

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1432/1998

New Delhi, this 23rd day of December, 1998 -

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Anurag Semwal
Assistant Master (Georgraphy)
Northern Railway Oak Grove School
Jharipani, Dehradun .. Applicant

(By Advocate Shri H.K.Gangwani)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Personnel Officer
Northern Railway
Baroda House, New Delhi
3. Principal
Oak Grove School
Northern Railway
Jharipani, Dehradun .. Respondents

(By Shri R.L. Dhawan, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Applicant is assailing the selection held for the post of Assistant Master/Georgraphy (AMG for short) in the Oak Grove School (OGS for short) under Respondent-Railways.

2. Applicant was initially appointed as substitute/AMG on 18.6.96 in the scale of Rs.1400-2600 on ad hoc basis. He claims that he has been discharging his duties satisfactorily for more than two years and has been conferred with temporary status. He is aggrieved because of two reasons. Firstly, the result of final selection for the post of AMG declared on 28.7.98 does not contain his name. The final list, on the contrary, indicates selection of one Mohd. Shariq.

Secondly, the order of termination of his services with effect from 12.8.98 has been issued illegally and arbitrarily.

3. Shri H.K. Gangwani, learned counsel for the applicant seeks to assail the aforesaid selection of Mohd.Shariq as well as the resultant action of the respondents in terminating the services of the applicant on a large number of grounds. We, however, bring up for sharp focus only those important ones.

4. The committee for selection has been constituted wrongly being contrary to the rules and instructions on the subject. There should have been three members one of whom should have been from SC/ST and the other from minority (OBC) communities respectively. This has not been done in this case. There was a member in the selection board who was a subordinate official directly under other members, thus making the constitution of the selection committee invalid in the eyes of law. Selection Board did not have even a single official of the rank of junior administrative grade.

5. Respondents had called 14 candidates for interview against one post of AMG which is contrary to the Railway rules and norms laid down on the subject. As per instructions under 215(e) of Indian Railway Establishment Manual (IREM for short) Vol.I, it is incumbent on the part of respondents to call candidates only 3 times the number of vacancies. Instructions of the Railway

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Board on the subject provide preference for substitutes over freshers. The fact that the applicant has been working as AMG for more than two years should have been enough for giving due weightage in terms of sub-rule (xiii) of Rule 179 of the aforesaid Manual. Sub-rule xiii prescribes that substitutes and temporary workmen will have prior claim over others in matters of permanent recruitment. The case of the applicant should have been treated as one of regularisation of ad hoc services. Applicant fulfills all the eligibility conditions and also has necessary experience behind him for the present job. His work has been well appreciated by one and all and no less than R-3 has officially recognised the meritorious services rendered by him in the past two years. As per the Master circular dated 1.6.83 issued by the respondents, continuation of such substitute teachers beyond 6 months would require personal approval of R-1 - GM of the Railways. Applicant has, therefore, vested rights for regularisation since his services have been utilised beyond six months, the counsel argued. Regularisation issues of Substitutes working in Groups C and D categories can only be processed by a screening committee and not by selection board as per the aforesaid Master circular. The procedure for such screening has to be confined only to those substitutes/temporary employees who are on the roll of Railway administration. Respondents should have formed a special screening committee for the purpose of identifying eligible officials out of those substitutes appointed earlier.

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7. As per the counsel, since the applicant has been discharging the duties for more than two years, he ought to have been given additional weightage even in the interview, as per the norms set out by the respondents. Based on details at pages 14-15 of the OA, applicant also alleges hostile discrimination against him in that he was in the merit list at Sl.No.3 arising out of the written test whereas the candidate (Mohd. Shariq) who has been selected was at Sl.No.5 and yet the latter has been given appointment despite applicant's better performance both in written examination as well as viva-voce. All these would establish that the selection process has been vitiated by extraneous consideration only to suit the respondents to pick up a candidate of their own choice, the learned counsel for the applicant contended.

8. Shri Gangwani further submits that as per stipulations in the advertisement dated 16-24.12.97, candidates having experience of working in residential English medium school are to be preferred. Applicant claims to have worked in Mayo college/Ajmer for a considerable length of time and has thus acquired sufficient experience of handling students in residential set up whereas the selected candidate does not have the experience of working in a school with boarding facilities.

