

30/100

5

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

✓ (DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 338/2001

R.A/C.P No.

E.P/M.A No.

1. Orders Sheet. OA-338/2001Pg. 1to 4
2. Judgment/Order dtd. 4.10.9/2002Pg. 1to 11allowed
3. Judgment & Order dtd.Received from H.C/Supreme Court
4. O.A. 338/2001Pg. 1to 48
5. E.P/M.P. NILPg.to
6. R.A/C.P. NILPg.to
7. W.S. RespondentsPg. 1to 6
8. Rejoinder.Pg.to
9. Reply.Pg.to
10. Any other Papers.Pg.to
11. Memo of Appearance.Pg.to
12. Additional Affidavit.Pg.to
13. Written Arguments.Pg.to
14. Amendment Reply by Respondents.Pg.to
15. Amendment Reply filed by the Applicant.Pg.to
16. Counter Reply.Pg.to

SECTION OFFICER (Judl.)

FORM No. 4
(See Rule 42)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH: GUWAHATI.

ORDERS SHEET

original

APPLICATION NO.

338 / 2001

Applicant (S) Mukul Das

Respondant (S) H.O.T. Rom

Advocate for the Applicant: G.K. Bhattacharya, B. Chandling

Advocate for the Respondant: Case

Notes of the Registry	Date	Order of the Tribunal
In Application is in form but not in time. Condonation Petition is filed not filed vide M.P. No. X C.F. for Rs. 50/- deposited vide IPO/BD No 76548872	30.8.01	Heard Mr. G.K. Bhattacharya, learned counsel for the applicant.
Dated 24.8.2001 Dy. Registrar.		The application is admitted. Call for the records. Returnable by 4 weeks.
		Mr. S. Sarma, learned counsel, accepts notice on behalf of Mr. B.K. Sharma, learned counsel for the respondents.
		List on 1/10/01 for further order.
Notice prepared and sent to D/S for issuing the Respondent No 1 to 4 by Regd. Post.	mb 1.10.01 30/8/01	Awaited service report. List on 17/10/01 for order.
by 30/9/01		
Issuing vide D/No 3410 W 3413 dtd 6/9/01	mb 17.10.01	Service report is not complete. List on 27.11.01 for order.
Service report were still awaited.	pg	
by 28.9.01		
Service report still now awaited.		

Vice-Chairman

Vice-Chairman

Member

(2)

27.11.01

List on 7.1.02 to enable the respondents to file written statement.

① Service report are still awaited.

By

IC Ushan
Member

Vice-Chairman

mb

7.1.2002

Written statement has been filed. The case may now be listed for hearing.

an

List for hearing on 11.2.2002.

The applicant may file rejoinder, if any, within two weeks from today.

29.11.2001

W/s on behalf of respondents has been submitted.

By

IC Ushan
Member

Vice-Chairman

**..".bb

11.2.02

"Prayer has been made by Sri B. Choudhury, learned counsel appearing on behalf of ~~xxx~~ Mr. G.K.Bhattacharyya, learned counsel for the applicant for adjournment of the case on personal ground. Prayer is allowed. List again on 7.3.2002 for hearing.

No rejoinder has been filed.

By
8.2.02

IC Ushan
Member

Vice-Chairman

mb

8.3.02

Heard Mr B.Choudhury, learned counsel for the applicant and Mrs.Sarma, on behalf of the Railway standing counsel.

List again on 8.4.02 to enable the respondents to ~~obtain~~ furnish necessary instruction on the matter and produce the connected records.

No rejoinder has been filed.

By
8.5.02

IC Ushan
Member

Vice-Chairman

pg
8.4.2002

On the prayer made on behalf of Rly. the case is adjourned and listed for hearing on 9.5.2002.

IC Ushan
Member

Vice-Chairman

bb

(B)

3

O.A.338 of 2001

Notes of the Registry Date

Order of the Tribunal

9.5.2002

List the case again on 30.5.2002 for hearing.

K. Ushara
Member


Vice-Chairman

bb

30/5.

The case is adjourned to 24.6.2002 as Division Bench did not sit today.

Mrs
A.K.3
30/5

Adjourned. List on 25.7.02.

By order

25.7.2002

On the prayer made by Mr. U.K. Nair on behalf of Mr. B.K. Sharma, learned Sr. counsel for the applicant for a little accommodation, the case is accordingly adjourned.

post the matter for hearing on 30.7.2002.

K. Ushara
Member


Vice-Chairman

bb

30.7.02

Heard at length. List again on 19.8.2002. In the meantime the respondents may obtain necessary instruction the matter.

K. Ushara
Member


Vice-Chairman

pg

19.8

Heard Mr. G. K. Mahalingam, learned Counsel for the applicant & Mr. S. R. Prasad, learned Counsel for the respondent. Hearing concluded. Judgment reserved. Mrs. A.K. Justice

WLS has been filed.

30
29.5.02

No. WLS has been filed.

30
24.7.02

4.9.02

Judgment delivered in open Court,

kept in separate sheet. The application is allowed in terms of the order. No order as to costs.

IC (Usha)
Member

[Signature]
Vice-Chairman

mb

Received copy
Bikram Choudhary
Adv.

13.9.02

Judgment dtd. 9/9/02
Communicated to the
Applicant and the Bar
Council.

[Signature]
17/9/02

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A./~~XXXX~~NO...338.....of 2001

DATE OF DECISION...4th Sept 2002....

Mrs Mukul Das

APPLICANT(S)

Mr G.K. Bhattacharyya and
Mr B. Choudhury

ADVOCATE FOR THE APPLICANT(S)

-VERSUS-

The Union of India and others

RESPONDENT(S)

Mr B.K. Sharma, Railway Counsel and
Mr S. Sarma.

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR K.K. SHARMA, ADMINISTRATIVE MEMBER

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

Judgment delivered by Hon'ble Vice-Chairman

X

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.338 of 2001

Date of decision: This the 4th day of September 2002

The Hon'ble Mr Justice D.N. Chowdhury, Vice-Chairman

The Hon'ble Mr K.K. Sharma, Administrative Member

Mrs Mukul Das,

Daughter of Late Mukunda Chandra Das,

Desbandhu Pally (PL-8),

P.O.- LUMDING, District- Nagaon.

.....Applicant

By Advocates Mr G.K. Bhattacharyya and
Mr B. Choudhury.

- versus -

1. The Union of India, represented by
The General Manager,
N.F. Railway,
Maligaon, Guwahati.

2. The General Manager (Personnel),
N.F. Railway,
Maligaon, Guwahati.

3. The Divisional Railway Manager (P),
N.F. Railway, Lumding,
District- Nagaon.

4. The Principal,
Railway High School,
Lumding.

.....Respondents

By Advocates Mr B.K. Sharma, Railway Counsel
and Mr S. Sarma.

.....

O R D E R

CHOWDHURY. J. (V.C.)

The spectrum of absorption in terms of the Master Circular issued by the Railway Board in conformity with the direction issued by the Hon'ble Supreme Court is the subject matter of controversy raised in this application in the following facts and circumstances set out hereinbelow:

The applicant is a Graduate in Arts and also possessing the requisite teaching qualification, namely

: 2 :

B.T. She belongs to the Scheduled Caste Community. She was first appointed as a Substitute Teacher in Railway H.S. School, Lumding vide order No.LS/37/LR-P-III dated 5.4.1979. It was stated that she was terminated from time to time and again reappointed. The applicant continuously worked since 23.2.1988 till 11.11.1994. It was stated that save and except the artificial breaks of two to seven days and during the school vacation, the applicant was in continuous service. By order dated 23.5.1988 she was granted temporary status with effect from 8.5.1988. The said order was passed with the approval of the competent authority. The applicant prayed before the authority for regularisation of her service in terms of the scheme for regularisation of the Substitute Teachers. When things continued in this fashion, by the impugned order dated 31.5.1990 the services of the applicant as Substitute Teacher was terminated with effect from 2.6.1990. Being aggrieved by the action of the respondents the applicant moved this Tribunal assailing the legitimacy of the order of termination and for regularisation of her service in O.A.No.85 of 1990. The Tribunal took up the matter for interim order alongwith O.A.No.84 of 1990 filed by another Substitute Teacher who also assailed the order of termination. By order dated 21.6.1990 the Tribunal stayed the order of termination. By Judgment and Order dated 31.10.1994 the O.A. was finally dismissed in the light of order passed in O.A.No.149(G) of 1989. Being aggrieved by the Judgment and Order of the Tribunal dated 31.10.1994 the applicant alongwith other aggrieved persons preferred SLPs before the Hon'ble Supreme Court. The SLP was numbered and registered as SLP (Civil) No.149 of 1995. The Supreme Court granted Special Leave and the appeal was numbered as Civil Appeal No.9427 of 1995. All the six cases were taken

up.....

up together by the Supreme Court for consideration and by Judgment and Order dated 13.10.1995 the Supreme Court set aside the Judgment of the Tribunal and allowed the applications with direction for considering the case of the applicants for their absorption on regular basis on the post of Assistant Teacher by the Screening Committee in accordance with para 5.1 of the Master Circular dated 29.1.1991. It was also ordered that in case the applicants were found suitable for such absorption by the Screening Committee, they were to be restored to the post held by them with continuity of service. The respondents took screening test of the six Substitute Teachers and after holding written and viva-voce test, found three of the applicants suitable holding the other three applicants as unsuitable vide communication dated 6.5.1996. Being aggrieved by the action of the respondents the applicant submitted representation before the respondent No.1. Failing to get any response the applicant submitted reminders before the authority and by the impugned order dated 25.8.2000 the representation of the applicant was finally turned down. Hence this application assailing the legitimacy of the action of the respondents in not considering her case in the light of the direction issued by the Supreme Court in conformity with the Master Circular.

2. The respondents contested the claim of the applicant and contended that the case of the applicant was considered alongwith other similarly situated persons. A Screening Committee was duly constituted and the Screening Committee lawfully considered the case of all the eligible teachers and on assessment the Screening

Committee.....

