

CENTRAL ADMINISTRATIVE TRIBUNAL  
CALCUTTA BENCH

O.A. 703/96

PRESENT : Hon'ble Mr. D.V.R.S.G. Dattatreya, Judicial Member  
Hon'ble Mr. B.P. Singh, Administrative Member..

Minati Mondal

- v e r s u s -

Union of India and Ors.

For the applicant : Ms. U. Sanyal, counsel.  
Ms. S. Banerjee, counsel.

For the respondents : Mr. S.P. Kar, counsel.

Heard on 19.7.2000

Order on 4.8.2000

O R D E R

B.P. Singh, AM

Ms. Minati Mondal, E.D. Substitute has filed this O.A. against her non-absorption on regular basis on the vacant post of Extra Departmental Agent or Gr.D categories and prayed for the following reliefs:-

"8.

(a) A mandate please may be given directing the respondent authorities to regularise the service of the applicant to the vacant post of E.D. Agent or Gr. D category to which she is legally entitled.

(b) An order directing the respondent authorities not to disengage the applicant from the post of Daily Rated Majdoor At Shyam Bazar post Office to which she is performing her duties upto this date, till regularisation of her service to the vacant post of E.D. Agent or Gr.D categories as per established rules and regulations."

2. The fact of the case is that the applicant is a scheduled caste candidate and possesses qualification of Madhyamik. She was initially appointed as substitute E.D. Packer on 14.10.1989 under Shyam Bazar Post Office under respondent No.4 as per Annexure-A/1. She has been

working as such satisfactorily since then. She was entrusted the duties of daily rated postman in Gr.D category w.e.f. 1.4.96. She has completed more than 3000 ~~days~~ days with short artificial breaks as substitute E.D.A. and daily rated Mazdoor as would be clear from Annexures B and C. When the post on which the applicant was working as substitute E.D.A. fell vacant, she was not regularised on the same post. Instead an outsider candidate was regularised denying her claim though she had completed more than 3000 days of service with short artificial breaks. The applicant made repeated representations (Annexure-D) for her permanent absorption on the vacant post of E.D.A. or Gr.D. The applicant has drawn our attention to DG of Postal ~~Service~~ letter dated 25.11.93 which provides that after a substitute E.D.A. is allowed to continue for period exceeding 180 days, as a matter of rule this continued arrangement will legitimise the claim of the substitute for regularisation of her service as E.D.A. The respondents have been utilising the services of the applicant as daily rated mazdoor as and when required by them. She has gained experience of working on various posts and with due regard to her service she has worked for about 3000 days with short artificial breaks and, therefore, she is legitimately entitled for regular absorption. She has also not been extended the benefit of decision in O.A. No. 539/95 in which the bench of this Tribunal delivered judgment on 20.9.95 directing the respondent authorities to take steps to absorb the substitute E.D.A. on regular basis, though the applicant was similarly circumstanced. A copy of the decision is enclosed at Annexure-E. The applicant has been denied the benefit of natural justice and fairplay as after fulfilling all the required conditions for absorption, she has not been regularised. She has been serving the department for such a long period and weightage of her experience should have been given. She has already completed about 7 years of service and worked for more than 3000 days. But she is still a daily rated mazdoor. Non-consideration of her regularisation is, therefore, illegal, arbitrary and malafide. There was a regular vacancy and she fulfilled the conditions for appointment. But she has not been considered for appointment so far by the respondents inspite of her repeated representations. The action on the part of the respondent authorities is thus violative of provisions of Arts. 14 and 16 of the

constitution. The applicant is entitled to be absorbed ~~for~~ on the post of E.D.A. and aGr. D category as she has already completed more than 180 days continuous service as substitute E.D.A. According to the rules ~~by~~ of the Deptt. of Posts and judicial pronouncement, her services ought to have been regularised against ~~at~~ the vacant post of E.D.A. or Gr.D which has not been done. Being aggrieved the applicant filed this O.A. and prayed for the reliefs stated above.

3. We have heard Id. counsel Ms. Sanyal leading Ms. Banerjee for the applicant and Id. counsel Ms. Ray for the respondents. We have gone through the O.A., reply to the O.A. and rejoinder with their annexures.

