

Central Administrative Tribunal

Jodhpur Bench, Jodhpur.

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O.A. No. : 237/1995

Date of Order : 11.9.1996.

Murad Bux and Ors.

Applicants.

Versus

Union of India and Ors.

Respondents.

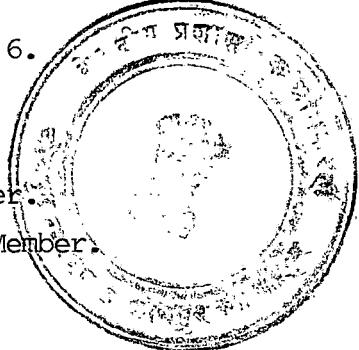
Mr. Y.K. Sharma, Counsel for the applicants.

Mr. V.D. Vyas, Counsel for respondents No. 1 to 6.

CORAM :

Hon'ble Mr. Ratan Prakash, Judicial Member

Hon'ble Mr. S.P. Biswas, Administrative Member



PER HON'BLE MR. RATAN PRAKASH :

The applicants S/Shri Murad Bux, Bega Ram and Mala Ram have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 to seek a direction to the respondents to regularise their services as Invoice Courier even if selection is necessary as they have been working since long to judge their suitability. They have also sought quashing of the impugned order dated 25.4.1995 at Annexure A/1 whereby they have been directed to report to their earlier station on their earlier post.

2. The brief facts of the case are that the applicant No. 1 Shri Murad Bux while working as Waterman at Bikaner Station vide letter dated 24.5.1990 was ordered to report himself for duties on the post of Invoice Courier and since then he has been working as Invoice Courier. Applicant No. 2, Shri Bega Ram was similarly working on the post of Waterman at Ratangarh wherefrom vide letter dated 2.5.1991, he was posted as Invoice Courier at Ratangarh. Applicant No. 3, Shri Mala Ram who had been working as Khalasi in the office of Chief Goods Superintendent, Sri Ganganagar was similarly posted as Invoice Courier vide letter dated 17.10.1994 (Annexure A/4). Thus, all the three applicants have been working on the post of Invoice Courier since 25.5.1990, 2.5.1991 and 17.10.1994 respectively. They submitted the representation on 24.4.1995 (Annexure A/5), stating therein that the post of Invoice Courier Grade Rs. 825-1200 (RPS) is a selection post and that no selection has been made since long, they be regularised on the post of Invoice Courier. The grievance of the applicants is that consequent thereto respondent No. 3, Senior Divisional Commercial Manager, Northern Railway, Bikaner has issued an impugned order (Annexure

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A/1) reverting all the applicants hence they have approached the Tribunal to claim the regularisation of their services as Invoice Courier.

3. A preliminary objection has been raised on behalf of the respondents that since the applicants have not exhausted the alternate statutory remedy by way of presentation of an appeal provided under Rule 18 (v) (B) of the Railway Servants (Discipline & Appeal) Rules, 1968, this OA is premature. On merit, it has been urged that none of the applicants has been appointed as Invoice Courier. Though they had been working on the post of Waterman and getting the Grade of Waterman which was Rs. 775-1025/-, Rs. 705-940/- and Rs. 775-1025/- respectively, they were never given the scale of Invoice Courier nor were granted any annual increment. It has also been averred that the post of Invoice Courier being a selection post, as per P.S. No. 4577 dated 30th January, 1969 (Annexure R/1), claim made by the applicants is without foundation and that they are not entitled for any regularisation or any of the relief claimed in the OA.

4. The applicants have filed a rejoinder reiterating the stand taken by them in the OA.

5. We have heard the learned counsel for the applicants, Shri Y.K. Sharma and the learned counsel for the respondents, Mr. V.D. Vyas at great length.

