

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 15 day of November, 2010

CORAM

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER

HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

1. **ORIGINAL APPLICATION NO. 302/2006**

1. Tej Singh son of Shri Laxmi Narain, aged about 51 years, Salesman at Railway Mans Consumer Co-operative Association Limited, Nasirabad Road, Ajmer.
2. Rajesh Tak son of Shri Hari Asha Ram, aged about 35 years, Assistant Manager, Western Railway Consumer Co-operative Society, Ramganj, Ajmer.
3. Rajendra Singh son of Shri Hari Singh, aged about 30 years, Salesman at Western Railway, Consumer Co-operative Society, Ramganj, Ajmer.

.....Applicants

(By Advocate: Mr. P.V. Calla)

VERSUS

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

.....Respondents

(By Advocate: Mr. R.G. Gupta)

2. **ORIGINAL APPLICATION NO. 172/2008**

1. Hari Shankar son of Shri Kunna Lal, aged about 39 years, resident of Jonhs Ganj, Narsinghpura, Rajeev Gandhi Colony, Ajmer.
2. Bhola Ram son of Shri Chhotu Lal Kumawat, aged about 36 years, resident of Ashok Vihar, Kalpna Colony, Gadi Maliyan Road, Ajmer.

.....Applicants

(By Advocate: Mr. P.V. Calla)

[Signature]

VERSUS

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2. The Divisional Railway Manager, Ajmer Division, Ajmer.

.....Respondents

(By Advocate: Mr. R.G. Gupta)

ORDER

By this common order, we propose of dispose of these OA as common question of facts & law are involved.

2. Briefly stated facts of the case are that the respondents issued letter dated 10.05.2001 for considering absorption of those staff of quasi administrative organization connected with the railways who were on roll continuously for a period of at least 3 years as on 10.06.1997 and who fulfill the conditions as laid down in the Railway Board letter dated 30.05.2000. The conditions laid down in the letter dated 30.05.2000 were in the following terms:-

- "(i) The workers should be on roll for a period of last 3 years as on 10.06.1997 and are still on roll;
- (ii) should fulfill the prescribed minimum educational qualification which is Class VIII pass;
- (iii) should have been engaged within the prescribed age limit;
- (iv) the absorption should resorted only after exhausting the list of Ex-casual labour born on live/supplementary live register.

3. It is averred that initially when the names of eligible candidates were called, the Officers of the Ajmer Division sent a report that no one is eligible. It is further pleaded that at the later stage officers of

the Ajmer Division releasing their mistake sent the list of 37 candidates who were working in the quasi administrative offices with the remarks against each -whether they were eligible or not. It is further pleaded that the list of such candidates was sent vide office letter dated 23.01.2003 by the office of respondent no. 2. It is further stated that all the applicants were held eligible but vide impugned order dated 16.05.2006 (Annexure A/1), the applicants were not found suitable for absorption for the reasons indicated against their names.

It is this order which is under challenge.

4. The applicants have placed reliance on the documents placed at Annexure A/2, Annexure A/3, Annexure A/10, Annexure A/11 and Annexure A/12 to show that in fact the applicants were performing the duty at Ajmer Division and their names were also recommended but still their cases were wrongly rejected for the reasons indicated in Annexure A/1. It is on the basis of these facts, the applicants have prayed that impugned order dated 16.05.2006 (Annexure A/1) may be quashed and respondents may be directed to consider their cases for regularization in Group 'D' in view of the Railway Board policy letter dated 30.05.2000.

5. Notice of these applications was given to the respondents. The respondents have filed reply. In the reply, the facts, as stated above, have not been disputed. On merit, it has been stated that the applicants are claiming relief on the basis of the Railway Board letter

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dated 30.05.2000 whereas the impugned order is dated 16.05.2006 is issued with reference to Head office letter dated 24.01.2006 (Annexure R/1). Thus the applicants are not entitled to any relief. It is stated that applicant have also suppressed the material fact in as much as the applicant no. 1 in OA No. 302/2006, Shri Tej Singh, was not on duty on 10.06.1997 and applicants nos. 2 & 3 who were working in Western Railway Co-operative Society, Ramganj, Ajmer was closed for the last 8-9 years since 2003 and they were not in service nor in roll when their cases were considered pursuant to letter dated 24.01.2006. So far as the applicants in OA No. 172/2008 are concerned, it is stated that they were not in roll on 10.06.1997 and they are still not on roll. Hence they have correctly been declared unsuccessful in terms of the Railway Board's letter dated 13.01.2006 and Head quarter's letter dated 24.01.2006 (Annexure A/6 and R/1 respectively). It is further stated that as per the report of the Chief Welfare Inspector, the Western Railway Co-operative Society, Ramganj, Ajmer was closed. Thus the copies of the muster roll submitted by the applicants are not reliable document but that document is a fictitious document. It is further submitted that in the salary statement (Annexure A/10), the names of the applicants are not there and the applicants were not in roll in the Western Railway Co-operative Society, Ramganj, Ajmer. The respondents have also further stated that the documents annexed by the applicants (Annexure A/11) showing the attendance register is also fictitious.

6. The respondents have also taken objection of limitation raised in OA No. 172/2008. The respondents have stated that the applicants challenged the order dated 16.05.2006 in the present OA whereas the present OA had been filed in March, 2008, i.e. after 22 months beyond the statutory period prescribed under section 21 of the Administrative Tribunal's Act.

