

(6)

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 22nd day of October 2008.

Original Application No. 165 of 2006

Hon'ble Mr. A. K. Gaur, Member (J)

1. Shri Jagdish Prasad, S/o Sri Sita Ram, R/o Village Algarpur, Post Office Vitthal, Distt: Deoria.
2. Shri Sarvada Nand Dubey, S/o late Shri R.K. Dubey, R/o Village Deoria, Post Bairbana, Distt: Deoria.

. . . Applicant

By Adv: Sri V.K. Srivastava

V E R S U S

1. Union of India through its General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.
3. Chief Personnel Officer, North Eastern Railway, Varanasi.
4. Mandal Rail Prabandhak (Karmik) North Eastern Railway, Varanasi.

. . . Respondents

By Adv: Sri R. Ranjan

O R D E R

The applicants have filed this OA praying for quashing the impugned order dated 21.12.2005 (Annexure 7 to the OA) and also for a direction to the respondents to consider the applicants case for screening and regularization on the ground that a number of juniors have been given benefit of screening and regularization earlier.

✓

✓

(11)

2. It is alleged by the applicants that they had filed OA No. 1148/00 before this Tribunal. This Tribunal vide order dated 27.09.2002 finally disposed of the OA with a direction to file a separate representation to the respondent No. 2, who shall verify the claims of the applicants and pass reasoned and detailed order in each case. This exercise was directed to be completed within a period of four months. Representations were filed in pursuance of the aforesaid order. It is also alleged by the applicants that one Digvijay Nath Tiwari whose name finds place at Sl. No. 70 was subsequently picked up for regular screening by certifying his previous working, whereas the respondents have failed to consider the case of the applicant without any reason or rhyme, although his name appears at Sl. No. 69. Vide non speaking and cryptic order dated 02.04.2003 the respondents rejected the claim of the applicants. The sole ground for rejecting the claim of the applicants is that the service rendered prior to 31.12.1980 was found to be unapproved and uncertified, and the work done as substitute in subsequent years was without the sanction of the competent authority. Consequently, applicants' name have not been put in the list of the authorized substitute as per Railway Board's letter dated 18.12.1980. According to the applicants on the strength of working of the applicants prior to 31.12.1980 they were given subsequent appointments in different years upto 1998 and this appointment by the respondents has created ✓

(17)

legitimate expectation of being permanently absorbed on the post. By filing subsequent OA No. 1162/03 against the order dated 02.04.2003. This Tribunal directed the respondents to consider the case of the applicants only after considering authorized casual labourers the cases of substitutes and directed the respondents to keep the name of the applicant in the Casual Labour Live Register and provide work if the work is still available in accordance with the number of days of working of the applicants. It is also clarified, that this shall be subject to availability of work and vacancies after the regular substitute or casual labourers already entered in Casual Labour Live Register are exhausted. The applicant preferred representation to the competent authority that the respondents without considering the facts and circumstances of the case has passed the impugned order dated 20.12.2004 ignoring the rightful claim of the applicants. No show cause notice or opportunity of hearing was granted to the applicants. They have also not intimated by the respondents that they are unauthorized substitutes. By no stretch of imagination the applicants could be deemed to be unauthorized substitutes. The applicants had worked since 1980 till 1998 in broken spells and their names have been shown in the Casual Labour Live Register, but no serial number has been disclosed by the respondents.

3. The grievance of the applicant is that the respondents have arbitrarily prepared two types of

✓

list. One for authorized and another for unauthorized substitutes. There is no provision or rule and circular under which the applicants have been shown in unauthorized list. There is also no indication as to why the name of the applicants have been kept in the list of unauthorized substitutes. The applicants also placed reliance on the case of one Hare Krishna Yadav, who had filed OA No. 254/92 and OA No. 253/93 filed by Vijendra Nath Pandey. In these two case this Tribunal directed to take up their case for screening and regularization on their turn. In pursuance of the order, the respondents regularized the services of the applicants of those OAs. Sri Vijendra Nath Pandey had been regularized much earlier in the year 1995. Hare Krishna Yadav had been screened and regularized vide order dated 21.07.2004. The applicants also claimed that their cases must have been be considered by the respondents in identical manner. The order dated 20.12.2004 has been passed by the respondents without considering the case of the applicants illegally and arbitrarily on the ground that on the availability of vacant posts, the services of the applicants will be considered in accordance with rules and seniority. The applicants earlier challenged the order dated 20.12.2004 by filing OA No. 874/05 and after hearing the counsel for the parties the same was permitted to be withdrawn, and the liberty was given to the applicants to file fresh OA specifying more better details therein. Copy of the order dated 05.08.2005 has been filed as Annexure A-6 to the OA. In

(ju)

pursuance of the order and direction of this Tribunal dated 05.08.2005 the applicants again submitted representation alongwith order to respondent No. 2 and the respondent No. 2 without considering the facts in detail rejected the representation of the applicants vide order dated 21.12.2005.

