

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH

CIRCUIT COURT SITTING HELD AT BILASPUR

Original Application No. 799 of 2004

Bilaspur, this the 13<sup>th</sup> day of May, 2005

Hon'ble Shri M.P. Singh, Vice Chairman  
Hon'ble Shri A.K. Bhatnagar, Judicial Member

Mustafa Kamal Ahmad, S/o. Shri Noor  
Ahmad, aged about 44 years, R/o. Quarter  
No. 957, RTS Colony, Bilaspur, District -  
Bilaspur, (Chhattisgarh). ... Applicant

(By Advocate - Shri S. Paul)

V e r s u s

1. Union of India, Ministry of Railway  
(Railway Board), through : its Chairman,  
Rail Bhawan, New Delhi.
2. The General Manager, South East Central  
Railway, Bilaspur (Chhattisgarh).
3. The Chief Personnel Manager, South  
East Central Railway, Bilaspur  
(Chhattisgarh).
4. The Divisional Railway Manager,  
South East Central Railway,  
Bilaspur (Chhattisgarh). ... Respondents

(By Advocate - Shri M.N. Banerjee)

O R D E R

By M.P. Singh, Vice Chairman -

By filing this Original Application the applicant has  
claimed the following main reliefs :

"(2) to set aside the order dated 10.9.2004 rejecting  
the representation and the impugned action/selection  
held of Law Assistant, which runs contrary to the extent  
of rules and law,

(3) to command the respondents to treat the applicant  
as regular Law Assistant from the date of his initial  
appointment in the year 1996 and give all the consequ-  
ential benefits as if he is regularly/substantively  
holding the post of Law Assistant w.e.f. 2.8.1996  
including seniority."

2. The brief facts of the case are that the applicant is  
presently working as Law Assistant on adhoc basis in the pay  
scale of Rs. 6500-10500/- in the office of Senior DPO/SEC,  
Railway, Bilaspur w.e.f. 2nd August, 1996. Although the  
appointment of the applicant was termed as adhoc but he was

selected by a written test followed by viva-voce and hence should be treated as a regular appointee on the post of Law Assistant. In a similar matter in OA No. 557/1991 the Calcutta Bench of the Tribunal vide order dated 17th April, 2001 has directed the respondents to treat the Law Assistant as regular employee for the reasons stated in the judgment. According to the learned counsel for the applicant, the applicant has submitted representations to the respondents on 5th August, 2003 and 30th October, 2003 requesting them to treat him as Law Assistant in regular capacity <sup>without</sup> compelling him to undergo the fresh selection. Even the Senior DPO/Bilaspur vide letter dated 4th September, 2003 and 10th September, 2003 has also made his recommendation to the higher authorities for regularisation of the applicant. But the respondents have decided to convene a fresh selection which was to be held on 14.3.2004. Since the representations of the applicant were not decided he also submitted candidature under protest, reserving his legal right arising out of the continuous officiation on the existing post of Law Assistant. The result of the examination was notified in which the name of the applicant did not figure in the list of qualified candidates. Hence, this Original Application is filed.

3. Heard the learned counsel for the parties and carefully perused the pleadings and records.

4. During the course of argument, the learned counsel for the applicant has submitted that the first limb of argument is that the applicant was appointed on the basis of regular selection against a regular vacancy on the basis of written examination and viva-voce and has continued for a period of 8 years in that post. His appointment should have been treated as regular. He has further submitted that similar issue has already been decided in OA No. 557/1991 on 17.4.2001, where directions were given to treat the applicant regular. The case of the applicant is squarely covered by the decision o

the Calcutta Bench referred to above and therefore the applicant is entitled for his regular appointment on the post of Law Assistant.

4.1 The second limb of argument is that although the applicant has appeared in the examination in protest and he has failed he can still challenge the said selection as per the law laid down by the Hon'ble Supreme Court in the case of Raj Kumar and others Vs. Shakti Raj and others, (1997)9SCC527 that "Service Law - Recruitment process - Selection - Locus standi to impugn the legality of the constitution of Selection Board or method of selection - Where the procedure of selection and the exercise of power to exclude the posts from the purview of the SSSB suffered from glaring illegalities, the candidate appearing for selection and remaining unsuccessful, held, not barred from questioning the selection - Acquiescence - Estoppel not applicable in such a case - Acquiescence - Inapplicability." According to the learned counsel for the applicant as per the Railway Board's Establishment Sl. No. 266/99 dated 28.10.1999, the selection is to be conducted as per the manner/procedure prescribed in the said establishment serial. The said serial in para-3 deals with the Selection Board. Para 3.4.2(ii) reads as such :

"In the case of selection of other departments - one Personnel Officer and two officers from the Department for which the selection is held."

