

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 317/2000

Date of Decision : 18th October 2001

S.G.S.Rannu Applicant

Shri S.V.Marne Advocate for the
Applicant.

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Union of India & Ors. Respondents.

Shri Suresh Kumar Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ? yes
- (ii) Whether it needs to be circulated to other 110
Benches of the Tribunal ?
- (iii) Library yes

P. V. J. -
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.317/2000

Dated this the 18th day of October 2001.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Shaikh Gafoor Shaikh Rannu,
MRCL, Central Railway,
Bhusawal,
R/at Gawali Wada,
Near Mamaji Talkies, Bhusawal.

...Applicant

By Advocate Shri S.V.Marne

vs.

1. Union of India through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST, Mumbai.

2. The Divisional Railway Manager,
Central Railway, Bhusawal Division,
Bhusawal.

...Respondents

By Advocate Shri Suresh Kumar

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 to quash and set aside the order dated 19.11.1999 with a direction to the respondents to regularise the services of the applicant forthwith.

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2. The applicant along with the 28 casual labourers filed OA.NO.801/92 before this Tribunal for regularisation of their services which was dismissed vide order dated 3.10.1995 (Annexure-'A-3'). The stand of the respondents was that as and when vacancy arises, when the applicant comes in the zone of consideration, his services will be regularised.

3. The applicant along with others thereafter filed OA.NO.517/98 before this Tribunal for regularisation of their services along with other reliefs which was decided along with other OA.No.830/98 on 28.1.1999 with the following order :-

"(1) The respondents should consider all the applicants in both the OAs. for regularisation as per scheme of the Railways after checking their names in the live register and taking into consideration their seniority and then suitability and eligibility for the purpose of screening as per rules.

(2) As and when the vacancies are to be filled up for Group 'D' posts in the Commercial Department, the names of the applicants after screening be considered and in case they are in surplus, for that department, then their names may be considered along with others for other departments.

(3) In the first instance, the respondents may first undertake the work of screening for Commercial Department and complete it within four months from the date of receipt of copy of this order. Then the administration may take up the work of filling up vacancies as and when there are vacancies and they decide to fill them.

(4) In the circumstances, there will be no orders as to costs."

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4. The applicant enquired with the respondents when services of Munshi Mohammad and Kashinath Omkar who were at Sr.No.4 & 9 were regularised. The respondents informed that his services would also be regularised during short time but the respondents did not regularise the services of the applicant. The applicant filed OA.NO.517/98 which is referred above. Against the order passed by this Bench in OA.No.517/98, the respondents moved the Hon'ble High Court of Bombay in writ petition which was summarily rejected. The respondents asked the applicant to fill up the requisite form for screening and the applicant after filling the form submitted the same to the respondents along with necessary documents. The respondents served the applicant with letter dated 19.11.1999 stating that he has been found unsuitable in the screening on the ground of less education (Annexure-'A-8').

5. The applicant has challenged the said order (Annexure-'A-8') on the ground that the basis of the said order is Railway Board letter dated 4.12.1998. The said letter cannot be made applicable in case of the applicant as the recruitment process has already started prior to 4.12.1998. The applicant has also challenged his non regularisation on the ground that services of four casual labourers who were junior to the applicants and have not passed 8th Std., the respondents have regularised their services. Thus, the action of the respondents is violative of Articles 14 and 16 of the Constitution. The Railway Board's letter dated 4.12.1998 can be made applicable only in case of fresh recruitment after 4.12.1998. As the

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applicant was engaged as casual labour on 25.5.1981 and at the relevant time for regularisation of the services the requisite educational qualification was only literate. The applicant is governed by the said rules. In addition to it, the Railway Board has issued a clarification dated 14.9.1999 stating that the qualification of 8th Std. would apply only to the recruitment undertaken after 2.12.1998 and the recruitment for which selection process has already been undertaken before the issue of instructions should be finalised without insisting on the qualification of 8th class pass (Annexure-'A-9'). The respondents had actually undertaken the work of regularisation of casual labour in Commercial Department of Bhusawal Division in 1997 (Annexure-'A-10'). The applicant represented the matter vide representation dated 7.2.2000. The respondents failed to reply the same. Hence, this OA. for the above said relief.