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9. Drawing strength from the decision of this Tribunal in OA No.325/1988 in the case of **Ram Bilas Paswan Vs. UOI SLR Vol.71 (1991)(1) 304**, applicant would claim that substitutes in the Railways hold civil posts and services of such substitutes could not have been terminated without application of mind. Applicant also argued that his case for regularisation is well covered by the order of this Tribunal in TA No.201/86 as reported in the case of **K. Marmdy and Ors. Vs. UOI & Ors. SLR Vol.48 (1987) 4 page 148**. It has been decided in that case that railway employees officiating in grade III, as in the present case, are entitled for regularisation after 18 months' working without undergoing any test. Lastly, the counsel submits that the ratio arrived at by the apex court in the cases of **Narender Chaddha (ATR 1986 SC 49)** and **Inder Pal Yadav (1985 (2) SLR 245)** are applicable in the facts and circumstances of the present case.

10. In the counter, Shri R.L.Dhawan, learned counsel for the respondents submitted that the applicant was appointed as a substitute teacher against a short term vacancy. The letter of appointment, as in A-2, indicates the following:

"in case you are interested for appointment as substitute, purely on ad hoc basis, please report for duty immediately and inform us your willingness telegraphically".

11. The aforementioned appointment was on the basis of simple interview held on 17.5.96, de-hors the rules. Shri Dhawan also submits that constitution of selection board was as per rules

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and it had one member each belonging to SC/ST and OBC communities. An officer of the rank of JA was also associated. As regards applicant's claim of experience for more than two years in the OGS, respondents would submit that the applicant was absent for almost 8 months with effect from 24.12.97 and that a substitute can get preference over others only when he/she has completed more than three years of service in that capacity. Respondents have also cited stipulations under section 1515 of IREM Vol.I to say that substitutes on completion of temporary status are not entitled to automatic absorption unless selected in the approved manner for appointment to regular railway posts. Section 215 is only applicable for promotion of Group C categories and not for direct recruits in Group C as in the present case.

12. As regards regularisation, the counsel for respondents drew support from the judgement of the apex court in the case of UOI & Ors. Vs. K.G. Vyas 1996 SCC (L&S) 468. That was the case pertaining to regularisation of an employee wrongly appointed to a higher post. The apex court held that regularisation cannot be granted by disregarding appointment rules. The employee was originally appointed as Khallasi (group D post) and was subsequently appointed to Group C post of Clerk and claimed regularisation as Storekeeper/Clerk because he had possessed all the requisite qualifications and had been working in that capacity for quite sometime. Jodhpur Bench of this Tribunal decided that the applicant was entitled for regularisation

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on the strength of his working in that post over a long period of time. While setting aside the Tribunal's order, the apex court held that the respondent in that case was not entitled for regularisation in terms of entitlement and in conformity with the rules applicable for such appointment.

13. We have heard rival contentions of learned counsel for both parties and perused the files/records containing selection proceedings. Two issues fall for determination. They are:- (i) whether the selection process herein has been vitiated by illegalities and arbitrary actions and (ii) whether the applicant, after having worked for two years on ad-hoc basis with temporary status can legally claim regularisation without going through the process of selection?

14. Before we examine the two issues aforesaid, it would be apposite to mention some important principles, as enunciated by the Hon'ble Supreme Court, which the selection board/administrative authorities are required to adhere to while conducting such selections. The functions of selection committee is neither judicial nor adjudicatory. It is purely administrative. Where selection has been made by the assessment of relative merits of rival candidates determined in the course of the interview of candidates possessing the required eligibility and there is no rule or regulation requiring the selection committee to record reasons, the selection

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committee is under no legal obligation to record reasons in support of its decision of selecting one candidate in preference to another. Even the principles of natural justice do not require an administrative authority or a selection committee or an examiner to record reasons for the selection or non-selection of a person in the absence of statutory requirement. What is very crucial in a selection process is to ensure "fairness" or "fair procedure". Procedural fairness is a hallmark of requirements in any administrative action pertaining to selection process. The selection committee cannot be an exception to this principle (emphasis ours). It must take a decision reasonably without being guided by extraneous or irrelevant considerations. When the selection committee consists of experts on the subject for selection and that they are men of high status and of unquestionable impartiality, the court/Tribunal is required to go slow to interfere with its decision. If any authority is required for this proposition, it is available in the case of **National Institute of Mental Health & Neuro Sciences Vs. K. Kalyana Raman (Dr.) 1992 Supp (2) SCC 481.**

