

Central Administrative Tribunal

HYDERABAD BENCH : AT HYDERABAD

O.A. No. 51 of 1991

Date of Decision: 12.4.1991.

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P.Sampath Kumar & 10 others

Petitioner.

Shri G.V.Subba Rao

Advocate for the
petitioner (s)

Versus

The Divisional Railway Manager (B.G.),
South Central Railway, Secunderabad,
& 3 others.

Respondent.

Shri N.V.Ramana, SC for Rlys.

Advocate for the
Respondent (s)

CORAM :

THE HON'BLE MR. B.N.JAYASIMHA, VICE-CHAIRMAN.

THE HON'BLE MR. D.SURYA RAO, MEMBER (JUDICIAL).

1. Whether Reporters of local papers may be allowed to see the Judgement? NO
2. To be referred to the Reporter or not? NO
3. Whether their Lordships wish to see the fair copy of the Judgment? NO
4. Whether it needs to be circulated to other Benches of the Tribunal? NO
5. Remarks of Vice Chairman on columns 1, 2, 4
(To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

B.N.J.
(B.N.J.)

D
(D.S.R.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No. 51 of 1991

Dt. of Decision: 12.4.1991.

Between:-

1. P.Sampath Kumar
2. T.Babu
3. V.Koteswara Rao
4. G.Mogli
5. M.Yadagiri
6. K.Sukkaiah
7. S.Velu
8. M.Narasamma
9. U.Manemma
10. B.Shanker
11. M.Narasamma

Applicants

and

1. The Divisional Railway Manager (B.G.), South Central Railway, Secunderabad.
2. The Chief Commercial Superintendent, South Central Railway, Rail Nilayam, Secunderabad.
3. The Senior Divisional Commercial Superintendent, Secunderabad B.G. Division, South Central Railway, Secunderabad.
4. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.

Respondents

Appearance:

For the applicants :	Shri G.V.Subba Rao Shri V.Venkateswara Rao, Advocates
For the respondents :	Shri N.V.Ramana Standing Counsel for Railways.

CORAM:

THE HONOURABLE SHRI B.N.JAYASIMHA, VICE-CHAIRMAN.
THE HONOURABLE SHRI D.SURYA RAO, MEMBER (JUDICIAL).

(ORDER OF THE DIVISION BENCH DELIVERED BY HONOURABLE)
SHRI D.SURYA RAO, MEMBER (J).

1. The applicants herein are ex-Cleaners working in the Vegetarian Refreshment Room, SCR, Khazipet, and presently working under the 3rd respondent i.e. Sr.DCS (B.G.), Sec'bad

Division. It is their case that the Supreme Court had in a Writ Petition filed by certain contract cleaners of Southern Railway, directed the Southern Railway to abolish the contract labour system which was prevailing in the Railway Canteen and to regularise the services of the contract cleaners working in the Catering Establishment and Pantry Cars in the Southern Railway. Pursuant to this Judgement, the Central Government abolished the contract labour in Railways. They state that consequent on abolition, the contract cleaners are deemed to be the Railway employees, either casual labour or regular employees w.e.f. 28-7-1987. It is alleged that even though the Railway Board had taken a decision to abolish the cleaning contract as early as 1987, the Chief Commercial Superintendent, South Central Railway, has not abolished the contract labour at the catering unit, Khazipet and the existing contractor whose contract should have been terminated w.e.f. 28-7-1987 was allowed to continue by giving extensions from time to time and thus the contract labour cleaners are being continued. The applicants state that the Chief Commercial Superintendent vide his letter No.C.95/F/8/Cleaners Policy, dated 11-4-1990 addressed to the CPO/SC informed ^{him} that in terms of notification published in the Gazette of India on 28-7-1987 the employment of contract labour in the Railway Catering Establishment was prohibited w.e.f. 27-7-1987, but they could not issue a notification dispensing with the contract labour w.e.f. 27-7-87, ^{and} therefore it is reasonable to consider the eligibility of all those cleaners of the contractor, who were in employment till the date of notification of the abolition of each individual unit and not only upto the date of 27-7-1987, ^{It is thus found that Contract cleaners who} ~~and who continued beyond and presently~~ ^{working earlier to 27-7-1987 and continued beyond and presently} working are to be deemed as Casual Labour employed under

the Railways and they have to be regularised against permanent vacancies as per the direction of the Supreme Court. The applicants state that the contract cleaners working in the Khazipet unit were screened for absorption as casual labour even though there are no directions to that effect by the Supreme Court and the intention of the Supreme Court judgement is that all the contract cleaners have to be regularised. However, the Chief Commercial Superintendent published a list of candidates in which 18 cleaners have been shown as those who are to be absorbed as casual labour ignoring the applicants against 29 screened. During the screening the applicants were informed that they all have been selected, but they were denied the right of being absorbed as casual labourers pending regular absorption as cleaners on the Railways. It is stated that they reliably learnt that the General Manager has accorded sanction for 28 posts of Casual Labour. Notwithstanding such sanction communicated by the General Manager, the CCS has issued a letter showing 18 persons as selected for absorption as casual labour dropping the applicants from the list. Pursuant to the said communication, the DRM/SC issued a letter on 8-1-1991 to the 18 candidates to undergo medical examination whereas the applicants have not been directed inspite of the fact that they too should be regularised as cleaners. The CCS/SC has deliberately discriminated the applicants in that they have been denied absorption as casual labour which attracts provisions of Articles 14 and 16 of the Constitution. By omitting the applicants from the said list, the applicants will be stopped from the date the official termination of the contract is made by the CCS pursuant to the directions of the Central Government and

