

**O.A.No. 362 and 363-396 of 2002.**

Order dated 20-01-2006.

It is the case of the Applicants that although, by registering the names as substitutes from the year 1972, they are waiting for opportunities to get engagements in the railways, instead of considering their cases (a) for engagements at the time of need of the Railways and (b) for regularization, the Respondents/Railways have engaged fresh faces (and, as a consequence, absorbed the said fresh faces permanently, without considering the cases of the Applicants. Repeated representations having yield no result, the Applicants have approached this Tribunal in the present Original Application filed under section 19 of the Administrative Tribunals Act, 1985 with prayers to direct the Respondents to engage the Applicants as substitutes against day to day casualities/vacancies.

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2. Respondents, by placing a counter on record, have questioned maintainability of this Original Application; on the ground of limitation as also on merit of the matter. It has been stated that there are no records to show that the Applicants are the registered substitutes of the Railway. They have further stated that as per the year of birth, as disclosed by the Applicants, (except Applicant Nos. 12 and 15) none of them have attained the

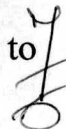
age of 18 years and that unless some one attains the majority age of 18 years, he/she cannot register himself/herself as a substitute in the Railways and that, therefore, the statements made by the Applicants are blatant lie without any support of record. In Toto the Respondents have denied the averments of the Applicants that they had ever registered themselves to be substitutes of the Railways; nor had they ever worked in the Railway in any of the capacity. They have also questioned the genuineness of the documents produced by the Applicants.

Applicants have filed a rejoinder reiterating the submissions made in the Original Application without touching the very important and vital averments of the Respondents that they are not the registered substitutes of the Railways.

3. Heard learned counsel appearing for both sides. By depending upon various provisions drawn by the Railways, the learned counsel appearing for the Applicants have submitted that it was the bounden duty of the Respondents/Railways to maintain a register recording the names of all Substitutes, wherever employed, according to the unit of recruitment (e.g. Division, Workshops, PWIs) and their lengths of engagements etc. strictly in the order of their taking up substitute employment at the time of their initial engagement and that, only to deny the benefits accrued in favour of

Applicants as substitutes, the Respondents have kept those records concealed. On the other hand, the learned counsel appearing for the Respondents/Railways have argued that the case of the Applicants are based on conjecture and surmises. There is no file (quoted by the Applicants) available in the Office nor whatever documents available do contain the names of the Applicants. It has been pointed out that had the Applicants been registered substitutes of the year 1972, they could have knocked the doors of the Courts/Tribunals much earlier; because of their non-engagements and on the face of engagements of new faces and that, having not done so, at this belated stage, such a grievance is neither tenable in law nor on fact.

4. Having considered the rival submissions of the parties and on perusal of the documents available on record, it is seen that, except bald submissions, the learned counsel appearing for the Applicants have produced no reliable materials to substantiate their plea (that they are the registered substitutes of the Railways of the year 1972) on the face of the specific denial of the Respondents in their counter as also during the oral hearing. It is to be noted here that this Tribunal can not make a roving enquiry in order to gather strength to the case of either of the parties. It is for the parties to prove their case by producing reliable materials in order to



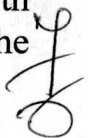
get the relief. After establishing the rights of a party, one can claim violation of any of the provisions of the Rules or laws of that he has been prejudiced. It is trite law that men may lie but document will not. There are no substantiating materials produced by the Applicants to show that they had ever worked in the Railways. No satisfactory answer has been given by the Applicants as to why they approached the Tribunal belatedly. They have also not met the objections raised by the Respondents that if it is taken that the Applicants are the registered substitutes of the year 1972, then as per the year of birth (disclosed by the Applicants) they were below 18 years and that, under the Rules, no person below 18 years could have been registered as a substitute in the Railways.

5. Apart from the above, it is seen that similar grievance (of similarly placed persons, as that of the Applicants) came up for consideration (in O.A.Nos.454/97, 165/98, 301/99, & 550/2000) and this Tribunal, in its order dated 17-04-2003, held as under:-

“7. A few questions arose out of this application which have not been answered satisfactorily by the applicants i.e., whether the Respondents could have registered some workers 7 to 8 years earlier for engagement and whether administratively it was feasible to maintain such lists for years together and if the applicants were actually engaged as substitutes sometimes in 1977, 1978, 1980 and 1981, according to their own admission, why they were not engaged till 1997, when they approached this Tribunal in the present O.A. They had for inexplicable

reasons remained dormant all these years. As a result having not been engaged for so many years they could not have retained their status as substitutes in terms of Estt. Sl. No. 244/84 dated 12-12-1984. Thus this point remains uncontrovertible. And having remained silent for so many years they are liable to lose their right to agitate the matter. It has been brought to our notice by the Respondents that similar issue came up before this Tribunal in O.A. No. 371/98. In that case applicants ( 15 in number) claims to have worked as substitutes on different dates in 1978 at Gurudijhatia Railway Station and produced certificates of engagement from the Station Master. Thereafter neither they were engaged nor did they agitate. The Tribunal found that the period of engagement during 1978-79 was 3 to 20 days, but they approached the Tribunal 21 years after the last engagement under the Railways. The Applicants could not clarify as to why they had remained silent for the last 21 years. Neither they had indicated if they had ever preferred any representation to the departmental authorities during the intervening period praying that they should be reengaged. Having regard to these facts of the case, the Tribunal held that the Applicants were not entitled to get engagement under the Respondents.

8. In the instant case also the period of engagement (notwithstanding that the certificates produced by the Applicants the authenticity of which is in doubt) of the Applicants were very short and that for over decade and a half they remained out of sight in the matter. It is because of the efflux of time the relevant documents/registers became unavailable with the Respondents. The latter have, however, brought before us the register of substitutes that they are maintaining since 1997 in a bound form and for the earlier period the documents are maintained in respective files. But the registers for the years from 1970 to 1980 were not available for good reasons. This inordinate delay in ventilating the grievance stares at the Applicants and the same is incurable. Onus lies on the Applicants to prove with reference to official documents in their possession the





fact of their registration, to produce certificates of enrolment and to offer explanations for remaining silent for over 16 to 19 years. But they had failed to comply with these requirements of the case.

9. In view of the preceding discussions, we are of the view that the applicants in OA No.454/97 as well as in other three OAs have not been able to make out a case for any of the reliefs prayed for. Accordingly, the four Original Applications fail. No costs."

6. In the present Original Application, it is also seen that the Applicants have approached this Tribunal after long lapse of time without any unimpeachable documents to show that they had ever registered their names as substitute in the Railways.

7. In the above view of the matter, I find no merit in this Original Application which stands dismissed. No costs.

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*M.R. Mohanty*  
20/01/06  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

Copy of Order  
may be given to both  
the counsels

3/4/06

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