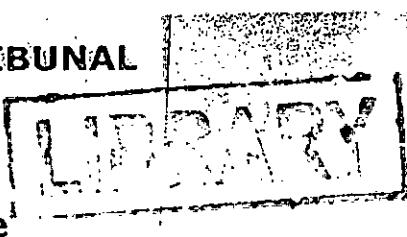


BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

**An application under Section 19 of the
Administrative Tribunals Act, 1985.**



ORIGINAL APPLICATION NO. 350/423 OF 2015

1. Sri Sudip Sarkar, son of Sunil Sarkar, date of birth May 14, 1972, residing at No.3, Chandighar, Post Office Madhyamgram Bazar, Police Station - Barasat, Kolkata - 700130.
2. Sri Prabir Mitra, son of Late Paritosh Mitra, date of birth April 22, 1973, residing at Madhya Durganagar, Jadubhatta Sarani, Post Office Rabindranagar, Police Station - Nimta, Kolkata -700065.
3. Sri Babul Sarkar, son of Sukumar Sarkar, date of birth January 10, 1972, residing at Deshbandhu Pally, Post Office - Purananda Pally, Police Station - Naihati, District- North 24-Parganas, Pin - 743165.

Sri Pranab Chowdhury, son of Late Jagadish Chowdhury, date of birth July 16, 1967, residing at 111, Radhaballav Road, Post Office - Naihati, Police Station - Naihati, District - North 24-Parganas, Pin - 743165.

Sri Tapas Das, son of Late Tarapada Das, date of birth June 22, 1967, residing at Kankinara Phingapara Road, 59/4, A.B. Road, Post Office - Phingapara, Police Station - Jagatdal, District - North 24-Parganas, Pin - 743165.

All the applicants are presently working as quasi union office worker/staff of the Union office of Eastern Railway Men's Congress, Naihati, District North 24-Parganas, having office at Railway Platform No.1, Post Office - Naihati, Police Station - Naihati, District - North 24-Parganas, Pin - 743165.

... Applicants.

-Versus-

The Union of India, service through The General Manager, Eastern Railway, Fairlie Place, 17, Netaji Subhash Road, Kolkata- 700001.

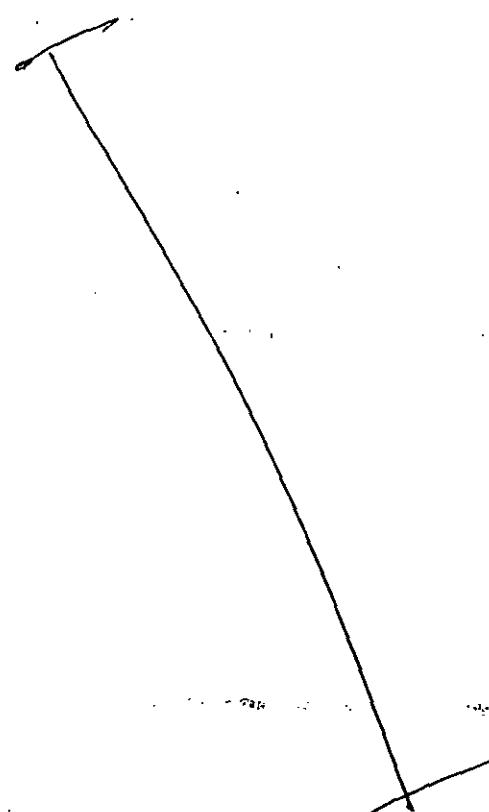
2) The Chairman, Railway Board, Rail Bhawan, Delhi - 110001.

3) The Chief Personnel Officer, Eastern Railway, Fairlie Place, 17, Netaji Subhash Road, Kolkata- 700001.

4) The Divisional Railway Manager, Eastern Railway, Sealdah, Kolkata- 700009.

5) Senior Personnel Officer, W & IR, Eastern Railway, Fairlie Place, 17, Netaji Subhash Road, Kolkata- 700001.

... Respondents



CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH

O.A.350/423/2015
M.A. 728/2018

Date of Order: 4.5.2020

Coram: Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Sudip Sarkar & Ors.....Applicant

Vrs.