4. Denying the plea taken by the applicants the respondents filed counter affidavit and submitted that the claim of the applicants for the alleged duty performed as substitute prior to 31.12.1980 were examined by the respondents through records and their claim has not been verified. The total period of working certified by respondents from 31.12.1980 to 11.06.1989 was for a different period and different place and the details of the period so certified relates to a period of 69 days only. As regard the rest of the period of duty after 31.12.1980 is concerned, the alleged duty performed by the applicant is without approval from the competent authority. The name of the applicants have been mentioned on roll on 30.04.1996 in an unauthorized list. According to the respondents the alleged duty performed by applicant No. 2 in between 01.12.1980 to 31.12.1980 was not certified and the duty performed, if any, after 31.12.1980 was performed without any approval of the competent authority. The applicant No. 2 was also not on roll/list on 30.04.1996 and thus comes under the substitute category. The respondents have further submitted in their reply that working period as

4/

(15)

Seasonal Waterman in the year 1980 was also not certified from the records. The representation of the applicants was considered and decided by speaking order dated 02.04.2003. In para 18 of the counter affidavit there is a clear and specific averment that the name of the applicants have not been included in any of the lists in which the name of Digvijay Nath Tiwari has been shown.

5. Rejoinder affidavit has been filed by the applicant but nothing new has been added therein.

6. I have heard Sri V.K. Srivastava, learned counsel for the applicant and Sri Ravi Ranjan, learned counsel for the respondents.

7. Having heard parties counsel it is found that the competent authority in pursuance to the order and direction of this Tribunal dated 05.08.2005 has considered the representation of the applicants. Vide order dated 21.12.2005, it has passed specific order clearly indicating therein that the working of the applicants performed prior to 31.12.1980 has not been certified and the working after 31.12.2080 performed by the applicant has not been approved by the competent authority and as such the applicants shall be deemed to be unauthorized. According to the applicants Jagdish Prasad (applicant No. 1) had worked for 624 days w.e.f. 30.04.1982 to 19.06.1998 in broken spells, but days of workings w.e.f. 13.07.1988 to ✓

(16)

01.06.1989 (69 days) of the applicant have been certified. As regard Sarvada Nand Dubey is concerned he claimed that he had worked w.e.f 01.12.1980 to 23.06.1993 in broken spells for a period of 239 days. After inquiring into the matter it was discovered that Sri Duby had not worked for even a single day prior to 31.12.1980, and whatever work has been performed by him as substitute after 31.12.1980 is wholly unauthorized. Similar kind of inquiry was conducted in the case of substitute Amba Lal Gupta and it was found that he also performed his work as substitute after 31.12.1980 without any approval of the competent authority which is not according to law. The competent authority also clearly and specifically mentioned that the work performed by the applicants prior to 31.12.1980 has not at all been certified and as the names of the applicants does not appear on the roll of 30.04.1996, they do not come within category of substitute. In order dated 21.12.2005 it is clearly observed that the applicants have utterly failed to give any documentary evidence in support of allegations that number of junior persons were appointed on 24.03.1987 and the Railway Administration has not prepared two types of list as alleged. The respondents have prepared only one list of authorized substitutes.

8. Learned counsel for the applicant has also invited my attention to the judgment rendered by this Tribunal in OA No. 05/02 and other connected OAs

(17)

wherein it has been pointed out that the respondents have prepared two kind of lists, one for unauthorized substitutes and another for authorized substitute. In the present case, I am required to consider the legality and validity of the order dated 21.12.2005 and as such (Annexure A-7 to the OA), I do not feel it appropriate and proper to refer the observations made by the Tribunal in its judgment rendered in OA 05/02 alongwith other connected matters. In my considered view the respondents have not committed any violation of Article 14 and 16 of Constitution of India.

9. Having heard parties counsel at length I find that the applicants have utterly failed to make out any case warranting interference in the OA, which is accordingly dismissed. No cost.

A.K. Gaur
(A.K. Gaur)
Member (J)

/pc/