

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 359/94 and 362/94.

Date of Decision: ²⁶26-03-98

Kanhaiyalal Balmukund & Anr.

.. Applicant

Shri D.V.Gangal.

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri Suresh Kumar.

.. Advocate for
Respondent(s)

CORAM:

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

The Hon'ble -

(1) To be referred to the Reporter or not ? X

(2) Whether it needs to be circulated to
other Benches of the Tribunal ? X

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

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

1. Original Application No.359/1994,
2. Original Application No.362/1994.

Pronounced, this the 26th day of March 1998.

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

1. Kanhaiyalal Balmukund,
Watchman,
Chawl 430,
Distt. Jalgaon,
Bhusawal 425 201. ... Applicant in OA 359/94.
2. Kailash Garibdas,
40/Block Limbus Club,
Quarter No.678,
Bhusawal. ... Applicant in O.A.362/94.

(By Advocate Shri D.V.Gangal)

V/s.

Union of India through

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T.
3. The Chief Medical Superintendent,
Central Railway,
Bhusawal - 425 201. ... Respondents in OA 359/94
and OA 362/94.

(By Advocate Shri Suresh Kumar).

ORDER

(Per Shri M.R.Kolhatkar, Member(A))

As these two O.As. contain similar facts and prayers, they were heard together and are being disposed of by a common order. Where necessary, additional facts relating to a particular O.A. are mentioned.

2. The applicants in both the O.As. are substitute/casual safaiwallas who have worked in various departments of the Central Railway as per particulars below :

"1. O.A. 359/94 :

<u>Name of the Department</u>	<u>Period of Employment.</u>
1. Construction	29.09.81 to 13.02.82

...2.

<u>Name of the Department</u>	<u>Period of Employment.</u>
2. Medical Department	02.04.82 to 14.05.87.
3. Operation Department	17.08.88 to 30.09.89.
2. <u>O.A. No. 362/94 :</u>	

<u>Name of the Department</u>	<u>Period of Employment.</u>
1. I.O.W. (C), Bhusawal	from 21.3.1981
2. Railway Hospital	04.11.81 to 12.06.82, 20.01.83 to 18.05.88 and 07.08.89 to 13.09.88
3. Operating Department	28.09.82 to 23.12.82, 01.12.83 to 14.05.84.
4. Screening of the Applicant was done	16.05.85 for the Medical Department for Safaiwalla.
5. Screening was done in 1992 against SC/ST quota but the applicant was not screened though he was present."	

The applicants contend that they were several times screened for regularisation, but no results were published and they were terminated (K. Balmukund on 30.09.89 and K. Garibdas on 18.9.1988). An M.P. for condonation of delay has been filed. It is contended that the applicants were making oral enquiries ^{even} and after termination they were called for screening. The applicants had met Chief Medical Superintendent and he had taken up the matter with the appropriate authorities by his letter dt. 03.01.94 which is to be seen (at page 23 of O.A. 359/94). It is stated ⁱⁿ the said letter that "the seven Safaiwallas including the two applicants have worked in the hospitals for 6 to 7 years. They worked sincerely to the entire satisfaction of the superiors. They are in possession of Labour Service Cards and therefore they should be absorbed." The O.As. came to be filed shortly thereafter viz. 14.02.1994.

3. Considering the facts and circumstances, I am satisfied that these are fit cases for condonation of delay and accordingly I condone the delay and consider the O.A. on merits.

4. The main contention of the respondents is that the applicants are substitutes which is a category different from Casual Labourers, that they have not attained temporary status and that in the absence of vacancies they could not be regularised and therefore were required to be terminated. The main difficulty in regularising these applicants is stated to be the fact that both the applicants have been appointed after 18.12.1980 and that there is a restriction on regularisation of casual labourers ~~with~~/substitutes who are appointed after 1980 and that the General Manager's sanction for regularisation is required to be obtained and the same has not been granted and therefore, the applicants are not entitled to any relief.

5. The learned counsel for the applicant in O.A. 359/94 ~~has~~ pointed out that in that O.A. so far as the applicant is concerned, he is in possession of a letter dt. 26.11.97 showing that the sanction for regularisation in his case was received. The same reads as below :

"Sub: G.M. sanction for regularisation of the Engagement.
Ref::Application dt. 19.11.1997.

C.E.(C) Mumbai CST vide his letter No.P-211-EW-O.S.CL/IV/Policy/IV dt. 11.10.89; has conveyed CAO(C)'s post-facto sanction for regularisation of engagement in favour of Shri Kanhaiyalal Balmukund casual labourer being engaged after 18.12.80; Service Card No.160536 Sl.No.191 of the list."