6. On the point of preliminary objection, it is suffice to mention that the applicants have miserably failed to establish that they were ever appointed on the post of Invoice Courier or were granted the pay scale for the post of Invoice Courier. The argument of the learned counsel for the applicants has been that by virtue of the communication dated 24.5.1980, they have been appointed on ad-hoc basis to work as Invoice Courier. A perusal of Annexure A/2 dated 24.5.1980, Annexure A/3 dated 2.5.1991 and Annexure A/4 dated 17.10.1994 respectively indicate that vide Annexure A/2, applicant Murad Bux, Waterman was sent to work on a temporary basis as Invoice Courier. Similarly, vide Annexure A/3, applicant Bega Ram, Waterman was deputed to work as Invoice Courier at Railway Station, Ratangarh. Similarly, the third applicant Mala Ram was asked to work on the post of Invoice Courier vide Annexure A/4. None of these communications indicate that they were appointed on the post of Invoice Courier. Applicants Bega Ram and Murad Bux have been shown to have been working as Waterman and Mala Ram on the post of Khalasi. From the material placed on record, it has not been

made clear by the applicants that any of the applicant was regularised on their basic post of Waterman or Khalasi. Moreover, the applicants have miserably failed to establish that they were ever appointed on the post of Invoice Courier or were granted that pay scale. On the contrary, it has been established on the basis of Annexure R/1 that the post of Invoice Courier is a selection post and that a person with 5 years' service in the class IV category has to qualify in the written test as well. The averment made on behalf of the respondents that the applicants were being paid substantive grade of Waterman as stated above, has also been not controverted by the applicants in their rejoinder.

7. In view of above, it cannot be said that the applicants were ever promoted or appointed on the post of Invoice Courier. Therefore, the relief claimed by the applicants that they have been reverted from the post of Invoice Courier to their basic post is not made out. Consequently, the preliminary objection raised on behalf of the respondents on the basis of the provisions contained under Rule 18 (V) (B) of the Railway Servants (Disciplinary and Appeal) Rules, 1968 has become redundant. The objections to this effect made on behalf of the respondents, therefore are negatived.

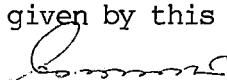
8. In this OA, it is made out that the post of Invoice Courier is a promotional post and has to be filled up after going through a departmental examination. The applicants' claim that they should be regularised on the basis of their working as Invoice Courier since year 1980, 1981 and 1984 respectively carries no weight. Moreover, the law in this respect has also been settled recently by Hon'ble the Supreme Court in the case of Union of India and Others Vs. Kishan Gopal Vyas, Civil Appeal No. \_\_\_\_/1994 arising out of SLP (C) No. 900/1994 wherein it has held that where the filling of post is regulated by certain rules governing recruitment, they cannot be filled up in any other way. In this case while considering appointment to the post of Store Keeper/Store Issuer/Clerk, setting aside the order of the Tribunal granting relief to the applicant therein ; it has been held by Hon'ble the Supreme Court :-

"Appointment to the post of a Store Keeper/Store Issuer/Clerk is regulated by certain rules governing recruitment to the post in the Department. The respondent, if eligible, is entitled to be considered for the same along with all others who may be candidates for the appointment. That is the only correct way of filling these posts which would ensure equal opportunity in the matter of employment as required by Articles 14 and 16 of the Constitution of India to all eligible persons who are candidates for these posts. A direction like the one given by the Tribunal in favour of the respondent or any one like him has the effect of denying

equal opportunity to the other eligible candidates by appointing a person not in accordance with the rules. Any order for absorption and regularisation of a person not appointed in accordance with the rules, given in the manner contained in the impugned order of the Tribunal would result in denial of equal opportunity in the matter of employment to the other eligible candidates for the public officers. Such a course must obviously be eschewed."

9. This being the state of law, the applicants cannot claim their right of regularisation on the post of Invoice Courier more so when they have miserably failed to establish that they were ever appointed even on ad-hoc basis on the post of Invoice Courier or were granted that pay scale.

10. In view of what has been said above, this OA is found to be without merit and is hereby rejected. The interim direction given by this Tribunal on 7.8.1995 stands vacated.

  
(S.P. BISWAS)

MEMBER (A)

  
(RATAN PRAKASH)

MEMBER (J)

SM