

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A /350/491/2014

Date of order : 11.9.18

Coram : Hon'ble Mrs. Bidisha Banerjee, Judicial Member
Hon'ble Dr.(Ms) Nandita Chatterjee, Administrative Member

Subodh Sharma, son of Hari Har Prasad,
Rly. Quarter No.1/OS/53, Unit 13, Dhan Singh
Maidan, Kharagpur, District-West Midnapore,
Pin-721301

.....Applicant

- Versus -

1. **Union of India**,
service through General Manager,
South Eastern Railway,
11, Garden Reach Road,
Kolkata - 700043;
2. **General Manager**,
South Eastern Railway,
11, Garden Reach Road,
Kolkata - 700043;
3. **Chief Personnel Officer**,
South Eastern Railway,
11, Garden Reach Road,
Kolkata - 700043;
4. **Chief Personnel Officer(Admn.)**,
South Eastern Railway,
11, Garden Reach Road,
Kolkata - 700043;

.....Respondents

For the applicant : Ms. A. Jayashree, counsel
Mr. Y.N. Gupta, counsel

For the respondents : Mr. P. Prasad, counsel

ORDER**Bidisha Banerjee, Judicial Member**

This application has been filed in order to seek the following reliefs:-

“(A) An order be passed directing the respondent authorities especially the Respondent No.2 and 3 to treat the applicant at par with other candidates who have been given appointment or going to be given appointment as the applicant being the empanelled candidate holding Serial No.176 of Graduate List of 303 empanelled candidates for the appointment in Group-D category in any Division of the South Eastern Railway at par with 104 appointed candidates of 303 paneled list and also at par with appointment going to be made under the cover of the judgment passed in W.P.C.T.256 of 2011 and W.P.C.T.,169 of 2012, W.P.C..T.462 of 2012 and W.P.C.T. 146 of 2013;

(B) Any other relief/reliefs, direction/directions as the Hon'ble Tribunal deem fit and proper under the facts and circumstances of the case;

(C) Cost.”

2. The case of the applicant in nutshell is as under:-

A panel of 303 selected candidates was published by the then General Manager, R.R. Bhandari in exigencies as 12000 vacancies arose only in South Eastern Railway except Adra Division and the Railway was facing tremendous difficulties in the operation of the daily running of the trains and its maintenance. Due to such exigencies and shortage of the Group-D employees, the then General Manager R.R. Bhandari circulated to all the Departments of the South Eastern Railway about appointment to the Graduate Wards of the Railway ex employees and also serving employees. 1167 applications were received and after careful scrutiny and verification of all the applications in respect of the educational and age profile the then General Manager, R.R. Bhandari selected 303 candidates out of which 199 candidates were from the Graduate quota, 44 from the Technical Quota and 61 referred by the HOD of the South Eastern Railway. The select list of



303 successful candidates was published on the notice board on 02-11-2005. Unfortunately, R.R. Bhandari was transferred and R.K. Raina had joined as General Manager. He gave appointment to 104 candidates from the said Select List by using pick and choose policy despite availability of 12000 vacancies. At present appointments are still going on from the said Select List of 303 empanelled candidates under the directions of the Hon'ble High Court.

3. At hearing Id. counsel for the applicant, Mr. Y.N.Gupta would vociferously submit that the Hon'ble High Court has permitted filling up of Group 'D' vacancies from such list.

4. Per contra the respondents submitted that in terms of Railway Board's letter No. E(NG)II/90/SB/10 dated 28.07.1991, No. E (NG)II/90/SB/10 dated 04.11.1992, E(NG) II/2001/SB-2 dated 14.08.2001 and as per rules provided in Chapter XV of Indian Railway Establishment Manual Vol. I, the General Managers of Zonal Railways have the power to engage Substitute in exigency of service. While Mr. R.R. Bhandari was General Manager of South Eastern Railway, 1167 suo-moto applications were received for employment and all these were grouped as follows from individual applications for Administrative convenience:

1. Graduates
2. Non-graduates
3. Technical

As the applications were not supported by the documents and were also not signed and complete by the applicants, the listed candidates who had applied to the GENERAL MANAGER were directed to submit the following documents duly attested by Gazetted Officer by 10.11.2005 vide Notice dated 02.11.2005.

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1. Applications with two passport size photo duly signed by the candidate.
2. Educational Qualification
3. Date of birth
4. Caste where applicable.

Many of the candidates did not submit the requisite documents for consideration of their cases within time. Accordingly, all those who had submitted complete documents were considered by the General Manager and subsequently offered appointment as Substitute gr. 'D' (fresh Face) and since appointment of Substitutes was in the exigencies of service, therefore, no approved list or panel existed. Such appointments were not regular appointments in Indian Railway through open advertisement. Cases were considered on one to one basis purely in exigencies and those who were considered were immediately offered appointment as fresh face Substitute Gr. 'D' and posted as per need of Railway Administration. Therefore, there could not be a situation that for Substitute Appointment an approved list is prepared and kept.



Further, the individual applicants did not have any vested right to be considered for such appointment, just because previous or even earlier General Managers, may have given their consent.

