

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

MA 76 of 2003
OA 553 of 1997

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

Samarendra Modak & Ors.

- VS -

Eastern Railway

For the Applicants : Mr. P.C. Maity, Counsel
Mr. T.K. Biswas, Counsel

For the Respondents : Ms. U. Bhattacharjee, Counsel

Date of Order : 29-07-2003

O R D E R

MR. B.P. SINGH, AM

This application has been filed by 96 applicants who are alleged to have worked as casual substitutes under the respondents. The applicants have prayed for regularisation of their services as casual substitutes as per circular dated 24-9-1996 issued by the Chief Personnel Officer, Sealdah Division (Annexure-A/7). The applicants have prayed the following reliefs :

- a) An order directing the respondents to incorporate the names of the applicants in the list of live substitutes/casual labour register as done in the case of the juniors and to allot works in accordance with rules applicable to substitute workers and not to make any discriminations in the matter of inclusion of names of the substitutes in the register provided/maintained as such and also in the matter of allotment of jobs/works and also directing the respondents to call for the applicants for screening test as also to treat the applicants as substitutes.

204

Contd....

- b) Consider the representations marked as Annexure "A6 to A9" and all similar representations made by the applicants in its proper perspective and in accordance with law.
- c) To allow this application and to pass order according to order passed by this Ld. Tribunal being Annexure-A/10".

2. The brief fact of the case is that the applicants were engaged by the Eastern Railway Authorities from 8-5-1974 to August, 1978 in the operation and maintenance of Railway system of Traffic Department without any break in the Parcel Section and also in the Office of the Station Superintendent as unskilled and unapproved substitutes and were provided with temporary identity cards with photographs to the applicants. A copy of the same is enclosed as Annexure-A/1. The applicants continued their service in the aforesaid department till 28-8-1978 and thereby they have acquired temporary status and for the purpose of being treated as temporary employees. The applicants were, thus, eligible for regular job, but they were not given any job thereafter. Since the applicants acquired temporary status, they made representation to the Railway Authorities on 9-11-1978 vide Annexure-A/2, but no action was taken by the respondents. Thereafter, the applicants made representations dated 15-12-91, 1-12-92, 15-12-93, 30-12-94, 2-1-96 and 2-10-96 which are enclosed collectively as Annexures-A/6. As the grievances of the applicants ventilated in the above said representations remained unheard by the authorities, therefore, being aggrieved they filed the present O.A. praying for the reliefs as stated above.

3. Shri P.C. Maity, Sr. Ld. Counsel leading Shri T.K. Biswas, Jr. Ld. Counsel appears for the applicants and Ms. U. Bhattacharjee, Ld. Counsel appears for the respondents. Reply has been filed by the respondents in this case. Rejoinder has also been filed by the applicants. We have heard Ld. Counsels for both the parties.

4. The Ld. Counsel for the applicants submits that the applicants had worked for more than 120 days under the respondents. They thus acquired temporary status and therefore, they became eligible

204

Contd.

for regularisation of their services. The applicants made representation as early in 1978 and subsequently from 1991 to 1996 but no action on the said representations was taken and no reply was also given by the respondents.

4.1 The Ld. Counsel further submits that in reference to the letter dated 17-11-1981 enclosed as Annexure-A/3 all the senior Subordinates of T & C Department of Sealdah Division were directed that the substitutes who had put in 100 working days should be utilised as substitutes and no other should be engaged. By subsequent circular dated 16-5-1991 (Annexure-A/4), the Senior Divisional Personnel Officer, Sealdah Division directed the authorities for verification of genuineness of work performed by the casual labourers prior to 1.1.1981. Verification was done on the basis of documents lying there. In spite of the above direction, the applicants' case was not considered. Thereafter the applicants made representations as stated above between 1991 and 1996. But no action was taken. In the year 1996 another circular was issued for regularisation of casual labour. Benefit of the said circular was also not given to the applicants in spite of direction therein.

4.2 The Ld. Counsel also drew our attention to the decisions passed by another Bench of this Tribunal in O.A. 664 of 1995 dated 26-11-2001 and in O.A. 684 of 1996 dated 24-9-2002 and submitted that the applicants are similarly circumstanced and therefore, similar order as has already been passed by another Bench of this Tribunal, should also be passed in this case also.

5. Reply has been filed by the respondents in this case. The Ld. Counsel for the respondents submits that the applicants were never engaged or appointed in any category by the Railway authorities nor any temporary identity card was issued by them.

5.1 The Ld. Counsel further submits that cause of action arose in the year 1977 and the present O.A. has been filed in the year 1997.

