O.A. in O.A 816/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH 'GULESTAN' BUILDING NO:6
PRESCOT ROAD, BOMBAY:1

Original Application No. 816/96, 817/96 and 818/96.

29th the Friday day of August 1997.

CORAM : Hon'ble Shri B.S. Hegde, Member (J)

Hon'ble Shri P.P. Srivastava, Member (A)

Paniadimai
working on the Dingin
Car Unit, Western Railway
Mumbai Central
Mumbai. ... Applicant in O.A. 816/96.

Sapan Kumar Ghosh
Working on the Dining
Car Unit, Western Railway
Mumbai Central,
Mumbai. ... Applicant in O.A. 817/96.

P.J. Muthaiya
Working on the Dining
Car Unit, Western Railway
Mumbai Central,
Mumbai. ... Applicant in OA 818/96.

By Advocate Shri M.S. Ramamurthy.

V/s.

Union of India through
The General Manager,
Western Railway,
Churchgate, Mumbai.

The Chief Catering Services
Manager, Western Railway,
Churchgate, Mumbai.

Assistant Catering Manager
Western Railway,
Mumbai Central, Mumbai.

Chief Catering Inspector,
Dining Car Unit,
Western Railway,
Mumbai Central, Mumbai. ... Respondents.

By Advocate Shri V.S. Masurkar.

Arun Kumar Jain.

Gulab Premanna ... Intervenor.

By Advocate Shri G.S.Walia.

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O R D E R

| Per Shri B.S. Hegde, Member (J) |

In these O.As, the applicants are prayed that the respondents be directed to apply the principle laid down by the CAT Jabalpur Bench in their Judgement dated 9.10.1986 in T.A. No.123/96 and regularise the services of the applicants as "Bill Issuer" from the date that they have been working as Bill Issuer for more than two years continuously and grant them all consequential benefits including seniority and further promotion.

2. The facts are common in all the three O.As. Therefore, they are disposed of by passing a common order.

3. These applications are made for regularisation of services of the applicants as Bill Issuer in terms of Jabalpur judgement dated 9.10.1986. It is true that due to shortage of requisite persons the services of the applicants have been utilised as Bill Issuer/Catering Inspector etc. The post of Bill Issuer is a higher post than that of the Waiter and Cleaner. Cleaners and Waiters working in the Catering Department of the Western Railway are entitled to seek promotion to Bill Issuers in accordance with the Recruitment Rules. The Recruitment Rules have not been annexed by the applicants. However this post is filled up on the basis of a Written Test, wherein eligible candidates can apply and pass the

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Written Test. The senior employees who have passed the Written Test are placed on the panel in accordance with the number of vacancies. A Writ Petition No. 2627/83 was filed in the High Court of Judicature at Bombay by Shri N. Narayanan and 19 others, who were Waiters/Cleaners and was subsequently transferred to this Tribunal and re-numbered as Transfer Application No. 509/87, by which the applicants were claimed regularisation without a written test on the ground that they had been working for a number of years. The Tribunal vide order dated 22.8.90 directed that the Written test for the purpose of promotion to the post of Bill Issuer in accordance with the scheme contained in the letter of the General Manager dated 16.2.1989, shall be conducted expeditiously and such of the applicants who so desire shall be permitted to take the same. Persuant to the direction of the Tribunal the applicants have expressed their willingness for appearing for the written test which was conducted in the year 1990. However the present applicants either did not apply for the said Written Test or failed because their names were not included in the panel so declared. The applicants did not raise any objection about the formation of the panel at that stage. In the similar way the next selection was conducted and a fresh panel was prepared on 14/16.12.1994. In this panel also the applicants were not selected. However the

applicants in the present applications have neither challenged the earlier panel dated 20.9.1990 nor the subsequent panel dated 14/16.12.1994 and have thereby acquiesced in declaration of and promotion as a result of these panels. Therefore, they cannot now claim any relief in the present application, ignoring the intervening said two panels.

4. It is also contended by the respondents that the present applications are nothing but the multiplicity of the proceedings and the applicants have challenged the second panel dated 14/16.12.1994 in O.A. 186/95 , in that they could have challenged the present reliefs which they have challenged. Having not claimed the consequential relief, the present applications are not maintainable. Further it is contended that the applicants were never promoted as Bill Issurers even on adhoc basis. The applicants has drawn our attention to the order issued by the respondents (Exhibit 'E') which only shows that on account of acute shortage, emergency, the following staff were deployed to work on Mobile Units as Bill Issuers after taking declaration in writing that they will not claim the seniority and post etc. No where it is shown that the applicants were promoted on adhoc or any other capacity. Therefore the applicants cannot have any justifiable right of seeking promotion. The applicants also cannot claim that they should be allowed to work in higher grade of Bill Issuers, irrespective of their being junior or having not been

selected. The applicants are neither the senior-most employees nor have they passed the required written test. Further the applicants cannot claim regularisation on the basis of Jabalpur Bench judgement dated 9.10.86 as they were not parties thereto. Moreover, the facts of that judgement is distinguishable from the present applications. Considering the facts and circumstances of the case, the Tribunal directed the respondents to regularise the applicants subject to requisite qualifications and test as sufficient for considering of an employee from the date he initially entered that post. There is no averment in the O.A. that the applicants have any right to claim consideration of promotion to the post of Bill Issuer in accordance with the Rules. The only prayer is that the Tribunal may give a direction to the respondents to give effect to the Jabalpur Bench decision and consequential relief thereof. As stated earlier in that decision the petitioners were appointed on adhoc basis and continued to work regularly as Bill Issuer for more than two years, whereas in the instant case the applicants have not been appointed or promoted as Bill Issuer on adhoc basis and no order has been passed by the respondents except in emergency situation the applicants have been directed to work and utilised their services as Bill Issuer on local basis is done either on the basis of seniority or regular empanelment. The applicant do not fulfill and satisfy the twin test and therefore they cannot claim for regularisation.

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5. The learned counsel for the respondents urged that the prayer made in O.A. 186/95 as well as in these O.As are one and the same i.e. regularisation in the post of Bill Issuer without passing written examination. Since that petition is still pending consideration, these applications are not warranted and the same is required to be dismissed.

6. It is an un-disputed fact that the post of Bill Issuer are to be filled in by all Class IV staff of catering department, below the grade of Rs. 825 - 1200 (RP) having put in 3 years of service on the basis of seniority cum suitability by inviting applications. The suitability is to be judged by way of written test only. The applicants are waiter as per respondents records. They were never promoted as Bill Issuer even on adhoc basis by the respondents. The applicants have appeared for the written test, however they failed in the test. Therefore, seeking of regularisation does not arise. Since no interim relief has been granted in O.A. 186/95, the question of entertaining these O.As on the same relief is not called for. All the applicants have appeared in the Written test but they failed. It is submitted that sometimes their services have been utilised as Bill Issuer purely on temporary basis for short term.

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7. The Apex Court in a recent decision in the case of Sanjoy Bhattacharjee V/s. Union of India and Ors. 1997(1) SC SLJ 482 has held that the candidate in the waiting list does not get any vested right to an appointment/regularisation. In the present case the names of the applicants do not appear even in the panel or waiting list, therefore, the question of their services being regularised as Bill Issuer is not in accordance with the Rules nor justice demands such a step.

8. In the result, we do not see any merit in the O.As. Accordingly the O.As are dismissed but no order as to costs.

(P.P. Srivastava)
Member(A)

(B.S. Hegde)
Member(J)

NS

Certified True Copy
Date

Section Officer
Central Administrative Tribunal,
Bombay Bench.