

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 690 of 1999

Original Application No. 714 of 1999

Jabalpur, this the 11th day of September, 2003.

Hon'ble Mr. D.C. Verma, Vice Chairman(Judicial)
Hon'ble Mr. Anand Kumar Bhatt, Administrative Member

(i) Original Application No. 690 of 1999

1. Sushil Kumar Rajak, aged about 30 years, S/o Ram Kumar Rajak, R/o Azad Chouk, Saroj Drycleaners, Katni (M.P.)
2. Naresh Kumar Tiwari, S/o late Shri Har Prasad Tiwari, aged 36 years. Qualification M.A. R/o. New Sabji Mandi, Katni, Dist. Katni (M.P.)
3. Jitendra Pal Singh, S/o Shri Malkhan Singh, aged about 33 years, R/o in front of Ashok Kumar Dubey, Gautam Bandwa, Katni, Dist. Katni (M.P.)
4. Jairaj Yadav, S/o Shri Har Govind Yadav, aged about 37 years, R/o Civil Ward No. 2, Damoh, Qualification B.A. Dist. Sagar (M.P.)
5. Surendra Pal Singh, S/o. Ramsachi Pal Singh, aged about 35 years, R/o Near Saurabh Kirana Stores Lane, Gaytri Nagar, Katni, Dist. Katni (M.P.)
6. Arun Kumar Banafar, S/o Shri Banafar, aged about 34 years, R/o Lal Mati, Jabalpur
7. Mustaque Ahmad, S/o Shri Ahmad aged about 32 years, R/o Ishwari Ward, Katni (M.P.)
8. Dinesh Kumar Patel, S/o Shri Phool Chand Patel, Qualification B.A. R/o. Katni (M.P.)
9. Rajendra Kumar Vishwakarma, S/o Shyam Bihari Vishwakarma aged about 37 years, R/o. West Ghampur, Jabalpur

(By Advocate - Shri S. Paul with Ku. C.V. Rao) APPLICANTS

VERSUS

1. Union of India, through Secretary, Ministry of Railways, Rail Bhawan, New Delhi
2. General Manager, Central Railway, G.M. Building, Mumbai
3. Chief Personnel Officer (Commercial) G.M. Building, Mumbai.
4. Divisional Railway Manager, Jabalpur (M.P.)
5. Senior Divisional Personnel Officer, Central Railway, Jabalpur (M.P.)

RESPONDENTS

(By Advocate - Shri S.P. Sinha)

(ii) Original Application No. 714 of 1999

1. Suresh Tiwari, s/o Shri P.D. Tiwari, aged about 34 years, R/o Railway Hospital Colony, Qualification (B.Com), (M.Com) Jabalpur, Dist. Jabalpur
2. Sandeep Sharma, s/o Shri M.M. Sharma, aged about 35 years, R/o Subhash Colony, Qualification, M.A (Previous), Jabalpur, Dist. Jabalpur (M.P.)
3. Umesh Sarate, s/o Shri S.S. Sarate, aged about 41 years, R/o Malhotra Compound, near Yadgar Chowkh Sadar, Qualification Higher Secondary, Jabalpur (M.P.)
4. N. Rajendra Rao, s/o late Shri N.S. Rao, aged about 40 years, R/o 787, Contonment, Sadar, Qualification B. Com (Ist year), Jabalpur (M.P.)

APPLICANTS

(By Advocate - Shri S. Paul with Ku. C.V. Rao)

VERSUS

1. Union of India, through Secretary, Ministry of Railways, Rail Bhawan, New Delhi
2. General Manager, Central Railway, G.M. Building Mumbai.

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RESPONDENTS

(By Advocate - Shri S.P. Sinha)

O R D E R

By D.C. Verma, Vice Chairman (judicial) -

As both the Original Applications involve common question of fact and law, they have been heard together and are being decided by a common order. In both the OAs the relief claimed by the applicants is for absorption as regular Ticket Collectors after taking into account their respective qualification, experience and competence. Prayer is to quash the order dated 11.11.1998 (Annexure-A-8) ^{in both the OAs} and the order dated 12.11.1999 (Annexure-A-20). Vide Annexure-A-8 the respondents issued orders for regularisation of volunteers to TCs, as the present applicants are, for absorption against Group-D posts.

2. To appreciate the points involved in the present OAs, it is necessary to give a brief background of the case. The Railways engaged volunteers to assist the Ticket Collectors posted at important stations. These volunteers were to be engaged from amongst four categories and were to be paid out of pocket allowance at the rate of Rs.8/- per day. The four categories were - (i) the serving railway employees, who can be rostered to work out side their official duty hours, suitably in the morning and in the evening, as may be considered necessary; (ii) retired Railway employees; (iii) Wards of Railway employees; and (iv) Bonafide scounts,

Guides. 4 to 6 above volunteers were to assist the Ticket Collectors in detention of ticketless passengers. Various OAs were filed claiming appointment on any post on the establishment of the Railways. Many, who were disengaged, challenged their disengagement. The Tribunal gave decisions to allow the volunteers to work on duty on pocket allowance of Rs.8/-per day. SLPs filed against the Tribunals' orders were decided by the Apex Court. The decision in Civil Appeal No. 1015 of 1995 in the case of Union of India & others Vs. Sagar Chandra Biswas and others, decided on 5.1.1995 is annexed as Annexure-A-5. The same was followed in another decision by the Apex Court in SLP Nos.17971/1993 and number of other petitions, main petition being Union of India and others Vs. Balal Ahmad and others, decided vide order dated 27.7.1995. The Apex Court relying on its earlier decision, disposed of the SLPs. The relevant part of the said decision, relevant for decisions of these OAs is as below-

