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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

HYDERABAD BENCH: HYDERABAD.

O.A.No. 983/93

Between S.V.K.M.Raju and 3 others Applicants
and
Union of India represented by the
Secretary Railway Board,
Rail Bhavan, New Delhi-110 001
and 4 others Respondents.

REPLY STATEMENT TO THE COUNTER AFFIDAVIT
filed by the Respondents.

I Srimati S.Tirumaladevi, wife of Sri K. Madhusudhana Rao, aged 30 years presently working as Fitter Grade III, in the Electric Loco Shed, S.E.Rly/Visakhapatnam-530 016 do hereby solemnly state as follows:-

1. That I am the second respondent in the above mentioned O.A. and I am fully acquainted with the facts of the case and I am therefore, filing this reply statement to the counter affidavit on behalf of all the applicants as I am authorised to do so.

2. I submit that the replies given to the averments made are answered in seriatim:

(a) Paras (i) (ii) and (iii):- The applicants were empanelled as skilled artisans against 25% direct recruitment quota and are appointed as Trainee skilled artisan staff vide D.P.O/S.E.Rly/Waltair's No.WPV/RSM/2/148 dated 2-11-87 (Copy annexed A-1) which is on record and not beyond record as stated in the reply. I state that in C.P.O/Garden Reach's circular No.P/L/13/Elect/Appr. dated 31-3-89 (Annexure-1 of the O.A.) the stipulation of 3 years of regular service as skilled artisan staff should imply and include the

period of training spent by the trainees immediately before their absorption as per Railway Board's letter No.E(NG)1-81PM-1-76 dated 25-4-81(Annexure-A-4 of the O.A.)and the same was not included either by mistake or ignorantly without connecting Railway Board's letter dated 25-4-81. I state that Railway Board's letter dated 25-4-81 was issued by Department of Personnel vide their O.M.No.3/10/80/JCA dt.4-9-80 as mentioned in the Board's letter itself. If the training period is taken into account as stipulated into the O.M.dated 4-9-80 issued by the Department of Personnel, the applicants are eligible without any doubt in the Selection. Ignoring the decision of the Department of Personnel as accepted by the Railway Board is ^a deliberate attempt on the part of respondent No.4 to ~~drive~~ ^{deprive} the eligible candidates like the applicants and others, thus flouting the instructions of the Government and to cover up the omission and to avoid an embarrassing position to themselves, the respondents are trying to cover up the mistake by taking the plea that the applicants were given the stipend during the period of training in scale Rs.210-4-218(Rs.900-940)and that the applicants did not complete three years of regular service as skilled artisan as stipulated in C.P.O's circular dt.31-3-89 as on 1-1-89. The scale of the pay of fitters is Rs.260-400/950-1500 and while applicants 1,23 were appointed as trainee skilled artisans on a stipend of Rs.210-218, applicant No.4 was appointed as trainee fitter in scale Rs.260-400, after having been empanelled as skilled artisan as mentioned in D.P.O/S.E.Rly. O.O.No.WPT/2/Class-III/WKRE/Sk.Artisans/84/iv dated 14-3-85(copy at Annexure A-2) of the O.A.). The scale

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of pay as trainee fitter given to the applicant 4 which is Rs.260-400 is the same as admissible to a regular artisan fitter grade III. Since all the four applicants were appointed on successful completion of training period without any extension of training period and were counted against the existing vacancies of fitters grade III, the training period is to be taken into account in terms of Board's letter dated 25-4-81 without any reservation as no conditions were stipulated in the Board's letter, for the purpose of selection. The respondents have mentioned in the counter affidavit that a conditional clause that the services of the applicant would be regularised only after passing the prescribed trade test and failing ~~in~~ which their services will be terminated is not ^{for} ~~bar~~ for counting the period of training as service for the purpose of selection in Lower departmental Competitive examination. The services of applicants 1,2,3 were regularised after completion of training successfully and passing the prescribed trade test from 3-9-87 and in the case of applicant No.4 the services were regularised from 16-3-86 after completion of one year's training period, which facts have been admitted by the respondents in the counter affidavit.

