

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 540 of 2005

Friday this the 3rd day of November, 2006

CORAM :

**HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

1. Renjeevkumar N.S.
S/o N Saseendran,
Nirmatt House,
St. Francis Xavier's Church Road,
Kaloor.P.O.
2. Binukumar C,
S/o T Chandrasekharan,
Kulathumal, Chaikkottukonam.P.O.
Thiruvananthapuram-695 122. : Applicants

(By Advocate Mr. PK Madhusoodanan)

Versus

1. The Chief Personnel Officer,
Southern Railway, Park Town,
Chennai-3.
2. The General Manager,
Southern Railway,
Park Town, Chennai -3.
3. The Chairman,
Railway Board,
Ministry of Railways,
New Delhi.
4. Dakshin Railway Employee's Union,
Reg. No.3068, Central Office,
represented by its General Secretary,
A Janaki Raman, S/o R Amirthalingam,
No.27, Msque Street,
Chepauk, Chennai-660 005.
5. J Sreeram, Sub-Khalasi,
O/o the Section Engineer,
Traction Rolling Stock,
A.C. Loco Tripshed,
Ernakulam South
Southern Railway,
Kochi-16.
6. V. Lakshmi Pathy,
Sub Sweeper cum Porter (SCP),
Railway Station, Southern Railway,
Trivunithura. : Respondents

(By Advocate Mr. KM Anthru for R.1 to 3)

(By Advocate Mr TC Govindaswamy for R.4 to 6)

The application having been heard on 27.9.2006, the Tribunal on 3.11.2006 delivered the following :

ORDER

HON'BLE MR.N.RAMAKRISHNAN, ADMINISTRATIVE MEMBER

1. The applicants in this case, Shri Ranjeevkumar and Shri Binukumar have filed this O.A in apprehension of proposed empanelment of suitable candidates as substitutes in Group'D' positions in the Southern Railway affecting their employment possibilities.
2. The applicants have passed S.S.L.C. and successfully completed Apprenticeship training respectively in Fitter & Plumber Trades. Such training, they received outside Railway establishment. They are unemployed and aspirants to Group'D' posts in the Railways. Recruitment to such posts are regulated through the instructions contained in A-7, A-8 and A-9. These references cover various aspects like recruitment units, periodicity, eligibility criteria, norms for physical test etc. More specifically, vide A-9, it is provided that such recruitment has to be done from the open market, through the Railway Recruitment Board, Chennai, and Trivandrum. Whenever vacancies occurred in Group'D' posts Southern Railway administration used to place an indent with the Railway Recruitment Board, Chennai or Trivandrum, depending upon the area where vacancies exist and they in turn recruits candidates from open market for appointment to the various Railway establishments.
3. But the respondent-1 issued A-10 notification on 29.11.2004 announcing the proposal to form a list of suitable candidates for engagement as substitutes in Group'D' vacancies from amongst the Course Completed Act Apprentices trained in Southern Railway Establishment. This notification listed out various parameters of such engagement. Following this, vide communication dated 23.3.2006 (A-11), an announcement was made about the approval by the G.M. Southern Railway for the engagement of 652 such apprentices as substitutes in Group'D' vacancies under 4 categories in administrative exigencies. After outlining the further process, this communication ended by intimating as follows:



"The above list does not guarantee engagement/regular appointment as Substitutes on Southern Railway Establishments. (emphasis supplied) The engagement will be need based depending on vacancies and exigencies of service. The Substitutes are liable for retrenchment on regular filling up of vacancies or when requirement does not exist for continuous engagement. (emphasis supplied) Candidates should desist from canvassing directly or indirectly, which would render them liable for disqualification and rejection of their candidature." This was followed by a notification by respondent-1 regarding the screening of the 648 Apprentices (A-12). Aggrieved by the A-10, A-11 and A-12 orders the applicants have approached this Tribunal.

4. They seek the following reliefs:

- i) A-10, A-11 and A-12 be quashed.
- ii) Directions to be issued to the respondents to take action to fill up Group'D' vacant posts in accordance with A-7 to A-9.
- iii) A direction that the above mentioned Group'D' posts lying for a long time vacant is not liable to be filled up by substitute arrangement as envisaged in the impugned orders.