15. As regards regularisation, law is now well settled. The apex court in the case of **Hindustan Shipyard Ltd. & Ors. Vs. Dr. P. Sambasiva Rao etc. JT 1996(2) SC 481** held that the process of regularisation involves regular appointment which can be done only in accordance with the proscribed procedures. That was the case where

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a few medical officers were working in the appellant corporation over a number of years on ad hoc basis. The Hon'ble High Court in a writ petition gave directions to the Corporation for their regularisation. While setting aside the order of the High Court, the apex court ordered that regular appointment to the post of Medical Officers can only be made after duly constituted selection committee has found them suitable for such appointments. The fact that no regular selection has been made after their appointment on ad hoc basis does not mean that they are entitled to be regularised. As a result of the direction for regularisation given by the High Court the requirement in the rule regarding selection by a properly constituted selection committee for the purpose of regular appointment has been dispensed with. This, the apex court held, was impermissible. Again, in the case of **N. Srinivasa Reddy & Ors. Vs. Govt. of A.P. & Ors.** SLJ Vol.65 (1) 1995, the apex court held that temporary or ad hoc appointment is not appointment in accordance with the rules and cannot be counted towards regularisation/seniority. In the case of **Mukesh Bhai Chota Bhai Patel Vs. Joint Agriculture and Marketing Officer Vs. Govt. of India & Ors.** AIR 1995 SC 413, the apex court laid down the law that mere working in a post for a number of years on ad hoc basis will not vest a person with the right to get regularised on a post which is meant to be filled up by regular recruitment under statutory rules. Regularisation can be made pursuant to a Scheme or an order in that behalf.

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16. In the background of law/Rules/principles laid down on the subject of "Selection & Regularisation", we shall now probe into the validity of applicant's claims based on a variety of considerations. Applicant has alleged illegality in the formation of the selection committee. We find that the committee consisted of five persons - 4 from different departments of Railways and one outsider. Three of them were Junior Grade Administrative Officers. The principal of OGS, where the applicant was working, was also a member of the said committee. A subject expert from DAV College, Dehra Dun (Department of Geography) was also associated. Formation of the committee, which included a member each from SC/ST community as well as OBC, was duly approved by the competent authority i.e. Chief Personnel Officer (CPO/IR for short), in advance. Applicant's contention that the committee did not have a minority (OBC) member or even a JA Grade officer cannot, therefore, be sustained.

17. It has also been argued that the selection process had faltered because of due weightage having been not given to the applicant, who was a substitute ad hoc teacher. It is true that respondents do have a system of providing preference, on conditions being satisfied, for such teachers working as substitutes. Even IREM talks about it. In fact, the Principal of OGS, who was himself a member of the Selection Board, wrote on 21.7.98 about giving weightage to the applicant

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vis-a-vis the candidate selected. This was not agreed to by two Members apparently because of the following reasons - (i) that the selected candidate scored highest total marks (94 out of 130) with his written score also being the highest whereas the applicant has scored a total of 88 with written score of 68; and (ii) that in respect of educational qualifications, from class X to MA/B.Ed., the selected candidate was found better off at almost all levels on a comparative analysis. Applicant's claim that he had secured even higher marks than the selected candidate, as mentioned in para 7, is without any valid foundation. For the reasons as aforesaid, the recommendation of the Principal was not agreed. We do not find any infirmity in the decision making process. In any case, a selection committee is legally entitled to adopt its own system of evaluation. Only thing to be ensured is that the internal/domestic yardstick so adopted should not be arbitrary and be based on rules/instructions on the subject. Procedure adopted at each stage of the selection does not appear to have suffered from any infirmity. The applicant has not come with any valid grounds warranting our interference in the matter.

18. We also find that the applicant has taken a plea that substitutes could be replaced only by candidates appointed through Railway Recruitment Board (RRB for short), when available. In other words, the final selection should have been held only by RRB and not by the selection committee. On perusal of records, we find that the Ministry of

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Railways vide its letter dated 9.1.76 has authorised the GM to recruit such teachers without the agency of Railway Service Commission to tide over difficult circumstances. The process of selection resorted to by the respondents, therefore, cannot be questioned.

