

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD
...

Registration T.A. No.1197 of 1986
(O.S. No.635 of 1985)

Km. Savita Sharma Applicant.

Versus

Union of India
and another Respondents.

...

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. V.K. Seth, Member (A)

(By Hon. Mr. V.K. Seth, Member (A))

This case has been received on transfer of
O.S. No. 637 of 1985 from District Judge, Gorakhpur
in terms of Section 29 of the Administrative
Tribunals Act, 1985.

2. In the suit before the court of Munsif, Gorakhpur
the plaintiff/applicant Km. Savita Sharma, a clerk
in the Handicraft Centre No. 2, N.E. Railway, Gorakhpur
had claimed the following reliefs; that by the
decree in favour of the plaintiff against the
defendants, Union of India, through its General
Manager, N.E. Railway ^{and} ~~the~~ Chief Personnel Officer,
N.E. Railway Gorakhpur declaring the plaintiff
as a confirmed Railway employee on the post of
Clerk since 9.10.1972 and confirmed ~~as~~ Railway Employee
on the post of Senior Clerk since 1.6.1981 and
entitling her for all the benefits and emoluments
accruing to those posts, ~~as~~. The defendants
be restrained from disturbing the status of the
Senior Clerk like any other incumbent ~~and~~
belonging to the N.E. Railway Administration. She

has also prayed for any other relief to which she may be found entitled to.

3. In her suit, the applicant has averred that the appointment to the post of Clerk was made by advertisement and in response to that, she submitted application and was called for interview and after selection, she was given appointment vide letter No. E/HCC/GKP/II dt. 9/31.10.1972 and after complying with the terms, she joined her duties on 9.10.1972 and since then, she is rendering her services as Clerk in the Handicrafts Centre, N.E. Railway, Gorakhpur. She has alleged that despite her persistent efforts, her services have not been regularised as a Railway Clerk nor has she been confirmed. She has also stated that she has become overage and now there is no prospects ^{of her} getting service anywhere else. Aggrieved by the inaction on the part of the Railway Administration, she served notice under Sec. 80C.P.C. on the defendants and this case on transfer has ^{now} come up before this Tribunal. The applicant has also alleged that the cause of action arose for the first time in the year 1974 when the plaintiff became entitled for confirmation of her status as a clerk.

4. In their written statement, the respondents have challenged the suit on various grounds. They have alleged that the suit is barred by estoppel and acquiescence, laches, that the suit is not justiciable in the court of law. They have also challenged the fact mentioned by the applicant. They have

asserted that no such advertisement was made by the Railway Administration and the advertisement which has been referred to by the plaintiff was made by the Secretary Managing Committee, Handicrafts Centre Gorakhpur vide notification No. E/HCC/GKP/II selection dt. 22.7.1992 and the said notification contained the details of the terms and conditions of the employment. They have also asserted that the plaintiff/applicant was employed as a clerk w.e.f. 9.10.1972 in the scale of 100-3-130 vide office order dated 9/31/10-1972 issued by the Chairman Handicrafts Centre, Gorakhpur. They have also stated that the terms and conditions as contained in her offer of appointment were as Under;

"This appointment is purely temporary and will not confer on her any claim for retention as a Railway Servant. Her appointment will be governed by such terms and conditions as may be laid down by the Managing Committee of the Handicraft Centres from time to time. She will not be an employee under the N.E. Railway Administration but an employee of the Handicraft Centres and will be paid from the funds of the Handicraft Centres. Her services are liable to be terminated at any time without giving any notice and without assigning any reasons."

They have also stated that she has accepted her offer of appointment without any protest or reservation. They have also stated that the

Handicraft Centre has been organised in the N.E. Railway under the Staff Welfare Scheme and that the affairs of these centres are managed by a managing committee which includes amongst others, the wife of the General Manager as a patron.. They also stated that the managing committee also engages some staff like tailors, mechanics, lady clerks etc for managing the affairs of the handicraft centres. Further the payment of staff so engaged in the handicraft centres are managed from the funds of these centres which comprises ;

- (a) grants from the staff benefit funds of the Railway Employees.
- (b) subscription from working members.
- (c) percentage contribution of the total value of work done by the lady members.