5. The grounds on which such reliefs are sought are the following:

- i) First, according to the applicants, Para 1315 of IREM Vol.I defines substitutes as follows:

"Substitutes are the persons, who are engaged on regular scale of pay and allowances to fill up the permanent or temporary posts which fall vacant due to absence of permanent or temporary employees, either on leave or otherwise and the posts cannot be kept vacant."

They can only be engaged where:

- a) no leave reserve is provided, or
- b) when leave reserves are provided, it is not possible to fill up the post due to their non-availability on account of high incidence of sickness among the staff, or
- c) when leave reserve is not readily available due to the vacancy at the roadside stations, or



d) when the Railwaymen being called for training in Territorial Army.

Thus, according to the applicants substitutes are engaged only as a stopgap arrangement against short term vacancies occasioned due to some contingencies and those posts cannot be kept vacant due to exigencies of service and for appointment to these vacancies regular selectees as per law cannot be made available immediately. But it is evident from A-11 that the said vacancies existed long back against which a regular selection from open market would have been conducted as stipulated in A-7 to A-9.

- ii) Secondly, these Act apprentices have no manner of right to be appointed in the Railway Administration on successful completion of their Act apprenticeship and have only a right to be considered for regular recruitment from open market along with the applicant and like eligible candidates like the applicants for appointment to Group'D' posts in Railways.
- iii) Thirdly, such appointed substitutes, on completion of 120 days of continuous as such will be entitled to get temporary status and will be eligible for regular absorption which would come in the way of employment prospects of the applicants and similarly situated persons.
- iv) Fourthly, no contingency to appoint such persons as substitutes exists now.
- v) The applicants are fully eligible and qualified to be considered for appointment to the Group'D' posts vacant in the Southern Railway shown in A-11.

6. Respondents oppose the application on the following grounds:

- i) Railways have organised apprenticeship training in accordance with the directives of the Central Government to provide technical training in specified trades relating to Railways. While it is not obligatory on the part of the Railways to provide them employment, giving them preference over those not trained by the Railway establishment would amount to only a constructive bias.



ii) The impugned A-10, A-11 and A-12 documents were issued in conformity with the laws and and in view of administrative exigencies. In fact, the administration did place indents for Group'D' employees but in view of the time element involved, the G.M concerned took a decision to engage the course Completed Act Apprentices as substitutes for the time being in view of the exigencies of administration.

iii) The G.Ms are vested with powers to engage such apprentices by virtue of R-1 document. This document is a copy of the Railway Board's letter No.E(MPP)2002/12/26/Vol.II Dated 21.6.2004 (RBE No.136/2004) addressed to all General Managers which provides for as follows:

"Some of the Railways have in the past approached Board to clarify as to whether Course Completed Act Apprentices can be engaged as Substitutes in Group'D'. It is clarified that Course Completed Act Apprentices can be engaged As Substitutes in Group'D' under GM's powers in administrative exigencies, subject to their fulfilment of the extant instructions prescribed for such engagements."

iv) In any case, the proposed engagement of the Course Completed Act Apprentices as substitutes does not amount to an appointment on regular basis, which has been made amply clear in paragraph 10 of A-11.

7. The party respondents who had impleaded themselves have also made the following:

- i) Between 1999 and 2005, the Railway Recruitment Board had conducted recruitments to Group'D' posts at least three times.
- ii) Factors like shifting of responsibility of recruitment from zonal Railways to RRBs and back to Zonal Railways, surrender of lower grade posts as part of man power planning and cadre restructuring gave rise to the emergence of large number of vacancies. Added to



this was the problem of over loading existing employees with work .

All this gave rise to the necessity of making some stop gap arrangement which was squarely a matter of exigencies of service.

Hence, it was necessary to resort to the engagement process covered by the impugned orders.