7. The applicants have not filed any rejoinder.

8. We have heard the learned counsel for the parties and have gone through the material placed on record.

9. It is not in dispute that the Railway Board took steps to absorb the workers of quasi administrative organizations connected with the railways who were on roll continuously for a period of at least 3 years as on 10.06.1997 and were still on roll and who fulfill other conditions, as stipulated in Railway Board letter dated 30.05.2000, the relevant portion has been reproduced in the earlier part of the judgment. It is also not in dispute that when steps were taken to absorb the staff in terms of the aforesaid Railway Board circular, the cases of the applicants who belonged to Ajmer Division were not forwarded. Their cases were subsequently forwarded and screening was held in the light of the Railway Board letter dated 13.01.2006 red with the General Manager letter dated 24.01.2006 on the same terms & conditions which were prescribed in Railway Board letter dated 30.05.2000. The applicants were not eligible for absorption as they were not on roll

when their cases were considered by the Screening Committee on 24.04.2006. The respondents have categorically stated that the document produced by the applicants in order to show that they were still on roll is a fictitious document. The respondents have categorically stated that the applicants were not on roll because Western Railway Co-operative Society has already been closed in the year 2003 and Annexures A/10, A/11, A/12 and A/13 are fabricated documents. Thus in view of the categorical ^{stand taken by} ~~finding given~~ by the respondents, the contentions of the applicants that they were still on roll cannot be accepted. Since the applicants did not fulfill the requisite criteria prescribed by the Railway Board for absorption, as such they have not made out any case for our interference.

10. That part, even if for arguments sake the applicants are held to be eligible in terms of circular dated 30.05.2000, no relief of absorption can be granted to the applicants in view of the law laid down by the Apex Court in the case of **State of Karnataka vs. Uma Devi (3)**, 2006 SCC (L&S) 753. At this stage it will be useful to quote Para No. 53 of the judgment, which thus reads as under:-

"53. One aspect needs to be clarified. There may be cases where irregular appointments (not illegal appointments) as explained in **State of Mysore v. S.V. Narayanappa**, AIR 1967 SC 1071, **R.N. Nanjundappa v. T. Thimmiah**, 1972(1) SCC 409 and **B.N. Nagarajan v. State of Karnataka**, 1980 SCC (L&S) 4 and referred to in Para above, of duly qualified persons in duly sanctioned vacant posts might have been made and the employees have continued to work for ten years or more but without the intervention of orders of the courts or of tribunals. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by

this Court in the cases abovereferred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of the courts or of tribunals and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further bypassing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme." (emphasis supplied to underline.)

11. As can be seen from the portion as extracted above, it is evident that the cases of regularization which had attained finality and were not sub-judiced would not come within the purview of exception to the rule contained in Para 53 of the said judgment. The cases where regularizations had already been made were not to be reopened. The Apex Court has categorically held that in future no direction should be given regarding regularization or making permanent those employees who have not been appointed as per the constitutional scheme. The view taken by the Apex in the case of **Uma Devi** was further reiterated in the **Punjab Water Supply & Sewerage Board vs. Ranjodh Singh**, 2007(1) SCC (L&) 713 wherein in Para 15, the Apex Court has held as under:-

"15. The question came up for consideration before a Constitution Bench of this Court in **State of Karnataka v. Umadevi (3)**, 2006 SCC (L&S) 753, where in it was held that no person who was temporarily or casually been employed could be directed to be continued permanently. It was opined that by doing so it would

be creating another mode of public employment which is not permissible."

12. At this stage, we also wish to reproduce Paras nos. 12 & 13 of the judgment of the Apex Court in the case of **Post Master General vs. Tutu Das (Dutta)**, 2007 (2) SCC (L&S) 179, which thus reads as under:-

"12. What was considered to be permissible at a given point of time keeping in view the decisions of this Court which had then been operating in the field, does no longer hold good. Indisputably, the situation has completely changed in view of a large number of decisions rendered by this court in last 15 years or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that behalf under a statute or the proviso appended to Article 309 of the Constitution of India.

13. Equality clause contained in Articles 14 and 16 of the Constitution of India must be given primacy. No policy decision can be taken in terms of Article 77 or Article 162 of the Constitution of India which would run contrary to the constitutional or statutory schemes."

13. The Apex Court in the case of **Dayanand Vedic Divyayala Sanchalak Samiti vs. Education Inspector**, 2010 (1) SCC (L&S) 698, in Para No. 21 has held as under:-

"21. Submission of the learned counsel that persons similarly situated are still continuing in service is not of any moment. This aspect of the matter has also been dealt with by this Court in Post Master General, 2007 (2) SCC (L&S) 179, stating:

"17. Submission of Mr. Roy that the respondent has been discriminated against inasmuch as although the services of Niva Ghosh were regularized, she had not been, may now be noticed.

18. There are two distinctive features in the present case, which are:

- (i) Equality is a positive concept. There, it cannot be invoked where any illegality has been committed or where no legal right is established.
- (ii) According to the appellant the respondent having completed 40 days does not fulfil the requisite criteria. A disputed question of fact has been raised. The High Court did not come to a positive finding that she had worked for more than 240 days in a year.

19. Even otherwise this Court is bound by the Constitution Bench decision. Attention of the High court unfortunately was not drawn to a large number of recent decisions which had been rendered by this Court."

14. For the foregoing reasons, these OAs are bereft of merit and are dismissed accordingly.

Anil Kumar
(ANIL KUMAR)

MEMBER (A)

M.L. Chauhan
(M.L. CHAUHAN)

MEMBER (J)

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