

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

O.A. No. 812 of 1991 &

O.A 360 of 1991 With M.A 273 of 2000

Date of decision : 11.08.2000

Smt. N. J. Desai : Petitioner [s]

Mr. K. K. Shah : Advocate for the petitioner [s]

Versus

Union of India and Ors. : Respondent [s]

Mr. N.S. Shevde : Advocate for the Respondent [s]

CORAM :

THE HON'BLE MR. V. RAMAKRISHNAN : VICE CHAIRMAN

THE HON'BLE MR. A.S. SANGHAVI : MEMBER (J)

Smt. N. J. Desai
Primary School Teacher,
At Viramgam,
Rly., Primary School No.1.

= Applicant =

Advocate : Mr. K. K. Shah

Versus

1. Union of India, to be served
Through Secretary,
Railway Board. Rail Bhavan,
New Delhi : 110 001.
2. General Manager (E),
W. Rly., Headquarter Office,
Church gate, Bombay.
3. Divisional Personnel Officer,
& President Railway School,
Divisional Office, W. Rly.,
Baroda.

= Respondents =

Advocate : Mr. N. S. Shevde

JUDGMENT

O.A 312 of 1991 &

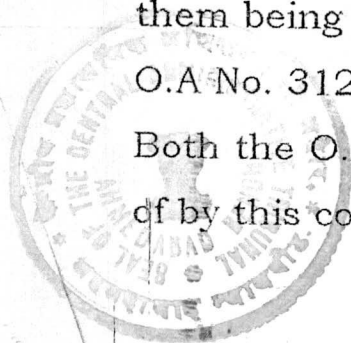
O.A 360 of 1991 with

M.A 273 of 2000

Date : 11/08/2000

Per Hon'ble Shri. A.S. Sanghavi : Member (J).

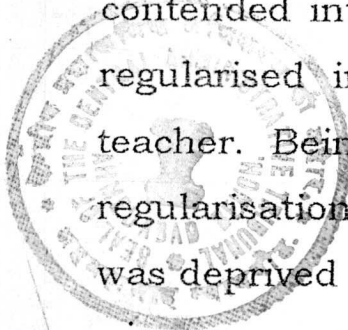
Both these O.As are filed by the same applicant and both of them being interconnected in as much as that the outcome of the O.A No. 312 of 91 depends on the result of the O.A No. 360 of 91. Both the O.As are therefore, consolidated and are being disposed of by this common judgment.



2. The applicant, Ms. N.J. Desai is a substitute assistant teacher serving with the respondents since 06.02.79. According to her, she was initially engaged as substitute primary school teacher in Baroda Division on 06.02.79 and since then she has been continuously working as a teacher. Even though she had been working continuously, she had not been given any opportunity to regularise her services by holding the screening test. According to her, several similarly situated assistant teachers have been recruited in service by the respondents holding test but, she has been declined the regularisation merely on the ground that she has not qualified by passing the test. She has alleged that except in 1984, no test has been held by the respondents and therefore, she has not been given any opportunity of qualifying for regularisation. According to her, every year on completion of the academic year, she was discontinued from the service and was again re-engaged on the completion of the vacation. She possesses all necessary qualifications for being a teacher and has now put in more than 12 years of service as a teacher with the Railways. She had represented to the respondents for being regularised in the service and was advised to apply for the R.R.B. exam which was conducted in June and July'91. She had appeared in the exam but, failed to clear the same and therefore, she apprehends that her services are likely to be terminated by the respondents. According to her, she could not have been compelled to appear in the examination as she had put up service of more than 12 years and was eligible to be regularised without screening.

During the pendency of the O.A 312 of 91, the applicant was served with order dated 09.10.91 informing her that since the panel of the regular as well as substitute teachers has been received from the R.R.B., A'bad, her service were no more required and as such, this should be treated as a termination notice for one month and that she should hand over the charge to teacher in-charge, New Primary School No.1 on or before 08.11.91. The applicant, therefore, moved another O.A no. 360 of 91 challenging this termination order contending inter alia that in spite of her long service, she was not given any opportunity for regularisation and the order passed terminating her services was arbitrary and in violation of principals of natural justice etc., She has prayed that the respondents may be directed to regularise her services by holding her screening test or by assessing the service records and to continue her in the service with all consequential benefits. The applicant had also prayed for interim relief seeking injunction against her termination from the service and on having been granted the interim relief as prayed for by her, she has continued to serve as a substitute teacher with the respondents up till now.

