

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

O.A. 565/1998

with

✓ O.A. 192/2001

Mumbai this the 29th day of November, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J).
Hon'ble Smt. Shanta Shastry, Member (A).

O.A. 565/1998

1. G.S. Shirude
R/o 87/870, MHB Colony,
Siddhi Vinayak Co-op Housing
Society,
Mahavir Nagar Kandivali (W),
Mumbai-400 067.
2. S.B. Dhamne,
R/o G-1, Parijat,
Behind Saraswat Bank
Virar (E) -401 303
Thane Dist.
3. Sanjay E. Yeole,
R/o Block No. 3, Vijay
Apartments, Near Sampada Hospital,
Kalyan (W),
Thane Distt.
4. Pravin C. Chitodkar,
R/o M.S./R.B./I
Building No. 40,
Central Railway Quarters
Sion (E),
Mumbai-400 022.

... Applicants.

(By Advocate Shri G.S. Walia)

Versus

1. Union of India, through
General Manager,
Central Railway,
Head Quarters Office,
C.S.T.M.
Central Railway,
Mumbai-400 001.
2. Divisional Railway Manager,
Mumbai Division,
C.S.T.M.
Central Railway,
Mumbai-400 001.

... Respondents.

(By Advocate Shri V.S. Masurkar)

O.A. 192/2001

G.S. Shirude
R/o 87/870, MHB Colony,
Siddhi Vinayak Co-op Housing
Society,
Mahavir Nagar Kandivali (W),
Mumbai-400 067.

... Applicant.

(By Advocate Shri G.S. Walia)

Versus

1. Union of India, through
General Manager,
Central Railway,
Head Quarters Office,
Mumbai CST,
Mumbai-400 001.

2. The General Manager,
Western Railway,
Headquarters Office,
Churchgate,
Mumbai-400 001.

... Respondents.

(By Advocate Shri V.S. Masurkar)

O R D E R

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

O.A. 565/1998 has been filed by the four applicants, praying for counting their services prior to their regularisation, that is from the original date of appointment as Substitute Pharmacists Grade-III and for a direction to the respondents to prepare a seniority list accordingly. Applicant No. 1 in this application has also filed another O.A. (O.A.192/2001), praying for the same relief, namely, for a declaration that he is entitled to the benefit of his service as Substitute Pharmacist on ad hoc basis w.e.f. 3.9.1985 to 9.11.1993 towards his seniority and other retirement benefits. Both the learned counsel have submitted that as the main issues

raised in these two applications are the same, they may be dealt with together. Accordingly, a common order is passed.

2. The brief relevant facts of the case are that the four applicants in O.A. 565/1998 were appointed as Substitute Pharmacists Grade-III w.e.f. 3.9.1985, 5.4.1986, 23.1.1987 and 19.5.1988, respectively. By respondents' order dated 9.11.1993, they were regularised as Pharmacists. According to the learned counsel for the applicants, the respondents ought to have given temporary/ad hoc appointments only for short spells and they had delayed holding the selections for regularisation. He has submitted that the posts against which the applicants continued to work as temporary employees were permanent and there were vacancies. Therefore, he has contended that the applicants are entitled to count their past ad hoc service from the dates of their first appointment as Substitute Pharmacists, till their date of regularisation for purposes of seniority and consequential benefits. In O.A.192/2001, the applicant who is Applicant No. 1 in O.A.565/1998 has prayed for the same benefits of seniority and other retiral benefits, like qualifying service with all consequential benefits. Shri G.S. Walia, learned counsel has relied on the judgement of the Hon'ble Supreme Court in T. Vijayan and Ors. Vs. Divisional Railway Manager and Ors. (2000 SCC (L&S) 444, paragraph 17. According to him, paragraph 216 of the Railway Establishment Manual which has been dealt with in that judgement is applicable to the facts in this case which deals with ad hoc promotions.