8. Heard the counsel and perused the documents.
9. The first point to be decided is whether regular employment of Group'D' posts is envisaged in the impugned orders. The applicants aver that it is so. But nowhere in the impugned document reference to regular employment has been made. In fact, as pointed out in para 10 of A-11, the list of approved candidates does not guarantee engagement/regular appointment as substitutes. Such substitutes when appointed are liable for retrenchment on regular filling up of vacancies. A-7 to A-9 outline the various procedures involved in the recruitment of Group'D' posts. Besides, as pointed out by the party respondents, during 1999-2005, at least thrice, action was taken for regular recruitment in which the applicants could have had a chance of participation. Based upon these facts, we find that what was contemplated by the impugned documents was not a regular appointment.
10. Next point to be decided is whether such engagements come in the way of the employment prospects of the applicants. According to them, instead of regular recruitment, the impugned notification has been issued. As pointed out above, there were recruitment initiative, undertaken thrice during the six year period between 1999 and 2005. Added to this, is the restrictive condition imposed by para 10 of A-11 declaring any guaranteed absorption of such substitutes. The Course Completed Act Apprentices may be eligible for consideration for recruitment to Group'D' posts but they are not entitled for such consideration. Hence we find that the process as per the impugned documents pose no threat to the employment prospects of the applicants.



11. Next question is whether selection of Course Completed Act Apprentices poses any prejudice or hostile discrimination to the applicants and similarly placed persons. Through R-4 and R-5 documents, it is clear that the process of training as apprentices in Railway establishments was through a process of open advertisement. The applicants, too, had chances of access thereto. But having chosen apprenticeship in institutions other than Railway establishments, the applicants cannot claim priority over such apprentices in engagement.

12. Next point raised by the applicants is that there is no exigency at all necessitating initiations of the process, covered by the impugned documents. His first point as raised in his rejoinder is that the vacancy position as indicated by the southern Railways during the four year period of 2002-2005 ranges between 2039 to 3358. Large scale pruning of such vacancies was resorted to by the respondents. This is inconsistent with the claim of exigencies. In reply, the respondents would say that the pruning was in the non-safety categories. Secondly, the applicants point out that inasmuch as 10 months having been taken for engaging such substitutes, the argument of exigency lacks force. The reply to this point by the respondents is that the process of selection was started in March 2005 and probably 35 candidates joined in August 2005 and the intervening period was necessary to fulfil all the formalities. This stand appears to be reasonable. A hurried selection process on the other hand, without going through the necessary formalities would only lead to avoidable criticism. Viewed in this context, taking five months may not be considered that long. The applicants point out that vide A-13 document the engaged khalasis are entitled for status on completion of continuous service followed by empanelment and absorption against regular vacancies and such assured absorption can be a cause of worry. The respondents reply that such process of absorption is not automatic and will necessarily have to go through the process outlined in R-10 the subject of which is constitution of selection Board for screening of casual labour for regular absorption and appointments of class-IV categories.



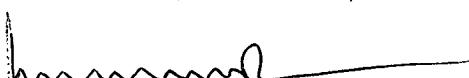
Ultimately, the existence of exigency is to be decided by the appropriate authority. This point has been made by the party respondents explaining the situation under which such exigencies arose. The power vested in the G.M in this regard has been adequately brought out vide R-1 document. It is important to note that these points have not been further controverted by the applicants.

13. In sum, we find that

- i) the impugned documents do not envisage regular appointments over which aspirants like the applicants could stake a possible claim
- ii) the applicants could have availed themselves of the opportunities of apprenticeship training in the Railway establishments,
- iii) having not availed them of such training they cannot argue prejudicial treatment in favour of such trainees through the impugned advertisement,
- iv) equally so, they could have staked their claims for employment when open advertisements were made at least thrice during 1999-2005 and,
- v) they are unable to substitute their claims relating to the non-existence of exigencies.

14. Based on the above findings, we order that the O.A. be dismissed with no costs.

Dated, the 3rd November, 2006.


GEORGE PARACKEN
 JUDICIAL MEMBER


N. RAMAKRISHNAN
 ADMINISTRATIVE MEMBER