3. The respondents have resisted both these O.As and have contended inter alia in their reply that the applicant was never regularised in service and had worked only as a substitute teacher. Being a substitute teacher does not give her any right of regularisation and therefore, she cannot be heard to say that she was deprived of her right of regularisation. They have admitted



that the applicant was granted temporary status w.e.f. 07.10.84 on completion of 90 days of continuous work as per the rules but have contended that this does not give any right to the applicant to contend that she was not liable for screening or was not required to appear in the test held by R.R.B. They have contended that in fact the applicant was given an opportunity to regularise her service in the year 1983-84. She had however, not appeared in that exam, though a notification dated 26.05.83 regarding the said exam was issued and was also published in Gujarat Samachar dated 02.06.83. They have further contended that in view of the change in the policy of the recruitment of the assistant teachers, it is now for the Railway Recruitment Board to regularise the service of the substitute teacher or to recruit assistant teachers. The R.R.B. has also issued a notification in the news paper for the selection of the regular and substitute assistant teachers in Baroda division. The applicant had appeared in that examination but failed to clear the same and hence, she was not empanelled for recruitment by R.R.B., A'bad. She is therefore, not eligible to continue as substitute teacher and her services are sought to be terminated to give posting to the teachers who are regularly selected. They have denied that arbitrary orders are passed by the R.R.B. or that the R.R.B. has no power to conduct the examination. They have also contended that the applicant has every opportunity of getting regularised in service, but she had not availed of the same and therefore, now she cannot be heard to contend that she was not given any opportunity of getting regularised. They have further contended

that the applicant has no right to maintain both these O.As as her services are only that of a substitute teacher. They have also denied that the applicant can be absorbed without holding any test and have contended that as per the rules, she is required to qualify by clearing the test held by R.R.B. They have prayed that the O.A be dismissed with costs.

4. We have heard the learned advocates of both the parties at length and carefully considered the rival contentions.

5. It is not in dispute that the applicant has been engaged as a teacher since 02.06.79 and that she has been serving as a substitute teacher with breaks during vacation from '79 till today. It is also an un-disputed position that she has been awarded temporary status on dated 07.10.1984 and has been deriving the benefits of a temporary status employee in the Railways. The applicant has contended that even after putting up such a long service she has not been regularised in the service. According to the case of the applicant under the old rules, it was not necessary for the Railway authorities to hold screening test for her and she could have been regularised in the service on the basis of her seniority as well as long service. Mr. K.K. Shah, learned advocate appearing for the applicant has however, not been able to produce any rules which show that for regularisation of primary teachers, no screening or selection was necessary. On the contrary, the para-2318 of the IREM 2nd edition, relied upon by the applicant suggests that selection was necessary for

regularisation of the substitute employees. This para 2318 reproduced at Annexure A/5 by the applicant runs as under :-

" Substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time on completion of six months continuous service. Substitute school teachers may, however, be afforded temporary status after they have put in continuous service of three months and their services should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection."

It is quite obvious that this rule envisages regular absorption after selection. Hence, the submission of Mr. Shah, that for the substitute teacher no screening or selection was necessary is clearly negated.

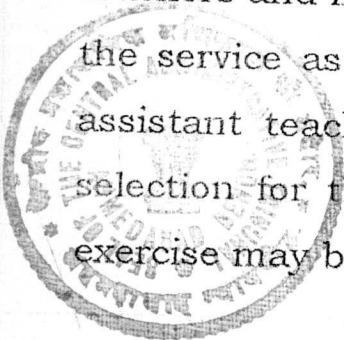
6. The respondents have in their reply contended that opportunity was given to the applicant for getting her services regularised by appearing in the selection test held in the year 1984. Mr. Shah has made a grievance that the applicant was not informed about such a test and therefore, she could not appear in that test. It appears that the grievance is baseless as it can be seen from the reply that notification regarding the selection test was published in the Gujarati News Paper, Gujarat Samachar on dated 02.06.83. It is also further stated by the respondents that a letter dated 28.05.83 was issued by the divisional office Baroda addressed to the head teachers, the teacher in-charge and Vice-President, Railway Schools located on Baroda Division and A.P.O.