5. The respondents further clarified that those who submitted requisite documents were considered and accordingly offer of appointment were given to 103 candidates. Aggrieved candidates filed O.A. No. 935 of 2008 in the matter of A. Tulsi Das and Others in Hon'ble CAT, Calcutta Bench, which was dismissed on 26.03.2010 with the following observation:-

"The respondents while admitting there was a list of 1167 persons who had applied suo moto for engagement as substitutes have denied the existence of any panel. Keeping in view the provisions of Chapter XV of I.R.E.M. Vol. I it is seen that it has not been made mandatory for the railways to draw up a panel. In any case the applicants have not made out

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any case that even assuming a panel existed on 02.11.2005 the validity of the panel still exists. No papers have been produced in proof of approval of such a panel by the then General Manager, Shri R.R. Bhandari. Our attention is also drawn to the decision of the Hon'ble Supreme Court in the State of Andhra Pradesh and Others Vs. D. Dastagiri and Others 2003(5) SCC 373 in which the Apex Court has ruled that selected candidates have no right to appointment even if the selection process is complete. Clearly substitutes in the railways have no posts against which they are appointed. There is no recruitment process involved. It is very clearly laid down that substitutes are taken in the exigency of service. We, therefore, hold that the O.A. lacks merit and is, therefore, dismissed."

Against the order WPCT No. 100/2010 and 122/2010 were filed in the Hon'ble High Court and a common order was passed on 27.06.2011 with the following observations:

"This concession has been made by the Railways considering the peculiarity of this case and must not create any precedent."

Subsequently similarly placed persons filed O.A. No. 242/2012 with MA No. 107/12 Prosun Ghosh & Others before the Hon'ble CAT, Calcutta Bench seeking extension of judgment passed by the Hon'ble High Court in WPCT No. 100 of 2010 and 122 of 2010 which was dismissed by the Tribunal on 21.03.2012 with the observation "When the Hon'ble High Court observed that said order shall not be treated as any precedent, we will not be justified to overlook, re-write and re-read such observations. We are bound to follow what has been observed by the superior Court. We do not find any prima facie case made by applicants; hence O.A. as well as the M.A. are dismissed under Section 19(3) of AT Act, 1985."

Further that, in a separate case seeking appointment as Substitutes under GM's power, Railway Administration filed WPCT No. 478 of 2013 in Hon'ble High Court at Calcutta against order of the Hon'ble Tribunal dated 08.10.2013 in O.A.

No. 1014 of 2012, Chaitali Das and Others Vs. UOI & Others. Hon'ble High Court issued an interim order dated 11.12.2013 with the following observation:-

"The Railway authorities are also restrained from engaging anyone to the post of Substitute under the existing policy until further orders although the said Railway authorities will be at liberty to engage Substitutes in case of exigency through the Railway Recruitment Board, if necessary."

The case is still pending.

When asked to submit the final order of the Hon'ble High Court in Chaitali Das, it was intimated that the matter is still pending, but Chaitali Das and others were appointed long back and Hon'ble High Court approved of such appointment.

6. The applicants have however produced a copy of the order dated 09.04.2015 in CPAN 1154/2014 arising out of W.P.478/2013 (Chaitali Das Vs. Union of India & Ors.) which records the following

"The learned Counsel representing the alleged contemnors on instruction of Sr. Personnel Officer (PST) (who is present in Court today) submits that the alleged contemnors are ready and willing to appoint four eligible petitioners, namely, (1) Chaitali Das, D/o Late Dulal Chandra Das : (2) Subhasis Sngputa, S/o. Late Rajmohan Sengupta; (3) Ramkant Barik, S/o Rabindra Nath Barik and (4) Kousik Banerjee, S/o Late Anadi Banerjee as substitutes subject to withdrawal of the contempt application.

The learned Advocate representing the petitioners on instruction submits that the petitioners are willing to withdraw the contempt application in the event the aforesaid four persons are appointed by the alleged contemnors.

The learned Advocate of the petitioners further submits that two other petitioners, namely, (1) Surojit Dey, S/o Santosh Kumar Dey and (2) Mahadeb Ghosh, S/o. Late Bankim Chandra Ghosh, have not yet crossed the age limit as per Railway Board circular and the Railway Board Authorities should also consider the claim of the aforesaid two petitioners sympathetically.

Since the alleged contemnors agreed to appoint four persons, namely, (1) Chaitali Das, (2) Subhasis Sengupta, (3) Ramkant Barik and (4) Kousik Banerjee as substitutes and the petitioners herein are ready and willing to withdraw the contempt application in the aforesaid

circumstances, we dispose of the contempt application without issuing any further direction.

The learned Advocate representing the petitioners also submits that since the alleged contemnors have agreed to appoint the aforesaid four persons as substitutes, no further issue is required to be decided in the said writ petition and the writ petitioners are therefore, not willing to proceed further with the writ petition.

In the aforesaid circumstances, the writ petition stands disposed of."

7. We failed to comprehend the reason why the respondents agreed to appoint a few(four to be precise) from the said so called "unapproved" list. It seems that the allegation of the applicants about the respondents about adopting a pick and choose policy, has sufficient force.

8. In the aforesaid backdrop, the O.A. is disposed of with a direction upon the respondents to consider the case of the present applicants in the light of the circulars and issue a reasoned and speaking order disclosing the fact as to what prompted them to engage Chaitali Banerjee and others, whereas the applicants still languish.



9. Reasoned and speaking order be issued within a period of eight weeks from the date of receipt of a copy of this order.

10. The O.A. is accordingly disposed of. No costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member