

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
O.A. 802 OF 1996 WITH MA 206 OF 97

Present : Hon'ble Mr. Justice A.K.Chatterjee, Vice-Chairman
Hon'ble Mr. M. S. Mukherjee, Member (A)

PROSANTA KUMAR NATH & ORS

VS

1. Union of India through the General Manager, Eastern Railway, Fairlie Place, Calcutta-1
2. The Divisional Personnel officer, E. Railway, Sealdah Division, Sealdah
3. The Divisional Railway Manager, E.Railway, Sealdah Division
4. S.S., Sealdah, E.Railway, Sealdah.
5. The General Manager, E.Railway, Calcutta
6. Chief Personnel Officer, E.Railway, Calcutta.

..... Respondents

For the petitioners : Mr. B.M.Goswami, Counsel

For the respondents : Mr. P.K.Arora, Counsel

Heard on : 1.7.97 : Order on :

~~1-9-1997~~ 1-9-1997

ORDER

M.S.Mukherjee, A.M.

This is a joint petition by 79 petitioners u/s 19 of the Administrative Tribunals Act, 1985, ventilating their grievance that the respondents have failed to put them in the approved list of substitute labours through proper screening subsequently absorb them in suitable Group D posts on regular or temporary basis despite the fact that the petitioners have performed the requisite days of work under law.

The petitioners claim to have worked as substitute in the Sealdah Division of Eastern Railway and their claim is that they have put in work for a total number of

working days exceeding 167 to 315 days, as the case may be in respect of individual petitioner as described at para 4(b) of the petition^{1/2}. In support they have produced certificates issued by the railway authorities as at Annexure-A to the petition collectively. They claim to have worked as such between 1974 and 1978 in different stations of Sealdah Division for more than 180 days in aggregate and therefore they claim to have acquired the status of temporary railway servants and they claim to be included in the approved panel of substitutes and consequent absorption against regular Group D posts. The petitioners contend that a large number of vacancies in Group D categories in the Eastern Railway specially in Sealdah Division are likely to be filled up shortly and there would be resultant vacancies for substitutes further and therefore the petitioners pray that they be screened and included in the approved list of casual labours. Their further case is that the Railway Board in terms of the circular dt. 20.11.91 prescribed the procedures for screening and regular absorption of the casual labours and the petitioners submits that they should be similarly treated and their case be considered for screening and inclusion in the approved panel for subsequent absorption in due course.

3. The respondents have contested the case by filing a written reply. Their general contention is that a good number of outsiders are filing cases in batches claiming that they had been engaged by the railways earlier and they are filing such cases based on forged documents allegedly prepared in collusion with some retired railway employees. The number of such cases filed before this Tribunal concerning the Sealdah Division is about 50 consisting of about 3000 applicants. All the petitioners claim that they had worked as casual labour or substitutes under T & C Deptt. during 1974, 1975 and 1976. They also claim to have attained temporary status.



4. To deal with the present petitioners in particular, the respondents contend that they are rank outsiders and that they had never worked under the railways in any capacity and the documents furnished by them along with the petition as at Annexure-A are manufactured documents in that no such service certificates are issued in respect of serving casual labours. The respondents have further submitted that they had done screening of a large number of casual labours on various occasions in 1978, 1981 and 1990. Moreover, in September/October 1985 lists of substitutes were published concerning casual workers throughout Sealdah Division, but the names of the present petitioners did not appear in such lists. The respondents further contend that had these petitioners worked earlier, they would have come forward for such screening previous held.

5. From inter alia all these arguments, the respondents submit that the petition is without any basis and they have, therefore, urged for rejection of the same.

6. After the hearing was concluded in the presence of the learned counsel for the respondents on 1.7.97, ^{and} when the judgement had eventually been reserved to be pronounced on 28.7.97 which was since shifted to 18.8.97, ^{However,} on 14.8.97, Mr. B.M.Goswami, the 1d. counsel for the petitioners has submitted his written submission in

^{amplification of the arguments advanced by him earlier. There is no indication that a copy of the same has been served on the opposite party.}

7. We have heard the learned counsel for the parties and have gone through the documents produced. We have also considered the written submissions of the petitioners. In view of urgency of the matter, we propose to dispose of the case at the stage of admission itself.