Committee found the applicant unsuitable. The respondents pleaded that all throughout it acted lawfully and in terms of the direction of the Hon'ble Supreme Court.

3. Mr G.K. Bhattacharyya, learned Sr. Counsel for the applicant referred to para 5.1 of the Master Circular R.B. No.12/91 M.C. No.20/91 (No.E(NG)/90//SD/Master Circular dated 29.1.1991) and submitted that as per the Master Circular the Screening Committee was to screen the persons. The authority in the instant case resorted to the selection process instead of screening and held written and viva-voce test like a regular selection process. The learned Sr. counsel stated and contended that the authority acted unlawfully and in blatant violation of the letter and spirit of the directions of the Supreme Court and thereby committed an error apparent on the face of the record. The learned Sr. counsel also submitted that while rejecting the claim of the applicant for absorption the authority fell into error in not taking the relevant considerations, namely length of service, the experience and the past service of the applicant and arbitrarily rejected the genuine claim of the applicant. The learned Sr. counsel also submitted that admittedly there were six posts and the authority could not have rejected the applicant as unsuitable against the vacancies for absorption. The learned Sr. counsel lastly submitted that the applicant belonged to Scheduled Caste Community and the Screening Committee did not take a Scheduled Caste Community Member in the Screening Committee which affected the decision making process of the respondent authority.

4. Refuting the contention of the applicant, Mr S. Sarma, learned counsel appearing on behalf of the Standing Counsel, Railways, urged for dismissal of the application on the ground of limitation. The learned counsel contended that the case of the applicant was turned down by the Screening Committee and the same was communicated vide order dated 6.5.1996. The order dated 25.8.2000 could not give rise to a fresh cause of action. The learned counsel also contended that the application was hit by the principle of waiver, estoppel, acquiescence as well as non-joinder of parties. The learned counsel submitted that the applicant was fully aware about the Screening Committee when she appeared before the Screening Committee for the viva-voce test. The applicant appeared before the Screening Committee, participated in the selection process and on her failure to get selected cannot now come around and question the legitimacy of the Screening Committee.

5. The basic issue is as to whether the case of the applicant was fairly considered in terms of para 5.1 of the Master Circular in the light of the direction issued by the Supreme Court. In the Judgment and Order of the Supreme Court para 5.1 of the Master Circular dated 29.1.1991 was referred to, which reads as follows:

"5.1 Substitutes, who have acquired temporary status should be screened by a Screening Committee and not be Selection Boards, constituted for this purpose before being absorbed in regular Group 'C' (Class-III) and Group 'D' (Class-IV posts).

Such a Screening Committee should consist of at least three members, one of whom should belong to the SC/ST Communities and another to minority communities."

The Supreme Court took note of the fact that the applicant alongwith the other appellants was a substitute

who.....

who had also acquired temporary status. The Supreme Court accordingly observed that conferment of temporary status had entitled the person who had been conferred with temporary status to all benefits as admissible to temporary Railway staff. Referring to para 5.1 of the Circular dated 29.1.1991, the Supreme Court held that the appellants were entitled to absorption on regular basis through the process of screening by the Screening Committee in accordance with the said provisions and they were not required to face selection by the Railway Recruitment Board for the purpose of regular absorption. Absorption is also a mode of recruitment. The Supreme Court took note of Sub-rule 2 of Rule 216 of the Railway Establishment Code which provided that "direct recruitment to Railway Services Group 'C' shall be made through the agency of the Railway Recruitment Board unless otherwise specially authorised by the Railway Board." The Railway Board by introducing in the Master Circular para 5.1, specially authorised to recruit persons by absorption. It provided a scope to absorb those substitutes who had acquired temporary status. The whole object is to protect such class of persons from being thrown out of employment and for absorbing them without following the procedure of direct recruitment through the Railway Recruitment Board. The absorption is an act of absorbing. The state of process of being absorbed. A mechanism was indicated in para 5.1 of the Master Circular for absorbing such persons by screening by a Screening Board. The Circular itself indicated that screening was something different from selection. By screening one is to screen the persons by a process of winnowing. In the Oxford English Dictionary Volume IX published by Oxford, the.....

the expression 'screening', amongst others, is described as 'A sorting or sifting carried out by means of a screen; material which has passed through the operation of screening'. According to the said dictionary the word 'screen', amongst others means an apparatus used in the sifting of grain, coal etc. It also means to sift by passing through a screen. The process of screening is meant for screening those persons by looking to the past services, career, length of service etc. It is not as rigorous as a selection test. The methodology is introduced to screen the substitutes for absorption and to discard those who have become obsolete, burdensome and turn to be a dead wood. Screening is not like selecting a person for appointment by way of direct recruitment. It is also not like promotion to find out some positive quality. The Screening Committee is required to look to their eligibility, qualification etc. and the past record ought to have been considered for absorption.

6. We have gone through the proceedings of the Screening Committee which held the selection test by holding written test as well as viva-voce test. They were asked to answer question in the written examination on their own and sought to verify as to whether candidates had sound knowledge. A part of the proceeding of the Screening Committee is reproduced below:

"In order to conduct a selection test, the following Officers were nominated on the Screening Committee.

- i) Dy.CPO/Gaz.
- ii) Dy.CPO/IR
- iii) Sh. T. Rabha, Member Secy./RRB/GHY.

Since the Teacher Gr.IV is a group 'C' post and invariably a written examination is held for their normal recruitment through the agency of RRBs, it was decided to hold a written examination for the 6(six) applicants which was followed by a Interview test. The written examination was held on 17.2.96 and the Interview test was held on 29.3.96. The written examination was of 50 marks and contained questions of simple English, General Awareness and

Arithmetic.....

Arithmetic. In the Interview test, marks was awarded under two separate heads: i) Personality/Adress & Presentation= 25 marks & (ii) V/Voce = 25 marks. The personality, address & presentation was judged by the Screening Committee based on the manner in which the various questions, put by the Screening Committee Members were answered, general presentation of the replies was also given weightage. The knowledge part reflected in the answers was judged under the head V/Voce. The marks were awarded to all the candidates by consensus. The questions were also put from the Question Paper for the written examination which helped in confirming whether or not candidates had sound knowledge and logic in answering the various questions."

The Screening Committee even screened the persons who according to them did not possess the teaching qualification, which according to them was mandatory for teachers. Such a person was allowed the opportunity to clear the B.T./B.Ed. qualification for getting the regular scale. The said person was selected on the score that in the opinion of the Screening Committee on their assessment the said person secured $24\frac{1}{2}$ marks out of 50 in the written examination and that his performance in the interview was found to be satisfactory. It was stated that the said person did not possess B.T. or B.Ed. The applicant who served as a Substitute Teacher from 1979 and who possessed the mandatory qualification was overlooked by the said Committee in an illegal fashion without addressing its mind to the scheme of absorption and specific directions issued by the Supreme Court.

7. Mr S. Sarma submitted that the Railway Authority exercised discretion lawfully and acted bonafide. We are basically concerned to extent of exercise of discretion by public authorities. Public authorities are set up to govern and administer, but then it is to govern and administer in conformity with law. Admittedly, the Railway Board provided a scheme for absorption of the substitutes by holding a screening.....

screening test, not by selection. The Supreme Court direction also indicated the same. Those vacant posts were kept for absorption of those persons. The discretion conferred is not arbitrary or unfettered. Mr S. Sarma contended that at best the authority might have acted wrongly which they are entitled to act as such. There is no doubt on the proposition made by Mr S. Sarma, but then the respondents are not authorised to act illegally and unlawfully and exceeding its jurisdiction. Under the law the executive authority is even permitted to make errors of facts and for that matter the errors of law within its jurisdiction, provided, of course, the error is not manifest on the face of the record. In the instant case, admittedly, the respondents, more particularly the Screening Committee pursued an objective other than that which they were entrusted to. It misdirected itself and exercised power for colateral purpose except those the law entrusted them as per the official policy enunciated by the Railway Board. The Tribunal dismissed the application of these applicants. The Supreme Court on SLP set aside the order of the Tribunal and specifically directed to consider the case of those persons for absorption on regular basis on the post of Assistant Teacher by the Screening Committee in accordance with para 5.1 of the Master Circular. Para 5.1 made it mandatory for screening the substitute teachers by a Screening Committee. Substitutes are a class by itself. The Railway Board on being aware of the plight of the substitutes issued its scheme from time to time. By R.B. No.12/91 dated 29.1.1991 the Master Circular was issued consolidating the instructions on the subject of substitutes.....


substitutes. The Substitute Teachers are engaged for unavoidable reasons with prior approval of the General Manager. The scheme provided for conferring temporary status for Substitute School Teachers, which are to be eventually absorbed against regular posts.


8. The proceedings of the Screening Committee itself indicated that the Screening Committee was influenced by considerations which could not have been lawfully taken into account and at the same time disregarded the relevant considerations which were required to be taken account of. The long past service which was for a considerable period and the service profile of the applicant was seemingly overlooked and the Screening Committee sought to decide the fate of the applicant on the basis of the test and eventually selected persons who lacked the eligibility criteria.

9. For all the reasons stated above it is difficult to uphold the order of the respondents in rejecting the claim of the applicant for regularisation of her service in terms of para 5.1 of the Master Circular. On consideration of all the aspects of the matter we, therefore, direct the respondents to reconsider the case of the applicant in terms of the Master Circular for absorption of the applicant on regular basis for the post of Assistant Teacher by the Screening Committee in terms of para 5.1 of the Master Circular dated 29.1.1991 in terms of the order of the Supreme Court. In the event the applicant is found suitable for absorption, the respondent authority is directed to restore the seniority position of the applicant in the post with continuity of service. The respondents are directed.....

directed to complete the aforesaid exercise within two months from the date of receipt of the order.