Union of India & Ors.....Respondents

For the Applicant(s): Mr. S.K.Mitra, Counsel

For the Respondent(s): Mr. A.K.Guha, Counsel

ORDER

Bidisha Banerjee, Member (J):

M.A. No. 728 of 2018 seeking to expunge and/or delete the name of the Chairman, Railway Board (Respondent No.2) from the array of respondents in O.A. No. 423/2015, is allowed.

2. This O.A. has been preferred by five applicants to seek the following reliefs:

"(a) Leave to move this original application in terms of Rule 4(5)(a) of the Central Administrative Tribunal (Procedure) Rules 1987;

(b) An order thereby quashing and/or setting aside the order dated November 18, 2014 (Annexure A/34) passed by the General Manager, Eastern Railway, the impugned order herein.

(c) An order thereby declaring that the refusal on the part of the respondents to absorb the applicants is grossly vitiated by utter arbitrariness and unreasonable has on the part of the respondents and also violated the applicants' Fundamental Rights Guaranteed under Article 14, 16 and 21 of the Constitution of India;

(d) An order so as to command and direct the respondents and each of them by themselves and also through their servants, subordinates, Agents and/or Assigns:- (i) to absorb/appoint the applicants in any Group-D category in the Railway services pursuant to the Railway Board's letter dated 30.05.2000 and in connection with the applicants have already been found eligible by the Railway authorities, (ii) to give such appointment with all consequential benefits including arrears of salary and continuity of service from the date from which the applicants would have been ordinarily entitled to consequent upon their being found eligible, had they not been denied the said appointment by the Respondents;

(e) An order thereby commanding and directing the respondents and each of them by themselves and also through their servants, subordinates, Agents and Assigns to clarify and transmit all records connected with the absorption of quasi administrative staff in Eastern Railway pursuant to the Railway Board's letter being dated 30.05.2000 circulated vide letter dated 15.05.2006 by the Eastern Railway before this Hon'ble Tribunal so that concessionable justice can be done by this Hon'ble Tribunal by passing appropriate order or orders as prayed for hereinafter.

(f) An order so as to command and direct the respondents and each of them by themselves and also through their servants, subordinates, Agents and/or Assigns to pay adequate compensation to the applicants in addition to the reliefs as prayed for hereinabove.

(g) An order of costs of and/or incidental to this application.

(h) Any further or other order or orders as to your Lordships may deem fit and proper."

3. The order impugned in the present O.A., dated 17.11.2014 (Annexure-A/34) that is issued by the General Manager, Eastern Railway is extracted hereunder for clarity:

SPEAKING ORDER

While disposing OA. No.350/0041/2014, Sudip Sarkar & Ors. -Vs- UOI & Ors, the Learned CAT in its order dated 02-09-14 was pleased to direct as under :-

"The General Manager, Eastern Railway is directed to dispose of the representation dated 20-02-14 annexed at annexure A-15 of this application within 8 weeks from this date and a reasoned decision be communicated to the applicant within 2 weeks thereafter. It is made clear that we have not gone into the merits of the case. All points are kept open for adjudication by the respondents."

After consulting necessary files and papers, I have found as under:-

As per Railway Board's letter No. ENG II/99/RR-1/15 dated 30.05.2000 and RBE No.56/2006 and CPO's SI.No.83(07)/06, Railways with approval of General Manager may consider absorption of the staff of quasi administrative office/organization who were on roll as on 10-6-97 and are still on roll subject to fulfillment of other conditions as laid down in Board's letter ibid.

Such absorption should be resorted to only after exhausting the list of ex-casual labour borne on the Live Casual Labour Register/ Supplementary Casual Labour register and Substitutes etc.

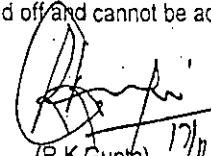
Keeping in view Railway Board's relevant guidelines which are binding upon me, I now consider the joint representation dated 20-02-14, submitted by S/Sri Sudip Sarkar, Prabir Mitra, Babul Sarkar, Pranab Choudhury and Tapas Das (Total 05 applicants) being Annexure-A/15 of the subject A and observe as under :-

All the 05 applicants claimed to be quasi-administrative employee and have been working in the Union Office of Eastern Railwaymen's Congress/E.Rly./ Naihati prior to 10-06-1997 and thereafter.

