

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CALCUTTA BENCH, CALCUTTA.

ORIGINAL APPLICATION NO.1347/1997.

Dated : 03.05.2005.

Hon'ble Shri J.K.Kaushik, Judicial Member,  
Hon'ble Shri Anand Kumar Bhatt, Administrative Member.

• Mohitosh Das,  
Son of Late Monindra Nath Das,  
Working as dis-engaged casual un-approved  
Substitute under E.Rly., residing at Village-  
Station Pura Post -  
Badkulla,  
District - Nadia.  
(By Advocate Shri T.K.Biswas)

...Applicant.

v.

1. The Union of India service through  
the General Manager, Eastern Railway,  
Fairlie Place,  
Calcutta - 700 001.
2. The Chief Personnel Officer,  
Eastern Railway,  
Fairlie Place,  
Calcutta - 700 001.
3. The Divisional Railway Manager,  
Sealdah Division,  
Calcutta - 700 014.
4. The Sr. Divisional Railway Manager,  
Sealdah Division,  
Calcutta - 700 014.
5. The Station Master,  
Sonadanga Railway Station,  
District - Nadia.

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6. The Station Master,  
 Birnagar Railway Station,  
 District - Nadia.  
 ...Respondents.  
 (By Advocate Shri R.K.De)

: O R D E R (ORAL) :

{Anand Kumar Bhatt, Administrative Member }

The following relief has been sought by the applicant in the present case :

- i) To cancel, withdraw and/or rescind the impugned order dated 21.12.1993;
- ii) To direct the respondents to conduct the screening for regular absorption of the applicant;
- iii) To direct the respondents to give regular posting order to the applicant under the Eastern Railway anywhere the vacancy is available;
- iv) An order directing the respondents to provide 'temporary status' to the applicant immediately;
- v) An order directing the respondents to procure the paid vouchers of Biranagar Railway Station.
- vi) And to pass such further or other order or orders and/or direction or directions as to this Hon'ble Tribunal may deem fit and proper."

2. The facts according to the applicant, in brief, are that he worked as un-approved substitute from 17.3.1979 to 30.4.1982 at Sonadanga Railway Station for a period of 161 days and the Station Master of Sonadanga Railway Station issued a certificate on 28.8. 1982. There is a mention of Applicant NO.2 also in the written pleadings. However, it is found that the OA has been filed only by Mohitosh Das and therefore, there is no second applicant.

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The applicant made a number of representations to the concerned authorities for absorption in Group 'D' on 15.9.1988, 31.1.1989, 15.7.1992 and 8.8.1992. The last representation was made on 14.12.1993, which was rejected by the concerned authorities on 21.12.1993 (Annexure - A-3). It was the duty of the concerned Station Master to send the name of the applicant to the higher authorities for the screening test and it was for the fault of the respondents that his name was not sent. Similarly situated approved and other un-approved substitutes were later on screened. Senior Divisional Personnel Officer, Eastern Railway, Sealdah published a list of those who were working as un-approved substitutes and in this list the applicant's name appears at Sl.No.101 (Annexure - A-4). The applicant alleges discrimination by way of picking up of favoured candidates by the respondents and dropping/not sending the name of the applicant for absorption and/or screening. Some similarly placed persons moved an application before the Tribunal in OA No.1518/94 dt. 18.6.1997 who were given relief by the Tribunal in their order dt. 18.6.1997. The applicant has prayed for similar relief as in the said OA (Annexure - A-5).

3. Per contra, the respondents in their reply have stated that since 1978 three screening tests have been held by the Sealdah

Divisional authority in 1978, 1981 and 1990. The substitutes who had actually worked/utilized or engaged as substitutes were duly placed in the respective panels and all such panels have been fully exhausted and have been cancelled being obsolete. The respondents have categorically stated that the present applicant never worked/utilized/engaged against any capacity at any point of time in Eastern Railway. The applicant is therefore rank outsider. The present OA is not supported by any documents showing the applicant's engagement at any time in the Railways and the applicant is making a fishing exercise in respect of his claim of having worked in the Railways. They have also stated that the impugned order dt. 21.12.1993 (Annexure - A-3) which is supposed to have <sup>been</sup> issued from the office of the Senior Divisional Personnel Officer, Eastern Railway is not a genuine document. In any case, as this document is of 28.11.1997 is highly time barred. The applicant cannot take the benefit of the judgment in OA No.1518/94 dt. 18.6.1997 as that judgment is not in rem. In addition, the judgment covers approved substitutes, whereas the applicant does not fall in that category according to his own admission. The applicant cannot ventilate his grievance for temporary status without showing in prima facie evidence that he satisfies the condition precedent for such temporary status. The