After the written examination, the applicant came to know that none of the members of the Selection Committee were of legal Department of the Railways. Apart from that, a syllabus was circulated before the aforesaid written examination. A perusal of the same would show that the Acts which are regularly required and used in dealing with the cases such as Administrative Tribunals Act, Railway Claims Tribunal Act, 1947, Consumer Protection Act, Workmen Compensation Act, Public Premises Act, Evidence Act, Indian Contract Act, CPC, no questions were asked. The questions were asked from certain

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Acts, which have no regular application in the Railways such as Payment of Wages Act, Companies Act, Partnership Act etc. He has also stated that as per the advance correction slip No. 20 the following amendment may be made in para 202.1 of Chapter II (Section A) of Indian Railway Establishment Manual Volume-I (Revised edition 1989):

"Para 202.1 - The second sentence of the second sub-para may be substituted with : 'The Senior Deputy General Manager or the Additional CVO of the Vigilance Organisation should not be nominated to serve on the Committee.' (Authority : Railway Board's letter No. E(GP)86/1/23 dated 18.6.87)."

In the present case, this rule position has been violated by the respondents and the additional CVO was nominated to serve on the committee. He has also submitted that as per the procedure followed by the respondents for selection of the applicant in the year 1996, the appointment of the applicant as Law Assistant should not have been treated as adhoc and the same is arbitrary, unjust and unreasonable and also contrary to the decision of the Calcutta Bench of the Tribunal in OA No. 557/1991. <sup>per the judgment of the Calcutta Bench,</sup> As/ the applicant should be treated as regular Law Assistant for all practical purposes. According to him, on earlier occasions, various Law Assistants have been regularised without subjecting them to any fresh selection process, for example S/Shri S.N. Bajpai (adhoc Law Assistant came from the post of Commercial Inspector Grade-III), Ms. B. Ambah (Hindi Assistant became adhoc Law Assistant), P.C. Manna (Deputy SS) and R.K. Singh (Adhoc Law Assistant from the post of Statistical Inspector). The learned counsel for the applicant has also drawn our attention to the appointment order issued by the respondents while appointing the applicant in the year 1996. He has stated that as per the appointment order dated 25.7.1996 there were two categories of persons, one category 'Part-A' consists of 9 persons and the other category consists of 4 persons in 'Part-B'. The name of the applicant appears in Part-B at serial No. 4. In the note below appended to this order it is mentioned that "the above order at Part A are issued on local ad-hoc measure and it will not confer on

them any claim for title, seniority or future continuance as CLA in scale Rs. 2000-3200/- RPS". He has therefore, contended that as per this order only the name of the persons mentioned in Part-A were treated as ~~ad~~hoc and on the basis of this letter the appointment of the applicant was treated as regular as nothing was mentioned against his name. For these reasons the applicant submitted that his appointment as Law Assistant should be regularised from 2nd August, 1996.

5. On the other hand the learned counsel for the respondents has stated that the selection to the post of Law Assistant in the scale of Rs. 6500-10500/- was initiated by South Eastern Central Railway for filling up 5 vacancies (4 UR & 1SC). The notification was issued on 28.10.2003. The written examination was held <sup>in 2</sup> on March, 2004 with supplementary examination in June, 2004. All eligible candidates including the applicant attended the written examination. No protest either on procedural aspects or content of the question paper was raised by any of the candidates till the publication of result of written examination. Vide OA No. 649/2004 the applicant represented before the Tribunal for quashing of the selection and permitting him to continue as Law Assistant with retrospective effect. The Tribunal vide orders dated 13.8.2004 directed the respondents to examine the application in detail and respond <sup>appropriately</sup> before finalizing the result. The applicant is continuously working as Law Assistant on ~~ad~~hoc basis in pursuance of the directions given by the Tribunal. He has submitted that the representation dated 15th March, 2004 alleged to have been submitted by the applicant with regard to the points raised by the applicant that the examination was not conducted in accordance with the provisions of IREM, has not been submitted by the applicant as the applicant while filing OA No. 649/2004 has sought direction to set aside the selection of Law Assistant held on 14.3.2004 and to



regularise his appointment as Law Assistant and if he had filed the said representation on 15.3.2004 then he could have mentioned about the same in his OA No. 649/2004 as the Tribunal while passing the order at the admission stage directed the respondents to decide his earlier representation submitted by him on 10th August, 2004 and not 15th March, 2004. Therefore, it makes very clear that the applicant has not submitted the representation on 15th March, 2004 as claimed by him while challenging the validity of the examination/selection conducted by the respondents. He has also submitted that in the judgment of the Calcutta Bench in OA No. 557/1991, it is seen that the operative part of the judgment stipulates that the case for regularisation and posting will be examined and speaking orders will be passed by the respondents. In pursuance of the said direction it is learnt that the Eastern Railway has not regularised the applicant <sup>has</sup> ~~as~~ ~~regular~~ Law Assistant without regular selection and passed the speaking order to that effect. The applicant is put to strict proof to establish that due to the said OA the representationists were promoted to regular Law Assistants without going through the prescribed selection/examination.