Dahod, advising that the existing substitute teachers will have to apply for the post of assistant teachers in terms of the notification issued on 26.05.83. It is, therefore, not believable that the applicant had no knowledge about the said notification and that she did not participate in the selection only on account of her ignorance about the said test. In any case, having failed to participate in the selection test held in the year 1983, it does not lie in the mouth of the applicant to contend in the year 1991 that she was not given opportunity of being regularised in the service and therefore, her services could not be regularised. Furthermore, the R.R.B. Baroda, had conducted screening for the assistant teachers in the year 1991 as per notification dated 29.10.90 and it is an un-disputed position that the applicant had appeared in the said selection but failed to clear the same. Since the Recruitment Rules for the assistant teachers provides for selection through written test and viva-voce, the submission that a teacher having experience of about more than 12 to 15 years, cannot be subjected to such written test or viva-voce cannot be up held. The status of the applicant is clearly that of a substitute employee or a substitute teacher who has been awarded temporary status. If she wants to get her service regularised then she will have to clear the selection test and thereby qualify for the said post. The applicant having failed to clear the test held in the year 1991, cannot be heard to say that because she had put up such a long service as a teacher, she should automatically be regularised in service.

7. Mr. N.S. Shevde, learned advocate for the respondents has contended that after holding the selection test in 1991, the respondents have prepared a panel of the qualified teachers and since qualified teachers are now available, the services of the applicant is no more necessary. The respondents therefore, desired to terminate the services of the applicant and in fact the same has been terminated vide order dated 18.07.91. He has conceded that though the termination order is passed, the applicant is continued in service on account of the interim relief granted by this Tribunal in these O.As.

8. It appears from the respondents' reply as well as submissions of Mr. Shevde, learned advocate for the respondents, that after 1984, the selection test for the assistant teacher was held for the first time in the year 1991. Admittedly, though the applicant was working as a substitute teacher from '79 onwards, she got an opportunity of being regularised in services only in the year '84 and thereafter in the year 1991. To some extent this circumstances endorses the submissions of Mr. K.K. Shah that for no fault of her she was not regularised in the service. We don't know the reason behind not holding the selection between '84 to '91 but this non-holding of the test however cannot be a ground for absorbing the applicant in regular service. She had an opportunity of getting absorbed as far back as 1984 but, she did not avail of the same. Again in 1991, when the selection was held she could not clear the same. Hence now, the respondents cannot be directed to regularise her service as that would be giving directions against the rules.

9. Mr. K.K. Shah, learned advocate for the applicant has however, pleaded that considering the long service put up by the applicant with the respondents and considering that she is an experienced teacher whose experience can be beneficially utilised by the Railway authorities and also considering the fact that at this age the applicant would not get any other service, the respondents may be directed not to terminate her services. We appreciate the fact that the applicant has now put up about 21 years of service and if terminated from service, she is not likely to get any other service. She having served the Railway Establishment for almost two decades, it would be definitely unfair to remove her from the service only on the ground of failure to get herself regularised in the service. We are conscious of our limitation in giving directions against rules but at the same time, we feel that on humanitarian considerations the applicant deserves one more chance to get herself regularised in the service. It is obvious that if she does not get a chance to get herself regularised in the service, she would be losing all the benefits of the service of two decades put up by her with the Railways. Under the circumstances, as one time exception and purely on humanitarian ground, we direct the respondents to allow the applicant to appear in the selection for the post of assistant teachers and if she clears the selection, she may be regularised in the service as assistant teacher. If no selection for the post of assistant teacher is to be held in the near future, the special selection for the applicant be arranged by the R.R.B. and this exercise may be completed within four months of the receipt of



this order. The order dated 09.10.91 terminating the services of the applicant is hereby set-aside and quashed and the respondents are directed to continue her in the service till the selection for the post of assistant teacher is held as directed above. It is made clear that these orders are passed as one time measure purely on humanitarian grounds and failure of the applicant to clear the test will not give her any right to re-agitate the question of her termination. With these directions, both the O.As stands disposed of with no order as to costs. In view of the both final disposal of the O.As, M.A/273/2000 in O.A 360 of 91 also stands disposed of.