3. We have seen the reply filed by the respondents and heard Shri V.S. Masurkar, learned counsel. According to the respondents, they have submitted that the applicants were appointed as Substitute Pharmacists. With regard to Applicant No. 1, they have submitted that although he was appointed on 3.9.1985 by DRM (P), Western Railway, his services were terminated on the expiry of the period of appointment as well as the fact that the Railway Recruitment Board (RRB) candidates were available w.e.f. 31.10.1987. He was engaged as fresh candidate by the Central Railway as Substitute only on 9.12.1987. They have also submitted that the date of regularisation of the applicants on acquiring temporary status is as given in paragraph 10 of the counter affidavit. They have submitted that the regularisation orders were issued when clear and permanent posts were available and these were done against the quota meant for direct recruits from RRB.

4. Shri V.S. Masurkar, learned counsel has referred to the annexures to the counter affidavit. In the letter dated 12.6.1990 which has been addressed to applicant No.4, it refers to the recruitment to the post of Pharmacist, with reference to the judgement of the Hon'ble Supreme Court dated 3.5.1989 and Tribunal's judgement referred to therein, which had directed the Railway Administration to give an opportunity to the petitioners to appear before the RRB for their selection to the posts of Pharmacist in accordance with the suitability and qualifications. He has submitted that as a result of screening of the Substitute Pharmacists held by the RRB, Bombay Central, on 28.6.1993, the applicants were regularised by order dated 13.10.1993. He has,

therefore, contended that paragraph 216 of the Railway Establishment Manual which has been relied upon by the learned counsel for the applicants which deals with cases of ad hoc promotions is not applicable to the facts in the present cases where the applicants have been recruited by the RRB. He has, therefore, submitted that the applicants can claim seniority only as per the extant Rules after their selection by the RRB.

5. We have considered the pleadings and the submissions made by the learned counsel for the parties. It is relevant to note that no rejoinder has been filed by the applicants to the reply filed by the respondents.

6. From the facts mentioned above, it is seen that by the order issued by the respondents dated 13.10.1993, the applicants have been regularised in the posts of Pharmacist. This order had been issued as a result of screening of the Substitutes, like the applicants, which was held on 28.6.1993 by the RRB, Bombay Central. The applicants were also declared suitable for regularisation of the services of Para-Medical Staff working in the capacity of Substitutes on Central Railway. A perusal of the appointment letter engaging one of the applicants, i.e. applicant No. 4 as Substitute Pharmacist also shows that he had been engaged for a period of three months as a Substitute. The applicants have not denied the fact that they have been screened by the RRB before their regularisation as Pharmacists. In the facts and circumstances of the case, we see force in the submissions made by Shri V.S. Masurkar, learned counsel for the respondents that Para 216 of the Railway Establishment Manual

which deals with ad hoc promotions against the selection and non-selection posts would not be applicable to the facts in the present case which deals with recruitment of the eligible candidates by the RRB. Therefore, the contention of the applicants that as they have been screened and found fit for appointment as Pharmacists by the RRB vide their letter dated 13.10.1993, they should be entitled to the past services rendered by them as Substitutes, cannot be accepted.

7. It is also relevant to mention that even though the regularisation order has been issued in respect of the applicants as far back as 13.10.1993, the applicants have referred to their representations made to the respondents which have been given only on 23.10.1996 and 22.01.1997 in the O.A. The respondents have also taken a ground that the O.A. is barred by limitation. O.A. 565/1998 has been filed on 26.6.1998 and O.A.192/2001 by one of the applicants on 27.2.2001. In the facts and circumstances of the case, the applications are also liable to be dismissed on the ground of limitation, for which ¹⁶which not even a condonation application has been filed.

8. In the result, for the reasons given above, as we find no merit in these applications, both O.As (O.A.565/1998 and O.A.192/2001) fail and are dismissed. No order as to costs.

10. Let a copy of this order be placed in O.A.192/2001.

(Smt. Shanta Shastri)
Member (A)

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

'SRD'