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CENTRAL ADMINISTRATIVE TRIBUNAL,
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 421/96 & 422/96
Cuttack this the 6th day of April, 2000

TN O.A. 421/96

Atanu Bhattacharjee

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

IN O.A. 422/96

M.A. Mohammed

Applicant(s)

-Versus-

Union of India & Others

Respondent(s)

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not ?
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not ?

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN
6.4.2000

6.4.2000
(G. NARASTHAM)
MEMBER (JUDICIAL)

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CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

ORIGINAL APPLICATION NOS. 421/96 & 422/96
Cuttack this the 6th day of April, 2000

CORAM:

THE HON'BLE SHRT SOMNATH SOM, VICE-CHAIRMAN
AND
THE HON'BLE SHRT G.NARASTHMAM, MEMBER(JUDICIAL)

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IN O.A. 421/96

Atanu Bhattacharjee, S/o. K.N.Bhattacharjee, at: C 8/G, Traffic Colony, PO: Jatni, Dist: Khurda, at present working as Casual Announcer, Commercial Department of S.E.Rly, At: Khurda Road Division, PO/PS:Jatni, Dist: Khurda

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Applicant

-Versus-

1. Union of India represented through the General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Divisional Railway Manager, S.E.Railway, Khurda Road, At/PO: Jatni, Dist: Khurda
3. Station Superintendent, S.E.Railway, Khurda Road Division, PO: Jatni, Dist: Khurda

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Respondents

IN O.A. 422/96

Abdul Munaf Mahammed, S/o. M.A. Manan, At: Ramachandrapur Bazar, PO: Jatni, Dist: Khurda, at present working as Casual Announcer, At: Bhubaneswar Railway Enquiry, Under Station Superintendent, Bhubaneswar Railway Station, At/PO: Bhubaneswar, Dist: Khurda

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Applicant

-Versus-

1. Union of India represented through the General Manager, S.E.Railway, Garden Reach, Calcutta-43
2. Divisional Railway Manager, S.E.Railway, Khurda Road, At/PO: Jatni, Dist: Khurda
3. Station Manager, Bhubaneswar, S.E.Railway, Khurda Road Division, at/PO: Bhubaneswar, Dist: Khurda

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Respondents

IN BOTH THE O.A.s.

Advocates for the applicants:

M/s.B.S.Mishra(2),
S.C.Kar
G.B.Mishra
& N.R.Mishra
Mr.D.N.Mishra,
Standing
Counsel(Railways)

Advocate for the respondents:

ORDER

MR.G.NARASTIMHAM, MEMBER(JUDICIAL): These two Original Applications, though separately heard are being disposed of through this common order as the grievances of the applicants are identical in nature and the main respondents, i.e. Res.1 and 2 are common in both the Original Applications, Res.3 in O.A. 421/96, i.e. Station Superintendent, S.E.Railway, Khurda Road and Res.3 in O.A. 422/96, i.e. Station Manager, S.E.Railway, Bhubaneswar simply carried out directions of other two respondents and the Annexures marked are also common.

2. The applicants, who are Matriculates were being engaged as Announcers for few months during Rath Yatra Season at different Stations ~~at~~ ^{in the} ~~Division~~ from 1985 to 1991. Applicant M.A.Mohammed in O.A. 422/96 even was engaged on that basis during Rath Yatra of 1992, i.e. till 13.7.1992. However, applicant Atanu Bhattacharjee in O.A. 421/96 was engaged till 3.2.1992. Applicants thereafter were appointed as substitutes in Commercial Department on casual basis. In addition to their engagements as Announcers, they were also appointed and allowed to work as Hot weather Train Waterman from 1989 to 1991 for a period of three months in each year (vide Exhibit-4 series). When substitutes were required in the Operating Department in the Railways under Khurda Road division, options were called for from the Commercial Department to exercise willingness and accordingly applicants exercised their options for being posted in the Operating Department. By letter dated 26.12.1991 (Annexure 1) applicants along with others were directed to attend the Office of the D.R.M. / Sr.D.P.O. on

8.1.1992 for screening test. Pursuant to this direction the applicants appeared in the screening test. However, while they were continuing in the Commercial Department as substitutes their services were terminated vide order dated 9.5.1995(Annexure-A/1). These facts are not in controversy.

2. In these applications praying for quashing the termination orders and for their consequent reinstatement and regularisation, applicants' case is that from the year 1985 till the date of termination they had worked for 1287 days (Annexure-6). In the screening test they had come out successful. Accordingly termination of their services was not according to law. This apart, one Khageswar Jena, appointed as substitute on 25.4.1994, i.e. much after the applicants and one Kum.Bijayalaxmi Dash, who was appointed along with the applicants as Announcer in the year 1985 though were regularised, their cases have been discriminated without any rhyme or reason, because Shri Jena and Kum.Dash were shown favouritism by the administration under the advice of the then Minister of the Railways, Shri K.C.Lenka.

