

(9)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH; JAIPUR**

**Original Application No. 18/2007**

**01st February 2008.**

**Hon'ble Mr. N.D. Raghavan, Vice Chairman.**

**Hon'ble Mr. R.R. Bhandari, Administrative Member.**

1. Teju Chalani, S/o Shri TekChand Ji, Gangman, Abu Road, aged about 53 years, R/o 2D-26J.P. Nagar, Madar, Ajmer.
2. Deepak Sharma, S/o Shri Amar Chandji, Gangmen Abu Road, R/o C-16, Aravalli, Vihar, Vaishali Nagar, Ajmer.

: Applicants.

Rep. by Mr. N.K. Gautam: Counsel for the applicants.

**VERSUS**

1. Union of India, through the General Manager, North Western Railway, Jaipur.
2. Divisional Railway Manager, North Western Railway, Ajmer.

: Respondents.

Rep. by Mr. T.P. Sharma : Counsel for the respondents.

**ORDER**

**Per Mr. N.D. Raghavan, Vice Chairman**

This application has been filed by two applicants under Sec. 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:

- (i) that the Hon'ble Tribunal may kindly issue by an appropriate orders or directions and writ and direct the respondents to consider the case of the applicants for taking action in accordance with the railways rules on the subject.
- (ii) Direct the respondents to treat the applicants in service w.e.f. 08.03.92 for all purpose except seniority.
- (iii) direct the respondents to govern the applicants by Railway services (Pension) Rules, 1993.



- (iv) direct the respondents to produce the sanctioned cadre and actual cadre of SS Ajmer and to post the applicants against such vacant post at Ajmer transferring them from Abu road.
- (v) Direct the respondents to grant yearly increment to the applicants w.e.f. 08.03.92 along with its arrear payment.
- (vi) Cost of the application to be awarded to the applicants.
- (vii) Any other just and reasonable relief in facts and circumstances of the case may be awarded to the applicants.

2. The brief facts of the case are as follows:

Both the applicants were initially engaged as Commission bearer/vendor in the catering department at Ajmer Division of the then Western Railway ( presently North Western Railway ).

Similarly placed persons had approached the Apex Court and the Apex Court directed the Railways to pay salary to the writ petitioners with effect from 01.12.83 with a further direction to absorb them as permanent Railway catering service. The Apex Court has further held that they would not become railway employees even though they were paid scale rate of pay till such time they were regularly absorbed in railway service.

Accordingly the applicants were paid scale of pay and they were continued to work as Commission Vendors and instead of

Commission they were getting scale of pay. However, vide order dated 01.11.91, the applicants were posted under the control of Station Superintendent Ajmer to perform the duties of coach attendant, waterman, Khalasi etc. They were also medically examined. The applicants have further stated that since they were engaged to perform the duties of regular employees of which posts cannot be kept vacant they acquired the status of 'Substitutes' in terms of para 1512 of IREM. It is also stated that



(P)

after completion of 120 days service as 'Substitutes' they were entitled for grant of Temporary Status and therefore all the rights and privileges admissible to a temporary railway servant specified under para 1313 of IREM should be extended to them. But it is their grievance that in spite of working as such for the last 15 years they were still not granted temporary status. However, the respondents regularised the services of the applicants vide order dated 05.04.2006 (Annex. A/5) and posted them as Gangman under Section Engineer (PW) Abu Road in the scale of pay Rs. 2610-3540 (RP) by treating them as Commission vendors and also declared them as governed by New contributory pension Scheme which came into effect from 01.01.2004. It is also stated that since they are aged about 53 & 43 respectively their health condition do not enable them to do the work of Gangman. It is further stated that since there were vacancies available under the Station Superintendent Ajmer, their services ~~were~~ ought to have been regularised from a much earlier date and brought ~~under~~ under the Railway Services (Pension) Scheme 1993. Various grounds have been raised in support of their contention vide para 5 (A) to 5(H) which are overlapping the averments made in the facts of the case.

