

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

O.A. 837/1997

Date of order: 01.05.2003

Present : Hon'ble Mr. B.P. Singh, Administrative Member.
Hon'ble Mr. N. Prusty, Judicial Member.

Smt. Parul Bala Das

- v e r s u s -

1. Union of India, service through the General Manager, South Eastern Railway, 11, Garden Reach Road Post Office and Police Station, Garden Reach, Calcutta-700 043.
2. The Chief Security Commissioner, Railway Protection Force, South Eastern Railway, 11, Garden Reach Road, P.O. and Police Station Garden Reach, Calcutta-700 043.
3. The Chief Personnel Officer, South Eastern Railway, 11, Garden Reach Road, Post Office and Police Station- Garden Reach Road, Calcutta-700043.
4. The Assistant Security Commissioner, Railway Protection Force, Shalimar, South Eastern Railway, Post Office & Police Station- Shibpur, District-Howrah.

...Respondents.

For the applicant : Mr. R.K. Sinha, counsel.
For the respondents : Mr. P. Chatterjee, counsel.

O R D E R

B.P. Singh, AM

This application has been filed by the applicant against the order dated 7.11.1996 by which the compliance report on the order dated 17.4.95 of this Tribunal passed in O.A. 1429/94 was complied with by the respondents. By this order the quantum of wages of the applicant was revised and enhanced by the RPF Department. So far as regularisation of the services of the applicant is concerned, the respondent authorities have stated in para 7 of the said reply that the regularisation of the applicant cannot be acceded to as there is no statutory provisions either

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in RPF Rules or Indian Railway Establishment Manual for the said regularisation. A copy of this decision was also communicated to the applicant on 9.1.97 and the same was received by the applicant. The applicant has prayed for the following reliefs:

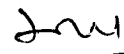
"8.

- (a) For direction and/or order upon the respondents to give the applicant temporary status with all benefits of temporary Railway servants and thereafter regularise her service giving her regular posting in the appropriate grade and pay scale.
- (b) For direction and/or order upon the respondents to review her monthly emoluments and enhance her pay in accordance with law and at par with the employees in the similar and same nature of job.
- (c) For direction and order upon the respondents to assign proper seniority and all service benefits to the applicant after regularisation of her service.
- (d) For direction and/or order upon the respondents to produce before the Hon'ble Tribunal all original documents of appointments giving out of turn appointment from 1994 discriminating the applicant so that conscionable justice may be administered by giving direction for regular post and posting to the applicant."

2. Mr. R.K. Sinha, Id. counsel appears for the applicant and Mr. P. Chatterjee, Id. counsel appears for the respondents. Reply has been filed in this case by the respondent authorities. Rejoinder to the reply has also been filed by the Id. counsel for the applicant. We have gone through the reply, rejoinder as well as O.A. and various annexures enclosed therewith. We have heard the Id. counsels as well.

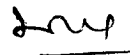
3. The Id. counsel for the applicant submits that a series of representations filed by the applicant have not been considered by the respondent authorities. Therefore, the applicant approached the Tribunal by filing O.A. 1429/94 which was disposed of by order dated 17.4.95 Annexure-A. In the said order following final order was passed:-

" The application is disposed of at the admission stage itself with the direction that the respondents shall consider the case of regularisation of the service of the applicant as and when her turn comes subject to usual conditions and before this regularisation, she shall not be replaced by any new part-time casual labour."



According to this order the respondents were directed to consider the regularisation of the services of the applicant as and when her turn comes subject to usual conditions and before this regularisation, she shall not be replaced by any new part time casual labour. In addition to the above, court has also observed that on the basis of the submissions made by the parties before the Tribunal, the Tribunal found that she is also entitled to the grant of the temporary status followed by regularisation of her service under the respondent authorities as and when her turn comes. It was also observed that her wages should also be considered for enhancement. The Id. counsel submits that the monthly amount which she was receiving was enhanced by order dated 7.11.96. So far as other reliefs are concerned, the same were denied on the ground that Railway Establishment Rules and statutory provisions in the RPF Rule did not provide for regularisation of the services of the part time employee. The applicant did not challenge the said decision by filing contempt proceedings as he thought that the order was complied with. However, she made representation to the respondent authorities on 10.9.96 as per Annexure-A/1 which is still pending without taking any action by the respondent authorities. Being aggrieved by inaction on the part of the respondent authorities the applicant has filed the present O.A. and prayed for the reliefs stated above.