3. In the counter the stand of the Department is that during the screening test it was detected that the applicants were engaged without prior approval of the General Manager, i.e. contrary to the instructions of the General Manager in letter dated 17.12.1983(Annexure-R/1). Accordingly they were not regularised and their services were terminated. As regards Shri Khageswar Jena, it is the case of the Department that he was regularised on 21.6.1996 as he was serving as a substitute in the Operating Department and

came out successful in the screening test. Kumari Bijayalaxmi Dash though was engaged as an Announcer along with the applicants in the year 1985, was transferred to the Electrical Department on her request and was regularised. Thus, according to Department, cases of Khageswar Jena and Kumar Bijayalaxmi Dash stand in a different footing. There is, however, no specific denial about the allegation that they have shown some favour at the instance of a political V.I.P.

4. In the rejoinder the applicants assert that they were appointed with the approval of the competent authority and that they including Kumari Bijayalaxmi was were posted as casual Hot Weather Waterman/woman in the years 1989, 1990 and 1991 and casual Announcers during Rath Yatra festival(Annexures 13 o 17)(Xerox copies). Hence the Department is estopped from raising the plea that their engagements were not approved by the competent authority, i.e. General Manager.

5. We have heard Shri B.S.Mishra(?), learned counsel for the applicants in both the cases and also Shri D.N.Mishra, learned Standing Counsel appearing for the Railway Administration. Also perused the records.

6. Shri B.S.Mishra, learned counsel for the applicants raised the following contentions:-

- 1) Applicants having been engaged with the prior approval of the competent authority of the Department, respondents are estopped from stating that their engagements were irregular. Moreover, the instructions of the General Manager have no ~~statutory~~ ^{legislating} force being administrative in character and even if the General Manager's prior approval

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was not obtained, engagement, of the applicants
can never be illegal or irregular.

2) Kumari Bijayalaxmi Dash was also engaged as an Announcer in the year 1985 along with the applicants. Even she was engaged as Hot Weather Waterman/Woman/Casual Announcer during Rath Yatra festival in the years 1989, 90, and 1991 along with the applicants without prior approval of the competent authority and her case was considered and she was regularised, this objection of non approval of the competent authority would amount to a case of clear discrimination by the Department as against the applicants, more so, when Shri Khageswar Jena, who is far junior to the applicants was regularised by ignoring the well known Principle FIRST COME LAST GO formulated by the Hon'ble Supreme Court in various cases.

3) Applicants having been engaged by the Department for about a decade, they had a legitimate expectation for being regularised inasmuch as by these engagements, the Department without any objection whatsoever, in a way assured the applicants that they would be regularised in service and by this conduct of the Department they had not applied for any post(s) before they ~~were~~ are agedbarred.

4) Even though their services were not regularised, the Department could not have terminated their services without giving them an opportunity to show cause.

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We have carefully considered these contentions and replies given by the learned Standing Counsel.

Annexures-13 to 17 are very clear that from the year 1989 to 1991, the applicants as well as Kum. Bijayalaxmi Dash and others were posted as casual Hot Weather Waterman/woman and also as Announcers during Rath Yatra festival with the approval of the competent authority. These orders were issued in the Office of the D.R.M., S.E.Railway, Khurda Road which would ~~give to~~ imply that the competent authority as mentioned therein is General Manager. This apart, the instructions issued by the General Manager under Annexure-R/1 are administrative in nature. This being not statutory, even an engagement/appointment without the approval of the ^{pure} General Manager will not be ^{illegal}. What is to be considered is whether services of any such person have been utilised by the Department on casual basis and that too for how many days. There is no dispute in these two cases that the applicants were in casual service since 1985. It is not denied in the counter that from 1985 to till the date of termination they had worked for 1287 days. Hence termination of their casual services, even some years after their appearance in the screening test only on the ground that their engagements were not made with the prior approval of the General Manager is not legally justified; more so, when their junior Shri Khageswar Jena engaged for the first time in the year 1994 and Kum. Bijayalaxmi Dash, who was also engaged along with the applicants in the year 1985 were regularised.

Kum. Bijayalaxmi Dash, as would ~~be~~ reveal from Annexures-13 to 17, was engaged along with the applicants

with the prior approval of the competent authority. Yet in her case objection of not obtaining prior approval of the competent authority, i.e. General Manager was not raised and for the reason best known, she was regularised in service. Thus it is a clear case where the Department has committed a glaring discrimination against the applicants in not regularising them in service and finally disengaging them from service even after their appearance in the screening test only on the ground that their engagements were not made with the prior approval of the General Manager. Thus there is violation of well known principle 'FIRST COME LAST GO' as enunciated by the Apex Court now and then in very many cases. We have, therefore, no hesitation to hold that the orders of termination of services of the applicants are illegal and accordingly the same need to be quashed.

Since we hold that the impugned orders of termination are not according to law, there is no necessity for us to deal with the other three contentions raised on behalf of the applicants.

In the result, we quash the impugned orders of termination dated 9.5.996 under Annexure-1. The applicants are therefore, deemed to be continuing under the Railways Department on substitute basis from the date of termination with consequential benefits. Respondents are further directed to regularise their services within a period of two months from to-day and till then the respondents are directed to provide engagements to the applicants in preference to their juniors, i.e. casuals/substitutes engaged subsequent to 1985.

Applications are allowed, but no order as to costs.

Somnath Som
(SOMNATH SOM)
VICE-CHAIRMAN

G.Narastmham
(G.NARASTMHAM)
MEMBER (JUDICIAL)