3. The Respondents have filed a detailed reply denying the contentions of the applicants. The respondents have also taken the following preliminary objections (i) that the O.A is barred by limitation since the applicants are seeking regularization with



(11)

effect from 1992 and the present O.A has been filed only in the year 2007 and no petition for condonation of delay has also been filed; (ii) Since the applicants are working at Aburoad, this Bench of the Tribunal has no territorial jurisdiction and the present application ought to have been filed before the Jodhpur Bench of this Tribunal; (iii) The respondents have also taken the plea of plural remedies.

4. With regard the facts of this case, the respondents have stated that the applicants were given the benefit as per the Apex Court Verdict and the applicants were paid scale rate of pay with effect from 01.12.1983. It is also stated that the applicants were never appointed as 'Substitutes' and therefore para 1512 of IREM would not be made applicable to them. It is also stated that the respondents have followed the Apex Court verdict only and as the applicants were appointed vide order dated 05.05.2006, they were not governed by the Railway Services (Pension) Scheme 1993 and the said scheme would be applicable to persons who were appointed prior to 31.12.2003. The respondents have denied the averments of the applicants that they were appointed as 'Substitutes' under Station Superintendent, Ajmer. They have generally denied the grounds raised in the O.A.

5. The applicants have filed rejoinder reiterating the facts and grounds mentioned in the O.A. In the rejoinder, the applicants



(1)

have also annexed copy of the judgement dated 16.08.2007<sup>of 11</sup> the Hon'ble High Court of Rajasthan in W.P. No.6113/2007 filed by the first applicant [Teju Chalani] and a copy of order dated 08.08.2007 passed by this Bench of the Tribunal in O.A. No. 243/2007, filed by the second applicant (Deepak Sharma).

6. We have heard the learned counsel for both sides and carefully perused the pleadings and records of this case. Admittedly, the applicants are seeking the relief of scale of pay applicable to a regular railway servant with effect from 1992. We are of the firm opinion that as the applicants have claimed the scale of pay from the year 1992 this application ought to have been filed in the year 1993 itself and the O.A has to be dismissed for laches on this ground alone. Looking into merits of this case, the applicants were given the benefit of regular scale of pay vide order dated 05.04.2006 (Annex. A/5). If at all the applicants have any grievance they ought to have challenged this in the present O.A. In stead of challenging the same, they have prayed for the reliefs mentioned in para 1 above. The Hon'ble High Court of Rajasthan at Jaipur have upheld the decision of this Bench of the Tribunal dated 10.04.2007, (some other O.A filed by the first applicant after three months of the filing of the instant O.A) vide its judgement dated 16.08.2007.

The Hon'ble High Court while disposing of D.B. Civil W.P. No.6113/2007, has observed as under in para 2 :

*hdr.*

(13)

"that if any fresh representation is made by the petitioner to the concerned authority for reconsideration of his transfer on the medical grounds such representation shall be considered and decided within four weeks from the date of receipt of such representation."

This Bench of the Tribunal had also vide its order dated 08.08.2007 passed in O.A. No.243/2007 filed by the second applicant herein, had held that the said O.A is premature and directed the respondents to decide the representation dated 17.04.2007, within a period of two months from the date of the order. This would clearly show that the applicants are pursuing their remedies claimed in the instant O.A before different forums in different ways. Therefore, this Bench is of the view that the applicants have not come before this Tribunal with clean hands. Further the respondents are following the directions given by the Apex Court on the subject. Therefore no fault can be fastened with their action. We are also of the view that at present the applicants are working in Abu Road, this Bench of the Tribunal has no territorial jurisdiction to entertain this application.

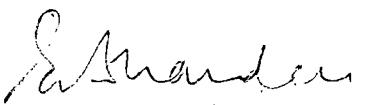
7. Further more, even though the applicants alleged that they are 'Substitutes', no proof or evidence appointing them as 'Substitutes' has been produced before us. That apart, as submitted by the respondents, the reliefs prayed for by the applicants are appearing to be plural in nature which therefore cannot be prayed for in a single O.A.

*Adr.*

14

8. Thus viewed from any angle, whether on the preliminary point of limitation, jurisdiction, ~~or~~ plurality of remedies or even on merits, as discussed above, we are unable to come to the rescue of the aggrieved in any aspect or respect cited supra.

9. In the result the O.A is dismissed in any event. No costs.

  
[R.R. Bhandari]  
Administrative Member

  
[M.D. Raghavan]  
Vice Chairman.

jsv