

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.3059/1992

New Delhi, this 4th day of September, 1998

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

S/Shri

1. Anand Singh Bisht
S/o Sh. Joga Singh Bist

2. Puran Chand
S/o Sh. Ganga Dutt.

3. Balram Singh
Sh. Girvar Singh

4. Kanti Ballabh Kuniyal
S/o Sh. Shobha Nand Kuniyal

5. Ravinder Kumar
S/o Sh. Baij Nath

all Parcel Porter under
Station Supdt., New Delhi)

.. Applicants

(By Advocate Shri B.S. Mainee)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi

.. Respondents

(By Advocate Shri P.S. Mehandru)

ORDER

Hon'ble Sh. S.P. Biswas, Member(A)

Applicants, all Parcel Porters under Station Superintendent, New Delhi/ Northern Railway, are aggrieved by alleged illegal action on the part of the respondents in not allowing them to appear in the test held for the purpose of providing promotions to the post of Ticket Collectors (Category-C) although many of their juniors appointed subsequently have been allowed to appear in the said test held on 28.11.92.

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2. It is the case of applicants that in terms of Railway Board's Letter No. E(NG)ii-75/CL/77 dated 12.4.75 casual labourers/substitutes whether employed on projects or otherwise having completed 4 months of service should be considered for empanelment by screening committee for absorption against regular Group-D posts. Although the applicants have worked as Substitutes for more than 8-10 years against regular vacancies but the respondents have failed to hold necessary screening test for the purpose of regularising them against the clear vacant posts. Shri B.S. Mainee, learned counsel appearing on behalf of the applicants, contended that the respondents did conduct screening test on 16.5.90, 16.9.91 and 12.11.91 when substitutes, juniors to the applicants, were called for screening. The case of Surinder Singh has been cited as an example to substantiate the allegation that respondents have called juniors ignoring superior claims of the seniors, like the applicants herein.

3. It is also the case of the applicants that the respondents vide their letter dated 20.10.92 had called for applications from amongst the staff belonging to Class-IV category, having completed 3 years of regular service, for the purpose of appearing in the test for promotional posts of Ticket Collectors. Applicants, fulfilling all the conditions, applied for appearing in the said test. Alongwith the aforesaid letter, the respondents had also issued a list of eligible candidates who were to appear in the said test. Applicants No. 1 & 2 are included in the list at S.No.

139 and 137 respectively but their names have been arbitrarily excluded from the field of eligibility and that the respondents subsequently acted illegally by issuing a letter dated 20.11.92 in terms of which the names of 12 candidates including the applicants No. 1 & 2 have been deleted from the said list, thereby denying legitimate claims of the applicants to appear for the test meant for the promotional posts of Ticket Collectors.

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4. The learned counsel for the applicants submitted that all the applicants have been appointed after holding necessary screening test and that too with the approval of Respondent No.1. They are working satisfactorily and there is nothing wrong that could stand in the way of further screening, if the respondents so required, the learned counsel contended. It is the failure of the respondents to hold screening test in time and that could not be taken as the basis to deprive them of the rights to appear in the selection, learned counsel would further contend.

5. In the counter, the respondents admit that the applicants were initially appointed as Substitute Luggage Porters with the approval of Respondent No.1 in the grade of Rs.750-940. It has been submitted that applications were called for only from those Class-IV employees belonging to Traffic/Commercial Departments from amongst those who had completed 3 years of regular service in Class-D category and could also read and write. Since the applicants were not eligible, they were not called to appear in the selection for Ticket

Collectors. In other words, the applicants, not being regularised against Group-D posts, could not be considered or held eligible for appearing in the test. The applicants were appointed as Substitutes subject to the passing of the screening test under the extant rules. In respect of Sh. Surinder Singh, the respondents have submitted that he was erroneously called and his name was subsequently struck off the list when it came to the notice that Sh. Singh is working in the Commercial Department. Similarly, Sh. Prakash Narain and Sh. Nand Kishore ~~who~~ were erroneously called to appear in the written test for the selection of Ticket Collectors and had to be subsequently deleted by office letter dated 25.11.92.

6. The issue that arises for determination is whether respondents refusal to allow the applicants to appear in the selection test against the promotional post of Ticket Collectors (Group-D) could be held as legally valid?

7. Before we *examine* the legality of the aforesaid basic issue, it would be apposite to elaborate the concept of Substitutes itself. The definition of Substitute is given in Chapter XVI of I.R.E.M. Vol.I. Para 1512 reads as under:-

"Substitutes" are person engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to costs against which they are employed. These posts fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary railway servants and which cannot be kept vacant."

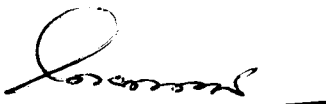
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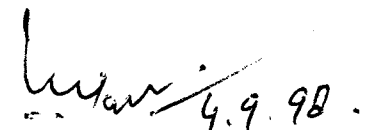
8. Para 1513 of this Chapter also gives circumstances under which a Substitute can be appointed. It mentions that ordinarily there should be no occasion to engage Substitutes. However, because of circumstances beyond control, there could be an absolute necessity to engage a Substitute even in cases of vacancies of short duration. In other words, a Substitute is appointed against a vacant post in Railways unlike the casual labourers. We find that the respondents have taken actions to delete the names of two applicants from the eligibility list vide Annexure A-3 dated 20.11.92. Nothing ^{but} ~~prohibits~~ ^{^ however} correction of errors with due process of law. Such an action could be taken only with the prior notice. It is also not understood as to how the applicants have been allowed to remain unscreened for the purpose of regularisation against Group-D post. The claims of the applicants for such regularisation cannot be denied because of the fact that these Substitutes are working against clear vacancies over a long period. Respondents have come out only with the promise that the applicants will be considered for screening in terms of seniority alongwith screening of casual labourers of 1986. At the same time, applicants also have not come with any legal basis to stake their claims. They rely only on the Railway Board's circular calling for the test wherein some of their juniors allegedly have been included in the eligibility list. This does not serve the legal purpose.

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9. From the oral arguments and materials available before us, it is not clear if the applicants have been screened/put to test for regularising them against permanent Group D posts. That is the pre-condition for allowing any such official for appearing in any test for selection against regular Group C posts. At the same time, it is seen that applicants are working for 8-10 years regularly against permanent posts in category 'D'. Under these circumstances, respondents shall first initiate actions to consider regularising the applicants in the present category, if necessary, with retrospective effect in case any juniors to them have been provided the same relief. This exercise shall be completed within four months from the date of receipt of a copy of this order. After the formalities for regularisation have been completed, the applicants shall also be considered for appearing in the selection test of Ticket Collectors strictly in terms of seniority of such comparable officials subject to fulfilment of other conditions laid down for such selection.

10. The application is disposed of as aforesaid. No costs.


(S.P. Elswas) ,
Member (A)


(T.N. Bhat)
Member (J)