The Union was asked to submit their eligibility statement along with the pre-requisites as laid down in Railway Board's letter no. ENG II/99/RR-1/15 dated 30.05.2000 vide this office letter no. E 257/11/Coop/ XVIII dated 15.05.2006 followed by a series of letters on the subject dated 28.05.07, 04.06.07, 22.10.07, 24.12.08 and 04.03.11. The Union submitted their response vide their letter no. ERMC/GRIEV/NH/11 dt. 18.03.11 i.e after a lapse of nearly 04 years.

The Board had given one time relaxation for such absorption on 30.05.2000 and extended the same on 03.05.2006. Accordingly, all the quasi administration employees who were found to be eligible in conformity to the criteria laid down in Railway Board's letter no. E(NG)II/99/RR-1/15 dated 30.05.2000 over this Railway were absorbed in phases upto 19.07.2007. No further absorption after this date has been made. As the subject applicants eligibility statement as per the laid down pre-requisites in terms of Railway Board's letter no. E(NG)II/99/RR-1/15 dated 30.05.2000 was submitted on 18.03.2011 by the concerned Union after a lapse of nearly 04 years of the last absorption, therefore, their candidature could not be considered as the whole exercise of one time relaxation had been completed on 19.07.2007.

Accordingly, in the fitness of things and keeping above facts in view, the representation of Shri Sudip Sarkar and 04 others dated. 20.02.2014 is hereby disposed off and cannot be acceded to.


(R.K. Gupta) 17/3
General Manager
Eastern Railway

4. It is evident from a bare perusal of the order impugned in the O.A. that, indubitably and inarguably the applicants served as staff of Eastern Railway Men's Congress Naihati Branch, engaged during the period from the year 1992 to 1995. They claim to have been discharging their duties satisfactorily and continuously for sufficient long time since their engagement till date. The Railway Board, vide

letter dated 30.05.2000, extended benefit of one time relaxation for the staff working in the offices of Railway Union/Organization for absorption of Group-D categories in Railway Services. Staff of quasi-administrative officers/organizations who were on roll continuously for a period of at least three years as on 10.06.1997 and were still on roll, subject to fulfillment of prescribed educational qualification required for recruitment to Group-D posts, were eligible, provided such staff were engaged within the prescribed age limit. The letter of Railway Board was first circulated by the Eastern Railway on 15.05.2006 to all the Union/Association. The name of the applicants was duly forwarded by the office bearers of the Eastern Railway Men's Congress in the month of November, 2006. Further, in February, 2009, verification of records to determine the eligibility of the applicants was done. In September 2010 verification report was submitted by the concerned officer before the Chief Personnel Officer, Eastern Railway.

The respondent authorities in spite of receipt of the list on November 2006, vide letters dated 24.12.2008 and 04.03.2011 directed that the list forwarded be approved by the President or Vice President of the Union. However, in response to the letters, vide letters dated 07.01.2009 and 18.03.2011 the list, duly approved by the Vice President and President of Eastern Railway Men's Congress respectively, was forwarded. Since no steps were taken by the respondents for absorption of the applicants in view of the Railway Board letter dated 30.05.2000, the applicants made a detailed representation dated 20.02.2014.

Aggrieved due to inaction, they preferred an Original Application No. 350/417/2014 where the General Manager, Eastern Railway, was directed to

dispose of the representation dated 20.02.2014.

Vide order dated 18.10.2014 the claim of the applicants for absorption have been denied by the respondents on the alleged ground that the list was approved by the President only on 18.03.2011, after a delay of four years, while the entire exercise of one time relaxation had been completed on 19.07.2007.



The applicants have disputed the delay as their names were duly forwarded way back in November, 2006, further approved on 07.01.2009 and once again on 18.03.2011. In support, Ld. Counsel would place the following documents, reproduced/discussed hereunder:

(i) Secretary ERMC Letter dated 01.11.2006 to the CPO, Eastern Railway,
extracted hereunder:

(ii) The list of names forwarded, as under:

Sub:- RECRUITMENT OF STAFF WORKING IN THE QUASI ADMINISTRATIVE ORGANIZATION CONNECTED WITH RAILWAYS.							
Dvn./ Unit/ Office/Organisation	Name of Quasi Administrative Office/Organisation	Name of the Workers	Date of Birth	Date of initial Appointment	Number of days of service as per 10.06.97	Educational Qualification	Remarks
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
Sealdah	EASTERN RAILWAY MEN'S CONGRESS (NAIHATI BRANCH) Regd. No. 3092	Sri PRANAB CHOWDHURY	16.07.1967	03.03.1992	1923 days	VIII passed	
do		Sri BABUL SARKAR	10.01.1972	12.08.1992	1759 days	H.S. passed	
do		SH TAPAS DAS	22.06.1967	07.03.1994	1129 days	VII passed	
do		Sri TAPAN ADHIKARY	01.12.1973	18.06.1995	723 days	VIII passed	
do		Sri PRABIR MITRA	22.04.1973	13.04.1996	1154 days	VIII passed	
do		Sri SUDIP SARKAR	14.05.1972	01.01.1995	891 days	H.S. passed	

(iii) The letter dated 24.12.2008 of Sr. Personnel Officer (W) to President, ERMC to approve the list forwarded vide letter dated 01.11.2006.

(iv) The letter dated 20.07.2009 by the Vice President ERMC (Central) forwarding names, extracted as under:

"To
The Chief Personnel Officer,
Eastern Railway, 17, N.S.Road,
Kolkata-1.

Respected Sir,

Sub:- Absorption of Staff working in Quasi
Administrative Offices/Organisations connected
with Railways.

I have to invite a reference to this office letter even no. dated 07.01.09 regarding the absorption of staff working in the offices mentioned above. An enquiry was made by welfare Inspector/Sealdah on 02.02.09 upon the list of names approved by the undersigned and sent to you vide this office letter no. G/06 dated 01.11.06 in connection with your letter No. E-257/II/Coop/XVIII dt. 15.05.06.

It is to inform you for your kind consideration that the workers concerned are very hard up now as they have no alternate way to earn their livelihood. You are requested to expedite the absorption of the subject workers in Indian Railways.

Thanking You,

Yours faithfully,

-Sd-

(P.N.SARKAR)
Vice-President
EMRC (CENTRAL)"

(v) The Verification Report dated 29.09.2010, which is as under:

No.EW/Quasi Admin./Loose/Appu.(Unions).

Dated : 29/09/2010.

The Chief Personnel Officer
Eastern Railway
Kolkata

Sub - Verification of the records of Quasi Union Office Workers E.R.M.C/E.Rly/ Naihati.

Ref - Your letter No.E-257/II/Co-op/XVIII dated 21/07/2009 & 10/09/2008

As desired vide letter under reference a S & W.I./SDAH was deputed for the purpose whose report in detail is enclosed herewith for disposal.

DA : As above.

29/9/10
(L.Tunsoy)

D.P.O.

f. Divl.Railway Manager
Sealdah

Sub - Verification of the records of Quasi Union Office Workers of E.R.M.C/E.Rly/ Naihati.

Ref - CPO/KKK's letter No.E-257/II/Co-op/XVIII dated 10/09/2008

As deputed I the undersigned verified the desired records of the Union Office Workers available with Union Office/ERMC/E.Rly. Naihati and the verification report in detail against each candidate is appended below:

01	Sri Pranab Chowdhury
	Date of birth - 16/07/1967 - As per school certificate (copy attached) Date of Apptl - 03/03/92 (Engaged - vide Secy/ERMC/NH Branch's letter No.ERMC/NH/App./92 dated 29/02/1992 (copy attached)) Qualification - Class-VIII passed from Madral High School, P.O. Madral, 24 Pgs (N) previously known as Madral Jr.High School. The school certificate verified by the concerned school authority and found correct. Verification report attached. Proof of working as on 10/06/1997 - Attendance Register available from 01/01/1996 onward till 31/8/2010. Paid voucher available from April/1992 till 31/8/2010.
02	Sri Babul Sarkar
	Date of birth - 10/01/1971 - As per Madhyamik Admin. Card (copy attached) Date of Apptl - 12/8/1992 (Engaged - vide Secy/ERMC/NH Branch's letter No.ERMC/NH/App./92 dated 10/7/1992 (copy attached)) Qualification - Passed 11.5 from Naihati Mahendra High School, P.O. Naihati, 24 Pgs (N). The Madhyamik certificate verified by the concerned authority and found correct. Verification report attached. Proof of working as on 10/6/1997 and still On Roll - Attendance register available from 01/01/1996 onward till 31/8/2010. Paid voucher available from September/1992 till 31/8/2010.
03	Sri Tapas Das
	Date of birth - 22/6/1967 As per school certificate (copy attached) Date of Apptl - 07/5/1994 - (Engagement - vide Secy/ERMC/NH Branch's letter No.ERMC/NH/App./94 dated 22/4/1994 (copy attached)) Qualification - Passed Class-VIII from Matra Sri Ram Vidyapith, P.O. Madral, 24 Pgs (N). The school certificate verified by the school authority and found correct. Verification report attached. Proof of working as on 10/6/1997 and still On Roll - Attendance register available from 01/01/1996 onward till 31/8/2010. Paid voucher available from May/1994 till 31/8/2010.



