

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

May 2003
or
2006
144(A)
Lalaji Sir
Extd
2007

O.A. No. 31/2003
TxXXX No.

199

DATE OF DECISION _____

Prem Kumari Solanki _____ Petitioner

Mr. P.V. Calla _____ Advocate for the Petitioner (s)

Versus

Union of India & ors. _____ Respondent

Mr. S.P. Sharma _____ Advocate for the Respondent (s)

CORAM :

The Hon'ble Mr. JUSTICE G.L.GUPTA, VICE CHAIRMAN

The Hon'ble Mr. G.C.SRIVASTAVA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(G.C.SRIVASTAVA)
Adm. Member

(G.L.GUPTA)
Vice Chairman

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 10/07/03

OA No.31/2003

Prem Kumari Solanki w/o Shri S.S.Solanki, aged about 55 years r/o House No. 1010, Bheemganj Mandi, Dadwara, Kota, presently posted as Asstt. Teacher, Rly. Primary School, Workshop, Kota.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Senior Divisional Personnel Officer, Ex-Official President, Railway School, Kota Division, Kota.

.. Respondents

Mr. P.V.Calla - counsel for the applicant.

Mr. S.P.Sharma - counsel for the respondents.

CORAM:

HON'BLE MR. JUSTICE G.L.GUPTA, VICE CHAIRMAN

HON'BLE MR. G.C.SRIVASTAVA, ADMINISTRATIVE MEMBER

O R D E R

Per Hon'ble Mr. Justice G.L.Gupta.

The reliefs claimed in the instant OA are as follows:-

- "i) the impugned seniority list dated 13.7.2001 in so far as it relates to the applicant may be modified treating the applicant as regular Assistant Teacher of August, 1982.
- ii) the impugned letter dated 1.5.2002 Annex-A/3 by which the applicant has been declared as surplus may also declared in so far as it relates to the applicant and further respondents may be directed to allow the applicant to work continuously on the post of Assistant Teacher at the place where she is working. The applicant should not be ousted from the post treating her surplus.
- iii) the encloser to the Annex-A/4 i.e. letter dated

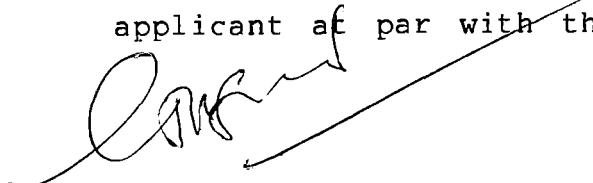


29.7.2002 by which the administration declared that seniority to the applicant has been granted correctly and she was regularised accordingly may also be declared illegal and same may be quashed and set aside. As such the impugned orders Annexures-A/1, A/2 and A/3 may kindly be declared illegal as prayed by the applicant.

- iv) Any other relief to which the applicant is found entitled, in the facts and circumstances of the present case, may also be granted in favour of the applicant.
- v) The Original Application may kindly be allowed with costs."

2. The case has chequered history. The applicant was initially appointed as Substitute Assistant Teacher on 22.8.1979. Temporary status was conferred on her w.e.f. 20.11.1979 vide order Ann.A6. Subsequently she was appointed on regular basis vide order Ann.A12 dated 14.7.2000. In the provisional seniority list of the Teachers dated 13th July, 2001 (Ann.A1), the name of the applicant appears at Sl.No.48. She, being not satisfied with her seniority position made representation Ann.A14 on 9.8.2001 for granting her higher seniority. Her representation was rejected vide letter Ann.A2 dated 27.9.2001. It seems that the applicant made some representations through Union also and the Union got the reply from the respondents which was conveyed to the applicant vide Ann.A4 dated 26.12.02.

2.1 The say of the applicant is that one Smt. Girija Mehra was engaged as Substitute Teacher from 22.5.81 and temporary status was granted to her on 1.12.84, subsequent to the engagement of the applicant as Substitute Teacher as also her getting temporary status, yet the respondents did not regularise the services of the applicant on screening basis, hence she had to file OA No. 264/94 which was decided by this Tribunal vide order dated 27.1.2000 directing the respondents to consider the case of the applicant af par with the case of Smt. Kamlesh Jain and



another. It is stated that Smt. Kamlesh Jain and Asha Mishra were engaged in the year 1980 and they were granted temporary status on 27.12.80 and they were regularised vide order dated 6.1.95 pursuant to the directions of the Tribunal given in TA No.163/1992 on 30.11.93, and subsequent direction given on 1.3.94 in OA No.80/1994.