19. Applicant has also submitted that calling of 14 candidates for interview for one post is against rules and instructions on the subject. He has cited sub-rule xi of Rule 179 of IREM Vol.I in support his contention that the number of applicants to be called for interview should not have exceeded 3-5 times the number of vacancies to be filled. We find that the respondents while conducting selection had adopted the RRB pattern. A large number of candidates had applied for the said post. After the written test was over, a decision was taken, following RRB procedure, that only those with the following pass marks could be called for viva-voce:

- (i) Max. marks for general candidates:
30 out of 100 marks
- (ii) Max. marks for SC/ST candidates:
20 out of 100 marks

20. Based on the aforesaid criterion, fourteen candidates who had crossed the above "pass marks" in the written test were called for interview. One, however, did not turn up for viva-voce. We do not find any arbitrariness in calling the candidates for viva-voce based on the aforesaid principle.

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21. Applicant has also challenged the constitution of selection committee on the basis that the Masater circular dated 1.6.83 prescribes that substitutes be put through selection process only by screening committee. We are unable to accept this contention in the background of Railway Board's instructions on the subject at para 4(a) in their letter dated 22.2.89. The said communication provides separate selection process for the purpose of regularisation. Applicant would also allege that since he had the experience of working in a residential English medium school, he should have been given preference as per note No.1 of the advertisement. It is only recommendatory and cannot be claimed as a matter of right. In the light of the law laid down by the Hon'ble Supreme Court on the subject of regularisation, as mentioned in paras 12 and 15 aforesaid, applicant's claim for regularisation without appearing in the test cannot be sustained in terms of law. Applicant's reliance on the case of K.Marmdy (supra) is misconceived. This is because in the aforesaid case, the Tribunal held that where a particular employee had been given promotional post and had worked in the said post for 18 months, reversion is not permissible without initiation of disciplinary proceedings. The facts and circumstances of the present case is different from that of Marmdy.

22. Records reveal that initial appointment of the applicant was not in terms of rules. We also find that the applicant has secured second position in

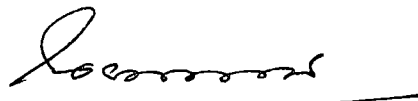
the final panel and since there was only one vacancy, he is the only candidate who has been officially placed in the "Waiting list". The fact that he is placed second in the panel itself indicates that there was proper consideration of his case and he has been treated fairly. From the perusal of records we have not come across any material that could raise serious doubt as to the deliberation of the selection committee. Nothing has been shown to us that the selection was arbitrary or whimsical or selection committee did not act fairly towards the applicant. The processes followed were in conformity with the principles of "Fairness" as elaborated in details in para 14 aforementioned. We, however, make it clear that we have expressed our opinion only in respect of selection to the post of AMG.

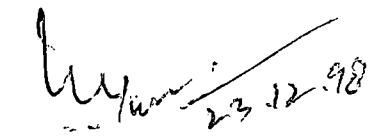
23. We notice some amount of "concern/sympathy" --- in Ministry's circular, by CPO/IR as well as by Principal of OGS --- towards the applicant herein as a substitute. This is because of stipulations in sub-rule xiii of Rule 179 which talks of giving preference for such candidates. The said stipulation is not mandatory in nature. Under the law/Rules, as detailed in paras 12 and 15 aforementioned, regularisation has to be preceded by a structured process of selection. An employee has to come out successfully in the selection process for permanent placement. Unsuccessful ad hoc appointees have to be replaced by those successful ones. Court/Tribunal should endeavour to find out whether a particular case in which

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sympathetic considerations are to be weighed, falls within the scope of law. Disregard of law, however hard the case may be, should never be done. We in the Court/Tribunal are required to administer the law as we find it, however inconvenient it may be. Yielding to instinct will tend to ignore the cold logic of law and that is not permissible.

24. For the reasons aforesaid, the OA is devoid of any merit and is accordingly dismissed. No costs.


(S.P. Biswas)
Member (A)


(T.N. Bhat)
Member (J)

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