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the Railway Board to abolish contract labour. The moment the said 18 casual labour are medically found fit and report, the respondents will officially terminate the contract even though as per the terms of the agreement the contract between the Contractor and the Railway terminated on 31-12-1990. But still the contractor^b being continued pending short extension in the official notification regarding termination. The applicant, apprehend stoppage immediately the appointment orders are given to the 18 casual labour simultaneously terminating the contract of the existing contractor officially. It is alleged that when the candidates were screened, they were not notified of any conditions for being screened. The General Manager, South Central Railway, waived the literacy qualification as such all the candidates, who have been working as cleaners prior to the abolition of the contract labour and who are continued as such even after abolition of contract labour under contractor have to be regularised without any discrimination in terms of the Supreme Court judgement wherein no age and literacy qualifications were prescribed. The action of CCS/SC in discriminating the applicants without any valid reasons is arbitrary, illegal and constitutional violation of the fundamental rights of the applicants under articles 14 and 16. It may also be mentioned that while publishing the list of names the reservation quota of 15 and 7½ % for the SC and ST communities has not been observed thereby two SC candidates of the applicants have also been denied empanellment which also offends the principles of observing reservation for SC candidates under Article 16 of the Constitution.

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2. On behalf of the respondents (Railways) a counter has been filed stating that the applicants, if aggrieved, could have approached the Labour Court. It is stated that the Supreme Court in the cases relating to Southern Railway had, while directing abolition of contract labour, had further ordered that if there is any dispute about the individual workmen, such disputes shall be decided by the Deputy Labour Commissioner, Madras. It is, therefore, contended that the proper forum is only the Commissioner of Labour or the Labour Court under the Industrial Disputes Act.

3. We have heard Shri G.V.Subba Rao, ^{for Sri. V. Venkateswara Rao} learned Counsel for the applicant, and Shri N.V.Ramana, learned Standing Counsel for Railways.

4. The first objection raised by Sri N.V.Ramana is that the application is not maintainable since this Tribunal has no jurisdiction to grant the relief prayed for. We are unable to agree with this contention. The applicants are seeking absorption in the Railways either as Casual Labour or ^{regular} Group-D employees in the catering establishment of the Railways on the strength of their having worked as Cleaners in the Railway Canteens/Pantry Cars both prior to the abolition of contract labour system and afterwards. They are claiming that other similarly situated persons have been absorbed whereas they have been discriminated against and are not being absorbed. It is well established that this Tribunal has jurisdiction to determine disputes arising in regard to recruitment of employees by virtue of section 14 of the Administrative Tribunals Act. The dispute in the instant case raised is in regard to the right of the applicants to recruitment and hence it cannot be said that this Tribunal has no jurisdiction to entertain the application.

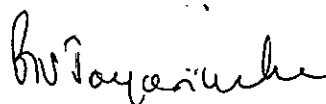
To

1. The Divisional Railway Manager,
(B.G) South Central Railway, Secunderabad.
2. The Chief Commercial Superintendent,
South Central Railway, Railnilayam, Secunderabad.
3. The Senior Divisional Commercial Superintendent,
Secunderabad B.G. Division,
S.C.Railway, Secunderabad.
4. The General Manager, South Central Railway,
Railnilayam, Secunderabad.
5. One copy to Mr.G.v.Subba Rao, Advocate, & v.venkateswar Rao,
Advocates CAT.Hyd.Bench.
6. One copy to Mr. N.v.Ramana, SC for Rlys, CAT.Hyd.Bench.
7. One spare copy.

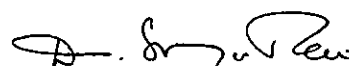
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5. The next question is whether the application is to be entertained at this stage. The applicants have already made a representation on 15.12.1990 complaining that they were not selected as a result of the screening when their juniors were selected and that they have been removed from service and deprived of their livelihood w.e.f. 15-12-1990. This representation is enclosed as an annexure to the application before us. It is clear therefore that the applicants have sought the remedy of making a representation on 15.12.1990 before approaching this Tribunal. Without waiting for the disposal of the said representation, the applicants rushed to this Tribunal on 1-1-1991 claiming for the reliefs as prayed for in the representation. Under section 20 of the Administrative Tribunals Act 1985 a period of 6 months is available to the departmental authority to whom a representation has been made for disposing of the same. The applicants have rushed to this Tribunal even before expiry of the period of 6 months. The application is therefore clearly premature and barred under section 20 of the Administrative Tribunals Act. We accordingly dismiss the application as premature. The respondent No.2, to whom the applicants made a representation dated 15-12-1990, is directed to dispose of the said representation within 2 months from the date of receipt of this order. With this direction the application is dismissed as premature. No order as to costs.

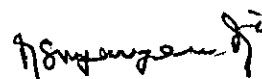


(B.N. JAYASIMHA)
VICE-CHAIRMAN



(D. SURYA RAO)
MEMBER (JUDICIAL)

Date:


11-1-91
for Deputy Registrar(J)

nsr

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X ref

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TYPED BY

COMPOSED BY

CHECKED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH: HYDERABAD

THE HON'BLE MR. B. N. JAYASIMHA: V.C.
AND

THE HON'BLE MR. D. SURYA RAO: M(J)
AND

THE HON'BLE MR. J. NARASIMHA MURTHY: M(J)
AND

THE HON'BLE MR. R. BALASUBRAMANIAN: M(A)

DATED: 12-4-1991.

~~ORDER~~ / JUDGMENT.

M.A./R.A./C.A.No.

in

T.A.No.

W.P.No.

O.A.No. 51/91

Admitted and Interim directions
issued.

Allowed.

Disposed of with direction.

Dismissed. ✓

Dismissed as withdrawn.

Dismissed for default.

M.A. Ordered/Rejected.

No order as to costs.