8. During the arguments and through the written submissions, the learned counsel for the petitioners has urged that the present case should be disposed of in line with the

judgements of this Tribunal in the cases OA 1186 of 91 (Katuram & Ors -vs- UOI) decided on 18.8.92, OA 1213 of 92 (Tarun Kanti Dutta & Ors -vs- UOI) decided on 23.11.92 and OA 66 OF 93 (Tarun Kanti Dutta & Ors -vs- UOI) decided on 15.4.93. In these cases a large number of other petitioners, who claimed to have worked as casual labours or substitutes had approached this Tribunal and the Tribunal had disposed of all the aforesaid OAs, by the orders mentioned above directing the respondents to do screening of the petitioners therein within a specified time and to absorb such petitioners who would be found fit by them after screening as per rules. The respondents were also directed to issue general notice to the ld. advocate for the petitioners to ask the petitioners to appear before such screening committee with all necessary documents in support of their claim.

9. In the instant case, the learned counsel for the petitioners has prayed for similar disposal of the application.

10. Well, in the earlier OAs, the Tribunal did not go into the merits of those cases and left the matter to be scrutinised by the railway respondents and depending on the result of such screening, the respondents were directed to empanel and absorb the successful petitioners under the railways. But just because the Tribunal chose this method of disposal in certain cases, the present petitioners cannot claim similar treatment in respect of the instant OA as a matter of right, in case we decide to go into the merits of the case ourselves.

11. Now on merits, the 79 petitioners claim to have worked as substitute workers under the railways in the past and they contend that after working for specified number of days as indicated in para 2 above, they have acquired temporary status. In support of their claim, they have produced certain

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certificates which have been annexed at Annexure-A to the petition. We have carefully gone through the contents of Annexure-A collectively which consists of 8 certificates (page 36 to 44 of the petition) given to 8 petitioners allegedly by the Station Master/Superintendent of Sealdah. Annexure-A consists also of photocopies of 9 documents (pages 45 to 51 of the petition) purported to be issued again by the Station Master/Superintendent of Sealdah ^{purportedly} ~~showing~~ directions to 63 persons to report for duty as unapproved substitutes with effect from the date of issue of the said communication. This was purportedly sent by Station Superintendent and addressed to certain functionaries called CS/Sealdah. So, all these documents covered only $63 + 8 = 71$ persons whereas there are 79 petitioners in the present OA. The petition is silent about the remaining 8 petitioners.

12. Secondly, only first 8 certificates for 8 petitioners purportedly show the specific dates during which those 8 petitioners worked. The remaining 63 persons covered under the different kind of certificate (i.e. the directing them to report for duty) do not even show when they worked. Moreover, these remaining certificates or communications are internal communication purportedly from the SS/Sealdah to CS/Sealdah without any indication that a copy of this had been endorsed to the petitioners. This, therefore, does not conclusively establish that these 63 employees/petitioners covered under this document had actually joined duty as substitutes and if they had really joined, as to how long they worked as such.

13. The respondents described these documents as manufactured ones and they have denied that the petitioners had ever worked for the railways even as unapproved substitutes. The petitioners have not also submitted any corroborative evidence of whatever value covering all the petitioners except 8 petitioners. The respondents have



further stated that even for these 8 certificates (pages 36-44), they could not be genuine official documents, as there is no rule requiring the Departmental officials to issue such certificates regarding the period of work done except when a casual labour has been disengaged from service and for that under the rules a specific proforma of service certificate has been prescribed with printed serial number. A specimen copy of such proforma service certificate has been produced by the respondents as Annexure-R1 to the reply. For the 8 certificates annexed to the petition, we find that they do not follow any such proforma nor do they bear any serial No. The certificates do not also indicate any reference number of the file from which the same has been issued. An official communication normally bear the issue number and the file number with such reference for easy location of the office copy in case of any dispute. The respondents have categorically stated that these are all fake and manufactured documents.

14. Under the circumstances, on overall consideration of the facts of the case, we are of the view that the certificates produced by the petitioners collectively at Annexure-A cannot be treated as genuine certificates regarding the claim of service and days of work by the concerned petitioners as contended in the petition.

