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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

CP No.445/2003 in  
OA No.1768/1999.

New Delhi this the 11th day of March, 2004.

HON'BLE MR. SHANKER RAJU, MEMBER (JUDICIAL)  
HON'BLE MR. S.A. SINGH, MEMBER (ADMNV)

Shri Mahesh Prasad & Others -Applicants  
(By Advocate Shri P.K. Sharma)

-Versus-

1. Mr. B.K. Jaiswal  
Chief Commercial Superintendent,  
now New Post as Chief Commercial Manager,  
Northern Railway, Gorakhpur, UP.
2. Mr. A.K. Dutta,  
Divisional Rail Manager,  
Lucknow Division, Lucknow, UP. -Respondents

(By Senior Counsel Sh. E.X. Joseph with Sh. Rajinder  
Khatter, Advocate)

O R D E R (ORAL)

By Mr. Shanker Raju, Member (J):

A brief factual matrix is relevant, which is enumerated as under. In OA-1768/1999 65 Commission Vendors and Bearers approached this Court for regularisation. By an order dated 14.11.2000 directions have been issued that till they are regularised and not absorbed against the available vacancies would be paid minimum of the revised pay scale on the basis of 5th Central Pay Commission's recommendations and the other allowances except increment. This was on the strength of an order passed by the Apex Court in WP (C) No.523/97. RA-8/2001 in OA-1768/99 filed by the respondents in the OA was disposed of on 28.3.2001, clarifying that though the order in the Writ Petition was passed in relation to the South Eastern Railway the same has to be followed.

2. CWP-523/97 filed by the respondents before the High Court of Delhi was disposed of on 7.11.2001, setting



aside the orders passed in RA with a fresh consideration by the Tribunal.

3. In pursuance thereof, in OA-1768/99 the following directions have been issued:

"5. In view of the above, the OA is allowed and the respondents are directed to faithfully implement the memorandum dated 13.12.1976 to absorb the applicants wherever the vacancies are available within a period of 6 months subject to availability of vacancies from the date of applicants they will follow the directions given by the Hon'ble Supreme Court issued from time to time. OA stands disposed of with the above directions. No costs." receipt of a copy of this order. For the absorption of the

4. Being aggrieved with non-compliance present CP is filed by the applicants. In reply the respondents apprised that the time to comply with the directions was extended for three months and in compliance priority for absorption against permanent posts was extended to applicants, the verification forms have been sent to applicants for their willingness to be absorbed in Group 'D' categories. Out of 150 Commission Bearers 77 have been screened earlier and remaining 73 were also screened. 69 screened Vendors/Bearers were absorbed whereas 4 Commission Vendors were found medically unfit.

5. In pursuance of an order passed in CP on 3.2.1001 a list has been filed by the respondents where few of the applicants have been found unsuitable due to non-filling of educational qualifications, some for being over-age and in the details at serial No.59-65 E.C. Railway has been approached for their absorption.



6. Having regard to the above, learned counsel for applicants contends that the directions having been complied with the question of educational qualification and age cannot be an impediment for their absorption against regular vacancies.

7. According to him, when the Apex Court has directed on 3.12.97 for grant of revised pay as per 5th Central Pay Commission till absorption same has not been followed by the respondents.

8. On the other hand, learned Senior Counsel Sh. E.X. Joseph, appearing with Sh. Rajinder Khatter contends that the issue regarding absorption/regularisation of Commission Vendors/Bearers was pending before the Apex Court and in WP-1568/86 on 20.4.87 process of regularisation has been ordered to be completed within a period of four months and absorption was in accordance with rules.

9. Ministry of Railway's letter dated 13.12.1976 provided regularisation of Commission Vendors/Bearers in the catering units but as the catering units have been given on contract for want of vacancies regularisation of applicants is to be effected against Group 'D' posts in accordance with rules.

10. Learned counsel further contends that as per rules the minimum qualification for appointment to Group 'D' post is 8th passed and applicants do not possess the aforesaid qualification. It is also stated that the maximum age limit is provided and applicants are beyond the age limit.

11. In so far as revision of pay and allowances as per 5th Central Pay Commission is concerned, it is stated that in CW-523/97 which pertained to the South-Eastern Railway the same would not apply to the case of applicants and moreover in the Writ Petition the aforesaid directions have been set aside and in OA-1768/99 directions were not specific as to the payment of revised pay scale as per 5th Central Pay Commission. Mere reference to the Apex Court decision would not have any applicability in the present case.

12. On pointed query as to whether a direction would be in futility if the age and educational qualifications are to be an impediment for consideration of applicants for regularisation, learned Senior Counsel fairly states that the matter can be re-examined.

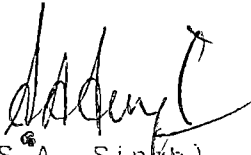
13. We have carefully considered the rival contentions of the parties and perused the material on record.

14. In so far as claim of applicants for grant of revised pay scale as per 5th CPC till regularisation is concerned, the decision of the Tribunal in OA-1768/99 and RA-8/2001 has been set aside in CWP-448/2001 by the High Court of Delhi and the same was to be re-considered. On re-consideration no specific directions have been issued except consideration for regularisation, as such we do not find any wilful disobedience on the part of the respondents.

(5)

15. As regards regularisation is concerned, we find that the claims of most of the Vendors/Bearers have been rejected for non-fulfilling the educational qualification and their being over-age. We find that the recruitment rules also contain a provision for relaxation and the fact that applicants had been working though on commission basis for the last 20 years and as the Apex Court has directed regularisation, subject to availability of vacancies by adhering to the age limit and educational qualifications and the fact that respondents' own letter dated 14.9.99 prescribe selection process which has already been undertaken before 4.12.1998 the educational qualifications would not be adhered to and the fact that this is not a selection and only a process of regularisation, we observe that the aforesaid two issues be re-considered by the respondents sympathetically with the object insight, i.e., to regularise these Commission Vendors/Bearers.

16. With the above observations CP is disposed of. Notices are discharged.

  
(S.A. Singh)  
Member (A)

  
(Shanker Raju)  
Member (J)

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