2.2. It is averred that the applicant has been discriminated in the matter of regularisation. It is further stated that she being senior ought not to have been declared surplus and the order Ann.A3, declaring her surplus, is illegal.

3. In the counter, the respondents have come out with the case that earlier on the basis of the Railway Board's direction regularisation was made on the basis of screening but thereafter it was ordered by the Railway Board that selection should be held. It is averred that the applicant was called for interview in the year 1984 but she did not appear. It is stated that in the year 1980 the applicant could not be screened as she had not completed 3 years of service. It is averred that the applicant has been considered for regularisation in the manner Smt. Kamlesh Jain, Asha Mishra and Girija Mehra were considered. It is also the case for the respondents that the applicant cannot be given higher seniority when she has been regularised in the year 2000. It is stated that the applicant being junior in the seniority list has been rightly declared surplus. In the preliminary objections, the respondents have stated that the applicant is claiming seniority over some teachers but they have not been impleaded as respondents and, therefore, this application is liable to be dismissed on the ground of

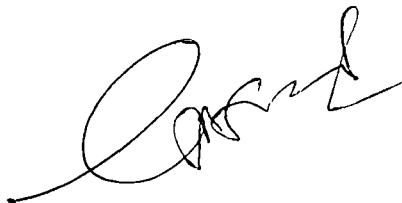


non-joinder of necessary parties.

4. We have heard the learned counsel for the parties and perused the documents placed on record.

5. The contention of Mr. Calla, learned counsel for the applicant, was that Smt. Girija Mehra was engaged in the year 1981 whereas the applicant was engaged as Substitute Teacher in the year 1979 and, therefore, the applicant had a right of regularisation before the regularisation of Smt. Girija Mehra. He pointed out that Smt. Kamlesh Jain, Asha Mishra and Geeta Saxena have been regularised on the basis of screening test and therefore, different standard could not be adopted in the case of the applicant and the respondents erred when they called upon the applicant to appear in the selection test in the year 1994. His main contention was that the respondents were bound to regularise the applicant in the manner the regularisation of Smt. Kamlesh Jain, Girija Mehra and Geeta Saxena was ordered and as it has not been done, the applicant has been discriminated. He prayed that the respondents be directed to refix the seniority of the applicant above Smt. Girija Mehra, Kamlesh Jain and others and not to declare her surplus.

6. On the other hand, the contention of Shri Shailendra Sharma, learned counsel for the respondents was that regularisation of the applicant has been ordered keeping in view the directions of the court. It was contended that the applicant is not entitled to be treated as regular teacher from the year 1982 as claimed by her. He submitted that the claim with regard to the seniority

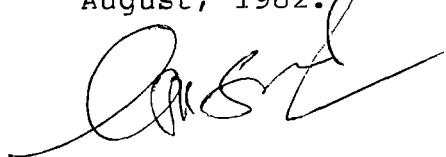


position of the applicant should not be considered as it is barred by limitation and also it suffers from non-joinder of necessary parties. According to him, the applicant cannot succeed in claiming limitation from the letter Ann.A14 dated 26.2.02, as the representation of the applicant against the seniority list had already been rejected by the respondents.

7. We have given the matter our thoughtful consideration.

8. A reading of the order Ann.A12 dated 14th July, 2000 shows that pursuant to the direction given by this Tribunal in OA No.264/94, the meeting of the Screening Committee was held on 29.6.2000. The Screening Committee found the applicant fit for regularisation and her regularisation was ordered with immediate effect. The regularisation of the applicant thus took effect from 14th July, 2000.

8.1 It is not the case for the applicant that she had filed representation against the order Ann.A12 stating that her regularisation ought to have been from earlier date. This OA has been filed on 20th January, 2003. Evidently, the OA has not been filed within one year from the date of the order An.A12 dated 14.7.2000 which formed the basis of the seniority of the applicant. No application for condonation of delay has also been filed. Therefore, so far as the date of regularisation of the applicant is concerned, the claim is clearly barred by limitation. The applicant therefore, cannot succeed in claiming that she should be treated as regular from August, 1982.