6. So far as such a sanction in the case of applicant in O.A. 362/94 is concerned, the counsel for the applicant

...4.

was not in a position to file the same, but he requested that the respondents may be directed to check their record and clarify the position. Accordingly, this Tribunal by its order dt. 23.12.1997 directed the respondents to file a detailed reply. The respondents in their reply dt. 16.3.1998 have stated that the applicant in O.A. 359/94 has worked as casual labourer in the construction department from 19.9.1981 to 18.2.1982 only and that the applicant's name appears in the list of post facto sanction given by the General Manager, but when the regularisation of the casual labourers was taken up in the Construction Department the applicant was not on the roll of the construction department and therefore, it was not possible to regularise him. The respondents have not stated anything regarding applicant's service in the other Departments viz. Medical Department and Operation Department. In regard to operation department, the contention of the applicant is that he had worked there for more than one year and the Department had issued a list on 18.5.1994 on the subject of "screening CL MRCL to a panel of safaiwallas" Form/in which there are 15 names (vide page 40 of the O.A.), but the name of the applicant does not figure therein ^{though} several of these ^{empanelled} employees are junior to the applicant (sl.no.1, 2, 3, 11, 12 and 15 and there is an employee at Sl.No. 6 who did not have any card). No reply has been given by the respondents in regard to these averments of the applicant. The respondents have also not given any reply in regard to the position of the screening of the applicant in the Medical Department.

...5.

7. So far as the applicant in O.A. 362/94 is concerned, the respondents have stated that his name does not figure in the list of casual labourers in respect of whom post-facto sanction was obtained by letter dt. 11.10.1989 from the General Manager, Central Railway. The respondents have stated that the services of the applicant as substitute in the Medical Department cannot be considered for regularisation in the Construction Department. That may be correct, but the applicant has filed at page 18 Annexure A-2 in O.A. 362/94 a list of serving SC/ST casual labourers and MRCLs in which the applicant's name appears at Sl.No.108. The respondents have not stated as to what happened to the screening done in 1992.

8. In support of their contention that the rules for the substitutes are altogether different from the Casual Labourers, the respondents have relied on para 2315 to para 2319 of the Indian Railway Establishment Manual (1968 edition). It does not appear therefrom that substitutes are altogether different from casual labourers. In para 2318 it is stated that substitutes should be afforded with all the rights and privileges as may be admissible to temporary Railway Servants from time to time on completion of six months of Railway Service. In the note below para 2318 it is stated that the conferment of temporary status on the Substitutes on completion of six months continuous service will not entitle them to automatic absorption/appointment to Railway service unless they are in turn for such appointment on the basis of their position in the lists and/or they are selected in the approved manner for appointment to regular railway posts. In para 2319(e) it is stated that a register

should be maintained for recording the names of all "substitutes" wherever employed according to the unit of recruitment e.g. Division, Workshops, P.W.Is. lengths etc. strictly in the order of their taking up Substitute employment at the time of their initial engagement. In the written statement also the respondents have used the words substitutes/casual labourers conjunctively. I am therefore not prepared to accept that substitutes if they have put in sufficient length of service or if they have been screened in their turn they are to be treated differently from casual labourers. The prayer of the applicants is to quash and set aside their order of termination and to direct the respondent department to reinstate them with full back wages and to direct the respondents to regularise them, in terms of the earlier screening to which they were subjected. The counsel for the applicant under instructions states that he gives up the relief relating to reinstatement and backwages and would be satisfied if the relief for regularisation based on screening is considered.

9. So far as the applicant in O.A. No.359/94 is concerned it is conceded that though a "post-18.12.1980 appointee", his case has been approved ex-postfacto by the General Manager. The main difficulty is stated to be that at the time of issue of order, he was not in the construction department. However, the fact remains that the applicant had successively worked in the Medical Department and the Operation Department and that he was left one department join another department according to the department's

convenience depending on availability of work. Therefore, being ^{G.M. approved} a post 1980 appointee is entitled to be regularised in the Medical Department or the Operation Department in his turn on a priority basis keeping in view ^{that} his appointment has ~~been~~ received post facto sanction and keeping in view also that he is in possession of Labour Card and that his allegation is that in the Operation Department several of his juniors have been screened and regularised.

10. So far as the applicant in O.A. 362/94 is concerned, it is true that his engagement was post 18.12.1980 ^{and} has not received post facto sanction of the General Manager. However, the fact remains that he was in the list of SC/ST candidates screened for regularisation as Safaiwalla's in the Medical Department vide Sl.No.108 in O.A. 362/94. He should therefore be considered for ^{obtaining G.M.'s approval and} screening and regularisation under the Medical Department where he has worked the longest.

11. Action for screening and regularisation should be completed within a period of four months from the date of communication of the order.

12. The O.As. are allowed in these terms. No orders as to costs.

M.R. Kolhatkar

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

B.