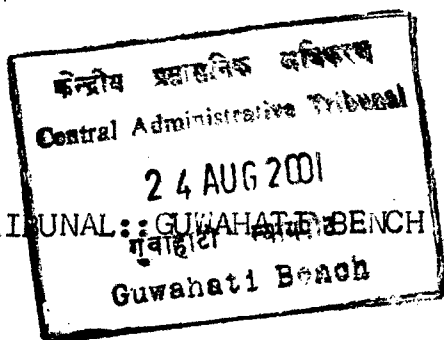
10. The application is accordingly allowed. There shall, however, be no order as to costs.


(K. K. SHARMA)
ADMINISTRATIVE MEMBER


(D. N. CHOWDHURY)
VICE-CHAIRMAN

nkm

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: GUWAHATI BENCH:
GUWAHATI.



O. A. NO. 338 /2001.

Mrs. Mukul Das Applicant.

-Vs-

Union of India and others... Respondents.

I N D E X

<u>Sl. No.</u>	<u>Particulars.</u>	<u>Page No.</u>
1.	Application ...	1 to 13
2.	Verification ..	14
3.	Annexure-I ..	15
4.	Annexure-II ...	16
5.	Annexure-III ...	17
6.	Annexure-IV ...	18
7.	Annexure-V	19 to 22
8.	Annexure-VI ...	23 to 34
9.	Annexure-VII ...	35 to 36
10.	Annexure-VIII ..	37
11.	Annexure-IX ..	38 to 42
12.	Annexure-X ..	43 to 44
13.	Annexure-XI ..	45 to 46
14.	Annexure-XII ..	47
15.	Annexure-XIII ..	48

Filed by:-

Bikram Choudhury
(Advocate)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: GUWAHATI BENCH ::

GUWAHATI .

(An application under Section 19 of the Administrative Tribunals Act, 1985).

O. A. NO. 338 /2001 .

Mrs. Mukul Das

Daughter of Late Mukunda Chandra Das

Desbandhu Pally (PL-8)

P.O. Lumding, District:-Nagaon

... Applicant .

-Vs-

1. Union of India

Represented by the General Manager,

N.F. Railway, Maligaon, Guwahati-11.

2. General Manager (Personnel)

N.F. Railway, Maligaon

Guwahati .

3. Divisional Railway Manager(P)

N.F. Railway, Lumding

District:-Nagaon .

4. Principal

Railway High School, Lumding .

.... Respondents .

contd....

59
Mukul Das.
Filed by the applicant
through Bikram Choudhury
Advocate
24-8-01.

1: PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION
IS MADE :-

- 1) Order No. E/252/43-8(W) dated 6.5.96 issued by the office of the Respondent No.2 whereby on the basis of ~~an~~ August screening test of 6(six) substitute teachers as per Hon'ble Supreme Court judgement the applicant was held to be not suitable .
- 2) Letter No.252/239/pt.IV(W) dated 25.8.2000 issued by the office of the Respondent No.2 informing the applicant that her allegations regarding the screening committee was not correct which infact rejected the representation filed by the applicant .


2: JURISDICTION OF THE TRIBUNAL :-

The applicant declares that the subject matter of the orders is within the jurisdiction of this Tribunal .

3: LIMITATION :-

The applicant further declares that the application is within the limitation prescribed under Section 21 of the Administrative Tribunals Act , 1985 .

contd....



4 : FACTS OF THE CASE :-

1) That the applicant belongs to the Scheduled Caste Community and she is a graduate in Arts and is also B.T. passed .

2) That the applicant was first appointed as a Substitute Teacher in the Railway H.S. School, Lunding on 6.4.79 by letter No. LS/37/LR-P-III dated 5.4.79 .

A copy of the said letter is annexed herewith and marked as Annexure-I .

3) That from time to time the applicant's services were terminated and she was again re-appointed. The applicant has been in continuous service since 23.2.1988 upto 11.11.1994. Even prior to this the applicant had been in continuous service with artificial breaks of 2 to 7 days and sometimes for the duration of the school vacation and other normal breaks in the academic year. The artificial nature of the gaps will appear from a chart showing the working particulars of the applicant which is annexed herewith and marked as Annexure-II.

4) That the Controlling Officer of the Railway H.S. School, Lunding by his order dated 23.5.88 granted temporary status to the applicant w.e.f. 8.5.88 and from that date she was entitled to get all benefits as admissible to the temporary railway staff .

A copy of the order dated 23.5.88 is annexed herewith and marked as Annexure-III.

contd...

4.

5) That the applicant begs to state that in terms of the existing instructions the respondent authorities are required to constitute from time to time, Screening Committees for the purpose of regularisation of Substitute Teachers who had acquired temporary status and such screening committees had regularised the services of the Substitute Teachers . Such exercises were carried out in 1977 and in 1984 but at that stage the applicant was not eligible as she had not yet attained temporary status. Unfortunately , the respondents had failed and neglected to constitute such screening committees since 1984 though there were a large number of Substitute Teachers holding temporary status and had been continuously working in the school . The applicant and other teachers had represented to the authorities for regularisation of their services but the applicant by letter dated 22.11.89 from the office of the Chief Personnel Officer, Maligaon was informed that her representation have been carefully examined but regretted to inform that her request for regularisation could not be considered as per decision taken by the General Manager on 19.8.86 .

6) That the applicant continued to serve as Substitute Teacher *hoping* that in view of her long service she would be ultimately screened and regularised. As such she was surprised to receive letter No. LS/ 37/ LR/pt-V dated 31.5.90 from the Principal, Railway H. S. School Lumding (Respondent No.4) whereby the applicant

contd...

Agd

23
5.

was simply informed that her services as Substitute Teacher was terminated w.e.f. 12.6.90 .

A copy of the letter dated 31.5.90 is annexed herewith and marked as Annexure-IV.

7) That being highly aggrieved by such wrongful and arbitrary termination your applicant on 5.6.90 filed an application before this Hon'ble Tribunal challenging the termination and praying that she be regularised with immediate effect . The applicant had also prayed pending disposal of the applicant the operation of the order of termination be stayed and the same was numbered as O.A. 85/90 . Similar applications were filed by some other teachers also and this Hon'ble Tribunal took up the hearing of the interim matter in the applicant's case and also in the case filed by Smt. Anupama Bhowmick (O.A.84/90) on 21.6.90. The Hon'ble Tribunal by order dated 21.6.90 had stayed the termination order w.e.f. 2.6.90 and the applicant continued in service.

A copy of the order dated 21.6.90 is annexed herewith and marked as Annexure-V.

8) That the case finally came up for final hearing on 31.10.94 and this Hon'ble Tribunal by following the judgement dated 31.10.94 in O.A.149 (G) of 1989 (Smt. Joyshree Deb Roy -Vs-Union of India) rejected the application and vacated the interim orders.

Copies of Judgement dated 31.10.94 in O.A. 149(G)/89 and O.A.85/90 are annexed herewith and marked as Annexure-VI and VII respectively.

contd...

24
6.

9) That , in pursuance, to the judgement passed by this Hon'ble Tribunal, the Controlling Officer, Railway H.S. School, Lunding by his order No. LS/37/pt IV dated 11.11.94 terminated the services of the applicant as Substitute Teacher from that date .

Copy of the order dated 11.11.94 is annexed herewith and marked as Annexure-VIII .

10) That the applicant begs to state that the terms and conditions of Substitute Teacher are contained in Chapter 23 of the IRFM, 1960 and also in various letters and circulars issued from time to time from the Railway Board . The relevant instructions have been collected and consolidated in a Master Circular No. E(NG)/90/SD/Master (Circular) dated 29.1.91 by the Railway Board and the applicant craves leave of the Hon'ble Tribunal to produce rely on the same at the time of hearing .

11) That the applicant being highly aggrieved by the judgement passed by the Hon'ble Tribunal filed a Special Leave petition in the Hon'ble Supreme Court which was numbered as SLP(Civil)No. 1949 of 1995 (Civil Appeal No. 9427 of 1992) . Some other teachers had also filed SLPs and all those 6 cases were taken up for hearing together on 13.10.95 . The Hon'ble Supreme Court allowed the appeals and the judgement dated 31.10.94 passed by this Hon'ble Tribunal was set aside

contd...

Ans

with the direction that the applicant and others shall be considered for absorption on regular basis by a Screening Committee in accordance with para 5.1 of the Masters Circular dated 20.9.1991 and in case the applicant and others were found suitable for such absorption they shall be restored to the post held by them with continuity in service .

Copy of the judgement dated 13.10.95 is annexed herewith and marked as Annexure-IX.

12) That, in pursuance, to the said judgement the applicant alongwith the other 6 candidates were by letter dated 23.1.95 directed to appear in the screening test to be held in the form of written examination followed by viva-Voce^{and} the written examination was to be held on 17.2.96. The applicant duly appeared in the written test and by letter dated 21.3.96 she was informed that she had passed the written examination and she was directed to appear in the Viva-Voce to be held^{on} 29.3.96.

Copies of the aforesaid two letters are annexed herewith and marked as Annexure-X and XI respectively.

13) That the Respondent No.2 by his letter No. E/252/43-8(W) dated 6.5.96 informed the results of the screening test and in the said result the applicant was held to be not suitable .Out of the 6 candidates

contd...

Dec

8.

only 3 candidates were found suitable and the other 3 including the applicant were not found suitable .

Copy of the letter dated 6.5.96 is annexed herewith and marked as Annexure-XII.

14). That the applicant on 26.6.96 , submitted a representation to the Respondent No.1 praying that the matter be reviewed and she be absorbed .The applicant, thereafter, had represented at all levels but there was no response whatsoever. The applicant after submitting reminders then received letter E/252/239/pt.IV(W) dated 25.8.2000 from the office of the Respondent No.2 whereby the applicant was informed that she was screened by a duly constituted committee but that she was not found suitable and as such her question of absorption on regular basis did not arise .

Copy of the letter dated 25.8.2000 is annexed herewith and marked as Annexure-XIII.