6. The respondents have resisted the claim of the applicant on the ground that it is barred by res-judicata, the scheme framed by the Railway Board is implemented on All India basis and the same is applied uniformly, the eligibility of the persons is to be determined on the date he is considered for regularisation. In OA.No.517/98 the direction is consideration of the applicant for regularisation as per the Railway Board Circular. After the decision of the said OA., the respondents had filed review petition and also the writ petition. The selection process

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started on 20.5.1999 after the judgement of this Bench in OA.No. 517/98. The selection process for the applicant for the first time commenced on 19.11.1999 after the judgement dated 28.1.1999. The applicant was never eligible to be considered for regularisation save and except in accordance with the provision of Railway Board Circular issued for such regularisation. The applicant was never considered for regularisation before filing of the OA.No.517/98. In OA.NO.517/98, the learned Advocate for the applicant submitted that "he is pressing the prayer only for future regularisation". Another submission was that they must review the actual number of vacancies and then the administration must take a decision to fill up vacancies and then only the cases of the applicant can be considered. Shri Munshi Mohd. and Sheikh Imam were considered for regularisation in view of order passed by CAT in OA.NO.677/88. Hence, prayed for dismissal of the OA. along with cost.

7. The applicant filed the rejoinder and the respondents filed the Sur-rejoinder also reiterating their stand stated above.

8. In OA.No.597/98 in para 2 the Tribunal has stated as under :- "In both the cases, the learned counsel for applicants submitted that he is pressing the prayers only for future regularisation of the applicant as per Railway Board Circular.

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In para 4 of the order it is mentioned that in view of the submission at the Bar, the only question for consideration is whether the applicants in both the OAs. are entitled to regularisation as per Scheme of Railways or not". In para 7 of the order it is stated that "the learned counsel for the applicant has submitted that another submission at the Bar was that the applicants had worked in Commercial Department and hence they should be considered for regularisation in the regular vacancies and then they should be considered for other Departments". The finding of the Tribunal in para 9 is "In the light of the above discussion, I feel that it is a fit case in which the respondents should be directed to consider the case for regularisation as per the Regularisation Scheme" and the operative part of the order is as noted in para 3 of this order. The perusal of the submission of the applicant's counsel clearly makes out a case that he has waived his right in respect of earlier vacancies. Hence, to lay hands, in respect of a claim of earlier vacancies, the applicant is estopped from challenging the action of the respondents by not regularising prior to 1999 as the same had been agreed to by the applicant and has not pressed the prayer.

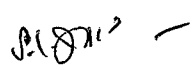
9. In OA.No.227/2000 decided along with other OAs.318/2000, 319/2000, 320/2000 which is relied by the respondents, it has been observed that "if the prayers have not been pressed in the OAs. and by voluntary statements, the same were foregone they cannot challenge the same, as the cause of action and reliefs in

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the present OA. would be barred by the doctrine of res judicata as well as constructive res judicata". Without going into the question whether the principle of res judicata and constructive res judicata does apply or not, at least I am of the considered view that it is a case of waiver of the reliefs sought. Hence, the applicant is now not competent to lay hands in respect of the earlier reliefs.

10. In view of the fact that the selection process started on 20.5.1999, the selection process for the applicant for the first time commenced on 19.11.1999, the applicant was eligible for regularisation in view of extant rules only, i.e. the Circular dated 4.10.1998 clarified vide order dated 14.9.1999, the applicant is not eligible for the screening in respect of the selection process dated 20.5.1999/19.11.1999.

11. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.


(S.L.JAIN)

MEMBER (J)

mrj.