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applicant never worked during the period 17.3.1979 to 30.4.1982 in Sonadanga Railway Station or Sealdah Division. Annexure - A-1 filed by the respondents are neither genuine certificates nor form part of the office record of the respondents. The respondents have further categorically denied that the applicant had made any representation on 15.9.1988, 31.1.1989, 15.7.1992, 8.8.1992 and 14.12.1993 (Annexure - A-2 colly.). About Annexure - A-3, the respondents have further stated that this letter has been addressed to Gour Chandra Das etc and it is doubtful whether it was addressed to the applicant at all. In 1990, a screening test was held and the screening committee had recommended 910 persons to be empanelled after verifying all relevant records viz. station-wise substitutes registers, pay-sheets/vouchers copy books etc. and thereafter duly empanelled the genuine persons and all such empanelled persons have been re-engaged and the panel has now become obsolete and non-workable. There is no evidence of any assurance given to the applicant by higher authorities as alleged by him. The learned counsel for the respondents cited **Ratan Chandra Sammanta and Ors. V. Union of India & Ors.** {1994 SCC (L&S) 182}. In the cited case, the writ petition was dismissed as there was no material in support of alleged right. The counsel stated that the same is the case here.

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4. In the oral submissions, the counsel for the applicant reiterated the written pleadings and mentioned that a relief which was given by the Tribunal in OA No.1518/94 shall be given in the present case also.

5. The learned counsel for the respondents adding to the written pleadings stated that the so called application given by the applicant on 15.9.1988 (page 15 of the paper book) is shown to have been recommended by the Station Master, Badkulla on 20.9.1990 i.e. more than two years later which in itself is doubtful.

He also stated that the applicant is claiming to have worked at ~~Sonadanga~~, <sup>Sonadanga,</sup> ~~Sealdah~~, whereas this application is alleged to have been forwarded by Station Master, Badkulla. He drew our attention to the representations on page 18 and page 19 of the paper book stating that though they are mentioned to have been written on 8.8.1992 and 14.12.1993, they seem to have been signed in the same sitting as is suspected from the same serial number in which the ten applicants have affixed their signatures. He categorically stated that the applicant has not worked in the Railways and his ~~assertion to~~ <sup>assertion to</sup> ~~association~~ in this behalf is not correct.

6. We have considered the case. The list which has been produced by the applicant at Annexure - A-4 is a letter issued by the office of the Senior Divisional Personnel Officer on 4.11.1990.

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This letter states that in the screening done, as the <sup>annexed</sup> names were not found in the paid vouchers for the period from 1.1.1990 to 31.7.1990 they were not called for the screening test. The various Station Masters were directed to verify their names from the paid vouchers and if they are found to have been mentioned in such paid vouchers the information was to be sent within seven days. Therefore, the simple appearance of the name of the applicant in the said list does not give any sort of claim to the applicant and apparently his name could not be found in any of the paid vouchers in the stations where he had <sup>in</sup> ~~probably~~ claimed to have worked. The counsel for the applicant on the date of hearing produced before the Tribunal the original of the forwarding endorsement dt. 20.9.1990 on the alleged representation of the applicant dt. 15.9.1988. When asked, as to how he has in his possession the original and when he has the original in his possession how he claims that this was sent by the Station Master, Badkulla to DRM Sealdah, he could not give a satisfactory reply and he only replied that this is a duplicate copy which was given as a receipt to the applicant. However, the explanation does not seem to be satisfactory. The respondents have categorically denied that the applicant ever made any representation as claimed by him and have also said that the letter produced by him at Annexure - A-3 is not genuine. In the

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absence of any rejoinder from the applicant in this regard, it is difficult not to believe the contention of the respondents. The applicant has claimed the benefit of the order which has been given by the Tribunal in OA No.1518/94 on 18.6.1997. However, we tend to agree with the contention of the respondents that this is a Judgment in personam<sup>m</sup> and not in rem and this is applicable to such applicants who were approved substitutes which is not the case for the present applicant. On the whole, we have a suspicion that the statement by the applicant that he worked in the Railways is not based on credible evidence and therefore cannot be believed. The Apex Court case of Ratan Chandra Samanta & Ors. (supra) cited by the counsel for the respondents squarely covers the present case. There is absolutely no ground to give any relief to the applicant. O.A. is accordingly dismissed. No costs.



(ANAND KUMAR BHATT)  
ADMINISTRATIVE MEMBER



(J.K.KAUSHIK)  
JUDICIAL MEMBER

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