

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Original Application No. 1190 of 2018

Dated: This the 19th day of November 2018.

Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Manendra Kumar Srivastava and others.      Applicants

By Adv: Shri K.P Singh

V E R S U S

Union of India and others.      Respondents

By Adv: Shri P.K Pandey

**ORDER**

1. The present Original Application has been filed by applicant Manendra Kumar Srivastava, Anuj Kumar Verma, Satya Prakash Jaiswal, Sanjit Singh Kushwaha, Arun Kumar Maurya, Arvind Kumar Chaudhari, Chandan Kumari, Archana Maurya and Alaka Kumar seeking the following reliefs:-
  - i. To issue order or direction to quash the Notification dated 17.10.2018 and 22.10.2018 issued by respondent No.2;
  - ii. To issue any order or direction, which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.
2. Case of applicants is that they are para-medical staff engaged on contractual basis in Indian Railways, D.L.W. Varanasi. Impugned notification dated 17.10.2018 issued on contract basis through walk-in-interview and fixed the interview date on 19.11.2018. Vide impugned notification dated 22.10.2018, age limit fixed for the applicant which is fulfilled by the present applicants. The respondents-Railway also issued letter dated 12.04.2018 making the contractual employees to get same remuneration which is applicable in case of regular employees (Annexure A-4 to Compilation No. II).

3. It is also the case of applicants that in spite of direction of the Railway Board to extend the contractual period upto 30.6.2019 the vide letter dated 17.1.2018 and 9.5.2018, the date of contract has been extended upto 30.11.2018.
4. Further case of applicants is that CPO, DWL, Varanasi with an intention to appoint his own persons through the aforementioned impugned notifications. Applicants rely upon case O.A. No. 986 of 2013 titled Smt. Poonam and others v/s Union of India and others decided on 01.10.2013 by this Tribunal and order dated 19.02.2014 of the Hon'ble High Court in Writ – A No. 109956 of 2014 titled Union of India v/s Poonam Devi.
5. I have heard and considered the arguments of the Learned Counsels for the parties and gone through the material on record.
6. Learned counsel for applicants has reiterated the pleas raised by him in his pleadings and submitted that the interim relief be issued in favour of the applicants. On the other hand, learned counsel for the respondents submitted that it is a contractual matter between the parties and the employment of the applicants comes to an end on the expiry of the date of the contract and the remedy of the applicants is to file a suit for damages, if available to them for any breach of contract.
7. Applicants seek the interim relief during the pendency of the O.A. that the working of the applicants as paramedical staff on contract basis may not be disturbed. For this purpose, it would be fruitful to refer to the relevant part of the orders of Tribunal and Hon'ble High Court relied upon by the learned counsel for applicants. The same read as under:

Tribunal Order: "While the ratio laid down by the Apex Court is unambiguous, however, a contractual employee does not have any

legal right to claim automatic extension of the contract. Renewal of contract will be contingent upon the work requirement of the concerned Department. Taking into account this position, we feel that interest of justice would be served if a direction is issued to the respondents to the effect that the post presently occupied by the applicants shall be filled only by a regular incumbent and if there is a need to fill up this post on a contractual basis, the applicants would have the first preference for these post as they have already worked for quite some time thereon."

Hon'ble High Court: "Even otherwise, we are satisfied that the reasons assigned by the Tribunal under the order impugned for directing railways to continue the petitioners on contact basis and not to resort to similar contractual appointment afresh, is in accordance with law and does not warrant any interference under Article 226 of the Constitution of India. However, we clarify that this order shall not preclude the railways from removing the contractual employees, whose work and performance is not satisfactory, as well as by a regular employee."

8. Taking into account the facts of the case and aforementioned orders relied upon by the applicants, the interim relief given is that the respondents while conducting the interviews would keep in view and abide by the directions/observations enunciated in the aforementioned Orders. However, the Railway Board's letter No. E(NG) – II/94/RR-1/29/Pt. (3246807) dated 21/02/2018 shall be adhered to in the present matter.
9. Learned Counsel for applicant refers to J&K Public Service Commission v/s Dr. Narinder Mohan, AIR 1994 SC 1808 wherein appointment was made on ad hoc basis as per Rule 4 which provides that for the purpose of this Rule, any person appointed to any post in service only by virtue of such deputation, contract, or ad hoc appointment, shall not be members of the Service. A clear distinction between ad hoc and contract! The citation has no application to the facts of the present case.

10. One aspect, if it exists, if the appointments are being made against regular vacancies, why are the temporary appointments being made year after year and not filling the posts by regularly appointed employees. The repeated mode of temporary appointment gives a reason for a prudent man to think that such appointments are made for consideration and in fact give albeit to give raise to a charge of corruption, nepotism etc against men at the helm of the railway affairs. Have we become so thick skin that we do not adhere to the repeated advice given by all to go for regular appointments unless there is an emergency.
11. It be noted that nothing mentioned hereinabove shall prejudice the facts/merit of the main case which shall be decided on its own merits after the counter affidavit and rejoinder affidavit, if any, is filed by the parties. LC for respondents to file the counter affidavit within a period of 4 weeks. On the counter affidavit being filed, LC for applicants may file the rejoinder affidavit within a period of two weeks there from. Let the matter be listed before the Registrar on **17.012.2018**. Copies of this order be given to the learned counsel for respondents who shall forward and ensure that it is placed before the Gazetted Officers i.e. (1) General Manager, Diesel Works, Varanasi and General Manager (P), (2) Diesel Locomotive Works, Varanasi, (3) Chief Medical Officer, Railway Hospital, DLW, Varanasi and (4) Pradeep Kumar Singh, GM (P)/CPO, Diesel Locomotive Works, Ministry of Railways, Varanasi. Copy of the order be also given to the Learned Counsel for applicants immediately.

(Rakesh Sagar Jain)

Member (J)

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