

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No. 247/93
Transfer Application No.

Date of Decision 9.7.97

Ms. G. V. Baliga & Ors.

Petitioner/s

Shri M. S. Ramamurthy

Advocate for
the Petitioners

Versus

Union of India & Ors.

Respondent/s

Shri V. S. Masurkar

Advocate for
the Respondents

CORAM :

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

Hon'ble Shri. M. R. Kolhatkar, Member (A)

- (1) To be referred to the Reporter or not
- (2) Whether it needs to be circulated to other Benches of the Tribunal ?

MR Kolhatkar

(M. R. KOLHATKAR)

MEMBER (A)

B. S. Hegde

(B. S. HEGDE)

MEMBER (J)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 247/93

9th this the /day of July 1993

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri M.R.Kolhatkar, Member (A)

Ms. Geeta V. Baliga & Ors.
working in the Computer
Reservation Offices at
Bombay Central, Borivali
and Churchgate in Western
Railway as Assistant
Coaching Clerks.

By Advocate Shri M.S.Ramamurthy

... Applicants

v/s.

1st Union of India,
Through the General Manager,
Western Railway, Churchgate,
Bombay 400 020.

2nd Chairman,
Railway Board,
Ministry of Railway,
Rail Bhawan,
New Delhi-110 001.

3. Chief Personnel Officer,
Western Railway, Churchgate,
Bombay - 400 020.

4. Sr. Divisional Commercial
Superintendent (E),
Western Railway, Bombay.

By Advocate Shri V.S.Masurkar
C.G.S.C.

... Respondents

O R D E R

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

The applicants in this OA^o are challenging
the decision of the respondents vide their letter
dated 1.7.1992 regularising the applicants as
Assistant Coaching Clerks (Commercial Clerks)
in the scale of Rs.975-1540 as if they are freshly
inducted into service and also respondents' letter
dated 8.9.1992 (Ex.'B') holding the applicants
ineligible for appearing for ECRCs selection on the
ground that they did not complete continuous service
of more than 2 years in the lower grade be set aside, etc.

2. The Tribunal vide its order dated 4.8.1995 after hearing the parties stated that "what should be granted at this stage is only declaration of the results of the viva-voce for which the applicants were called on 3.10.94 consequent upon their [redacted] passed the written test, the result of which was declared on 6.9.94. Since the matter is ripe for final hearing we are not inclined to grant any further interim relief except a direction to the respondents to declare the applicants' results of the viva-voce within two weeks but the appointments as a sequel to the declaration of result shall not be made until the final decision of the O.A."

3. The counsel for the applicant Mr. M.S. Ramamurthy has drawn our attention to the earlier decision of this Tribunal in this behalf vide order dated 1.5.1991 in OA.No. 757/88 rejecting the prayer of the applicants for regularization as ECRCs or counting of the service as substitutes for seniority and promotion. The Tribunal in that OA. had observed that "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. Similarly, 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." "Regarding the prayer of the applicants for regularization as ECRCs had been rejected by the Tribunal. However, the applicants may, if they so wish, submit a representation through proper channel to the Railway Board,

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within four weeks from the date of receipt of a copy 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 interim relief granted vide the order dated 27.4.1989 stands vacated."

4. The brief facts are the applicants were directly recruited and appointed as substitute Lady Berth Reservation Clerks (LBRCs) during the period 1979 to 1982 on daily rates of wages. They were engaged to cope up with the increased amount of work on Western Railway, but since the work continued to increase, the applicants were continued in service and were paid in the scale of Rs.260-430 which is the scale attached to the post of Commercial Clerks. The contention of the learned counsel for the applicants is that majority of applicants are graduates and their initial engagement as Substitute LBRC, date of attaining temporary status and the Railway Board had conveyed their orders dated 1.5.1987 for screening and absorbing Mobile Booking Clerks of Bombay Division, the salary of Mobile Booking Clerks was Rs.175/-p.m. and they were utilised at the Booking counters to work like any other regularly appointed Assistant Coaching Clerks. Accordingly, Western Railway authorities have recommended to the Railway Board that their services be regularised after subjecting them to screening. As the applicants are holding the post of ECRC since 8 to 10 years and recommended for regularisation the Railway Board directed them to be screened and absorbed as regular Assistant Commercial Clerks after they completed 3 years of service as Mobile Booking Clerks, which direction was not immediately carried out in so far as the MBCs

were concerned, with the result some MBCs had filed OA.No.324/88 and sought regularisation of the services in terms of the directions of the Railway Board, which was eventually granted by the Tribunal vide its judgement dated 6.9.1988. The Western Railway authorities wrote to the Secretary, Railway Board, that when they recommended for the screening and absorption of MBCs of Bombay Division, 26 LBRCs/ ECRCs had been inadvertently left out and recommended that the engagement of the LBRCs/ECRCs was justified because of non-availability of selected candidates and continuous service rendered by the ECRCs and the existence of vacancies on Western Railway and sought for screening and regularisation of these employees. Since there was no response from the respondents, they filed OA.NO.757/88 praying for regularisation of their services as ECRCs in the scale of Rs.1200-2040.