2/24

Contd....

so, the application is barred by limitation and requires to be dismissed on this ground itself.

5.2 The Ld. Counsel further submits that in the O.A. no letter of engagement or termination etc. has been enclosed. The Ld. Counsel submits that in 1978 no circular has been issued for regularisation of such substitutes against available vacancies or posts. If the applicants were actually utilised or engaged as substitutes they must have been invited for screening test for regularisation or absorption in the posts. It is clear that they had never worked as substitutes. Thus, the application is devoid of merits and it should be dismissed.

5.3 The Ld. Counsel for the respondents submits that it is stated in O.A. that the applicants were engaged by the authorities since 1974 to 1977 as substitutes. If it is so, the applicants should have produced appointment/engagement letter, but they have not done so far. The applicants have also not submitted any representation as alleged by them as the respondents have not received any such representation.

5.4 The Ld. Counsel for the respondents submits that application for condonation of delay has also not been filed. Therefore, the case is barred by limitation. The Ld. Counsel, however, drew our attention to page 4, para 6 of the judgement of this Tribunal dated 18-10-2001 in O.A. 1152 of 1998, MA 56 of 2001 (Ashok Kr. Sil & Ors. -Vs- UOI & Ors.) wherein it is held that no application for condonation of delay has been filed by the applicants and therefore, the application is liable to be dismissed on the ground of limitation alone vide State of Karnataka -vs- SSI, Kotrayya (1996) 6 SCC 267, Secretary of Govt. of India - vs - Shivram Madhu Gaikward, 1995 Supp. 3 SCC 231 and Ramesh Chandra Sharma -vs- Udhamp Singh, 2000 SCC (L&S) 53.

5.5 The Ld. Counsel for the respondents further submits that the applicants have also failed to prove that they had worked in the Railway organisation as substitutes by showing any valid and genuine

JW

Contd....

document of their engagement/appointment. The Ld. Counsel submits that in the reply they have stated that the applicants never worked as substitutes as claimed by them. He submits that this fact as stated in the reply has also not been refuted by the applicants while filing rejoinder to the reply.

6. In view of above submissions, it is clear to us that the applicants have virtually failed to make out a case of their engagement during the period from 1974 to 1978. The applicants have not enclosed any evidence of their representations from 1978 to 1996. All the representations submitted by the applicants just state that they have worked in the Railway organisation as substitutes without enclosing copy of any order or other proof of their engagement. However, the applicants submitted a list of substitutes (Annexure-A/1), but the same has not been signed with date by any of the Railway authorities. It is difficult for us to rely on the list. Besides, the respondents have denied to have received any representation as alleged to have been submitted by the applicants in their Office. The Ld. Counsel for the applicants has drawn our attention to the representation dated 2-10-1996, but the same is also reported not to have been received in the office of the respondents. So far as the averment of the respondents that the applicant were never engaged by them is concerned, no proof refuting the same has been produced before us by the applicants. It is difficult for us to agree with the submissions of the Ld. Counsel for the applicants as well as the submissions ~~made in the O.A.~~ that the applicants had worked from 1974 to 1978.

7. The Ld. Counsel for the applicants submits that an order was passed by another Bench of this Tribunal in O.A. 664 of 1995 dated 26-11-2001 and in O.A. 684 of 1996 dated 24-9-2002 in favour of the applicants of the said O.As. As the present applicants are similarly situated, therefore, similar order should be passed in the present O.A. also. In view of above submissions made by the Ld.

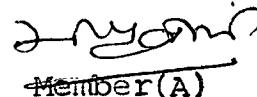
2/2

Contd....

Counsel for the applicants, we have gone through the orders dated 26-11-2001 and 24-9-2002. As already stated above, the applicants have not produced any documents or any evidence regarding their engagement as substitutes between 1974 and 1978. This fact has been refuted by the Ld. Counsel for the respondents while submitting at the time of hearing as well as in the reply of the respondents and the same has not been refuted by the applicants. We have gone through the orders passed in O.A. 664 of 1995 and O.A. 684 of 1996. In both the O.A.s it has been directed by the Ld. Tribunal that respondents should verify the documents of the applicants and ~~to~~ consider their claims as contained in their representation." In the present application, as the applicants could not produce any document in respect of their engagement as substitutes, therefore, it is not possible for us to pass similar order in this case. As the applicants are not similarly situated, the decisions passed in the above said OAs, are not applicable in this case. Accordingly, we dismiss the O.A.s being barred by limitation^{as} well as ~~on~~ merit.



Member (J)



~~anyone~~
Member (A)

DKN