15. The next argument of the petitioners is that the respondents had issued in their favour temporary identity cards (pages 52 to 59 of the petition as shown in Annexure-B to the petition) or that before appointment as unapproved substitutes they had been subjected to medical examination by the respondents and that they had been found to be medically fit. In support the petitioners have also produced medical fitness certificates (pages 60 to 67 of the petition as at Annexure-B collectively). The respondents' case is that there

is no provision in the rules to issue any such temporary identity card in the format in which they have been issued as per photocopies annexed to the petition. On the other hand, regarding medical fitness certificates, these are seen to be certificate declaring the petitioners as fit for the job. It is the contention of the respondents that if the certificates had been genuine, they should be in the custody of the respondents themselves before the petitioners had been appointed. These could not be in the custody of the petitioners to whom these certificates had not been endorsed. There is no satisfactory and effective explanation from the petitioners as to how they got hold of these certificates which if true should be been in the custody of the respondents. Therefore, we are inclined to accept the contention of the respondents that these certificates as appended to the petition collectively as part of Annexure-B do not successfully establish that the petitioners had really worked for the respondents.

16. Through the written submission, the learned counsel for the petitioners has stated that the Railway Board has recently issued a letter on 16.10.96 indicating that about 56000 casual labours are to be regularised by 1997-98 and a copy of the said letter has been annexed to the written statement as Annexure-F. The petitioners' prayer is that they should not be denied the benefits of the circular. But a close reading of the said circular shows that it is a circular dt. 3.9.96 and it refers to the announcement of the Hon'ble Railway Minister in the Parliament that approximately 56000 casual labour as on roll on 30.4.96 would be regularised by 1997-98. So, obviously the benefits of the circular can be extended to only those casual labours who were on roll on 30.4.96. But as per the petition itself, the petitioners had been engaged many many years back and ^{at that} they were not on roll as

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on 30.4.96. So, there is no question of the petitioners legitimately claiming any benefit out of this circular.

17. While countering the petition, the respondents have averred that in the past in pursuance of the orders from the authorities/courts/Tribunals three successive screening had been held and completed in the years 1978, 1981 and 1990 and the candidates who appeared in such screening and found suitable had subsequently been absorbed against regular vacancies. In the instant case, the petitioners, who claim to have worked as substitutes between 1974 and 1978 never came forward for screening on earlier occasions. It is the contention of the respondents, if the petitioners had genuinely worked as claimed by them they should have asked for such screening but they did not do so. Moreover before the last screening done in 1990, the respondents have averred, lists of substitutes had been published in September/ October 1985 for all the stations over Sealdah Division. But in such lists, the names of the petitioners do not appear. The respondents have therefore submitted that the petitioners are not genuine parties/workers. There is no cogent explanation offered by the petitioners to this contention by filing any rejoinder or through the written submission which was filed much after the hearing was concluded.

18. The petitioners, however, filed a Misc. Application No. 206 of 1997 in relation to the present OA, through which they have prayed for direction on the respondents to produce the records whereby the names of the petitioners have been recorded against casual labours/substitutes and relating to the vacancy position of the casual labours/substitutes. Mr. Goswami, the 1d. counsel for the petitioners has argued that the respondents' failure to produce such records should give an adverse inference against them and in favour of the petitioners about their claim.

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character.

19. We are afraid, we cannot agree with this contention. The onus is primarily on the petitioners first to make out a *prima facie* case with supporting evidence that they had really worked for the number of days claimed in the petition and if the respondents contest this, then the respondents can be directed to produce the records to substantiate their contention. But since from the foregoing analysis it is seen that the petitioners have not been able to produce even any *prima facie* evidence that they had really worked for the railways in the past along with contemporary sufficient and reliable documentary evidence in support of their claim, we do not see why the petitioners should be allowed the benefits of adverse inference being drawn against the respondents for their alleged failure to produce their own records. An application before this Tribunal cannot be used as an instrument for a roving enquiry for the purpose of eliciting evidence, if any, in favour of the petitioners which would make out a case in their favour. Since the petitioners have failed to do so, on overall consideration of the case, we are unable to grant them any relief.

20. In view of the above, we find no merit in this petition. Accordingly it is rejected. There will be no order as to costs.

M.S. Mukherjee
1/9/1997
(M.S. MUKHERJEE)

MEMBER(A)

A.C. Chatterjee
(A.C. CHATTERJEE) 1-8-87

VICE CHAIRMAN