15) That the applicant begs to state that the Screening Committee constituted after the judgement of the Hon'ble Supreme Court consisted of the following members :-

- 1) Sri T. Rabha, Deputy Member Secretary, RRB/ Guwahati.
- 2) Sri A.K. Brahma, Deputy CPO/Maligaon.
- 3) Smt. Maiti Brahma, Deputy CPO/Maligaon.

contd...

Dad

16) That the applicant begs to state as per clause 5.1 - Substitutes, who have acquired temporary states should be screened by a Screening Committee and not be Selection Boards, constituted for this purpose before being absorbed in regular Group 'C' (Class-III) and Group 'D' (Class-IV) posts.

Such a screening committee should consist of at least three members, one of whom should belong SC/ST communities and another to minority communities .

(Board's letter No. E(NG)II/83RR-1/7 dated 1.6.83).

17) That the applicant begs to state that during the long years she served the railway administration as a Substitute Teacher she has been carrying out her duties sincerely and to the best of her abilities and there was ^{any} ^{remains} not ~~adverse~~ with regard to her teaching duties and there can be no justification for holding the applicant as not suitable. In point of fact at least two of the persons found suitable were junior to the applicant as per the number of days served .

18) That the applicant ^{has} exhausted all her resources while pursuing the case from the Hon'ble Tribunal to the Apex Court and she did not had the resources to approach this Hon'ble Tribunal. However since a great injustice has been done to the applicant and that to in a most

contd...

27

JRS not made
pg.

27

illegal and arbitrary manner she has somehow managed to approach this Hon'ble Tribunal and prays that relief may be granted to her. The applicant is an unfortunate divorcee and her father has already expired and she has no other alternative source of livelihood .

5 : GROUND'S FOR RELIEF WITH LEGAL PROVISIONS :

I) For that the Screening Committee while considering the case of the applicant did not take into consideration, the relevant considerations i.e. length of service, experience and post service records while holding her not suitable and as such the finding of the Screening Committee is bad in law and is liable to be set aside.

II) For that the persons selected were junior to the applicant inasmuch as there length of service is much less than the applicant and as such the finding of the Screening Committee is bad in law and is liable to be set aside .

III) For that the applicant belongs to the Scheduled Caste Community and the Screening Committee and the appointing authority did not at all stage took this aspect of the matter into consideration and as such the finding is bad in law and is liable to be set aside .

IV) For that as per the Hon'ble Supreme Court order, 6 posts of teachers were kept reserved for the applicant and others who had approached the Hon'ble Supreme Court and as such the applicant was entitled to one of

contd...

Del

11.

the said post being a Scheduled Caste candidate and that not having been done the impugned action is bad in law and is liable to be set aside .

V) For that the Screening Committee was not constituted in terms of the Hon'ble Supreme Court judgement and clause 5 of the Master Circular inasmuch as no member from the minority community was included in the Screening Committee and as such the findings arrived at by the Screening Committee is bad in law and is liable to be set aside .

VI) For that the Screening Committee held the screening in a most illegal and arbitrary manner by not considering the case of the applicant who belonged to the Scheduled Caste community though there were 6 posts and only 3 persons were found suitable to be absorbed .

VII) For that in any view of the matter the impugned selection is bad in law and is liable to be set aside.

6 : DETAILS OR REMEDY EXHAUSTED:-

The applicant has submitted a representation appeal against her non selection and the same was rejected by order dated 25.8.2000.

contd...

[Handwritten signature]

7 : DECLARATION :-

That the applicant further declares that he has not previously filed any application/Writ petition .Or suit regarding the matter in respect of which this application has been made before any Court of law or any other authority or any other Bench of this Hon'ble Tribunal and no such application/writ application or suit is pending before any of them .

8 : P R A Y E R :-

1979

It is, therefore, prayed that Your Lordships would be pleased to admit this application, call for the entire records of the case, including the minutes of the screening committee meeting, ask the respondents to show cause as to why the impugned orders dated 6.5.96 (Annexure-XII) and 25.8.2000 (Annexure-XIII) should not be set aside and as to why a direction should not be issued to absorb the applicant in Railway Service and after perusing the causes shown, if any and hearing the parties be pleased to set aside the impugned orders dated 6.5.96 (Annexure-XII) and 25.8.2000 (Annexure-XIII) and issue direction as prayed for and /or pass any other order/orders as Your Lordships may deem fit and proper.

And for this act of kindness, the applicant, as in duty bound, shall ever pray.

contd...

Das

13.

9 : INTERIM ORDER, IF ANY, PRAYED FOR :-

NIL.

10 : Does not arise, the application will be presented personally by the Advocate of the applicant .

11 : PARTICULARS OF THE BANK DRAFT/POSTAL ORDER IN RESPECT OF THE APPLICATION FEE :-

I.P.O. No. 761548872 dated 24.8.2001
issued by Guwahati Post Office Payable at Guwahati
is enclosed.

12 : LIST OF ENCLOSURES :-

As stated in the Index .

contd...

VERIFICATION

I, Mrs. Mukul Das , daughter of Late Mukunda Chandra Das , aged about 46 years , Desbandhu Pally (PL-8) P.O. Lumding, District:-Nagaon (Assam), do hereby, verify that the statements made in paragraphs No. 1, 5, 15 17 and 18 are true to my personal knowledge and the statements made in paragraphs No. 2, 3, 4, 6 15 14 and 16 are believed to be true on legal advice and that I have not suppressed any material fact .

Place :- Guwahati

Date :- 24.8.01 .

Mukul Das.
Signature of the Applicant .

.....

NO. LS/37/LR-P-III Co Rly School
dt 5.4.77 5.4.79 Lunding

To

Mrs Mukul Das,

C/o Sri Mukunda Das, Dak Corried /LMG

Qr. No H/15-A, HRLF Colo ny

Dak Carried, /LMG

Sub : Appointment

You are hereby appointed subs teacher in scale 260-400/ on Rs 260/ P.M. w.c.f. 6.4.79 against leave vacancy of Mrs M.R.Das Gupta, Asstt. teacher on leave, for a period up to three months or till Mrs. Das gupta joins her duty which ever is earlier.

This will not confer on your any claim for regular absorption on the Rly & your service will be terminated at any time without notice. If you are agreeable please give your consent before joining the appointment.

Copy to DAD/LMG

E/Bill at office.

Witnessed by
Bikram Choudhary
for DAD

at perimer
198
Landing

TO WHOM IT MAY CONCERN

This is to certify that Smt. Mukul Das, Asstt. Teacher(substitute) of this school has been working here since 6.4.79 from time to time with the following break-ups :-

1. 6.4.79 to 5.5.79
2. 29.8.79 to 04.09.79
3. 12.09.80 to 27.09.80
4. 02.03.81 to 31.03.81
5. 02.04.81 to 30.06.81
6. 16.08.82 to 22.10.82
7. 03.03.83 to 18.06.83
8. 18.08.83 to 04.11.83
9. 07.11.83 to 04.01.84
10. 21.02.85 to 29.06.85
11. 23.11.85 to 17.12.85
12. 24.04.86 to 04.05.86
13. 21.03.86 to 02.04.86
14. 08.05.86 to 30.06.86
15. 26.08.86 to 06.10.86
16. 13.11.86 to 30.12.86
17. 07.02.87 to 07.03.87
18. 10.03.87 to 06.04.87
19. 21.04.87 to 20.06.87
20. 23.06.87 to 04.07.87
21. 10.08.87 to 17.09.87
22. 19.09.87 to 25.09.87
23. 04.02.88 to 11.11.94

15/11/95
Principal,
Rly. H.S. School, Landing
बस/Principal
रेल्वे एस. स्कूल
Railway H. S. School
बस/Principal

Sikranta Choudhury

N..F. Rly

Office of the
Controlling Officer,
Rly GS School /LMG

Office order :

Smt A Bhowmick & Mrs. Mukul Das, Substt.
Teacher who are working in this school in scale
1200-2040/-, appointed under this office order No
LS/37/LR-Pt.VI dt 30.1.88, are hereby granted
temporary status w.e.f. 7.5.88 & 8.5.88
respectively and as such they are entitled to
get all benefits as admissible to temporary
Rly. staff.

This has the approval of DRM/DMG.

No.LS/37/LR-Pt.VI dated 23.5.88

X Controlling Officer
Rly HS School/LMG

Copy to

1. CPO/ 2. DPO/LMG 3. DAO/LMG
4. Teacher concerned,
5. E/Bill at office.
6. spare copies for p/case.

Controlling officer,
Rly.HS School/LMG

Attested by

Sikram Choudhary
ASSTANT

26

N.F. RAILWAY

NO. LS/37/LR/Pt-V

Dt : 31.5.90

OFFICE ORDER

To

Smt Mukul Das, Substitute Teacher

Railway Higher Secondary School, Lunding

In terms of CPO/ PNO's XXR No E/252/239/pt-III(w)
dated 28.5.90 communicated vide DRM(P)'s letter
No E/252/24/LM(W) dated 28.5.90 your services as
substitute teacher is hereby terminated w.e.f.
2.6.90 (AN)

Principal

Railway Higher Secondary School

Lunding.

Attested by
Bikram Choudhary
Principal

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : : GUWAHATI - 5

O.A. 84/90 & 85/90

Smt. Anupama Bhowmick

Smt. Mukul Das. Applicant Vs. U.O.I. & Ors.

B E F O R E

THE HON'BLE SRI K.P. ACHARYA VICE CHAIRMAN

THE HON'BLE SRI J C ROY MEMBER (A)

For the Applicant : Mr B Malakar, Adv.

For the respondents: Mr S Huda, Adv

Date

Order

21.6.90

This common order will govern both the cases mentioned above.

