

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Date of order : 15th November 2011

O.A. No. 372 of 2006

C O R A M

Hon'ble Mr. Naresh Gupta, Member [Administrative]
Hon'ble Mrs. Bidisha Banerjee, Member [Judicial]

1. Manoj Kumar, S/o Deo Nath Singh, r/o village & Post – Paharichak, sonapur.
2. Ram Bilas, S/o Late Raj Kumar Singh, r/o village & Post – Paharichak, sonapur.
3. Om Prakash, S/o Shri Shyam Singh, r/o village & Post – Raghopur, Vaishali.
4. Bijendra, S/o Late Parmeshwar Sah, r/o village & Post Subhai, District – Vaishali.
5. Md. Iqbal, S/o Md. Ishaque, r/o village & Post – Garhara, District – Begusarai.
6. Md. Anis, S/o Abdul Sattar, r/o village – Satichaura, P.O. Lakhbiniya, District – Begusarai.
7. Md. Masimuddin, S/o Shamimuddin, r/o village & Post – Garhara, District – Begusarai.
8. Kapil Paswan, S/o Shiv Balak Paswan, r/o Gram Baikundhawa Khadha, P.O. Kugalahi, District – East Champaran.

[All are Ex Substitute Safaiwala, under E.C. Railway, Commercial Department, Sonapur, District – Saran [Bihar]

.....Applicants.

By Advocate : Shri M.P. Dixit

Vs.

1. The Union of India, through the General Manager, E.C. Railway, Hajipur.
2. The D.R.M, E.C. Railway, Sonapur.
3. The Senior D.P.O, E.C. Railway, Sonapur.
4. The D.C.M, E.C. Railway, Sonapur.

.....Respondents

By Advocate : Shri B.K. Sinha.

ORDER

Naresh Gupta, M [A] :- This OA has been filed by one Manoj Kumar and 7 others against the order dated 22.05.2006 [Annexure A/11] passed by the DRM, E.C. Railway, Sonapur [respondent No. 2] whereby the claim of the applicants for re-engagement as substitute Safaiwala was rejected. The facts of the case as presented in the OA are as follows:

2. These applicants were engaged in 1996 as Substitute Safaiwala in Commercial Department under the Divisional Commercial Manager, E.C.

Railway, Sonapur and posted at different places. After some time, the headquarters of the applicants was fixed vide letter dated 14.05.1996 and 22.07.1996 [Annexure A/1 series of OA]. However, the applicants were not allowed to work due to some confusion in between the authorities regarding some irregularities in transfers and postings due to which the matter was referred to the Vigilance Department for proper inquiry, and accordingly, the Vigilance Committee was constituted, comprising one Shri A.K. Sinha, Deputy General Manager, Vigilance, Gorakhpur, who submitted his report vide letter dated 10.03.2001 stating that there was no irregularity in their appointments and transfer etc [Annexure A/2 of OA]. Notwithstanding the affirmation of above inquiry report by the General Manager, Vigilance, [respondent No. 3] vide his letter dated 12/16.4.2001 [Annexure A/3 of OA] to the Senior D.P.O, E.C. Railway, Sonapur, the applicants were not allowed to work. The applicants submitted a representation [Annexure A/4 of OA] to the respondents stating all the facts and circumstances, but no action was taken for their re-engagement although respondents No. 3 and 4 and also the then D.R.M, Shri Shiv Kumar had given their approval for engagement of the applicants which could be verified from the marginal note of the said letter dated 14.05.2006 given by the officer.

3. It is further stated in the OA that in as much as respondent No. 2 was silent over the issue, the applicants filed OA 976 of 2002, which was disposed of at the admission stage on 21.11.2002 with a direction to respondent No. 2 to treat the OA as representation and pass an appropriate order in the light of the inquiry report of the Vigilance and recommendations of the then D.R.M etc [Annexure A/5 of OA]. However, the applicants got a communication dated 18.02.2003 issued by respondent No. 2 [Annexure A/6 of OA] rejecting their claims. It is contended that respondent No. 2 had not gone through the inquiry report of the General Manager, Vigilance and also failed to appreciate the recommendations of the then D.R.M, Senior D.P.O, D.C.M and A.P.O that is in the noting of the various officers in the letter of applicant No. 1, Manoj Kumar [Annexure A/4 of OA]. Aggrieved by order dated 18.02.2003 [Annexure A/6 of

O.A], the applicants filed CCPA 75 of 2003 against the D.R.M, E.C. Railway, Sonapur [respondent No. 2], which was disposed of on 01.012.2004 with liberty to the applicants to agitate the issue by filing OA afresh. Following this, the applicants moved this Tribunal in OA 19 of 2005. The Tribunal vide its order dated 17.01.2006 [Annexure A/8 of OA] set aside the order dated 18.02.2003 [Annexure A/6 of OA] and directed the D.R.M [respondent No. 2] to make a detailed inquiry with reference to the documents such as inquiry report of General Manager, Vigilance, recommendations of the then D.R.M, Senior D.P.O, D.C.M, A.P.O in Annexure A/4 etc. Thereupon the D.R.M passed an order on 22.05.2006 [Annexure A/11 of OA] beyond the period of three months stipulated by the Tribunal without seeking any extension of time, rejecting the claim of the applicants without verifying the aforesaid documents and instead demanding production of documents from the applicants.