9 State that while the C.P.O's circular dated 31-3-89 stipulates 3 years of regular service as skilled artisan, Para 140 of Indian Railway Establishment Manual lays down that ~~in~~ serving matriculate employees with 3 years of service in skilled grade(s) are eligible to

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appear in the LDCE but not 3 years of regular service as was mentioned in by the respondent No.4 in the circular dated 31-3-89. It is submitted that Para 140 of IREM which stipulates 3 years of service in skilled grade should not be read in isolation but should be read with ^{inclusion} Board's circular dated 25-4-81, means the period spent on training will also count towards the required service to appear in the selection. In the circumstances even according to para 140(i) of IREM 3 years of service in skilled grade which should include the training period as per Board's letter dated 25-4-81, the applicants have fulfilled the conditions of eligibility and the applicants submit that this have not been properly interpreted by the respondents in their counter for the reasons best known to them as the applicants believe that the respondents will be put in awkward ~~situation~~ if the applicants are given the eligibility as the respondents may have to face representations from other staff similarly situated like the applicants who have not applied for the selection. Therefore, the question of allowing the applicants erroneously to appear in the selection as stated by the respondents is baseless and incorrect.

Para-iv) It is submitted that the applicants came to know that some of their colleagues having to come to know that the applicants passed the written examination and were being called for viva-voce test, since they themselves did not submit their willingness to appear in the selection, sent representation to the Administration about the applicants ineligibility to appear in the election and the applicants later came to know from some of

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their colleagues that their names are likely to be deleted, gave a representation to the Chief Electrical Engineer followed by a reminder to safeguard their own interests. It is therefore, submitted that the denial made in the counter affidavit that the administration acted on a representation made by some of the employees be it regular or pseudonymous one, is not correct and the respondents are put to strict proof. The applicants further submit that respondents should clearly state at what stage and ^{on} ~~what~~ basis the respondents detected the alleged erroneous ineligibility of the applicants in the selection and consequent deletion of their names from the select list as admitted in Para-3 of their letter No.P/L/13/Elect/Appr/Ranks/IV dated 21-4-91 copy at Annexure A-9 of the O.A.).

Para(v): It is submitted that the statement made by the respondents that the applicants are aware of the mistake committed by the administration is baseless and false and in fact they are aware of their eligibility to appear in the selection as per Board's letter dated 25-4-81. As already explained in the above Paras, the administration having not aware of the letter of the Railway Board dated 25-4-81 committed ~~that~~ a mistake by a stipulation in their circular dt.31-3-89 that three years regular service in skilled grade required instead of mentioning 3 years of service in skilled grade vide para 140(i) of the IREM which should include the period of training also read with Board's letter dated 25-4-81. The applicants submit on the question of completion of 3 years of regular service in

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skilled grade will not arise for any trainee even if the training period is included as stated by the respondents as the word 'Regular' would mean service rendered after completion of training period and after successfully passing the prescribed examination by the trainees, as already mentioned by the respondent in last Para of letter dated 25-2-91 addressed to the General Secretary, S.E.Rly. Men's Congress (Copy at Annexure A-7 of the O.A.)

Para(vi). From what has been stated in the above Paras it is clear whether the respondents have properly understood and applied their mind in interpreting the contents of Board's letter dated 25-4-81. The respondent's reply dated 25-2-91 (Impugned letter) (copy at annexure A-7 of the O.A.) was issued basing on the circular dated 31-3-89 stipulating 3 years of regular service in skilled grades which is not covered by Board's letter dated 25-4-81 and the respondents do not have any authority to interpret in their own way the applicability or otherwise of the training period as service for the purpose of appearing in a departmental examination and it is only the Department of Personnel who have to interpret or clarify the position.

On receipt of the impugned letter dated 25-2-91 the General Secretary, S.E.Rly. M.C. gave a further letter dated 5-3-91 and not 25-2-91 as mentioned in the reply of the respondents, to review the matter and on the basis of Board's letter dated 25-4-81 which are very clear. In this representation dated 5-3-91 nothing was mentioned that the applicants would have to undergo training for a period of 2 years as apprentices and

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that in the meanwhile they will be completing requisite service and hence asked to consider the applicants to depute them for training. ~~and~~ The Honourable Tribunal may kindly peruse the Annexure 8 of the O.A.) and verify whether the statement made in this para by the respondent is correct or not and whether the statement made is deliberate to mislead the Honourable Tribunal or by mistake. A reference by respondent No.4 was made after receipt of the letter dated 5-3-91 from the General Secretary S.E.R.M.C., vide respondents letter dated 21-6-91 to the Railway Board (copy at annexure A-9 of the O.A.) expressing certain doubts about the eligibility of the applicants as per Board's letter 25-4-81 or otherwise and other clarifications. To the respondents reference dated 21-6-91 (Annexure A-9 of the O.A.) the Railway Board vide their letter No.E(NG)I/91PM1/16 dt.12-9-91 (copy placed- 3) where in the Board clarified the instructions contained in their letter No.E(NG)I/85/PM1/13(RRC) dated 19-2-87 regarding the rule of 2 years service in the immediate lower grade for promotion within Group 'C' do not apply to the LDCE for filling up the quota of 25% earmarked for induction of intermediate Apprentices Mechanics in the Technical Departments. Further the Board in para-2 of the same letter desired to know whether in Board's letter dated 25-4-81 were not made applicable in the past after issue of these instructions in April-81 and when large # number of selections would have been held in the past on S.E.Rly. in different departments.

