

Central Administrative Tribunal
Calcutta Bench, Calcutta

OA 528/1997

This the 13th day of April, 2005

Hon'ble Shri S.K. Malhotra, Member (A)
Hon'ble Shri G. Shantappa, Member (J)

1. Pares Nath Paramanik, son of Sri Naba Kumar Paramanik, unemployed youth, Aged about 30 years, resident of village & P.O. Gagagnabad, District - Purulia.
2. Nikhil Misra, son of P.K. Misra, aged about 27 years, unemployed youth, at present residing at village & P.O. Gagagnabad, Dist. - Purulia

...Applicants

(By Advocate Shri S.K. Dutta)

Versus

1. Union of India, service through the General Manager, South Eastern Rly. Garden Reach, Calcutta.
2. General Manager, S.E. Railway, Garden Reach, Calcutta.
3. Chief Personnel Officer, S.E. Railway, Garden Reach, Calcutta.
4. Divisional Railway Manager, S.E. Railway, Adra Purulia.
5. Divisional Personnel Officer, S.E. Railway, Adra, Purulia.

(By Advocate Shri S.R. Kar)

O R D E R (ORAL)

By Hon'ble Shri S.K. Malhotra, Member (A):

By filing this OA, the applicants have prayed that the respondents be directed to give appointment to them in Group-D post in S.E. Railway since certain persons junior to the applicants have been given appointment.

2. The facts of the case in brief are that a circular dated 1-11-1989 was issued by the respondents in order to meet the contingency of casualties/ absenteeism in the lower grade (Group-D), Engineering Department. In accordance with this circular the ward of the retired or retiring employees between 31-10-1984 and 31-10-1994 were invited to submit their applications for engagement as casual labourers, purely on temporary measure on day-to-day basis. The applicants in this OA have stated that they had filed their applications and according to them, their names appeared in the screening list and were empanelled by the Selection Committee. However, no appointment was given to them although many other junior persons who did not come within the zone of consideration were given appointment. Hence the present OA.

3. The respondents have filed their written reply in which they have stated that a number of applications were received in response to the circular dated 1-11-1989 and after scrutiny, the eligible candidates were subjected to necessary screening test to adjudge their fitness/suitability by a duly constituted Screening Committee. The candidates who were found suitable for engagement as casual labourers were engaged/ appointed from time to time with the approval of the appropriate authority. It has been stated that the applicants in this OA were not found suitable by the Screening Committee for engagement and as such they were not appointed. Subsequently the validity of the circular dated 1-11-1989 was challenged before this Tribunal in OA 968/1990 and the Tribunal vide order dated 13-8-1993 quashed the above circular as it was found violative of Article 16 of the Constitution. Railway authorities were directed to review the appointments made on the basis of the above circular which has been

quashed by the Tribunal. It has been stated that since the applicants were not found suitable by the Screening Committee and the above circular under which the applicants had applied for the engagement, was quashed and set aside, the question of giving appointment to the applicants does not arise.

4. We have heard both the learned counsel for the parties and have also gone through the pleadings available on record.

5. During the course of discussions, the learned counsel for the applicant brought to our notice the judgement dated 28-7-2004 in OA 714/1994 passed by this bench of the Tribunal in which directions were issued to the respondents to comply with the order dated 13-8-1993 for undertaking a review of the appointments made based on the above circular dated 1-11-1989, within a period of six months. It is also observed that in another judgement dated 20-12-2004 in OA 719/1994 passed by this bench of the Tribunal, it was held that merely because some employees have continued in the post wrongly without a review having been undertaken by the respondents, it would not give cause of action to the applicants who were seeking benefit of absorption in terms of Railway circular dated 1-11-1989. That OA was accordingly dismissed.

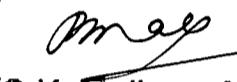
6. After taking into consideration the facts and circumstances of the case, it is clear that the review which was required to be undertaken by the respondents in compliance of the order dated 13-8-1993 passed by the Tribunal was in respect of only those employees in whose case the appointments had already been made and not in respect of those who were not given any appointment or those who were not found fit by the Screening Committee. The applicants in this OA were not found

2

suitable for appointment by the Screening Committee as mentioned above which fact has not been refuted by the applicants. The benefit of any review as and when it is undertaken, cannot be extended to these applicants. The question of giving appointment to them in response to the circular 1-11-1989 which has been quashed by the Tribunal, would not arise.

6. As a result, the OA turns out to be bereft of any merit and the same is accordingly dismissed. No costs.


(G. Shantappa)
Member (J)


(S.K. Malhotra)
Member (A)

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