4. The respondents have, in their written statement, stated that the applicants have no case for their re-engagement as Substitute Safaiwala as their first engagement itself was based on forged documents, and they had not produced necessary documents in support of their claim such as [i] documents regarding first engagement, [ii] working certificate, working place/Department, details of working days, [iii] Red Cards, and [iv] Educational qualification / date of birth certificate. Despite several opportunities being given to them, none could produce the above documents except the educational qualification certificates. No such record was available in the concerned units and the names of these applicants were not found in the attendance register. Accordingly, the claims of the applicants had been rejected and a speaking and reasoned order dated 22.05.2006 was passed by the DRM, E.C. Railway, Sonapur [respondent No. 2] in compliance with the order of this Tribunal dated 17.01.2006 in OA 19 of 2004 wherein this Tribunal had directed the aforesaid officer [respondent No. 2] to make a detailed inquiry regarding the notes of the senior officers in their own hand-writing, particularly the orders dated 14.05.1996 and 22.07.1996, and thereafter pass speaking order reflecting on the rights of the applicants to be engaged as substitutes as claimed by them. Following the above order of the

Tribunal, the first engagement of the applicants was found to be illegal and based on forged documents particularly the order dated 14.5.1996 and 22.07.1996. This also created doubt as the file through which the aforesaid orders were said to have been issued were not available. The respondents have cited the judgment of the Hon'ble Apex Court in Secretary, State of Karnataka vs. Uma Devi [3], reported in 2006 [4] SCC page wherein it was held that if the original engagement / appointment was not in accordance with law, then the person concerned would not be entitled for any relief. The respondents have also cited the decision of the Hon'ble Apex Court in the case of State of Himachal Pradesh vs. Suresh Kumar Verma, reported in [1996] 7 SCC 562 in which it was held that if the directions were given to re-engage such persons in other work or appoint them against the existing vacancies, "*the judicial process would become another mode of recruitment.*"

5. As regards the averment of the applicants that the Vigilance Organization had recommended in favour of the applicants, the respondents have submitted that Vigilance had stated that the anomaly occurred because of non-adherence to the provisions of para 9 of the Master Circular No. 20 which provides that without the approval of General Manager, no fresh face should be engaged. The orders dated 14.05.1996 and 22.07.1996 relied upon by the applicants were found to have been engineered in a fraudulent manner and did not have the approval of the competent authority, and accordingly were cancelled by the then DRM, E.C. Railway, Sonapur [respondent No. 2] vide office order No. 191 dated 19.09.1996. Similarly, the orders relating to fixing of the headquarters of the applicants were cancelled by the office order No. 191 dated 19.09.2006, as the same had not been issued in accordance with law.

6. In their rejoinder filed on 19.12.2006, the applicants have reiterated that the Vigilance report was in favour of the applicants and that the G.M had granted approval to their engagement in 1993 [Annexure M/1 in rejoinder]. Further, one letter dated 30.06.2000 has been filed [Annexure M/2 in rejoinder] which is said to confirm the aforesaid order of the G.M [Annexure M/1 of

rejoinder].

7. Heard the learned counsels of the applicants and the respondents on 02.11.2011 and perused the entire record. During the course of the hearing the learned counsel for the applicants cited the decision of the Central Administrative Tribunal [Jodhpur Bench] in MA 05 of 2004 of O.A No. 260 of 2002 in support of his contention that the authorities had not passed the speaking order within the time stipulated by the Tribunal in OA No. 19 of 2005 and was, therefore, non-est. This order of the Tribunal [in the aforesaid MA] in in a different context² and does not help the case of the applicants. It is seen that the applicants have, in support of their case, placed reliance on notings of some officers and the report of the Vigilance. These have been traversed in great detail in the speaking order dated 22.05.2006 passed by the DRM / SEE [Annexure R/1 in W.S = Annexure A/11 of OA] in pursuance of the order of this Tribunal in OA 19/2005. While making the inquiry, the aforesaid officer had provided an opportunity to the applicants to produce the documents in support of their contention and in as much as the applicants could not produce the required documents, he had proceeded to passing the speaking order in the case based on the information available on record. He held that the order of engagement as Safaiwalas was not issued with the approval of the competent authority, viz., the General Manager. The contention that the Vigilance had recommended in favour of the applicants is incorrect. The Vigilance recommendation pointed towards system failure which resulted in anomalous transfer order / office order being issued without proper authority. The notings of the Senior officers referred to by the applicants in their OA and in the orders of this Tribunal were in the nature of queries or directions to put up or link the cases demanding quick disposal.

8. It is trite that Courts / Tribunal cannot re-appreciate the evidence by assumption of the role of Appellate Authority.

9. However, in view of the document^s in Annexure^s M/1^{and M/2} of the rejoinder filed on 19.12.2006 according to which it is claimed that the G.M had accorded approval to the engagement of the applicants as Safaiwalas, the authorities need to examine the matter afresh. The respondents are accordingly directed to re-

examine the case of the applicants for re-engagement as Substitute Safaiwalas having regard to the above position and pass a speaking order within a period of four months from the date of receipt / production of this order. The OA stands disposed of accordingly. No order as to costs.

Banerjee

[Bidisha Banerjee] M [J]

Naresh Gupta

[Naresh Gupta] M [A]

/cbs/