

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

OA 1314/97

Date : 22.9.06

Present : Hon'ble Mr.B.V. Rao, Member(J)
Hon'ble Dr.A.R. Basu, Member(A)

Pulak Chakraborty and another

-Vs-

- 1) Union of India represented by General Manager, S.E. Railway, Garden Reach, Calcutta
- 2) DRM, S.E. Rly, Kharagpur
- 3) Sr.Dvl. Electrical Engineer (TRD), S.E. Railway, Kharagpur
- 4) Dvl. Personnel Officer, S.E. Rly, Kharagpur
- 5) Asstt. Personnel Officer, S.E. Rly, Kharagpur
- 6) Chief Traction Foreman (TRD), S.E. Rly, Santragachhi

For the applicants : Mr.P.K. Ghosh, Counsel

For the respondents : Mr.S. Choudhury, Counsel

ORDER

Mr.B.V. Rao, JM

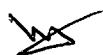
Shri Pulak Chakraborty and Shri W.C. Reid have filed this OA seeking the following reliefs :

- a) An order granting leave under Rule 4(5)(A) of the Administrative Tribunals (Procedure) Rules, 1987 to enable the applicants to move these applicants jointly.
- b) Condonation of delay, if there be any delay.
- c) An order directing the respondents to draw increment of the applicants No.1 and the Applicant No.2 in scale of pay of Rs750-940/- on completion of 12 months service in each year from the date of their respective date of appointment in scale Rs750-940/- as substitutes, to fix pay correctly for each respective year as shown in para 4(f) above and to pay the arrears of difference of wages pay, allowances etc. together with interest @18% per annum thereon from the date it becomes due and payable till the amount is actually paid.
- d) An order directing the respondents to pay arrear wages for the spells on which the applicants were not allowed to join duties on the score of non-availability of vacancies even though the applicants were posted against clear vacancies of permanent posts under posting Order No.EEANR/TR/US/ABS dated 29-7-87 and



an order to pay interest @18% thereon from the date those became due and payable till the date the same is actually paid.

2. The brief facts of the case according to the applicants are that both joined in the Railways as Substitute Bearers in scale of Rs750-940/- on 11-12-81 and 3-4-82 respectively. On completion of 4 months continuous service, both acquired all the rights and privileges as admissible to temporary Railway servants and became entitled for annual increments, privilege leave, privilege passes etc. They contended that increments in the scales of pay should have been given on completion of normal period of 12 months and which should have been effective from 1st of the month in which it falls due. They further stated that through APO/KGP's posting order dated 29-7-87 both the applicants were declared to have been screened and was declared suitable to work as Khalasi in scale of Rs750-940/- and was posted as a regular measure as Bearer and Chowkidar w.e.f. 29-7-87 against clear vacancies against permanent posts. They were however not released to join in permanent posts and prevented from performing duties uninterruptedly against permanent posts and utilized against leave/sick vacancies with artificial breaks and such artificial breaks would appear to have been treated as LWP, though those periods were of forced options and they did not apply for LWP. They further stated that repeated representations for compliance of the said posting order dated 29-7-87 proved futile till 30-1-90. Therefore, they contended that they should be deemed to be in continuous service w.e.f. 29-7-87 without any break and is entitled to all consequential benefits as break or breaks if any was constituted artificially by the authorities more particularly, by respondent No.6 by not allowing them to join duties in clear vacancies in permanent posts. Thereafter, through a posting order dated 21-2-90 they were posted as Substitute Khalasi in scale of Rs750-940 under TFO (OHE) SRC. Even though it has been clearly stated in the above quoted letter dated 30-1-90 that the applicants have since been regularized, the applicants have been stated as substitutes, which is arbitrary, unjust and in utter disregard to the orders of DRM. They further stated that in the seniority list of Bearers/Masalchies in the scale of Rs750-940 seniority of staff named therein has not been determined and not been fixed on the basis of date of appointment in the grade and



in consequence of which staff against Sl. Nos.5,13 to 18 and 21 have been wrongly shown as seniors to the applicant No.1 and the staff against 5,13 to 18 have been wrongly and illegally shown as seniors to applicant No.2. Hence the applicants approached this Tribunal to ventilate their grievances.

3. The respondents contested the matter by filing a reply stating that they were engaged as Substitute against leave/sick vacancies. Hence the question of apptt. on loyal quota does not arise at all. They were engaged in scale of Rs196-232 and not against scale of Rs750-940/- . The scale of Rs750-940/- has been introduced from 1-1-86 as recommended by 3rd CPC and Rs2550-3200/- from 1-1-96 as recommended by 4th CPC. They further contended that they were engaged as substitute bearers on 11-12-81 and 13-4-82 respectively and due to non completion of stipulated period of service for attaining the temporary status they could not be granted temporary status. On being empanelled the applicants were posted regularly vide office order dated 29-7-87 on pay of Rs750-940 p.m. which denotes that they could not complete one years of service for accrual of one increment since their engagement as substitutes on 11-12-81 and 13-4-82. Their services have been screened and empanelled and have been regularised vide office letter dated 10-5-90. Increments from 1987 to 1995 were not drawn. Later, pay was refixed and increments were also granted to the applicants after their regularization and according to rules differing absent/LWP period vide office order dated 5-1-96. Arrears have also been paid to them amounting to Rs1310 and Rs2508/- vide office bill dated 14-11-96. They further contended that the annual increments were granted as a matter of course to the temporary/permanent staff and staff attends temporary status after completion of 12 months of qualifying service. LWP, Absent, Dies-non period etc. do not count for increments. After all, when vacancies arises the applicants after constituting screening test etc. were regularised against the overall vacancies of OHE(Group and RSO/RSM group). They further contended that the applicants frequently remained absent/ LWP during these period. The date of annual increment as claimed from 1982-83 to 29-7-87 does not arise as the office order dated 5-1-96 shows that their pay in the year 1987 was Rs850 per month in the scale of Rs750-940/- . In view of the facts stated in the reply, the

respondents submitted that the claim of the applicants is baseless and accordingly the application is liable to be dismissed with costs.

4. Heard both the parties.

5. The learned counsel for the applicants reiterated the facts of the case and he repeatedly stated before us that the applicants are entitled to the reliefs as they claimed in the application and he prayed to allow the OA by granting the reliefs of the applicants.

6. Per contra the learned counsel for the applicants opposed the application and he stated before us that in view of the facts stated in the reply the applicants are not entitled to claim any relief since they were engaged as substitute bearers and they did not fulfill the required eligibility criteria, they were not given temporary status on the day which the applicants are claiming and subsequently on being empanelled they were appointed against a regular vacancies and the arrears of amounts also paid and their pay also fixed as per pay commission recommendations and increments also allowed as per the extant rules. Hence he stated that the claim of the applicant is baseless and is liable to be dismissed.

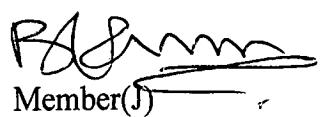
7. We have considered the submissions and arguments of both the parties. We have gone through the entire pleadings and material on record.

8. After traverse the material on record and having regard the submissions of both the parties, we have seen a lot of force in the submissions of the learned counsel for the respondents. They have categorically dealt with all the issues and contentions raised by the learned counsel for the applicant in the pleadings and during the course of arguments. In view of the rules in force and circumstances of the case, we do not find any merit in the instant OA.

9. In the results for the foregoing reasons, the OA is dismissed being devoid of merit. No costs.



Member(A)



Member(J)