Sd/-
(A.S. Sanghavi)
Member (J)

(શ્રી) કરમેશભાઈ
Prepared by:

મિલિતેશ શાંકર

Compared by: 18/8/2000

સચિવ અધિકારી

True Copy

Sd/-
(V. Ramakrishnan)
Vice Chairman

Mb

90/882-
અમદાવાદ બેન્ચ (જિલ્લા)
અમદાવાદ બેન્ચ (જિલ્લા)
અમદાવાદ બેન્ચ (જિલ્લા)
Correspondence Tribunal
અમદાવાદ ન્યાયપીઠ,
Ahmedabad Bench

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL AT AHMEDABAD

M. A. NO.273 OF 2000

IN

O. A. NO.360 OF 1991.

Smt.N. J. Desai.....

.... Applicant

V/s

Union of India & Ors.....

... Respondents

REPLY ON BEHALF OF
RESPONDENTS TO
THE APPLICANT'S
REJOINDER.

The respondents beg to file sur-
rejoinder to the applicant's rejoinder as under:-

1. The averments made in the rejoinder, which are not specifically admitted herein, are hereby denied. The averments made in reply to M.A. are based on official record and are correct.

2. Regarding para 1 of the rejoinder, it is stated that a recruitment selection was conducted to select suitable candidates for the post of Assistant Teacher vide notification No.E/SCH/1091/5/1 Vol II, dated 26.5.83. The said notification was

Supply by
Mr. M.S. Shinde
(59)
28/2/2000

also published in Gujarat Samachar dated 2.6.1983.

It is stated that Divisional Office letter No.E/SCH/1091/5/1 Vol III, dated 28.5.83 addressed to Head Teachers, Teacher-in-charge and Vice President, Railway Schools in Baroda Division and APO(W) Dohad it was advised that the existing substitute teachers will have to apply for the post of Assistant Teacher in terms of the said notification dated 26.5.83. Thus the applicant was well informed about the recruitment selection. It is not obligatory on the Railway Administration to inform the substitute teachers at their residence individually.

It is stated that initially recruitment of Assistant Teachers for Baroda Division was done locally but as per GM(E) CCG's letter No.E/SCH/890/11/41, dated 9.7.90 the same has been handed over to the Railway Recruitment Board, Ahmedabad, for regular as well as substitute Assistant Teachers. It is stated that PTC is valid qualification for the post of Assistant Teacher.

Since the recruitment job was handed over to RRB, Ahmedabad, the applicant's application forwarded to the Chairman, RRB, Ahmedabad vide Divisional Office letter No.E/SCH/1091/82, dated 29.10.90 in response to Category No.6 of

Employment Notice No.4/90-91.

Special ~~screening~~/selection for empanelment of Assistant Teachers in Railway School exclusively from amongst working substitute teachers was conducted by RRB, Ajmer, vide Employment Notice No.1/94 in which the applicant had appeared but has failed to qualify the said selection.

Many opportunities were available to the applicant but the applicant failed to avail of the same. Once the applicant did not apply in response to the notification issued in May, 1983 and in subsequent selection conducted by RRB, Ahmedabad and RRB /Ajmer, the applicant failed to qualify, the selection. It is stated that the substitute teachers who applied in 1983 were called for selection in February, 1984 and 20 substitute Assistant Teachers were empanelled in order of merit vide Memo no. dated 1.1.87. The said selection was conducted by the Local Selection Board as per existing procedure at that time. The policy was changed in 1990 ^{before that} and it was not necessary for ~~them~~ to pass RRB Test. Other eligible substitute teachers appeared in the selection conducted by RRB, Ajmer.

Since ^{the} ~~teh~~ applicant has not passed the selection of Assistant Teacher conducted in 1990 and 1994, she cannot be regularised. As such the respondents were compelled to terminate the services of the applicant as per terms & conditions of her engagement letter, which clearly states that her engagement is in stop-gap arrangement and it does not confer any right for regular employment or for empanelment.