"Therefore, this is a special type of status which is conferred by the Tribunal, perhaps under the establishment rules of the Railways. But what is important is that the Tribunal desired that these respondents should be considered for Group D post as and when vacancies arise. The ultimate effect of this is that the respondents will continue to work as volunteers on payment of out of pocket allowance at the rate of Rs.8/-per day, but as and when vacancies arise in Group D post, they should be considered for absorption in accordance with the inter se seniority between the volunteers. Nothing further than that is contemplated by the impugned order of the Tribunal... In view of the above since the position now stands clarified and any doubt which existed now stands removed by the order, nothing further remains to be done and we do hope that the question of absorption of the respondents, if not completed by now, will be completed expeditiously. The appeal will stands disposed of accordingly. No costs".

3. The respondents issued a circular dated 11.11.98 (Annexure-A-8) whereby 74 candidates working as

Volunteers to Ticket Collectors were directed to be absorbed against Group-D vacancies in the scale of Rs.2610-3540. Of these 74, 18 candidates are in Jabalpur Division. 9 applicants of OA 690/1999 and 4 applicants of OA 714/1999 are among these 18 candidates. The applicants have challenged this order Annexure-A-8 on the ground that as they have been working as Volunteer to TCs which is a Group-C post, they be absorbed on a Group-C post and the orders issued for their absorption on a Group-D post be quashed. Earlier the four applicants of OA 714/1999 filed OA No.503/99. The same was decided by a Bench of this Tribunal vide order dated 15.9.1999. The Tribunal without deciding the OA on merits merely directed the respondents to decide their representations and till decisions of the representations status quo relating to the services of the applicants was to be maintained. The respondents by Annexure-A-20(in OA No.714/1999) dated 12.11.1999 decided the representation rejecting the applicants' claim. Hence in the present OA 714/1999 the order dated 12.11.1999(Annexure-A-20) by which the representation was rejected has also been challenged.

4. The respondents in both the cases have contested the claim of the applicants for regularisation on a Group-C post. The learned counsel submitted that all the 9 applicants of OA 609/1999 have joined as Gangmen, whereas the four applicants of OA No.714/1999 have not yet joined the post of Group-D.

5. Counsel for the parties have been heard.

6. The Apex Court while deciding the Civil Appeal No.1015/1999 in Sagar Chandra Biswas's case (supra) upheld the Tribunal's order for direction to consider

the Volunteers to the Ticket Collectors for Group-D post as and when vacancies arise. (The same order was followed in the case of Balal Ahmad and others (supra)) Thus, the Apex Court decisions mentioned above provide for consideration of the applicants for absorption on Group-D post only. The applicants' prayer for their consideration on Group-C post would amount to review of the orders passed by the Apex Court in the aforesaid cases. This cannot be done.

7. The learned counsel of the applicants submitted that the applicants have been working as Ticket Collectors and they have gained experience, consequently their regularisation, if not permissible on a Group-C post of a Ticket Collector, they may be absorbed on a Group-D post of some other department and not for the post of Gangman which the applicants may not be able to perform due to their earlier experience. In our view this submission of the learned counsel of the applicants cannot be accepted. The direction of the Apex Court/Tribunal is for appointment to Group-D post only subject to inter se seniority. Consequently, when the posts found vacant, offers had been given and now it is for the applicants to accept the same or to refuse the same. The applicants as stated earlier cannot be absorbed as Group-C. The respondents cannot be directed to create posts to absorb/appoint the applicants on any light duty work. Choice is with the applicants to join the same or to lose their seniority in waiting for other vacancies. Vacancies in any departments are to be filled up as per the recruitment rules meant for the said posts. The appointments of the applicants are not in pursuance to ^{or} after following the recruitment rules but by way of exception that they are being given appointments to Group-D posts. The applicants have

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not been holding any post nor they were working against any vacancy. They were working as Volunteers to TCS as and when required. The four applicants of UA 714/99 have not yet joined the post of Gangman as per the impugned order Annexure-A-8. They have done it on their own risk. Though the order was passed in the year 1998 they have already lost many benefits and have also affected the rights of others who would have been appointed on the said posts. Consequently, both the UAs have no merit and they are to be dismissed. It is ordered that in case the applicants ~~are not~~ fail to join the post within a period of one months from the date of this order, the respondents would be free to offer the posts to other persons or take action as per rules. The interim relief granted in favour of the applicants to continue them on the post of Volunteers to TCS would stand discontinued in case the four applicants of UA 714/99 fail to join as aforesaid.

8. In the results, both the UAs are dismissed with the above directions. Costs easy.

Anand Kumar Bhatt
(Anand Kumar Bhatt)
Administrative Member

D.C.Verma
(D.C.Verma)
Vice Chairman(Judicial)

rkv.

पृष्ठांकन सं ओ/व्या..... जबलपुर, दि.....
प्रतिलिपि अवृत्ति:-

- (1) सचिव, उच्च व्यापालय वार एसोसिएशन, जबलपुर
- (2) अ.प्र.वि.वि/विभागी/कु..... के काउंसल
- (3) अ.प्र.वि.वि/विभागी/कु..... के काउंसल
- (4) के.प्र.वि.वि/विभागी, जबलपुर व्यायामी देने

K.C.V.Rao, 2nd (2 COP)
S.P.Sinha - 2nd (2 COP)

सुन्ना एवं आवश्यक वार्ताएँ देने

Abhishek Singh
उपसचिव
12.9.03

Facet/10/12/03