

In the Central Administrative Tribunal  
Calcutta Bench

OA No.677/97

Present : Hon'ble Mr. Justice B. Panigrahi, Vice-Chairman  
Hon'ble Mr.N.D. Dayal, Member(A)

Gajai Chandra Rishi, S/o Late Sitiesh Chandra Rishi, residing at  
Village and Post Office - Jalalpur, P.S. Kaliachak, Dist.Malda

....Applicant

-Vs-

1) Union of India, represented by the GM, Eastern Rly, 17 Netaji  
Subhas Road, Calcutta-1

2) The Chief Personnel Officer, Eastern Rly, 17 Netaji Subhas Road,  
Calcutta-1

3) The DRM, Eastern Rly, Asansol Dn., Dist. Burdwan

4) The Sr.Dvl. Personnel Officer, Eastern Rly, Asansol Dn.,  
Dist.Burdwan

....Respondents

For the applicant : Mr.A.K. Banerjee, Counsel  
Mr. S.S. Mondal, Counsel

For the respondents: Dr.S. Sinha, Counsel

Date of Order : 12.07.84

ORDER

Mr.N.D. Dayal, Member(A)

We have heard the learned counsel for both sides and perused the pleadings. The applicant, an unemployed Scheduled Caste person is a resident of Village Jalalpur, District Malda. He made an application for engagement as Substitute and the Chief Personnel Officer, Eastern Rly by his letter dated 20-11-84 asked the applicant to report to Sr.DPO Eastern Rly, Asansol/Dhanbad/Mughalsarai with original certificates for engagement as substitute in that Division. By endorsement to the letter, the DRM and Sr.DPO were advised to engage the applicant after scrutiny of the original testimonials ensuring eligibility conditions. The Sr.DPO on 26-11-84 instructed Station Master, Suri to engage the applicant as unapproved substitute against the vacancy of casualties over and above leave reserve. It was informed that the applicant was being posted pending medical examination. The applicant was directed to report to Station Master, Suri

2. The applicant has stated that he joined as unapproved substitute and also drew monthly salary. Subsequently his medical test was held on 13-2-85 in which he was declared fit but without any reason he was not allowed to continue in service. He later came to know that the same order dated 20-11-84 was also issued to Umapada Acharya and nine others whose medical tests were also done, but no letter of appointment was issued. These persons moved OA No.24/90 before the Tribunal which by its order dated 20-8-93 directed that within 2 months from the date of communication of the order, the concerned authorities shall complete the screening of the applicants and enlist them in the approved panel of substitutes. If any vacancy arises, the applicants shall be given engagement in accordance with their seniority in the panel of approved substitutes. On completion of requisite number of days of work they should be given temporary status and ultimately they will be eligible for absorption against regular vacancies strictly in accordance with the rules. Similarly, one B.C. Sarkar<sup>\* 944.</sup> also filed OA 1031 of 1994 before the Tribunal and by order dated 4-6-96 the Tribunal directed the respondents to engage the applicants as substitute or in any suitable job having regard to their qualifications and in case there is no existing vacancy to engage them as soon as next vacancy will arise whether in the SC quota or in the general category and for such engagement the applicants shall not be regarded as age barred. It was further directed that the respondent No.4 shall within 3 weeks from the date of communication of the order, inform the applicants whether there is any vacancy in his Division and if not when vacancies are likely to arise. Hence the applicant has prayed for the following reliefs:

a) An order directing the respondents to engage the applicant as substitute or in any other job against the quota meant for SC/ST candidates or against the existing vacancies and/or to reengage the applicant as substitute on the basis of the appointment letter already issued, as has been done in identical matters.

b) An order directing the respondents to extend the benefit of judgement and order dated 4-6-96 passed in OA No.1031 of 1994.

3. Shri Banerjee, the learned counsel for the applicant has contended that vacancies exist and the applicant being similarly situated to the persons who moved the Tribunal in the above OAs must also get the benefit. He has referred to a number of judgements of the Apex Court & the Tribunal in this regard as noted in the application. Our attention was drawn to letter of 13-9-96 by which Asstt. Personnel Officer, Eastern Rly, Dhanbad informed Station Master, Renukoot that B.C. Sarkar has been engaged as unapproved substitute, declared medically fit in Category A2 and directed to report to him for duty. One or two other letters of similar appointment have also been enclosed. The applicant is aggrieved that he made a representation on 15-3-97 to the respondents seeking implementation of the orders passed by the Tribunal but to no avail. The learned counsel fairly admits that the applicant had earlier filed OA 272/1988 which was dismissed on grounds of limitation but the present application is filed on basis of discrimination against the applicant who now seeks benefit of the above two judgements of this Tribunal in cases of similarly circumstanced persons.

4. The respondents in the reply have clarified that although the applicant was ordered to be engaged as an unapproved substitute under Station Master, Suri pending his medical examination the subsequent services of the applicant were found to be unsatisfactory as he had been absenting himself from duty, because of which his name was deleted from the list of unapproved substitutes w.e.f. 5-1-85. As such, the question of his medical test on 13-2-85 does not arise.


5. The respondents have pointed out that the application is barred by res judicata as it was preferred on same grounds <sup>earlier</sup> dismissed by the Tribunal. They have annexed to the reply a copy of OA No.272/88. It is observed that this OA was moved before the Tribunal by the applicant against the order dated 5-1-85 passed by

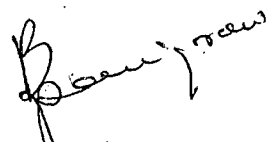
the respondents by which his name was struck off from the list of unapproved substitutes and for his continuation as such. By order dated 29-4-88, the Tribunal did not accede to the prayer of the applicant. At that time also the applicant had made a representation dated 2-2-88 and sought relief as being similarly situated to the applicants whose cases had been redressed by the Tribunal earlier vide its order dated 13-11-87 in TA Nos.1929 and 1931 of 1986. However, the Tribunal made it clear that such a plea would not save the application from being hit by limitation because the applicants in those TA cases did not sit over their rights. Within a period of four months from the date of passing the impugned order, they filed their writ applications before the Hon'ble High Court challenging the same. As such the Tribunal held that the case of the applicant stood on a different footing because he sat over his rights for more than three years and only after taking advantage of the said decisions in those TA cases submitted his representation dated 2-2-88 and then came to the Tribunal. It was opined that the representation of the applicant would not save the period of limitation in terms of the provisions of Section 21 of the A.T. Act, 1985. It was also observed by the Tribunal that if the applicant's contention was accepted he would get a fresh start of limitation on the basis of his representation and the present application would become premature and could not be entertained. In view of such findings, the application was dismissed.

6. In fact, looking at the OAs 24/90 and 1031/94, we find that the circumstances of the applicants in these two cases are easily distinguishable since in the present case the applicant having been allowed to join was thereafter discontinued as unapproved substitute because of unsatisfactory work. It is also clear that having been so discontinued the medical test if any, undergone by him after that date could hold no validity. The present application filed by the applicant seems to be the same as the earlier one but only seeking benefit of different judgements. Perhaps they are more similar to each other than the circumstances of the applicant to

those who received the benefit. If OA 272/88 was filed three years late, the present application is another ten years later. Besides, the order of this Tribunal dated 29-4-88 in OA 272/88 had become final.

7. In the aforesaid situation, we do not find any merit in the application which is dismissed. No order as to costs.

  
Member (A)

  
Vice-Chairman