

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. No. 757/88
TXXXXXX

198

(99)

DATE OF DECISION 1-5-1991

Mrs. B.R. Desai & Ors. PetitionersMr. M.S. Ramamurthy Advocate for the Petitioner(s)

Versus

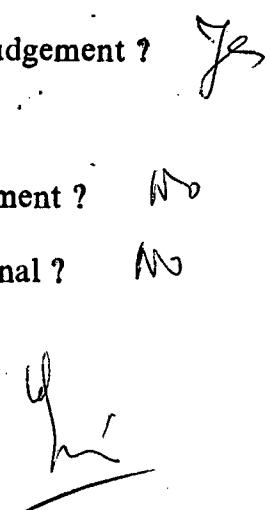
Union of India & Ors. RespondentsMr. A.L. Kasturey Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. U.C. Srivastava, Vice Chairman

The Hon'ble Mr. M.Y. Priolkar, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ? Yes
2. To be referred to the Reporter or not ? No
3. Whether their Lordships wish to see the fair copy of the Judgement ? No
4. Whether it needs to be circulated to other Benches of the Tribunal ? No



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY

OA.NO. 757/88

(3)

Mrs. Bharti Rajesh Desai & Ors. ... Applicants

v/s.

Union of India & Ors. ... Respondents

CORAM: Hon'ble Vice Chairman Shri U.C.Srivastava
Hon'ble Member (A) Shri M.Y.Priolkar

Appearance

Mr.M.S.Ramamurthy
Advocate
for the Applicants

Mr.A.L.Kasturey
Advocate
for the Respondents

JUDGEMENT

Dated: 1-5-1991

(PER: M.Y.Priolkar, Member (A)

The 26 applicants in this case were initially engaged during the period 1979 to 1983 as substitute Berth Reservation Clerks on daily wages and on completion of six months service, they were given temporary status in the pay-scale Rs.260-430(R). Their grievance is that their services are still not regularised and, also, that they are being paid in the lower scale of Rs.260-430 (now revised to Rs.950-1500) as against the regular reservation-cum-enquiry clerks who are in the scale of Rs.330-560, (now revised to Rs.1200-2040) although both have the same duties and responsibilities. They also pray for their entire service after attaining temporary status to be counted for seniority, promotion and other purposes.

2. According to the respondents, under Rules 2315 and 2316 of the Indian Railway Establishment Manual (IREM) and the Note below them, "substitutes" are persons engaged on regular scales

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of pay to posts which may fall vacant due to non-availability of permanent or temporary railway employees but cannot be kept vacant, and such substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants, from time to time, on completion of six months' continuous service. The conferment of temporary status after six months' service will not, however, entitle them to automatic absorption/appointment to railway service unless they are in turn for such appointment on the basis of their position in select lists and/or they are selected in the approved manner for appointment to regular railway posts. The respondents submit that in view of this specific provision in the statutory rules, the applicants are not entitled to absorption or regularisation of services, merely on the ground that these substitutes have completed more than four or five years' service after attaining temporary status.

3. Under the Recruitment Rules for these posts, vacancies of Enquiry-cum-Reservation Clerks (ECRC) are filled in as under:-

25% Direct Recruits (graduates) through Railway Recruitment Board.

75% Rankers by selection from the categories of Commercial Clerks and Ticket clerks with 3 years' service.

The direct recruits have to undergo 3 months training at Udaipur and one month's practical training. The majority of the applicants, who are all stated to be wards of Railway employees, are not graduates (only 7 out of 27 are graduates - Exhibit-A). Apparently, the minimum educational qualification decided for them was only S.S.C. as against graduate for regular direct recruits. They were not required to pass the test conducted

by the Railway Recruitment Board. They have also not undergone the initial training of 4 months prescribed for direct recruits. They are thus in a separate category distinct from the direct recruits for whom 25% of the vacancies in this cadre are reserved. They are also not on par with the rankers who fill up the remaining 75% vacancies. The eligible rankers are Commercial Clerks, Ticket Clerks, etc. in the lower scale of clerks of Rs.950-1500 with a minimum of 3 years' service and the vacancies are filled through a process of selection. We, therefore, agree with the contention of the respondents that the applicants cannot be regularised as Enquiry-cum-Reservation clerks as they are neither recruited through the Railway Recruitment Board nor from the rankers. They have not undergone the initial training prescribed for direct recruits and a large majority do not have the minimum educational qualification prescribed for direct recruits. Their regularisation as ECRCs will be an injustice to rankers as they will be occupying the vacancies meant for rankers. Besides, such substitutes who were engaged in earlier years have been absorbed as Office clerks and not as ECRCs. The respondents have also brought to our notice a judgement of a single judge of the Bombay High Court dated 30.8.1983 in Writ Petition No. 1467 of 1980 (Smt.S.K. Daftardar and others v. General Manager, Western Railway and others) which was upheld on appeal by a Division Bench in which the High Court in view of the provisions in IREM relating to substitutes cited by us in para 2 above, rejected the demand of similar substitute ECRCs engaged in some earlier years even for seniority in the lower cadre of Office clerks in which they were eventually absorbed. A special leave petition against this judgement has also been rejected by the Supreme Court. We are in respectful

agreement with the decision of the High Court and, therefore, reject the prayer of the applicants for regularisation of their services as ECRCs in the scale of Rs.1200-2040 and for counting their service as substitutes for seniority, promotion and other purposes.