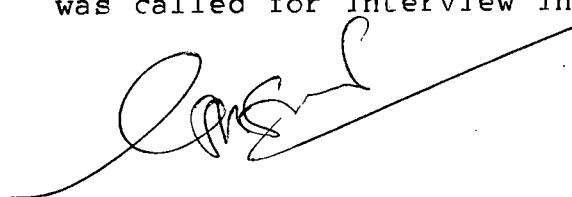


8.2. Apart from that, the seniority list Ann.A1 was published on 13.7.2001 in which the date of regularisation of the applicant was stated as 14.7.2000. In the seniority list Smt. Girija Mehra and Kamlesh Jain were shown senior to the applicant. The applicant made a representation against the seniority list which is Ann.A14 on record. In that representation dated 9.8.01, the applicant stated that she should be regularised w.e.f. 21st August, 82 and her name should appear between Sl.No. 21 and 22 of the seniority list. That representation Ann.A14 of the applicant was rejected by the respondents vide communication Ann.A2 dated 27.9.01. The applicant did not file the instant OA within one year from 27.09.01 also. Therefore, even on the basis of the seniority list, the applicant cannot succeed in claiming regularisation from 1982. The claim is clearly barred by limitation.

8.3 The applicant has tried to take benefit of the letter dated 26.12.02 to bring the matter within limitation.

8.4 The letter dated 26.12.02 (Ann.A4) was sent to the applicant by the Western Railway Mazdoor Sangh, whereunder a copy of the letter dated 29.7.02 of the General Manager, Western Railway, was enclosed. In the letter dated 29.7.02 it was informed that the claim of the applicant for assigning correct seniority was examined and that her seniority position in the seniority list was correctly shown.

8.5 It is seen from the letter that the applicant had sent a representation through the Union. It is further seen that in that representation the applicant had claimed seniority over some persons who had been given appointment under the loyal quota. It is also seen that the applicant was called for interview in 1994 but she did not attend.



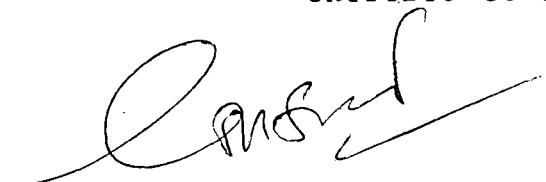
8.6 It is not understood how this letter extended the period of limitation to bring action against the seniority list dated 13.7.01. The representation of the applicant against that seniority list Ann.A14 dated 9.8.01 had already been rejected vide communication Ann.A2 dated 27.9.01. The communication to the Union on further representation on 29.7.02 does not have the effect of extending the period of limitation for challenging the seniority list Ann.A1.

9. That apart, the applicant has challenged her seniority position in this OA but she has not impleaded the persons who are likely to be adversely affected. It has to be accepted that the claim of the applicant for higher seniority, if allowed, is likely to adversely affect the rights of other incumbents and hence they are necessary party. The application is, therefore, liable to be dismissed on the ground of non-joinder of necessary parties also. It is significant to point out that the applicant did not take steps to implead the incumbents whose rights are likely to be affected even after taking specific objection in the reply.

10. Even on merits, the applicant cannot succeed. Much emphasis was laid by the learned counsel for the applicant that in the order Ann.A10 dated 27.1.2000 it was directed that the applicant would get the benefits in para-materia with the case of Smt. Kamlesh Jain and Geeta Saxena.

10.1 The relevant part of the order dated 27.1.2000 passed in OA No.264/94 is reproduced hereinunder:-

"9. We accordingly declare that the applicant is entitled to be considered for regularisation and



other benefits which the respondents had granted to Smt. Kamlesh Jain and Smt. Girja Mehra.

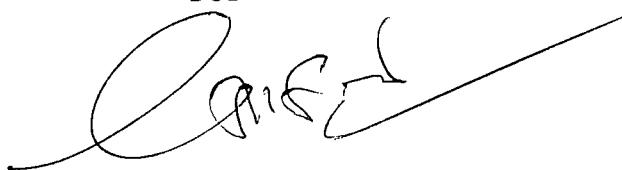
10. We, therefore, allow this OA and direct the respondents to consider the case of regularisation of the applicant in service with other consequential benefits in para-materia with the case of Smt. Kamlesh Jain and Anr. OA No.80/94 decided on 1.8.94 and Smt. Geeta Saxena and ors. OA No.823/94 decided on 18.4.94. The whole exercise must be completed within a period of 3 months from the date of receipt of a copy of this order".