4. The Id. counsel Ms. Sanyal for the applicant has reiterated the fact as stated in the O.A. and in the rejoinder. The applicant has virtually repeated the same arguments in the rejoinder. The Id. counsel pleaded that the representations of the applicant for regularisation of services to the post of E.D.A or Gr. D category remained undisposed of by the respondents though she has been working continuously as substitute E.D.A. from 1989 with short artificial breaks till date. The action of the respondents is, therefore, illegal, arbitrary and malafide. The Id. counsel further submitted that the respondents have acted illegally *and* arbitrarily by not absorbing the applicant to the vacant post of E.D.A or Gr.D though they were duty bound to accommodate the applicant. The applicant was engaged as the substitute E.D.A. and daily rated Mazdoor from 1989 till date. She has completed more than 3000 days of service and thus has acquired a right for regularisation her service. She was denied the same against the principles of natural justice and fairplay. The non-regularisation of her service was against the provisions of Arts. 14 and 16 of the constitution as her legitimate claim for regularisation on the vacant post was denied. The Id. counsel further submitted that when the vacancy arose the legitimate claim of the applicant was ignored and the post was filled up by outside candidate who did not have any experience of working on the post whereas the applicant has long experience of working on the post. Due to her long uninterrupted service the applicant is entitled to be absorbed. The respondent authorities have given total 'good bye' to the departmental rules

and regulations and also the decision of the Hon'ble Tribunal in similar cases. Since the applicant had completed a long service as E.D. agent/daily rated mazdoor she was entitled for absorption against E.D.A. post/ Gr. D post. The departmental rules also provide for the same. The Hon'ble Tribunal directed in O.A. NO. 539/95 ~~that~~ the respondents to take steps to absorb the applicant as EDA subject <sup>to departmental</sup> rules, as mentioned above. The Id. counsel pleaded vehemently that the absorption of the applicant on regular basis against the post of EDA/Gr.D is fully justified. Therefore, the O.A. should be allowed granting the prayer made therein.

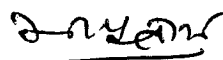
5. The Id. counsel Ms. Ray for the respondents submitted that the main question involved in this case is whether the substitute to a an E.D.Agent who has worked for 180 days or more in a calendar year is entitled for absorption on regular basis or not. The Id. counsel submitted that this issue has been finally decided by the Hon'ble Apex Court in the order dated April 28, 2000 in Civil Appeal No. 3080/2000 arising out of Special Leave Petition (C) No. 12309/1997 (Union of India & Ors. Vs. Debika Guha and Ors.). This Civil Appeal arose against the order dated 11.10.96 in O.A. No. 1062/95 (Debika Guha and Ors. Vs. U.O.I & Ors.) of this Tribunal in which the official respondents preferred the above appeal before the Hon'ble Apex Court. The Hon'ble Apex Court has passed the following orders:-


" The grievance before us in this appeal is in relation to an order passed by the Central Administrative Tribunal, Calcutta Bench holding that substitute Extra Departmental Agents of the Postal Department who have worked for 180 days or more in one calendar year continuously can claim to be regularised. The Tribunal gave a further direction that the appellants should determine on the basis of available records the period for which the respondents have worked continuously and if such period in any calendar year exceeds 180 days, neglecting short artificial breaks, should absorb them in future vacancies, provided they satisfy the eligibility conditions. When similar matters came up before this Court in Writ Petition No. 1624 of 1986 and connected matters, this Court held that the claim on behalf of substitutes

ordinarily is not entertainable but made it clear that, however, if they have worked for long periods continuously, their cases could be appropriately considered by the department for absorption. When this Court has already decided that there cannot be a legal claim on the basis that they have worked for 180 days continuously, it may not be necessary for us to consider that aspect of the matter. Indeed, if it is shown that they have worked for long periods continuously, it will be for the department to consider the same whether that was a proper case for absorption or not and pass appropriate orders. Thus, we think the whole approach of the Tribunal is incorrect in the light of the decision of this Court. Therefore, we set aside the order passed by the tribunal. However, it is open to the appellants to examine the case of the respondents, if they have worked for long periods, to absorb them, as the case may be. The appeal is allowed."

6. The above order of the Hon'ble Apex Court is very clear and final. We do not find any scope to adjudicate the matter. The court has clearly held that the claim on behalf of the substitutes is not entertainable and, therefore, there cannot be any legal claim on the post that they have worked for 180 days or more continuously. The decision of the Hon'ble Apex Court is binding onus and no new material has been placed before us by the parties at the time of hearing. So far as the claim of the applicant for regularisation against the Gr.D post is concerned, she is not entitled to any benefit on the basis of working as a substitute E.D.A. Accordingly we dismiss the application directing the respondents to act in accordance with the order dated 28.4.2000 passed by the Hon'ble Apex Court as quoted above.

7. No order is passed as to cost.

  
( B.P. Singh )  
Member (A)

  
( D.V.R.S.G. Dattatreya )  
Member (J)