The applicants, therefore, submit the Board are very clear that the instructions contained in Board's letter dt.25-4-81 are applicable in the case of applicants.

Not following the Board's clarifications and to come to a decision, again the respondent No.4 made a further reference vide their letter No.P/L/13/Elec/Appr/Ranks/ IV dated 14-11-1991, ^{Copy at annexure A-3} committed that they followed on S.E.Rly. the practice of 3 years of regular service as skilled artisans and the training period was not being counted towards regular service for the purpose of selection and still expressed certain doubts in para-3 of the same letter about the counting of training period, be counted towards regular service or not for the purpose of L.D.C.E. To this reference again, the Railway Board vide their letter No.E(NG)I/91/P.M.I/18 30-3-92 (copy at annexure A-12 of the O.A.) in Para-2 ^{Stated} ^{Spent} thereof, ⁱⁿ that the time ~~spent~~ on training/apprenticeship immediately before appointment would count for service for the purpose of appearing in the departmental Examination and a reference was being made to the department of Personnel and Training on the question of as to whether the above dispensation will be ~~be available~~ available to staff irrespective whether they have completed the probationary period satisfactorily. Despite this clarification issued by the Railway Board, respondent did not take any action to include the applicants in the selection and depute them for training and compelled the applicants to approach the Honourable tribunal during the month of Nov.1992 for redressal of their grievance. In this connection the applicants humble ^{to} bring it to the notice of the Honourable tribunal the respondents have conveniently avoided to say anything on the Board's letter dated 30-3-92 which ^{ed} ^{was} filed as Annexure 12 and averments made in sub-para (vi) of Para 4 at pages 7 and 8 of the O.A.

The respondents stated in sub para 3 of para (vi) at page 5 of the counter that Board vide their letter No.E(NG) I/91/PM1/16 dated 8-10-92 in reply to respondents letter dated 21-6-91 (Annexure R-1 of the counter) informed the applicants are ineligible to compete in the selection even if the training period is counted, since the applicants had not put in 3 years of service in skilled grade (i.e., in scale Rs.950-1500) and that during the training period they were paid only a stipend of Rs.210/- plus usual allowance in scale Rs.210-216 (Rs.900-940). The applicants submit that when the respondents received a reply dated 8-10-92 before filing the O.A. in November 1992, the applicants should have been informed of the position, which they failed to do so. In fact after receipt of reply dated 30-3-92 from the Railway Board, wherein the Board clarified that the period of training would count for service in the departmental examination, the applicants believe that to avoid an embarrassing situation for the respondents in not following Board's instructions in letter dated 25-4-81, the matter might have been discussed in the Board's Office by the officials in the Office of respondent No.4 and got a reply that since the applicants were appointed on stipend in a lower scale and they are not eligible in the selection. The applicants further submit even after receipt of interim orders passed by the Honourable Tribunal on 20-1-93 directed the respondents to depute the applicants for training for the post of Charge Man Grade 'D' as and when feasible giving 8 weeks time to file the counter. Since the counter was not filed M.A. No.298/93 was filed praying the Honourable Tribunal to direct the respondents to depute the applicants to training immediately pending disposal of the O.A. In this connection the applicants state that a letter No.P/L/13/Elect/Court case of Intermediate Apprentice Mechanic/(Electric) date 11 of March 1993 (copy at Annexure A-4) addressed to Divisional Railway Manager (Personnel), respondent No.4 advised that as the matter was referred to Railway Board

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for clarificatory order and till such time the clarificatory orders are received from the Railway Board, the applicants cannot be sent to training. This position was also brought to the Notice of the Honourable Tribunal by the Applicants counsel at the time of hearing of M.A. No.298/93 on 29-6-93. The applicants submit that in March 1993 if this was the position obtaining in the office of the 4th. Respondent by pleading their inability to depute the applicants to training pending receipt of Board's clarificatory orders, how in the counter filed on 14-7-93 at Visakhapatnam and served on 22-7-93 at Hyderabad, the respondents are taking a plea under Board's letter dated 8-10-92 replying that the applicants are not eligible for the selection in the circumstances explained in the said letter.