5. The said contention was opposed by the respondents and contended that the posts of ECRCs in the scale of Rs.1200-2040 are filled in as under, (1) 25% by direct recruitment of Graduates through Railway Recruitment Board, (2) 75% by selection from the categories of Commercial Clerks and Ticket Checking staff with 3 years in the lower grade. The respondents in the reply clearly stated that the applicants would not be regularised as ECRCs but their services on communication of sanction from Railway Board would be regularised in the scale of Rs.260-430/975-1500. Thereafter, before the matter came up for hearing and final disposal, the Ministry sent a letter dated 30.11.1989 to General Manager, Western Railway in regard to the screening of LBRC/ECRCs for absorption

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in regular employment, etc. It was further stated that the suitability of the applicants and others for absorption in Group 'C' post should be considered by a Committee of three Officers including the Chairman or Member-Secretary of the Railway Recruitment Board. It was decided that these candidates should be considered only for the posts of Commercial Clerks and not for any other posts. Thereafter, the OA. No. 757/88 was disposed of with the direction that the applicants would be entitled to draw the emoluments according to the pay scale of ECRCs after a period of six months after their initial engagement as Substitutes in terms of Rule 2318 of IREM etc. The contention of the learned counsel for the applicant is that the respondents are wrongly denying the benefit of service rendered by the applicant as ECRCs.

6. Learned counsel for the respondents denied the various contentions of the applicants and submitted that the applicants had suppressed the material facts in this OA, which had not been brought to the notice of the Tribunal, stating that they had not filed any suit, petition or application before any Court or any Bench of this Tribunal which is not correct and secondly, this OA. is not tenable in view of the observation made by the Tribunal in OA. No. 757/88 stating that it is not open to the applicant to file any fresh OA, "the applicants shall not have the liberty to approach the Tribunal again even if the Railway Board's decision goes against them".

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7. The learned counsel for the applicant submits that though the details of earlier OA, was given at Para 14 of the OA., however, by mistake the same could not have been stated by oversight but there is no suppression of material facts. Secondly, regarding the contention of res-judicata, the said contention is not maintainable because the reply given by the respondents dated 7.1.1997 is not with reference to the representation made by the applicant but with reference to the Western Railway's recommendation letter dated 25.9.1992 for which clarification issued by the Railway Board stating that Railway Board accorded approval for relaxation of the eligibility condition from 3 years to 2 years as one time exception for filling up the posts of ECRCs and only regular service in this grade can be taken into account for the purpose of counting the 2 years service. Benefit of substitutes service cannot be allowed. Therefore, the objection raised by the respondents that the principle of res-judicata would apply has no substance and the petition cannot be dismissed on that ground. Admittedly, in the instant case reply given by the respondents is not with reference to the representation given by the applicant which has not been disposed of by the respondents but with reference to the department's query which was controverted by the Railway Board and thus cannot be treated as res-judicata. Therefore, in our view, both the contentions of the respondents are to be rejected:

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8. The applicants were absorbed as Commercial Clerks as on 1.7.1992 pursuant to the direction of the Tribunal's order. As per Recruitment Rules, in order to get further promotion to the post of ECRC, they shall have to put in minimum 3 years of service for consideration. Since most of the applicants have passed written as well as Viva-voce test and once they have found to be eligible for promotion in the year 1995 after completion of 3 years service, there is no justification on the part of the respondents not to allow their request for consideration to the post of ECRC after completion of 3 years service, especially when they are substitute as ECRC they have put in considerable service of 8 to 10 years.

9. It is further brought to our notice that applicants have continued as ACC but were working as ECRCs.

10. In the light of the above and in the facts and circumstances of the case, since the applicants are made to work as ECRCs though they are getting the salary of ACC, considering their past service in the post of ECRC and the length of service rendered by them, we hereby direct the respondents to consider the applicants for selection by promotion for the posts of ECRCs from the date they complete 3 years service after 1.7.1992 subject to their having passed the test and on this footing they may be appointed to the post of ECRCs. This process may be done within a period of three months from the date of receipt of a copy of this order.

11. The OA is disposed of with the above directions with no orders as to costs.

M.R.Kolhatkar
(M.R.KOLHATKAR)
MEMBER (A)

mrj.

B.S.Hegde
(B.S.HEGDE)
MEMBER (J)