In O.A No 84/90 Smti. Anupama Bhowmick was appointed as a Substitute Teacher in the Railway Higher Secondary School, Lujding on 27.3.1984 vide Annexure 'A' In O.A No 85/90 Mrs Mukul Das was appointed as a substitute teacher in the same school with effect from 6.4.1979 petitioners in both the cases have been continuing as such with certain interruption but with continuous services from 30.1.86 till 2.6.90 (FN). Petitioner in both the cases had been in continuous service in the said school, as teachers and they have been

- 2 -

given temporary status as evident from the Annexures to the petitions in both the cases. The services of the petitioners in both the cases has been terminated with effect from 2.6.90. Feeling aggrieved by these orders of termination Smt. Bhowmick filed an application under section 19 of the Administrative Tribunals, Act 1985 forming subject matter of OA84/90 and Mrs Mukul Das filed a similar application which formed subject matter of OA 85/90. Both these applications were admitted for hearing and filing of counter is awaited. On 5.6.90 Mr. Malakar moved on behalf of the petitioners in the both cases for issuance of interim orders to the extent that the orders of termination should be stayed. This prayer is for issuance of interim orders was heard on 5.6.90 by a Single Judge and the learned Single Judge rejected the prayer of the counsel for the reasons stated herein. Today, the prayer of the same nature has been renewed by Mr Malakar before the Division Bench on the ground that exactly in similar matters, one of which is subject matter of OA 91/90 and so also in another case the Division Bench has stayed operation of the termination order in respect of similar substitute teacher, who have gained temporary status. Mr. Malakar submitted on behalf of the petitioners in both the cases that the Division Bench should reconsider the matter and not set aside the order of the single judge, give

- 3-

similar relief to the petitioners in both the cases as given in OA 91/90 . This prayer of Mr Malakar was stiffly and vehemently opposed by Mr S Huda, the learned counsel for the Railway Administration on the ground that the Single Judge had taken a very correct view which should not be unsettled by the Division Bench. After giving our anxious consideration to the arguments advanced at the Bar we are of opinion that once the Division Bench has taken a particular view which is not in conformity with the view taken by the Single Judge. the view of the Division Bench must prevail over the view of the Single Judge. The Division Bench must prevail having once taken a contrary view in OA 91/90 we find no reason to make departure from the same view in the present cases as the facts are exactly parties that till the final disposal of these application the termination orders passed by the concerned authority terminating the services of Smt. Anupama Bhowmick and Mrs Mukul Das are hereby stayed and this stay order would be effective from 2.6.1990. ✓

Send a copy of this order by Regd. post with A/D to the OP Nos 2 and 3 in both the cases and a copy of this order be made available to the

- 4 -

counsel for the both sides so that Mr Huda may communicate with the concerned authority. If necessity arises the petitioners may produce a copy of this order before the concerned authority to take further action.

Mr Malakar had filed attested xerox copies of the termination orders today, which may form part of the record. He undertakes to file the original at the time of hearing.

Sd/- K.P. Acharya

Vice.Chairman

Sd/- J C Roy

Member (A)

Attested by
Bikram Choudhury
ADVOCATE

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.149(G) of 1989

Date of decision: This the 31st day of October 1994.

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Smt Jayasree Deb Roy (Dutta)
Substitute Teacher,
Railway H.S. School, Lumding,
N.F. Railway, Lumding, Assam.

.... Applicant

By Advocate Shri J.L. Sarkar

-versus-

1. The Union of India
(Through the General Manager,
N.F. Railway, Guwahati)
2. The Controlling Officer,
Railway H.S. School, Lumding,
N.F. Railway, Lumding.
3. The Principal,
Railway H.S. School, Lumding,
N.F. Railway, Lumding.

By Advocate, Shri B.K. Sharma.

.....

ORDER

CHAUDHARI.J. V.C.

The applicant has filed this application on the basis of apprehension that her temporary service may be terminated by the respondents at any time. However, she also ~~presented~~ ^{presented} for regularisation of her service as substitute teacher.

2. The applicant holding B.A., B.T. degree was appointed as Substitute Teacher in the grade of Rs.440 - 750 in Railway School, Lumding, N.F. Railway. She

-2-

was so appointed as applications for Assistant Teachers as substitute were invited and she had appeared at the viva-voce test. The appointment was purely temporary and was liable to be terminated at any time without notice. She joined the service on 2.3.1981. Thereafter, she was given intermittent breaks in the service and was reappointed from time to time and in that manner she has put in service for more than three years five months as Assistant Teacher.

3. By office order dated 6.5.1988 issued by the Controlling Officer, Railway H.S. School, Lunding, the applicant was granted temporary status with effect from 13.3.1988 and the order provides that she is entitled to all benefits as admissible to temporary Railway Staff.

4. In the year 1989 she was once again called for interview for the panel of Substitute Teachers and her service has been continued as Substitute Teacher vide letter dated 18.3.1989, Annexure-D. Her scale at the time of filing the application on 3.10.1989 was Rs.1200 - 2040 (RPRS). The applicant submits that as she has been working for more than three years and has got temporary status and was found capable twice in viva-voce test and further as she has now become overaged for employment and she has no scope for fresh appointment elsewhere her service may be treated as regular and she be treated as regular employee. She has also prayed that her services should not be terminated. She had made prayer for regularisation in her representation filed before the Chief Personnel Officer, N.F. Railway on 8.9.1991, Annexure-E, but as her services were not regularised she filed the application.



5. An interim order to maintain status quo was initially passed on 4.10.1989. That was made absolute on 16.11.1989. As a result thereof the applicant has continued to be in service uptill now. The respondents have filed Misc. Petition No.74/93 on 22.7.1993 for vacating the interim order contending that the order has caused lot of administrative inconvenience and it has become difficult to accommodate the regular incumbents who have come through positive act of selection by the Railway Recruitment Board and it is also resulting in the Government being made to incur extra expenditure on the applicant although the regularly selected candidates are waiting and thus public money is being wasted. Mr B.K. Sharma, learned Railway Counsel, informed us that a select list has been prepared and the selected candidates are waiting for their appointment which cannot be done by reason of pendency of the present application and other applications which are being heard alongwith this application.

6. The applicant submitted some documents with the leave of the Tribunal alongwith her application dated 7.11.1989. In that application she has made an additional grievance that some substitute teachers who are junior to her are still continued in service. However, on her own showing these are all substitute teachers and her service was not terminated till the application was filed. The Annexures to the application under ^{which} gaps were given in the service of the applicant from time to time do show that on most of the occasions her service was terminated in the wake of puja holidays and she was subsequently reappointed. The apprehension of the applicant that the interim order of

being.....

vacated her service is likely to be terminated as the respondents have already prepared a select list for regular appointees cannot in the circumstances be said to be unfounded.

7. The respondents vehemently oppose the application. They inter alia contend in the written statement that in accordance with the relevant rules and in terms of the note against para 2318 of IREM the conferment of temporary status on the substitutes does not entitle them to automatic absorption/appointment to Railway service unless they are selected in the approved manner for appointment to regular Railway post and that in accordance with this rule substitute teachers are engaged with clear understanding that such engagements will not confer any right on them to claim for regularisation and that they should take it that their services will be terminated at any time on resumption of approved candidates. According to the respondents the mere fact that temporary status is conferred after three months continuous service and benefits available to temporary Railway servants are extended the substitute teachers cannot claim regularisation as a matter of right. They, therefore, contend that the applicant is neither entitled to be regularised nor is entitled to be called for a screening test. Thus according to the respondents the application has no merit and is liable to be rejected.

8. The contentions of the applicant which are ^{projected} purported before us by Mr J.L. Sarker are as follows:

The breaks given in her service from time to time are artificial gaps, even so she has worked for more than three years five months. She was twice interviewed and was found suitable. She was granted temporary status. She was

also extended facilities of free medical treatment and other privileges of Railway servants. Earlier services of the substitute teachers have been regularised by holding screening test. Having regard to the length of service she has put in and earlier policy of the Railways to regularise the services of such substitute teachers if the service of the applicant is to be terminated that shall be violative of Articles 14 and 16 of the Constitution of India and it will not be just and fair to recruit others by terminating her service only because she was ^{is a} terminated as substitute teacher. There are vacancies to which she can be justly appointed on regular basis.

9. In the light of the contentions of the parties as noted above the point that arises for consideration is as to whether the applicant can compel the respondents to regularise her service as an Assistant Teacher as a matter of legal right.

10. Admittedly, the initial appointment of the applicant was as substitute teacher in the grade pay of Rs 40 - 750/- with the condition that it will not confer on her any claim for regular absorption and that her service will be liable to be terminated at any time without any notice. Annexure-A to the application which sets out the periods of service of the applicant as substitute teacher yearwise from March 1981 upto 25.1.1989 shows that between the period from 15.12.1987 to 25.1.1989 she had continuously worked for 408 days. Although she was continuing from 26.1.1989 her continuation after filing of the application on 2.10.1989 would be regarded as by virtue of the interim order. The maximum period at any given time in the earlier years was 61 days.

Everytime....

bulk

Everytime the applicant was reappointed after a gap it was provided in the order that the appointment was purely temporary and liable to be terminated at any time without any notice as can be seen from Annexures - I to K. It may be mentioned that the appointment of the applicant was to Group 'C'/Class III post.

11. Mr J.L. Sarkar, the learned counsel for the applicant, relies on para 1515 of the Railway Establishment Manual read with para 123 of the Railway Establishment Code and contends that substitutes who have rendered continuous service of three months are entitled to be regularised. Mr B.K. Sharma, learned Railway Counsel, however disputes this proposition and submits that there is difference between temporary status holder and temporary Railway servants. In his submission automatic regularisation after continuous service of 90 days will result in creating a chaotic situation and will give a go-by to the process of selection in the prescribed manner.

12. In this connection reference may be usefully made to the Full Bench decision of the Central Administrative Tribunal in the case of Jetha Nand and others -vs- Union of India and others (Full Bench Judgments of CAT 1986-89 353). The question that was placed for consideration before the Full Bench was whether employees working on adhoc basis for more than 18 months could be regularised even if they have not passed the test and whether they have a right to be regularised merely because their work is satisfactory and a period of more than 18 months had elapsed. The applicants in that case were also Railway employees. The Full Bench was pleased to notice the Railway Board Circular dated 9.6.1965,

Rules....