10.2 The order provided that, i) the applicant was entitled to be considered for regularisation in service (ii) she was entitled to consequential benefits which were granted to Smt. Kamlesh Jain, Girja Mehra and Geeta Saxena and iii) the exercise was to be completed within 3 months.

11. Admittedly, the applicant has been regularised as teacher. The question that arises for consideration is that what advantage or benefit had been given to Smt. Girija Mehra, Kamlesh Jain and Geeta Saxena to which the applicant is entitled. It is now admitted position that the applicant has been regularised only on the basis of screening as was done in the case of Smt. Kamlesh Jain, Girija Mehra and Geeta Saxena and no selection test has been held. Therefore, there is no hesitation in saying that the applicant has not been discriminated in the matter of process of regularisation.

12. As to the benefit given to Smt. Kamlesh Jain and Geeta Saxena, we may read the orders passed in their matters. Smt. Geeta Saxena had filed OA No. 138/90 (OA No.823/92 JPR). The same was decided vide order dated 18.4.94 and the following order was passed:-

"However, no rule has been shown to us to suggest that more than one screening is necessary, one for continuance on the temporary posts and



another for absorption against regular posts. In the case of Smt. Girija Mehra who figures in the panel at Annexure A-1 along with the three applicants, regularisation was done as per Annexure A-13, which is order dated 15.12.89. Since the applicants also figured in the same panel, there is no reason why they should be subjected to a different treatment. In the circumstances, we direct that the applicants may also be absorbed against vacancies of Primary School Teachers in Kota Division which were the subject matter of the advertisement issued in Rajasthan Patrika of September, 1990, in preference to those who were to be appointed by direct recruitment by the Railway Recruitment Board. The respondents shall take necessary action in pursuance of these directions within a period of four months from the date of receipt of a copy of this order".

12.1 The order indicates that the court had given directions to consider regularisation of Smt. Geeta Saxena on the basis of the screening already done and no further screening was to be done. It is seen that the name of Smt. Geeta Saxena figured in the panel in which the name of Smt. Girija Mehra also existed. It is not the case for the applicant that her name was also in the same panel. Be that as it may, admittedly, the applicant has been regularised on the basis of screening and therefore, it cannot be said that she has not been granted the same benefit as was given in the case of Smt. Geeta Saxena. It is not the case for the applicant that Smt. Geeta Saxena has been regularised from the date she completed 3 years as Substitute Teacher or from a date before the date of screening.

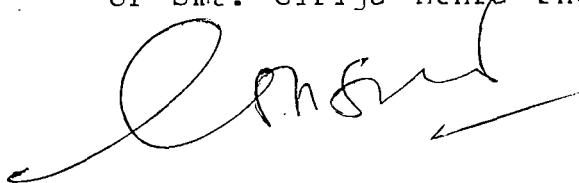
12.2. As to the case of Smt. Kamlesh Jain in OA No. 80/94 decided on 1.3.94 referred to in the order dated 27.1.2000 Ann.A10, it may be pointed out that the court had only directed to dispose of the representation of the applicant therein through a detailed order keeping in view the decision rendered by this Tribunal in TA No. 163/92 decided on 30.11.93. The applicant therein was permitted



to file fresh representation. It is not understood as to how the order dated 1.3.94 passed in OA No. 80/94 helps the applicant. No positive direction was given in the said order and only representation was directed to be decided.

13. As to the TA referred to in the order dated 1.3.94 passed in OA No. 80/94 it may be stated that the court had directed to equate Smt. Girija Mehra with the applicant therein Smt. Kamlesh Jain in the matter of regularisation. In the order it was specifically stated that the respondents might adopt the mode which was just and proper and equitable and did not take away the rights of equality in the facts and circumstances of the case. Pursuant to the order passed in the said TA, Smt. Kamlesh Jain was considered for regularisation. She was ordered to be regularised vide order dated 6.1.95 Ann.R5. It is significant to point out that Smt. Kamlesh Jain has been assigned seniority position from the date of regularisation though she had been engaged as Substitute Teacher w.e.f. 22.09.80. In other words, she was not regularised from the date on which she completed 3 years or from the date earlier to the date of screening. The applicant has also been given seniority position on the basis of the date of regularisation. No case of discrimination is made out.