04	Sri Prabir Mitra
	<p>Date of birth - 22/4/1973 ... as per school certificate (copy attached) Date of App't - 12/4/1994. (Engaged vide Secy ERMC/NH Branch's letter No.ERMC/NH/App/94 dated 01/4/1994 (copy attached)) Qualification - Passed Class-VIII from Nadibag Rajlaxmi Smriti Jr High School P.O. Badu Barqasaf, 24 Pgs (N). The school certificate verified by the school authority and found correct. Verification report attached. Proof of working is on 10/6/1997 and still On Roll. Attendance register available from 01/01/1996 onward till 31/8/2010. Paid voucher available from May/1994 till 31/8/2010.</p>
05	Sri Sudip Sarker
	<p>Date of birth - 14/5/1972 ... as per Madhyamik Board certificate (copy attached) Date of App't - 01/01/1995. (Engaged vide Secy ERMC/NH Branch's letter No.ERMC/NH/App/94 dated 30/12/1994 (copy attached)) Qualification - Higher Secondary Passed, Madhyamik Passed from New Barrackpore Colony Boys High School, New Barrackpore, 24 Pgs (N). Madhyamik Board certificate verified by the concerned school authority and found correct. Verification report attached. Proof of working is on 10/6/1997 and still On Roll. Attendance register available from 01/01/1996 onward till 31/8/2010. Paid voucher available from February/1995 till 31/8/2010.</p>
06	Sri Tapas Adhikary
	<p>Not On Roll since April/2003. It is learnt that he died but no death certificate is available with the Union Office.</p>

10/01/2012
 (H.K. Parida)
 S & W.I./Gr.I/SDAH

(vi) The letter dated 31.01.2012 of the Sr. Personnel Officer (CW & MPP) for the CPO, which speaks as under:

No. E.804/W/Griev/GM's Open Adalat

Kolkata, 31.01.2012

Divisional Railway Manager,
 Eastern Railway,
 Sealdah.

Sub : GM's Open Adalat - Absorption of quasi administrative staff in Railways.
 Ref : Your letter No. EW/Quasi - Admin/Loose/Appn(Union) dtd.05.01.12

The observation of the Principal CPO is as under :

"Since large number of Traffic substitutes is yet to be regularized by Sealdah division, cases of quasi administrative staff can be considered only after substitutes are regularized. Therefore, absorption of quasi administrative staff cannot be considered now"

(P.C. Tudu)
 Sr. Personnel Officer (CW & MPP)
 for Chief Personnel Officer

Copy forwarded for information & necessary action and may furnish actual position of pending substitutes of your divisions / workshops:

Placing the documents, a supra, Ld. Counsel would strenuously urge that it was absolutely unfair on the part of the respondents to deny their claim on the ground of delay, as their names were forwarded and as evidently they were enlisted in November, 2006, before the whole process closed.

Ld. Counsel would further submit that driven by desperation one amongst the 5 staff, who were enlisted, committed suicide.

5. We heard the Ld. Counsels and perused the records.

6. Having noted that the names of the applicants were forwarded in 2006 November, i.e. within time, we feel it appropriate to quash the speaking order by which their claim has been rejected due to delayed forwarding of list/names and remand the matter back to the authorities for an appropriate consideration and order, to be issued within three months.

7. O.A. is disposed of accordingly. No costs.

h
(Dr. Nandita Chatterjee)
Member (A)

Bidisha Banerjee
(Bidisha Banerjee)
Member (J)

RK