✓

Rules 109 and 110 of the Indian Railway Establishment Manual and other ^{related} relative provisions and noticed the case law on the point. The ratio laid down by the Full Bench is that the cardinal principle to regularise adhoc employee is that he must have qualified in the selection test to become suitable for the post. It was held that the Circular dated 9.6.1965 applied only in the case of those Railway servants who have been selected or empanelled for the promotional post and that the basic feature is that the Railway servant should first be qualified and found suitable in a test to be entitled to be empanelled for appointment to a post. It is only then that he acquires a prescriptive right to hold the post. It was further held that suitability test was mandatory before the service of Class IV employees could be regularised in Class III post. The decision, however, related to Class IV employees, whereas the applicant is a Class III employee. However, to the extent that it is essential for claiming regularisation that the employee should have been found suitable by a test to be empanelled for appointment to a post could be applicable even in the instant case. In this connection it is pertinent to note that Rule 216 of the Railway Establishment Code provides the mode of selection even for Class III posts only through the Recruitment Board.

"216.(1) Group C and Group D posts on Indian Railways and other Railway Administrations ~~shall be~~ filled in either of the following ways according to the relevant recruitment rules or other extant orders, if any-

- i) by direct recruitment
 - ii) by promotion
 - iii) by transfer of suitable staff, if necessary, from other Government offices.
- (2) Direct recruitment to Railway Services, Group C shall be made through the agency of the Railway Recruitment Board unless otherwise specially authorised by the Railway Board."

13

Mr J.L. Sarkar sought to rely on the master circular issued by the Railway Board dated 3.8.1992. Mr B.K. Sharma, however, rightly pointed out that the circular has no application to the applicant who is not a temporary Railway servant but is merely a holder of temporary status. The question has been squarely dealt with by the Gauhati High Court in the order on Misc. Case No.444 of 1994 in Civil Rule No.3114 of 1993 decided on 21.6.1994. A grievance was made in that case by the applicant that although he was selected for the regular post, by reason of order of interim stay granted in the Civil Rule he was not being appointed and the stay should be removed. It was held that the law on the point is settled by a recent decision of the Supreme Court reported in (1994) 2 SCC 630 as also in IV - 1994(1) AISLJ (SC) 219 (J & K Public Service Commission -vs- Dr Narinder Mohan & Ors) where the Supreme Court pointed out as follows:

"Therefore, adhoc employees should be replaced as expeditiously as possible by directly recruited recruits. A little leeway to make adhoc appointment due to emergent exigencies, does not clothe the executive Government with power to relax the recruitment or to regularise such appointment or to regularise such appointment nor to claim such appointments to be regular or in accordance with rules. Back door adhoc appointments at the behest of power source or otherwise and recruitment according to rules are mutually antagonistic and strange bed partners. They cannot co-exist in the same sheath. The former is in negation of fair play. The latter are the product of order and regularity. Every eligible person need not necessarily be fit to be appointed to a post or office under the State, selection according to rules by a properly constituted commission and fitment for appointment assures fairness in selection and inhibits arbitrariness in appointments."

It was noted that the Supreme Court also considered in

that case State of Haryana -vs- Piers Singh (1992) 4 SCC 118

and pointed out as follows:

"Therefore, this court did not appear to have intended to lay down as a general rule that in every category of adhoc appointment, if the adhoc appointee continued for long period, the rules of recruitment should be relaxed and the appointment by regularisation be made.
....."

and further in the case of *Panna Singh* the Supreme Court printed out:

"That the normal rule in recruitment is through the prescribed agency but due to administrative exigencies, an adhoc or temporary appointment may be made. In such a situation, this court held that efforts should always be made to replace such adhoc or temporary employee by regularly selected employees, as early as possible. The temporary employees also would get liberty to compete alongwith others for regular selection but if he is not selected, he must give way to the regularly selected candidates. Appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such adhoc or temporary employee."

In view of these pronouncements of the Supreme Court the order of stay was vacated in that case.

13. It appears to us that the above decisions of the Supreme Court which we have also independently considered conclude the position of law and that affords a complete answer to the claim of the applicant. Since there is no dispute on the point that the posts of Class III are to be filled in by selection by Recruitment Board and the process has already been completed and a select list has also been prepared that the applicant cannot claim the relief sought as a matter of legal right.

14. Mr J.L. Sarkar, however, made an impassioned plea that as it is a salutary rule that law takes notice of what ought to have been done and in as much as by reason of length of service the applicant has rendered and otherwise

also she is found suitable to be appointed as a teacher on regular basis, equity, fairness and policy of equality requires the applicant to be considered for regularisation before a direct recruit is appointed. In addition to that he points out the circumstances that the applicant has become overaged for employment elsewhere and that it would be very harsh upon her if her service is to be terminated now on the ground that she has been appointed temporarily as a substitute teacher. We think that although we may share the anxiety of the learned counsel we cannot help the applicant having regard to the position of law as is firmly settled in view of the judgments of the Supreme Court referred to above which were also relied upon by the Gauhati High Court. It is not a case where we can call in aid our inherent powers. It is, therefore, needless to refer to the several decisions cited by Mr J.L. Sarkar to persuade us to lean in favour of the applicant as we do not think that it would make any difference to the settled position of law. We may usefully refer to the circular of the Railway Board No.E(NG)II-89/RC-3/2 (RBE No.58 of 1989) dated 22.2.1989 relating to the subject of Engagement of Substitute Teachers on adhoc basis on Railways. ~~is also relevant to be noted.~~ That deprecates the practice of the Railways in not following the clear instructions and substitute teachers continue to be engaged on adhoc basis

for....



for long periods from among candidates, not on the approved panel and without going through proper selection procedure.

15. The sum and substance of the above discussion is that in as much as the posts of Class III teachers are required to be filled in accordance with the prescribed procedure through the Selection Board that requirement cannot be dispensed with by conferring right on the adhoc appointees although with temporary status to be preferred over the selected candidates. On merits, therefore, the application must fail.

16. However, we notice that the applicant is a lady teacher. She is very ^{well} qualified. Her service was found to be satisfactory. She has worked although as a substitute teacher for a considerable length of time. She apparently has become overregeed to secure any other appointment. Rightly or wrongly, she has continued to be in service uptill now. Termination of her service will result in her being deprived of her source of income for her livelihood. These circumstances do require some sympathetic consideration by the respondents. We can, therefore, only suggest that the respondents shall not deprive the applicant of the opportunity to appear before the Selection Board if she would be otherwise eligible as and when such a selection is made and the respondents shall try to accommodate her even on temporary basis if there happens to be any casual vacancy available from time to time and for that purpose she may be placed on waiting list of substitute teachers, keeping in view the circular of the Railway Board dated 22.2.1989(Supra) which contemplates preparation of a regular panel for anticipated vacancies for appointing substitute....

: 12 :

substitute teachers. With these observations we dismiss the application as no relief in terms as prayed is capable of being granted to the applicant.

17. In the result the application is dismissed. However, in the circumstances of the case there will be no order as to costs. The interim stay is vacated.

18. The Misc. Petition No.74/93 is consequently disposed of with no separate order thereon.

Sd/- M.G.CHAUDHARI
VICE CHAIRMAN

Sd/- G.L.SANGLYINE
MEMBER (ADMIN)

TRUE COPY

M. G. Chaudhary
3/11/95

Section Officer (J)
आचार्य सहायक / सहायक आचार्य
Central / District Education Office, Bhopal
गवर्नर, मध्य प्रदेश, भुवनेश्वरी-5
गवर्नर, मध्य प्रदेश, भुवनेश्वरी-5

[Signature]
3/11/95

-35-

53 VII

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No.85 of 1990

Date of decision : This the 31st day of October 1994

The Hon'ble Justice Shri M.G. Chaudhari, Vice-Chairman

The Hon'ble Shri G.L. Sanglyine, Member (Administrative).

Smt Mukul Das
Substitute Teacher
Railway H.S. School, Lumding,
Assam.

.... Applicant

By Advocate Shri J.L. Sarkar, M. Chanda
and B. Malakar.

-versus-

1. The Union of India
(Through the General Manager,
N.F. Railway, Maligaon.
2. The Divisional Railway Manager(P),
N.F. Railway, Lumding
3. The Controlling Officer,
Lumding Railway H.S. School,
Lumding, Assam.

.... Respondents

By Advocate Shri B.K. Sharma.

....

ORDER

CHAUDHARI.J. V.C.

The applicant who was appointed as Substitute Teacher with the Railways on temporary basis prays by this application that her service be regularised as a Teacher. Her grievance is that she has good academic qualification and was initially appointed as Substitute Teacher on 6.4.1979 and she has put more than $4\frac{1}{3}$ years continuous service with intermittent breaks. She submits that she is, therefore, entitled to be considered for regularisation.

W

Her grievance is also that no screening test was held for her. She has also appeared in the recruitment test held by the Railway Recruitment Board and had qualified in the written test. She was not considered in the viva-voce test. She contends that the respondents are proceeding to recruit fresh candidates to the post in which the applicant and other substitute teachers have been working with efficiency and that is highly irregular and unconstitutional.

The application was filed on 1.6.1990. It appears that the service of the applicant was actually terminated on the same day, i.e. 1.6.1990 on which date the application was filed. On 21.6.1990 an interim order was passed directing the opposite parties that till final disposal of the application (and other applications) the termination order may not be given effect to. It appears that by virtue of that order the applicant is continuing in service.

2. The facts in this case as well as the contentions urged are similar to those involved in O.A.No.149(G)/89. We have rejected that application by a detailed judgment and for the same reasons we dismiss this application.

However, the observations made in the operative portion of the order in O.A.No.149(G)/89 shall also be applicable to the present applicant. There will be no order as to costs.