14. No rule or order has been brought to our notice which provides that regularisation must take effect from the date of initial engagement as Substitute Teacher or the date on which the incumbent completes 3 year period. It is also significant to point out that even in the case of Smt. Girija Mehra she was appointed on regular basis

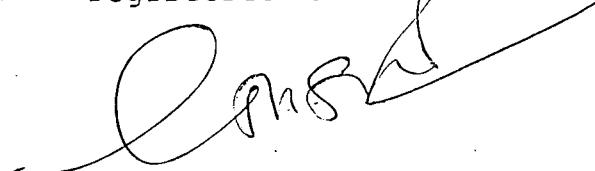


w.e.f. 15.12.89 and not from the date of her initial engagement i.e. 25.5.81 or from the date she completed 3 years in the year 1984.

15. The fact remains that in the order dated 27.1.2000 the respondents were directed only to consider the case of regularisation in the manner in was done in the case of Smt. Girija Mehra and Kamlesh Jain and the respondents have done that. As already stated, the orders passed in OAs No. 80/94, 823/94 nowhere provided that the regularisation would take effect from the earlier date or that the higher seniority would be granted. It has therefore, to be held that the applicant's case has been considered in para-materia with the cases of Smt. Kamlesh Jain, Geeta Saxena and Smt. Girja Mehra. The applicant cannot succeed in claiming ther appointment as regular teacher from the year 1982.

16. The next contention of the learned counsel for the applicant was that the case of the applicant was not considered earlier because of the pendency of the cases and there was no fault on her part if she was not regularised earlier.

16.1 It is seen that in the year 1980 when the regularisation was to be done on the basis of screening, the applicant had not completed 3 years service. In the year 1984 when the applicant was called for screening by way of interview, she did not appear and therefcre, was declared fail. Instead of appearing for screening the applicant chose to file a civil suit before the Munsif Court which was later transferred to this Tribunal and registered as TA No. 2184/86. The same was decided on

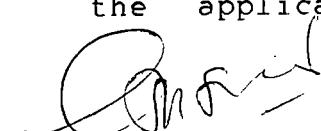


29.7.93.

16.2 The reliefs claimed by the applicant in the Civil Suit were of declaration and permanent injunction. The applicant had sought declaration that she was regularly appointed teacher from 22.8.79 and her services could not be terminated. In the reply the respondents had come out with a case that the services of the applicant would not be terminated and her case for regularisation would be considered according to rules. This court had disposed of the T.A. stating that the action of regularisation be taken according to the rules. It is evident from the order that the case of the applicant that she ought to have been considered for regularisation in the screening on 30.10.80 was not accepted by this court.

16.3 When the right of screening had not accrued to the applicant on 30.10.80 and she did not appear for screening in 1984, she cannot get relief on the ground that due to the pendency of the case, the matter of her regularisation could not be considered earlier. In any case, the applicant was herself responsible for taking the matter to the court of law without any cause. The respondents had not done anything which could be the cause of apprehension in the mind of the applicant to file a civil suit. The applicant was satisfied with the order dated 29.7.93 passed in the civil suit converted into TA No.2184/86.

16.4 As to the second case (OA No.264/94) filed by the applicant, it may be pointed out that she filed the said OA when she was asked to appear in the special selection for regularisation vide communications dated 6.6.94 and 12.5.94. In the said OA, it was claimed that the applicant was entitled to be considered for



regularisation on the basis of screening test only. The OA was allowed vide order dated 27.1.2000, the relevant portion of which has been reproduced hereinabove. The order directed treatment of the case of the applicant para-materia to the cases of Smt. Girija Mehra, Kamlesh Jain and Geeta Saxena. As already stated in detail, the same has been done. In the order it was nowhere directed that if the applicant succeeded in screening test she would be treated to have been regularised from the date the services of Smt. Girija Mehra or other incumbents were regularised. Therefore, the applicant cannot succeed in asserting that she should be treated as regular teacher from earlier date. It follows that the date of regularisation in her case would be the date of screening as was done in the case of other incumbents. That being so, the seniority of the applicant has been correctly stated in the seniority list Ann.A1.

17. The applicant was declared surplus vide order dated 1.5.02. She was the junior most teacher on that date. No fault is found in the order Ann.A3.

18. Consequently, there is no merit in the instant OA. It is hereby dismissed. The interim order dated 29.1.03 stands vacated.

19. No order as to costs.

G.C.Srivastava
(G.C.SRIVASTAVA)

Administrative Member

G.L.Supta
(G.L.SUPTA)

Vice Chairman