4. The applicants, in support of their prayer for regularisation, have relied on a judgement of the Principal Bench of this Tribunal and also a judgement of this Bench dated 6.9.1988 in OA.NO. 329 of 1988, directing absorption after screening of Voluntary/Temporary Mobile Booking Clerks in regular vacancies of booking clerks. These vacancies are, however, in the lower scale of Rs.950-1500 and the minimum educational qualification under the recruitment rules is SSC and, unlike in the present case, the minimum educational qualification was not relaxed at the time of initial engagement as Voluntary/Temporary Mobile booking clerks. The Railway Board has since issued orders vide letter dated 30.11.1989 (Exhibit R-1) that the services of the applicants be regularised after screening as Commercial Clerks (Booking/Luggage/Goods)subject to the usual conditions. With this, the grievance of the applicants should be largely met. However, the learned counsel for the applicants contended that the applicants should be considered for regularisation only in the higher scale of ECRCs of Rs.1200-2040 and not in the initial recruitment grade of clerks of Rs.975-1540 as the Western Railway Administration was proposing to do. He argued that the wording of clause (v) of the Railway Board's letter dated 30-11-1989 that "these candidates should be considered only for posts of Commercial Clerks (booking/luggage/goods) in which category they worked and not for any other posts, i.e. office clerks, as they never worked as office clerks" would

suggest that the Railway Board intended that the applicants having worked as substitute ECRCs should be regularised only as ECRCs. We do not, however, see any merit in this contention since clause (ii) of the same letter requires that the candidates "should have the minimum prescribed educational qualification required for recruitment in the category of Commercial Clerks (Booking/luggage/goods clerks)" whereas most of the applicants are not graduates, which is the prescribed educational qualification required for direct recruitment as ECRCs. If they are treated as promotees and not direct recruits, it will be an injustice to the rankers as they will occupy the vacancies from the 75% quota meant for rankers. It will also be an injustice to similarly situated several senior substitute ECRCs recruited much earlier to the applicants and have been absorbed not as ECRCs but as clerks in the initial recruitment grade of Rs.975-1540. However, since the learned counsel for the applicants insists that the interpretation of clause (v) of Railway Board's letter dated 30-11-1989 cannot be anything other than what is claimed by him, the applicants may, if so advised, make a representation to the Railway Board in this regard and abide by their decision thereon.

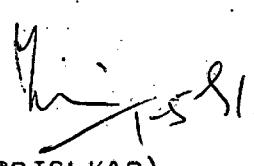
5. As regards the other grievance of the applicants that they are being paid in the lower scale of Rs.260-430 (now revised to Rs.950-1500) as against the regular reservation-cum-enquiry clerks who are in the scale of Rs.330-560 (now revised to Rs.1200-2040) although both have the same duties and responsibilities, we have already held by our interim order dated 14.12.1989 that the applicants are entitled to be paid in the same scale as the regular ECRCs until the disposal of this application, subject to the final decision of the case. The Supreme Court in the

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case of Randhir Singh v. Union of India (AIR 1982 SC 879) has observed that the principle of equal pay for equal work may be properly applied to cases of unequal scales of pay based on no classification or irrational classification, though those drawing different scales of pay do identical work under the same employer, and, further, that a classification based on higher qualifications, which may be either academic qualifications or experience based on length of service, could be reasonably sustained. Most of the applicants who are not graduates and lacked the necessary training or experience could, therefore, be legally paid in a lower scale than the direct recruit ECRCs who are required to be graduates and also undergo a certain period of training at Udaipur and elsewhere. However, there are specific statutory rules framed by the Railway Board which are applicable to the "substitutes" which would cover the present case also. Under Rule 2315 of IREM, substitutes are persons engaged in Railway establishments on regular scales of pay and allowances applicable to posts against which they are employed. According to Rule 2317 substitutes should be paid regular scales of pay and allowances admissible to such posts, irrespective of the nature or duration of the vacancy. Rule 2318 lays down that substitutes should be afforded all the rights and privileges as may be admissible to temporary railway servants from time to time on completion of six months continuous service. In view of these clear provisions in the rules, the applicants would be entitled to draw the emoluments according to the pay scale of ECRCs from time to time, from a period of six months after their initial engagement as substitutes, in accordance with Rule 2318. Their pay should be notionally fixed on this basis from such due dates, but since

they have approached the Tribunal only on 12.10.1988 for this grievance arising in 1979 to 1983, the actual monetary benefits will be payable only from one year prior to the date of filing the application, i.e. the arrears of the difference in pay and allowances shall be payable with effect from 1.10.1987.

6. On the basis of the foregoing discussions, we see no merit in the prayer of the applicants for regularisation as ECRCs or counting of the service as substitutes for seniority and promotion. However, the applicants may, if they so wish, submit a representation through proper channel to the Railway Board, within four weeks from the date of receipt of a copy of this order regarding the intention behind clause (v) of their order dated 30.11.1989 and the Railway Board may dispose of such representation, if any, within six weeks of their receipt. The applicants shall not, however, have the liberty to approach the Tribunal again even if the Railway Board's decision goes against them. The applicants' prayer for being paid in the same scales as regular ECRCs from time to time is granted and the respondents are directed to pay them arrears for the difference in pay and allowances on this account with effect from 1.10.1987 till they actually work as ECRCs. The interim relief granted by our orders dated 27.4.1989 and 14.12.1989 is hereby vacated. With these directions, OA.757/88 is disposed of, with no order as to costs.


(M.Y. PRIOULKAR)

Member (A)


(U.C. SRIVASTAVA)

Vice Chairman