3. A copy of the order passed today in O.A.No.149(G)/89 shall be placed on record of this application.

4. The interim order is vacated.

Sd/- M.G.CHAUDHARY
VICE CHAIRMAN

Sd/- G.L.SANGLYINE
MEMBER (ADMN)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

Sub. Officer (J)

ADMINISTRATIVE

VIII

N.F. RAILWAY

Office of the
Controlling Officer,
Railway HS School
Lumding.

No . LS/37/Pt VI

11.11.94

To

Smt. Mukul Das,
Rly. HS School,
Substitute Teacher,
Lumding.

Sub :- Termination of service as Substitute
Teacher vis-a-vis O.A.No 85(G) /90
before the Hon'ble CAT-Guwahati.

The Hon'ble Tribunal/Guwahati Bench heard
the abovementioned case on 31.10.94 and passed
orders vacating the 'Stay' granted earlier and the
Hon'ble Tribunal has also dismissed the case
filed by you.

In compliance with the judgment delivered on
31.10.94, your services as Substitute Teacher
is terminated from the date of issue of this
letter.

Controlling Officer,
Rly. HS School, Lumding

Attested by
Bikram Choudhury

ANNEXURE-IX
(TYPED)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 9424 OF 1995 .

(1)

(arising out of S.L.P. (Civil) No. 1946 of 1995)

Smt. Jayashree Deb Roy (Dutta)

... Appellant

-Versus-

Union of India & Ors.

... Respondents

WITH

CIVIL APPEAL NO. 9425 OF 1995 .

(2)

(arising out of S.L.P. (Civil) No. 1947 of 1995)

Mrs. Samita Dutta

... Appellant

-Versus-

Union of India & Ors.

... Respondents

WITH

CIVIL APPEAL NO. 9426 OF 1995 .

(3)

(arising out of S.L.P. (Civil) No. 1948 of 1995)

Mrs. Ratna Roy

... Appellant

-Versus-

Union of India & Ors.

... Respondents

WITH

CIVIL APPEAL NO. 9427 OF 1995 .

(4)

(arising out of S.L.P. (Civil) No. 1949 of 1995)

Mrs. Mukul Das

... Appellant

-Versus-

Union of India & Ors.

... Respondents

Attested by

Sikham Choudhury
Advocate

contd...

WITH

CIVIL APPEAL NO. 9428 OF 1995.

(5)

(arising out of S.L.P. (Civil)No. 1950 of 1995)

Subal Chandra Chakraborty

...Appellant

-Versus-

Union of India & Ors.

...Respondents

WITH

CIVIL APPEAL NO. 9429 OF 1995.

(6)

(arising out of S.L.P. (Civil No. 1951 of 1995)

Mrs. Aparna Das

...Appellant

-Versus-

Union of India & Ors.

...Respondents.

ORDER

Leave granted in all the Special leave petitioners .

The appellants were appointed as Assistant Teachers in the Schools run by the North East Frontier Railway. Originally, they were appointed as. Substitute teachers but subsequently they were conferred temporary status. They were continued in service with short breaks in between. They sought regular absorption but failed. They moved the Central Administrative Tribunal (hereinafter referred to as 'the Tribunal') for appropriate relief. By judgment dated October 31, 1994, the Tribunal has dismissed the applications submitted by the appellants. The Tribunal has held that the petitioners would have to go through

the prescribed procedure of Selection by the Railway recruitment Board for regular appointment on the post of Assistant Teacher .

Shri Raju Ramachandran, the learned counsel appearing for one of the appellants in these appeals, has invited our attention to the Master Circular R. B. No. 12/91 M.C. No.20/91 (No. E(NG)/90/SD/Master (Circular) dated January,29,1991, relating to substitutes in the Railway. In para 5.1 of the said circular provision is made with regard to absorption of substitutes in regular service in the following terms :-

" 5.1 Substitutes, who have acquired temporary status should be screened by a Screening Committee and not be Selection Boards, constituted for this purpose before being absorbed in regular Group 'C' (Class-III) and Group 'D' (Class-IV) posts.

Such a Screening Committee should consist of at least three members , one of whom should belong to the SC/ST Communities and another to minority communities".

The submission of the learned counsel is that in view of the said provision in the circular regular absorption of the appellants has to be made through the process of Screening by the Screening Committee and they are not required to appear before a Selection Board for that purpose. It has been further submitted by the learned counsel that the circular January 29, 1991 has been issued in accordance with the provision contained

contd....

in sub-rule (2) of Rule 216 of the Railway Establishment Code which provides that "direct recruitment to Railway Services Group-C shall be made through the agency of the Railway Recruitment Board unless otherwise specially authorised by the Railway Board ". (emphasis supplied). It appears that reliance was placed on this circular before the Tribunal but the Tribunal held that it was not applicable to the case of the appellants on the ground that the appellants are holders of temporary status and are not temporary railway servants. In taking this view, the Tribunal appears to have committed an error because para 5.1 of the circular speaks of substitutes who have acquired temporary status. There is no dispute, that the appellants are substitutes and they have acquired temporary status. Moreover the order whereby temporary, status was conferred on Smt. Jayashree Deb Roy appellant in Civil Appeal No. _____ of 1995 (arising out of S.L.P. (Civil)-No. 1946/95) is on record which states "as such she is entitled to all benefits as admissible to temporary railway staff". The said order indicates that the conferment of temporary status entitles the person who has been conferred that status to all benefits as admissible to temporary railway staff. The appellants were, therefore, entitled to the benefit conferred under para 5.1 of the circular dated January 29, 1991, and on that basis the appellants are entitled to absorption on regular basis through the process of screening by the Screening Committee in accordance with the said provision and they are not required to face selection by the Railway Recruitment Board for the purpose of regular absorption. The judgment of the Tribunal holding otherwise cannot, therefore, be upheld and has to be set aside. ,

contd....

After the impugned judgment of the Tribunal, the services of the appellants have been terminated. In case the appellants are found suitable for absorption by the Screening Committee, they should be appointed on regular basis on the post that was held by them and they would also be entitled to continuity of service. The appeals are, therefore, allowed, the judgments of the Tribunal dated October 31, 1994 in the applications filed by the appellants are set aside and the said applications are allowed with the direction that the appellants shall be considered for absorption on regular basis on the post of Assistant Teacher by the Screening Committee in accordance with para 5.1 of the Master Circular dated January 29, 1991, and in case the appellants are found suitable for such absorption by the Screening Committee, they shall be restored to the post held by them with continuity of service. The process of Selection by the Screening Committee as per directions in this order shall be completed within a period of three months from the receipt of the copy of this order. A copy of this order be sent to the Chief Personnel Officer, North East Frontier Railway, Maligaon, Guwahati.

By our order dated March 27, 1995, we had directed that appointment may not be made on six posts of school teachers. The said order shall continue till the Screening Committee completes the process of screening.

No costs.

New Delhi
October 13, 1995.

Sd/- Illegible,
(S. C. AGARWAL)

Sd/-
(G. B. Pattanai)

ANNEXURE- X
(TYPED)

N. E. Railway.

No. E / Court / Sube

DRM(P) Office

Lumding, dated 23.01.96

To

- 1) Ms. Jayashree Deb Roy (Dutta),
C/O Shantanu Deb Roy,
Rly. Qrs. No. 779(B), Babu Patty, Lumding.
- 2) Ms. Samita Dutta
C/O Bipul Sarkar, Lecturer
Lumding College, P.O. Lumding
PIN- 782447 .
- 3) Ms. Ratna Roy
C/O A. B. Roy Nandy
Punjab National Bank, Lumding
College Road, Lumding.
- 4) Ms. Mukul Das
C/O Late Mukunda Chandra Das
Deshbandhu Pally (P. L. B.)
Lumding. PIN -762447
- 5) Ms. Aparna Das
C/O Sri Arun Kanti Das
Rly. Qrs. No. 742, Institute Colony
P.O. Lumding, PIN -782447
- 6) Ms. Subal Chakraborty
C/O Shantanu Deb Roy
Rly. Qrs. No. 779(B), Babu Patty
Lumding-PIN -782447 .

Sub :- Screening test consequent upon judgement of
Hon'ble Supreme Court.

Ref:- CPO(W)/MLG's L/No. E/252/239/pt. II(W)
dt. 18.1.96.

You are hereby directed to appear with all original
certificates and testimonials in the screening test to be

contd...

held in the form of written examination followed by Viva-
voce test for regularisation of your service in Railway
as Asstt. Teacher Grade-IV in scale Rs. 1200-2040/- (RPS) if
found suitable .

The written examination will be held on 17.02.96
at 10.00 hrs. in CPO/MLG's office.

Sd/-Illegible,

23/1/96

Copy to :-

- 1) Sr. Personnel Officer(W)/Maligaon for his information pl.
- 2) Principal, Rly. H. S. School, Lunding for information please,
he is also requested to send the service particulars of the
candidates directly to the SPO(W) before hand .

Attested by

Bikram Choudhary
Adversary

Sd/-Illegible,

for D. R. M(P) Lunding.

N. F. Rly. Lunding .

ANNEXURE-XI

(TYPED)

N. F. Railway

No. E/252/239/pt. III(W)

Dated 21.3.96

To

1. Ms. Jayashree Deb Roy (Dutta),
C/O Shantanu Deb Roy,
Rly. Qrs. No. 779(B), Babu Patty, Lumding.
2. Ms. Samita Dutta
C/O Bipul Sarkar, Lecturer
Lumding College, P.O. Lumding
PIN - 782447 .
3. Ms. Ratna Roy
C/O A. B. Roy Nandy
Punjab National Bank, Lumding
College, Road , Lumding .
4. Ms. Mukul Das
C/O Late Mukunda Chandra Das
Deshbandhu Pally (P. L. B.)
Lumding, PIN - 762447 .
5. Ms. Aparna Das
C/O Sri Arun Kanti Das
Rly. Qrs. No. 742, Institute Colony
P.O. Lumding, PIN - 782447 .
6. Mr. Subal Chakraborty
C/O Shantanu Deb Roy
Rly. Qrs. No. 779(B), Babu Patty
Lumding - PIN - 782447 .