6. On the other hand, the learned counsel for the applicant has stated that as per his information the applicant in the OA No. 557/1991 was appointed on regular basis in pursuance of the direction given by the Calcutta Bench of the Tribunal without conducting any selection. However, the respondents be asked to produce the relevant records regarding the order <sup>by the Railways</sup> issued to regularise the applicant in OA No. 557/1991, to verify the facts stated by the learned counsel for the respondents.

7. We have given careful consideration to the rival contentions and we find that the applicant was appointed as Legal Assistant in the grade of Rs. 6500-10500/- in the year 1996 after passing the written examination <sup>and</sup> ~~and~~

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failing in viva-voce, ~~and~~ He is continuing as such on the post of Law Assistant since 1996. We also find that the applicant had earlier made representation to regularise his services before the fresh selection was conducted by the respondents. Even his case was recommended by the Sr. DPO/Bilaspur vide his letters dated 4th September, 2003 and 10th September, 2003 i.e. well before the selection for the post of Law Assistant was notified on 28.10.2003. The applicant has continued to work on the post of Law Assistant for the last 8 years. There has been no complaint against the applicant by any senior officer to the effect that the performance of the applicant is not upto the mark.

8. The learned counsel for the respondents was granted 15 days time to submit the written submission and the other relevant records relating to the appointment of the legal Assistants in pursuance of the directions given by the Calcutta Bench of the Tribunal in OA No. 557/1991 decided on 17.4.2001. The learned counsel for the respondents has submitted the relevant records on 12.5.2005. In the written submission, the learned counsel for the respondents has stated that in compliance with the order of the Calcutta Bench of the Tribunal, the Chief Personnel Officer of Eastern Railway vide office memorandum dated 8th July, 2001 had passed a speaking order declining the regularisation of the applicant on the post of Law Assistant, merely on account of continuation as Law Assistant on adhoc measure for a prolonged period under the Court order and thereby Shri Srivastava, (applicant) therein was reverted to his substantive post in the parent cadre. Shri M.M. Srivastava being aggrieved by this order had filed another OA before the Calcutta Bench and as per the interim order, he is continuing as Law Assistant on adhoc basis.

8.1 It is further stated by him that the applicant in the present OA appeared in the selection of 1996 and was declared

successful in the written examination only. He did not qualify in the viva voce of 1996. 23 candidates who qualified in 1996 were initially appointed as Law Assistant on adhoc basis but looking to the existing vacancies a panel of 13 candidates on the basis of written test and interview was finally declared. But keeping in view the work load and vacancy position of 1996 remaining candidates who even-though did not qualify in viva-voce were continued on adhoc basis including Shri Ahmed (applicant) in the present OA. The unsuccessful candidates continued to work on adhoc basis. Some of the candidates filed OA No. 1484/1999 before the Calcutta Bench of the Tribunal and obtained interim relief on 15.12.1999 to the effect that status quo shall be maintained. Shri Ahmed was not a party to the OA No. 1484/1999 but keeping in view the overall position, all the unsuccessful candidates were allowed to continue on adhoc basis. This is how Shri Ahmed continued on adhoc basis. As such, the claim of the applicant that since he has been allowed to work on adhoc basis for long period, therefore he should be regularised is not tenable. Apart from it, the respondents have also tried to justify that the examination was conducted as per rules and the prescribed procedure. They have stated that as per Para 202.1, of IREM, there is no restriction in Section-B about the officers from Vigilance Department being member of the selection. As per para 202.1 Section-B is applicable in the present selection and not Section-A. It is further stated that there is no JAG post in the law cell in South Eastern Central Railway. However, Law cell is having one Assistant Law Officer of Group-B rank in the scale of Rs. 7500-12000/- who works under the administrative control of SDGM. The pay scale of Law Assistant is Rs. 6500-10500/- (pre-revised scale of Rs. 1600-2660/-) for which only officer of the rank JAG could be a member of the selection committee.