4. Mr. R.K. Sinha, Id. counsel for the applicant has also submitted that the part time casual labour is entitled for grant of temporary status according to the railway rules. In this connection the Id. counsel for the applicant has referred to Indian Railway Establishment Rule, 2001 regarding grant of temporary status and, therefore, the case of the applicant should have been considered accordingly. The Id. counsel has referred the case of Aparna Bhattacharyay (Mukherjee) Vs. State reported in 2001 Vol.I Calcutta High Court Notes on page 570 onwards in the order referred to therein. The High Court has given direction for regularisation of services and approval of appointment of temporary services for long duration in various organisations and it has been stated

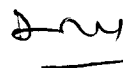


that if an adhoc or temporary employee continued ^{for} fairly ~~in a~~ long spell the authority must consider his case for regularisation. He has also referred the case of Arun Kumar Rout Vs. State of Bihar (AIR 1998 SC 1477) in which Hon'ble Supreme Court held that appellants who had worked even without getting any salary for sufficiently long time deserved sympathetic consideration in getting appointment against such sanctioned post on humanitarian consideration. Ld. counsel for the applicant submits that the case of the applicant is covered by the above observations and, therefore, the applicant is entitled for regularisation of service.

5. Ld. counsel for the respondents submits that the applicant has made same and similar prayer which he made in his earlier O.A. 1429/94, which was finally disposed of by order dated 17.4.95. He has come before the Tribunal for the same relief regarding enhancement of emoluments, grant of temporary status, regularisation and other service benefits. These issues have already been considered in the earlier O.A and finally decided by the Hon'ble Tribunal. Therefore, the said decision has reached finality and the fresh application should not be filed by the applicant for the same and similar relief. Thus the case is covered by the principles of res judicata and, therefore, the same should be dismissed on this ground.

5.1. Ld. counsel for the respondents further submits that Hon'ble Tribunal in their order dated 17.4.95 has only directed for consideration of the case of the applicant subject to usual conditions and the case was considered by the respondent authorities. The applicant being a part time sweeper, her services cannot be regularised as there is no statutory provisions either in the RPF Rule or Indian Railway Establishment Manual to this effect.

5.2. Ld. counsel for the respondents further referred to Railway Establishment Rules 2001 which defines casual labour and submits that part time employees cannot be treated as casual labour and, therefore,



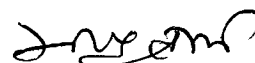
the said rule is not applicable in this case. The Id. counsel for the respondents further submits that the benefit of this scheme granted to the Part time casual labour for grant of temporary status, absorption as given by Hyderabad Bench in O.A. No. 912/1992 and 961/93 has been set aside by the Hon'ble Supreme Court in the S.L.P. filed by the respondent authorities for the above cases, which has been reported in 1998 SCC L&S 119 where the Hon'ble Apex Court has come to the conclusion that part time casual labours are not eligible for grant of temporary status and regularisation and, therefore, they are not entitled for regularisation. In view of the said decision the Id. counsel submits that the applicant is not entitled for either grant of temporary status or for regularisation of the services.

6. In view of the above, the Id. counsel for the respondents submits that there is hardly any merit in the O.A. and O.A. requires to be dismissed.

7. We have heard and considered the submissions made by both the counsels. We are of the view that the grievance of the applicant in the present O.A. has already been considered by the Tribunal in their order dated 17.4.95 passed in O.A. No. 1429/94. The issue has already reached finality. The respondent authorities have also complied with the order on 7.11.96 as per Annexure-A/2 and communicated the decision to the applicant and same has been accepted by the applicant without raising any objection. The prayer has already been decided by the earlier Bench of this Tribunal and reached finality and the applicant has also not challenged even the order passed by the authority. We are, therefore, not inclined to interfere in the earlier decision at this stage. Therefore, this O.A. appears to be repetitive of the earlier O.A. We also do not find any merit in the O.A. and, therefore, dismiss the same without any order as to costs.



Member (J)



Member (A)