3) In the circumstances explained in the above paras, the applicants believe that to avoid an embarrassing situation the S.E.Railway authorities who have not followed the Board's orders of 25-4-81, all the while and if the applicants are empanelled as Chargeman Grade 'B' (as they qualified both in the written and viva-voce test as admitted by the respondents and their names were deleted to avoid delay in finalising the panel (Annexure A-2 of the O.A.), the respondent No.4 might have got issued the reply dated 8-10-92 after six months of the original letter dated 30-3-92 by the Board which is unjust and illegal on the part of the respondents, to deny the rightful claims of the applicants of their eligibility in the selection.

4) The applicants further state that after issue of Department of Personnel's O.M. dated 4-9-1980 which was circulated by the Railway Board in their letter dated 25-4-81, the following further circulars and amendments to the rules have been issued by the Government of India and the Railway Board in connection with the counting of the training period for various concessions/benefits to the employees who had undergone the training before being absorbed in regular posts as mentioned below:-

1) The training period would count as qualifying service for the purpose of pension upto a maximum period of

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one year vide Board's letter No.F(E)III79/PM1/20 dated 27-7-84 (Copy at Annexure A-5), even if the trainees are in receipt of nominal allowance and not given the scale of pay, provided the training is followed immediately by an appointment.

2) In terms of Board's letter No.(E(NG)I/ICI/1 dated 4-2-91 (copy at Annexure A-6) the period spent by the trainee is treated as duty for the purpose of granting increments in the scale in which they are ultimately absorbed. In otherwords during the period of training the trainees who are given stipend in a lower scale i.e., 900-940 for a period of 3 years and appointed in scale Rs.950-1500 after completion of training successfully and on absorption in scale Rs.950-1500 will draw three increments and their pay will be fixed at Rs.1010/- from the date they are absorbed instead of drawing the basic pay of Rs.950/-.

Vide Board's letter No.E(NG)1-93/PM1/4 dated 18-1-93 (copy at Annexure A-7) the Railway Board clarified that the instructions of Board's letter dated 25-4-81 would also apply to the limited departmental competitive examination for promotion to Group 'B'.

5) The applicants submit from what has been stated in the above paras the instructions issued from time to time by the Government of India Department of Personnel have been followed and have been implemented in toto by the Railway Board and other Zonal Railways except by the S.E. Railway authorities who have not followed the same to the detriment of its employees thus flouting the instructions of the Department of Personnel and Training to save an embarrassing situation for themselves under one pretext or the other. The applicants further submit that applicant No.4 was given the grade of Rs.260-350/950-1500 during the period of training which scale is applicable to a skilled artisan staff and if the contention of the respondents that the applicant should draw the scale of Rs.950-1500 during the period of training for counting the period of training as service, applicant No.4 fulfilled the conditions. This statement is made without prejudice to the plea of the applicants that

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the period of training should be counted as service for the purpose of appearing in the Departmental Examinations irrespective of the fact whether during the training period stipend/nominal allowance is paid and not the scale of the post.

6) The applicants further submit that since all the instructions regarding the period of training to be counted for various purposes have been issued from time to time commencing from 4-9-90 and the Railway Board in their letter dt.30-3-92 (Annexure A-12 of the O.A.) sought certain clarification from the Dept. of Personnel and Training, it is the Dept. of Personnel and Training alone is competent to clarify any matter on the subject and whether the service during the training period will count as service towards Departmental examination where the scale of the post is not given but only the stipend which is less than the scale of the post, if any clarification is still required and the Ry. Board who have clarified the position in their letter dt.8-10-92 is not competent to take a decision.

7) In the circumstances, the applicants humbly pray that the Hon'ble Tribunal may be pleased to allow the O.A. and grant the reliefs prayed for in the Original Application.

A. Tirumala Deo

D E P O N E S T.

day of
solemnly affirmed Eighth/August of 1993
at Visakhapatnam and the deponent signed
before me .

Y. Subrahmanyam
Advocate, Visakhapatnam.
Y. Subrahmanyam, B.Com, B.L.
(Senior Accounts Officer, S. E. Ry. Retd.)
ADVOCATE
D. No. 45-58-7, Naresimha Nagar
VISAKHAPATNAM-533 024
Phone 66093