As per Railway Board's instructions a substitute teacher should be retained in service during summer vacation if he is required to serve after ~~xxxx~~ such vacation, otherwise he may be discharged at the commencement of such vacation and that such staff retained during summer vacation will be eligible to draw vacation pay. It is submitted that the applicant's services were not at all required by the Railway Administration and notice of termination from Railway Services was issued to her vide Divisional Office letter No. E/SCH/1091/5/1 Vol III(L), dated 9.10.91.

However, it is submitted that in view of interim order granted by the Hon'ble Tribunal against her termination the applicant has been retained in Railway Service during the pendency of the present O.A.No.360/91. The Railway Administration does not

As she was not a qualified candidate and, panel of qualified candidates were available

therefore

: 5 :

require the services of the applicant as she has failed twice in the RRB Selection. The applicant was being discharged at the commencement of the vacation and as such payment of salary for the vacation period does not arise. The post of Assistant Teacher being a selection post, the applicant has no right to continue in the said post without passing the selection. The applicant cannot be regularised without passing the selection.

The Divisional Personnel Office is authorised to sign the reply.

3. The applicant is not entitled to any of the reliefs claimed in the prayer clause.

In view of what is stated above, the application may be dismissed with costs.

VERIFICATION

I, S.K. Alkela, age about 36 years, serving as Sr DBO in Western Railway, Baroda, do hereby state that what is stated above is true to my knowledge and information received from the record of the case and I believe the same to be true. I have not suppressed any material facts.

Baroda

Dated: 12.7.2000

ADVOCATE FOR THE
RESPONDENTS.

(Sr DBO)
BRe

2 copies
17/05/02
S. J. (5)

પ્રારૂપ સંખ્યા 4
FORM NO. 4

दिनांक
Date

कार्यालय टिप्पणी
Office Report

आदेश
Order

19/04/2002

Mr. K.K.shah for the applicant is not present.

Adjourned to 16/05/2002.

(Meera Chhibber)
Member (3)

CMJ/

તારીખ
Date

કાર્યાલય ટિપ્પણી
Office Report

આદેશ
Order

16.5.2002

This MA has been moved by the original respondents in OA no. 360/01 seeking extension of time for implementation of the order passed in the aforesadi OA. Mr. Shevde has submitted that copy of the judgement itself was received late and by that time the time for implementation of the order was already over. Accordingly they have approached the Tribunal requesting for six months extension of time from 15.1.2002. Mr. Shevde submits that copy has already been given to Mr. K.K.Shah. No reply has been filed. Under the circumstances the extension date in MA for implementation of the order till six months from 15.1.2002 is granted. MA stands disposed of. MA 298/02 for condonation of delay also stands disposed of.

Cool
(G.C.Srivastava)
Member (A)

sm

<div> <div> <div></div> <div>Date</div> </div> </div>	<div> <div>कार्यालय टिप्पणी</div> <div>Office Report</div> </div>	<div> <div>आदेश</div> <div>Order</div> </div>
<div>16.5.2002</div>		<div> <p>This MA has been moved by the original respondents in OA no. 360/01 seeking extension of time for implementation of the order passed in the aforesaid OA. Mr. Shevde has submitted that copy of the judgement itself was received late and by that time the time for implementation of the order was already over. Accordingly they have approached the Tribunal requesting for six months extension of time from 15.1.2002. Mr. Shevde submits that copy has already been given to Mr. K.K.Shah. No reply has been filed. Under the circumstances the extension date in MA for implementation of the order till six months from 15.1.2002 is granted. MS stands disposed of. MA 298/02 for condonation of delay also stands disposed of.</p> <p>(G.C.Srivastava) Member (A)</p> <p>sm</p> <p>MI . IM</p> <p>Adjoined .</p> <p>12/0</p> </div>

કાર્યાલય ટિપ્પણી
Office Report

આદેશ
Order

16.4.02

MA 102

MA filed by
the counsel for
resp praying
to condone the
delay in filing
MA for extension
of time

MA 102

MA filed by
the counsel for
resp in OA
praying to extend
the time by a
period of six
months from
21-1-02

Post MA 102
and MA 102
for orders

16/4 16/4

19/04/2002

Mr. K.K.Shah for the applicant is not present.

Adjourned to 16/05/2002.

(Meera Chhibber)
Member (J)

CMJ/