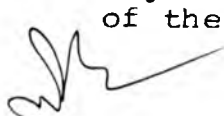
9. We have gone through the written submission as well as



the documents enclosed with the written submission and we find that the facts and the issue of the present case are similar to the one in OA No. 557/1991. In that case the applicant was appointed as Law Assistant on adhoc basis on the basis of the selection made in the year 1986. Shri M.M.L. Srivastava (applicant in OA No. 557/1991) has qualified in the written test but has not passed the viva-voce and therefore he was not empanelled. Thereafter he had appeared in the next selection held in the year 1988 but he could not qualify in the same. Thereafter, he has filed OA No. 557/1991 and direction was given by the Tribunal to consider his case for regularisation.

10. In the present case also, the applicant was appointed as Legal Assistant on adhoc basis after qualifying the written test in the year 1996. He did not qualify the viva-voce and, therefore, could not be included in the panel of regularly selected Legal Assistant. The applicant had appeared again in the selection made by the respondents in the year 2004 but failed in the written examination. The above facts, therefore make it abundantly clear that the present application is fully covered by the judgment dated 17.4.2001 passed in OA No. 557/1991. We also find that the respondents have enclosed a copy of the order dated 8.7.2001 issued in pursuance of the direction given in OA No. 557/1991. As per this order the applicant was reverted to his substantive post in the parent cadre. From the written submission given by the learned counsel for the respondents, we find that Shri M.M. Srivastava is still continuing as Law Assistant on adhoc basis. However, the respondents have enclosed no documents with regard to his continuance even after his reversion vide order dated 8th July, 2001. The relevant portion of the judgment of the Calcutta Bench in OA No. 557/1991 dated 17.4.2001 is extracte below :

"7. The applicant has relied on a number decisions of the Hon'ble Supreme Court in support of his case.



These are

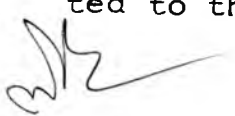
1. AIR 1986 SC 49 (Narendra Chadha Vs. UOI & Ors.)
2. 2000(2) SCSLJ 188 (Rudra Kumar Bain & Ors. etc. Vs. Union of India & Ors.)
3. (1989) 9 ATC 37 (Suparna Mukherjee Vs. UOI & Ors.)
4. (1991) 16 ATC 9 (R.N. Mukherjee and Ors. Vs. UOI & Ors.)
5. (1995) 30 ATC 1 (Ram Nath Paswan & another Vs. UOI & Ors.)

In a recent decision the Constitution Bench of the Hon'ble Supreme Court in Rudra Kumar Bain (supra) case held that if a person possessing the requisite qualification is appointed on ad hoc basis with the approval and in consultation with the competent authority and if he continues on the post for a fairly long period, then his such appointment cannot be called ad hoc, fortuitous or temporary. In the instant case we find that the applicant possessed all the qualifications and he was appointed as Law Assistant after qualifying in a written test. The respondents' only ground is that the direct recruitment quota has to be filled, but it is not made clear anywhere what was the quota and what was the number of vacancies or whether the promotees had occupied in excess of their quota. On the other hand, as we have already mentioned above, that if 10 vacancies should be considered, then the applicant is coming within the first seven vacancies according to his position in the written test. Therefore, his case, needs to be considered sympathetically. We have also noted above that the applicant has been continuing for more than 13 years in the post of Law Assistant and if at this stage he has to be reverted, then it will surely cause prejudice to him which will not be in the best interest of the administration. It is not the case of the respondents that the performance of the applicant is not upto the mark. On the other hand, several authorities have commended the performance of the applicant as Law Assistant.


8. In view of the above, we allow the application and direct the respondents to consider the case of regularisation of the applicant in the post of Law Assistant in the light of our observation made above. The order of the respondents in this regard shall be passed and communicated to the applicant within three months from the date of communication of this order. No costs."


We are in respectful agreement with the judgment passed by the Calcutta Bench of the Tribunal in OA No. 557/1991.

11. In view of the aforesaid discussion, we also allow this OA and direct the respondents to consider the case of the applicant for his regularisation on the post of Law Assistant in the light of the observations made above. The order of the respondents in this regard shall be passed and communicated to the applicant within a period of three months from the




date of receipt of a copy of this order. There shall be no order as to costs.

  
(A.K. Bhatnagar)  
Judicial Member

  
(M.P. Singh)  
Vice Chairman

"SA"

Copy to :-

① Sh. S. Paul, Adv.   
(M. K. Ahmed)

② Sh. M. Banerjee, Adv.

Issued

18.5.05