Further like casual labours , the staff working in the Handicraft centres are eligible for screening , regularisation and absorption in class-IVth posts. They can also appear in the open selections conducted by the Railway Board for Class-III posts and that by engaging as a clerk the managing committee had not imposed any restriction on her to seek better employment. They have also stated that her representation for appointment and regularisation were considered but were not found admissible according to the extant Railway Rules. and accordingly, she was advised to contact Dy. G.O.S. for her screening

to a class-IV post and appointment but she rushed up to the court and filed the present suit.

5. In her Rejoinder, the applicant/plaintiff has alleged discrimination and challenged the order as illegal and void-ab-initio and she has also drawn our attention to Section(G) para 283⁹ of the Indian Railway Establishment Manual and asserted that Handicraft Centres should be managed as per guidelines contained therein. She has also invited our attention to the Railway Board's letter dated 26.9.1957 addressed to the General Manager, in which it is stated that the Railway Board have decided that ~~on~~ ~~at~~ those Railways ~~where~~ there are separate clerical staff employed ~~at~~ at the cost of the staff benefit funds for work in connection with the staff benefit funds, the work should w.e.f. 1.10.19⁵⁷ ^{be} handled by the staff in the normal Railway Cadre amongst other items of the work. .. The clerical staff ~~of~~ ~~and~~ the staff benefit fund should be taken over under the regular Railway Service and treated as ~~a~~ Railway Servants w.e.f. 1.10.1957 The applicant claims that as per these orders, she became a regular railway employee w.e.f. the date of her appointment. She has also drawn our attention to the temporary injunction obtained by her.

6. Shri G.C. Bhattacharya, learned counsel for the applicant forcefully reiterated the averments already made in the plaint and the rejoinder affidavit. Sri Amit Sthalekar, learned counsel for the

respondents while reiterating the arguments already advanced in the counter affidavit and supplementary counter affidavit ~~has~~ also drew our attention to the case of Kausar Ansari Vs. Union of India and others in T.A.B-16 of 1986 decided by the Patna Bench of the Tribunal and reiterated ~~his~~ his preliminary objection regarding lack of jurisdiction.

7. We have carefully considered all the records of the case and before considering the merits of the case, we consider it necessary to decide the brief question relating to the jurisdiction of the Tribunal with regard to this matter. The various records submitted in the case clearly show that the handicraft centres are not managed from the railway revenues and instead the funds for meeting their expenditure comprises three elements as pointed out by the Respondents. The letter dt. 19.9.1972 addressed to the plaintiff asking her to appear for interview and also ~~the~~ letter of appointment ^{to her} are signed by the office bearers of the handicraft centre, namely in the first case by the Secretary, of the centre and in the 2nd case i.e. appointment letter by the chairman. Further her letter of appointment clearly mentions that her appointment will be governed by the ~~said~~ ^{such} terms and conditions as may be laid down by the managing committee of the centres and that she will not be a Railway employee but an employee of the handicraft centres and will be paid from the funds of the Handicraft centres. In this connection it would ~~also~~ be relevant to refer

to Rule 103 (43) of the Indian Railway Establishment Code, Vol. I which defines 'Railway Servant' as a person who is a member of a service or who holds a post under the administrative control of the Railway Board. Section 14 of the Administrative Tribunal Act, 1985 States that;

"14 Jurisdiction, powers and authority of the Central Administrative Tribunal (1) save as otherwise

(a)

(b)

(i)

(ii) a person (not being a member of an All- India service or a person referred to in clause (c) appointed to any Civil Service of the Union or any civil post under the Union; or"

From the language of the India Railway Establishment Code and section 14 of the Administrative Tribunals Act, 1985 it is quite clear that the case of the applicant cannot be entertained by this Tribunal as she is not a person appointed to any civil service of the Union or any civil post under the Union nor is she covered by any of the other categories mentioned in Section 14 of the Act. Accordingly, her application is dismissed. Nevertheless, the Railways may in its discretion ~~to~~ consider whether the scope of the recruitment rules for regular railway employment can be suitably enlarged to provide some relief to the employees working in the attached organisations of the Railways performing like duties for long years. There will be no order as to costs. Interim order.

Member(A)

Vice-Chairman

Dated: 26 April, 1993.
(n.s.)