

RB

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

OA 71/89

Lucknow this the 16 th day of March, 2001

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J).

Hon'ble Shri A.K. Misra, Member(A).

1. Harinder Yadav,
S/o Shri Devanand Yadav,
R/o Gr.No.416-A, Diesel Colony,
Gonda.
2. Madan Murari,
S/o Shri Shyam Nath Shukla,
R/o Gr.No.204-D, Semra Colony,
Road No.9, Gonda.
3. Anil Kumar Srivastava,
S/o Shri Ram Autar Lal Srivastava,
Mr. No.418-A, Diesel Colony,
Gonda.
4. Shafiq Ahmed,
S/o late Shri Rafiq Ahmed,
R/o Gr.No.85-D, Badgaon,
Gonda.

... Applicants.

(By Advocate Shri L.P. Shukla)

Versus

1. Union of India through the
General Manager,
North-Eastern Railway,
Gorakhpur.
2. Divisional Railway Manager,
North Eastern Railway, Ashok Marg,
Lucknow.
3. Sr. Divisional Mechanical,
Engineer (Diesel), Gonda.

... Respondents.

(By Advocate Shri Anil Srivastava)

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman(J):

This application has been filed by four applicants in which they have stated that although they are senior most casual labourers entitled for regularisation and consequential

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benefits of seniority and promotion, etc., they have not been declared successful in the screening held on 7.10.1988 for which the results were published on 23.1.1989. They have accordingly prayed that these results may be set aside and they be declared entitled for regularisation as Khalasis from the date their juniors were regularised with all consequential benefits.

2. In the amended O.A., the applicants have submitted that in the screening held for regularisation of Khalasis on 18.12.1985 and the supplementary screening held on 31.1.1986, applicants 1, 2 and 4 appeared and applicant 3 appeared in the supplementary screening. According to them, the Screening Committee had held the selection for 43 casual labourers/ substitutes of Diesel Shed, Gonda, and applicants 3 and 4 were declared fit, applicant 2 was declared fit subject to production of General Manager's approval and applicant 1 was declared unfit on the ground of being under-age at the time of appointment.

3. We have heard the learned counsel for the parties and perused the records. The learned counsel for the applicant has drawn our attention to the Tribunal's order dated 23.4.1998 in which reference has been made to Annexure 9-A. The respondents in their supplementary counter affidavit to the amendment in the O.A. have denied the authenticity of ~~this~~ document, but it is stated that they have admitted the approval of the General Manager having been sought in the case of the applicants to treat the initial appointments as authorised, for the purposes of their regularisation. During the course of hearing, Shri Anil Srivastava, learned counsel has submitted that this approval has been obtained from the General Manager in 1996, that is during the pendency of this O.A. for ex-post facto approval of the initial appointments of the applicants in 1980-81.

4. Learned counsel for the respondents has, however, submitted that Annexure 9-A filed by the applicants is not an authentic document because it was never issued/published by them. He has also submitted that the authentic document is the result/panel which was issued ~~vide~~ letter dated 28.2.1986 in which the applicants did not find a place because they were not found suitable. He has also pointed out that as the applicants were engaged as casual labourers after 31.12.1980, the prior approval of the General Manager for their engagement was necessary, as they could not have been engaged as fresh casual labourers without such approval. The respondents have submitted that the General Manager had accorded his ~~post-facto~~ approval for regularising the services of only 20 casual labourers/substitutes, who were screened on 27.8.1984 and the applicants were not among those persons. However, Shri L.P. Shukla, learned counsel has disputed these facts stating that the respondents were required to keep the results of the screening done in 1984-1985 in the personal custody of at least their three different offices, that is DRM, DPO/SPO and CPO. According to him, the respondents cannot, therefore, state that they were not able to produce the results of the screening. He has submitted that copies of the results were shown to the applicants, who had in turn copied them and filed in the applications. The respondents have submitted that the results are, however, not traceable in the offices of the respondents. and the document relied upon by the applicants is not authentic.

5. The respondents in their replies have submitted that as the applicants were never declared suitable, their names

did not find place in the select panels of candidates declared and they were given another chance to appear in the screening vide letter dated 23.1.1989. They have also taken the plea that the O.A. has been filed in 1989 and as per the provisions of Section 21 of the Administrative Tribunals Act, 1985, their claims relating to December, 1985 and January, 1986 are, therefore, barred by limitation. We see force in this submission made by the respondents. Besides, the applicants in Paragraph 1 of the O.A. as well as in the relief clause, which they had filed in March, 1989, ^{had} impugned the results dated 23.1.1989 of the screening held in October, 1988 and had prayed for a direction to the respondents to have them declared entitled for regularisation as Khalasis from that date. Therefore, in the facts and circumstances of the case, the later claims made by the applicants based on subsequent documents which they have filed in the O.A., which have been denied to be authentic by the respondents pertaining to the earlier selection are rejected on the ground of limitation. If the applicants were aggrieved by the screening held in 1986 or earlier, as contended by them, they ought to have filed the O.A. in accordance with the provisions of Section 21 of the Administrative Tribunals Act, 1985 and, therefore, their claims based on the earlier selections are belated and are accordingly liable to be rejected. They have also not filed any miscellaneous petition praying for condonation of delay and taking into account the prayers made in the OA filed in 1989 the delay in filing the application with respect to screening results of 1984, 1985 and 1986 are rejected.

6. Besides, if as now claimed by the applicants, they were already declared successful in the screening held in 1986, they need not have appeared in the subsequent screening, where they have not been declared successful which has been impugned in the present application. The contentions of the

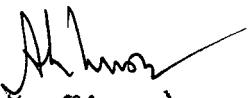
learned counsel for the applicants that in case the applicants knew that they were declared successful earlier, they would not have appeared in the subsequent screening test in 1989 appears to be an after thought and in the circumstances of the case cannot be accepted. The learned counsel for the applicants wanted to file another supplementary affidavit at the time when the case was fixed for final hearing. Considering the facts and issues involved in the case and the several opportunities which have already been given to the applicants to bring on record the relevant documents, it was not found necessary to grant a further adjournment for this purpose.

7. As mentioned above, during the arguments learned counsel for the parties have submitted that approval of the General Manager was sought in the case of the applicants for treating their initial appointments as authorised which has been agreed to by the General Manager in 1996, that is during the pendency of the O.A. Shri Anil Srivastava, learned counsel has relied on a list of cases, copy placed on record, and Rules 220 and 302 of IREM Vol.I. He has vehemently submitted that the applicants can be regularised in the posts only after they have been selected and declared passed in the selection. The respondents have submitted that even in the screening test conducted on 7.10.1988, the applicants were found unsuitable as per the results dated 23.1.1989. No documents have been placed on record to controvert the averments made by the respondents that the applicants have not been declared successful in the 1989 screening, although they had participated in it. We do not find any good grounds to set aside those selections as prayed

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for by the applicants. In this view of the matter, we also find no good grounds to declare that the applicants are entitled for regularisation as Khalasis from 1989 or from the earlier date as it is settled law that the Courts/Tribunal cannot substitute their findings for the recommendations of a duly constituted Selection/Screening Committee which has been held in the present case at the relevant time. We have also considered the other submissions made by the learned counsel for the applicants, but in the circumstances of the case, do not find any merit in the same.

8. In the result, for the reasons given above, the O.A. fails and is dismissed. No order as to costs.


(A.K. Misra)
Member(A)


(Smt. Lakshmi Swaminathan)
Vice Chairman(J)

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