Sub :- Screening test consequent upon judgement of
Hon'ble Supreme Court.

You have passed the written examination held
on 17.2.96 for regularisation of your service in Railway as
Asstt. Teacher Gr. IV .

contd...

-2-

You are, therefore, requested to as per in the Viva-
voce test which will be held on 29.3.96 at 13.00 hours in
CIO/MLG's office with all original certificate and testimonials.

Please acknowledge the receipt .

Sd/-Illegible,

.....

Attested by
Bikram Choudhary
Advocate

Office of the
General Manager, M.F. Railway,
Moligon, Cawnpore-201001
No. 2/252/43-2(4)

Moligon, dated 2-5-96.

To: Divisional Personnel Officer,
M.F. Railway,
Ludhiana.

Sub:- Screening test consequent upon Judgment of Hon'ble
Supreme Court in SLP No. 1946, 1947, 1948, 1949, 1950 & 1951.

....
The screening test of six Substitute teachers in the form
of written followed by Viva voce held on 17.2.96 and 24.2.96
respectively for absorption in Railway Service as per Hon'ble
Supreme Courts verdict. The result is shown against each.

- | | |
|-------------------------------|------------------|
| 1. Smt. J. Deb Roy (Dutta) | ... Suitable |
| 2. Smt. Mukul Das | ... Not suitable |
| 3. Smt. Sumita Dutta | ... Not suitable |
| 4. Smt. Patna Roy | ... Suitable |
| 5. Smt. Aparna Das | ... Not suitable |
| 6. Shri Subal Ch. Chakraborty | ... Suitable |

The three suitable Substitute teachers may be directed to
CPO/Moligon's Office with all original certificates and
testimonials immediately for their absorption in Railways
as teacher.

Alahane 6/5/96
(A. Kispotta)
Sr. Personnel Officer (W)
For General Manager (P)

Copy forwarded for information and necessary action to:-

- 1) Controlling Officer, Rly. Primary School/DNR (DMO/DNR). He is requested to inform Shri Subal Ch. Chakraborty as he found suitable in the above screening test and direct to report undersigned immediately.
- 2) Principal, Rly. H.S. School/LMG. He is requested to inform Smt. J. Deb Roy (Dutta) and Smt. Patna Roy vide (1) and (4) above as found suitable in the above screening test and direct to report undersigned immediately..
- 3) All ex. Substitute Teachers concerned.

Alahane 6/5/96
For General Manager (P)
M.F. Railway: Moligon.

nds
Comptroller
B. H.
6/5/96

Attended
Bikram Choudhury
ASSTANT

N.E. RAILWAY

Office of the
General Manager(P)/Maligaon
Guwahati-781011.

Dt. 25-8-2000.

No. E/252/239/Pt. IV(W)

To : Smt. Mukul Das,
C/O Late Mukunda Ch. Das,
Deshbandhu Pally (PL-8)
P.O. Lunding - 782447,
Dist. - Nagaon (Assam).

Sub:- Absorption as Asstt. Teacher on
regular basis as per verdict of
Hon'ble Supreme Court of India.

Ref:- Your letter dated 27-3-2000.

The contents of your letter under reference have been examined carefully and found that Hon'ble Supreme Court of India directed the Railway Administration in the verdict dated 13-10-1995 to screen you and absorb on regular basis if found suitable. Accordingly, six Substitute teachers including you were screened by a duly constituted Screening Committee but you were not found suitable and as such the question of your absorption on regular basis does not arise. ✓

You have stressed upon the Constitution of Screening Committee stating that there should have been one member from SC/ST Community. In this connection this is to inform you that there was one JA Grade Officer in the Screening Committee who happened to be the Member Secretary, RRB/GHY. Thus, your allegation is not correct.

from ST
community

This is for your information. ✓

(A. Kispotta) 25/8/2000
Sr. Personnel Officer (W)
for General Manager(P)/Maligaon.

Attested by

Bikram Choudhury
Advocate

बेचारी बेंच

O.A. No. 338/2001

- Versus -

Wm ✓
Confidential
Mr. W. H. H. H.
(A)

The answering Respondents beg to file their written statement as follows :

1. That the answering Respondents have gone through the copy of the original application on which the above referred case has been registered and they have understood the contents thereof. Save and except the statements which are specifically admitted hereinbelow, other statements made in the O.A. are categorically denied. Further the statements which are not borne on records are also denied and the Applicant is put to the strictest proof thereof.

BRIEF HISTORY OF THE CASE

2. That the Applicant was appointed as a substituted teacher by way of a stop gap arrangement in absence of regular teacher with the clear understanding that such engagement would not confer upon her to claim for regularisation. The Applicant had filed O.A. No. 85/90 claiming regularisation of her services, but the same was rejected. Making a grievance against the same, the Applicant alongwith others preferred an appeal before the Hon'ble Supreme Court vide Civil Appeal No.

✓
WFO
2000-2001
D. W. / 10/10/00
G. W. / 10/10/00
(A)

3. That the answering Respondents state that the O.A. preferred by the Applicant is in fact against the order dated 6.5.96 (Annexure-XII to the O.A.) and the communication dated 25.8.2000 (Annexure-XIII to the O.A.) cannot give rise to any cause of action. This being the position, the O.A. is grossly barred by limitation as per the provisions of Section 21 of the Administrative Tribunals Act, 1985. The instant O.A. is also hit by the principles of waiver, estoppel and

acquiescence and also bad for non-joinder of necessary parties. Accordingly, on all these grounds, the O.A. is liable to be dismissed without entering into the merit of the case.

PARAWISE REPLY

4. That with regard to the statements made in paragraphs 1, 2, 3 and 4 of the O.A., the answering Respondents do not admit anything contrary to the relevant records. However, it is stated that the Applicant was not in continuous employment of the Railways as substitute teacher. It is also denied that on attaining the temporary status, the Applicant was entitled to get all benefits as admissible to the temporary Railway staff. Acquiring of temporary status does not entitle any substitute teacher for automatic absorption/appointment in the Railways. This is precisely the reason as to why the Hon'ble Supreme Court issued direction for consideration of the case of the Applicant and others by a Screening Committee. In this connection, the circulars of the Railway Board holding the field may also be referred to and the same will be produced at the time of hearing of the O.A.

5. That with regard to the statements made in paragraph 4.5 of the O.A., it is stated that the instances given by the Applicant were duly taken note of by this Hon'ble Tribunal in the earlier proceedings as well as by the Apex Court and did not find favour. Thus there is no scope for the Applicant to reiterate the same stand again in this proceeding. However, it is stated that regularisation of services of three

teachers in 1984 does not confer any right on the Applicant to get her services automatically regularised. Since the Applicant was not a selected candidate and was appointed only as a substitute teacher, her services could not be regularised dehors any selection. However, as per the direction of the Apex Court, her case was considered along with others for such regularisation/absorption and she could not come out successful in the said selection. Now she has preferred the instant O.A. making a grievance against the said selection.

6. That with regard to the statements made in paragraph 4.6 of the O.A., the answering Respondents do not admit anything contrary to the relevant records. The services of the Applicant and others were terminated in terms of their appointment and on availability of regularly selected candidates through the Railway Recruitment Board.

7. That with regard to the statements made in paragraphs 4.7 to 4.14, the answering Respondents do not admit anything contrary to the relevant records and reiterate and reaffirm the statements made hereinabove. The case of the Applicant was considered as per direction of the Apex Court, but she was not found suitable. The entire exercise was carried out as per direction of the Apex Court.

8. That with regard to the statements made in paragraph 4.15 and 4.16 of the O.A., while denying the contentions raised therein, the answering Respondents

beg to state that the Applicant is estopped from raising the plea as has been raised after taking a chance for favourable consideration by way of appearing before the Screening Committee, knowing fully well about the constitution of the Selection Committee.

Shri T. Rabha, the then Member Secretary, Railway Recruitment Board was one of the members of the Screening Committee which had considered the case of the Applicant and others. Said Shri Rabha is an S.T. Thus there was no illegality towards constitution of the Screening Committee. The Applicant has raised such a plea after about five years of consideration of her case by the Screening Committee. The plea now raised is wholly untenable.

9. That with regard to the statements made in paragraph 4.17 of the O.A., while denying contentions raised therein, the answering Respondents beg to state that suitability of the substitute teachers was judged by the duly constituted Screening Committee as per directives of the Hon'ble Supreme Court and it is most respectfully submitted that the Hon'ble Tribunal would be reluctant to sit on appeal and/or to carry out a review of the said selection. The claim of the Applicant that two of the teachers found suitable by the Screening Committee were junior to the Applicant as per the number of days served is vague and indefinite. in any case, in the matter of selection for absorption, such a plea is wholly untenable.

10. That the answering Respondents deny the correctness of the statements made in paragraph 4.18 of the O.A.

53-71
✓
WMA
10.03.2010
JALPA (A)
10.03.2010
10.03.2010
10.03.2010

and reiterate and reaffirm the statements made hereinabove. The entire exercise towards consideration of the case of the six substitute teachers was carried out as per directives of the Hon'ble Supreme Court. It is denied that any injustice has been done to the Applicant in a most illegal and arbitrary manner.

11. That in view of the facts and circumstances stated above, the Applicant is not entitled to any relief and none of the grounds as urged by the Applicant is sustainable in law. Accordingly, the O.A. preferred by the Applicant is liable to be dismissed with cost.

VERIFICATION

I, Jai Shankar Prasad Singh, aged about 46 years, son of Raghubansh Narain Singh, presently working as Chief Personnel Officer (Admin) of the N.F. Railway Administration, do hereby solemnly affirm and verify that the statements made in paragraph 1 of the W.S. are true to my knowledge ; those made in paragraphs 2 to 10 are true to my information derived from the records and the rest are my humbles submissions.

And I sign this verification on this the 27 th day of November 2001 at Guwahati.

WJR

(Signature of Jai Shankar Prasad Singh) (A)
Jai Shankar Prasad Singh