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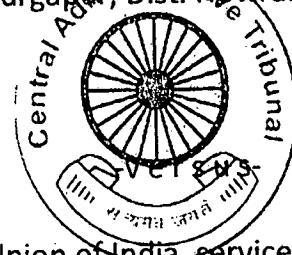
No.O A /350/516/ 2013

Date of order : 21.8.18

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

1. Shri Subhas Chandra Maity,
Son of Late Santosh Kumar Maity,
aged about 28 years, by profession
unemployed, residing at Vill. Bally
Ramchandrapur, P.O. Bally, Durgapur,
Dist. Howrah, Pin – 711 205
2. Shri Dharmendra Kumar Mahato, son of
Ram Ashreay Kumar Mahato, aged about
27 years, by profession unemployed, residing
at Vill. Bally Ramchandrapur, P.O. Bally
Durgapur, Dist. Howrah, Pin-711 205

.....Applicant



1. Union of India, service through the General Manager,
Eastern Railway, Fairlie Place, Kolkata -700 001;
2. The Chairman, Railway Board, Rail Bhawan, Ministry
of Railways, Government of India, New Delhi-
110001;
3. The Chief Personnel Officer(A), Eastern Railway,
Fairlie Place, Kolkata – 700 001;
4. The Divisional Railway Manager, Eastern Railway,
Howrah Division, Howrah

.....Respondents,

For the applicant : Mr. J.R. Das, counsel

For the respondents : Mr. B.K. Roy, counsel

ORDER

Bidisha Banerjee, Judicial Member

This original application has been filed by two applicants who seek the following reliefs:-

- "i) An order granting leave to the applicants under Rule 4(5)(a) of CAT(Procedure) Rules, 1987 to move the application jointly;
- ii) An order directing the respondents to consider the case of the applicants for appointment as Substitutes without further wastage of time in any Division of the Eastern Railway;
- iii) An order directing the respondents to effect such process of recruitment on immediate basis causing application of applicant No.2 be registered in the list of applicants seeking employment as Substitutes since applications from both the applicants have duly been received by the office of the General Manager, E. Railway on 31.01.2011 and be effected immediately;
- iv) To pass an appropriate order directing the respondents to consider the case of the applicants for appointment to the post of Substitute and to issue necessary appointment orders in respect thereof in favour of both the applicants in terms of the Railway Board's Circular dated 12.9.2005 being RBO No.144 of 2005;
- v) To pass an appropriate order directing the respondents to produce the relevant records in connection with the Substitute appointment by then G.M.E. Railway, during 2011 to 2013 including present G.M., at the time of hearing of this original application for proper adjudication of the entire case;
- vi) A judicial enquiry be held to find out as to whether any appointment as 'Substitutes' in Group D category was made outside the list of registered candidates and after holding the said enquiry, appropriate order be passed;
- vii) And to pass such further or other order/Orders and/or Direction or Directions as to this Hon'ble Tribunal may seem fit and proper."

2. The case of the applicants lie in a narrow compass :-

The applicants had submitted prayers for recruitment as Substitutes on 18.12.2010 and 06.12.2010 respectively which were duly received by the office of the General Manager, Eastern Railway on 31.01.2011 as evident from the acknowledgement cards. Since no communication was received from the respondent authority, the applicants made repeated representations through RTI Act of 2005 regarding the fate of such applications when the authority concerned

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initially denied receipt of either of the applications, but subsequently accepted the receipt of the application at least from applicant No.1. By their communication dated 01.11.2012, respondents denied preparation of any panel for such recruitment and stated that the turn of the applicant No.1 had not come to be considered for such recruitment. However, through RTI the applicants came to learn that 41 candidates have been engaged during 01.08.2011 to 28.02.2013 in the Eastern Railway. A Railway Board's Circular dated 17.09.2010 has been published seeking amendment in IREM Vol.I(1989 edition) regarding appointment of substitutes in Railways and the applicants claim that they are fully eligible and deserve such recruitment as Substitutes under the amended guidelines. Aggrieved being not considered, applicants have approached this Tribunal for justice.

3. The applicants in order to seek relief prayed for in this O.A, have heavily relied upon a decision of Hon'ble High Court at Calcutta in WPCT.No.369/2012 which records the following facts:-

"The petitioner has approached this Court against the decision of the Central Administrative Tribunal, Calcutta Bench in O.A.650 of 2012. By its order dated 31st August, 2012, the Tribunal has dismissed the application filed by the Petitioner.

The grievance of the Petitioner before the Tribunal was that the Respondent Nos. 1 to 4 had engaged substitutes without publishing an advertisement for recruitment of such employees. The prayers in the application were that the Respondent Nos. 1 to 4 should be directed to issue an advertisement for such recruitment, for a declaration that the employment of substitutes without such advertisement was illegal and void and several other prayers.

The Tribunal has strangely considered these prayers to be made in public interest. It has then proceeded to consider judgments relating to the scope of public interest litigations. Thereafter, it has concluded that the Original Application was in the nature of a roving inquiry to ascertain there have been any illegalities in the appointment of substitutes and has dismissed the Original Application at the stage of admission.

We are surprised at the observations made by the Tribunal. It is well settled that public interest litigations do not fall within the domain of the Central Administrative Tribunal which is a creature of the Statute viz. The Administrative Tribunals Act. The Administrative Tribunal does not have jurisdiction over any matters beyond those prescribed in the Act. The Tribunal was not called upon to consider the scope of public interest litigations. Instead, the grievance of the Petitioner was that substitute employees had been engaged by the Respondents-Authorities without following the well-settled procedure of issuing an advertisement for recruitment. It is this subversion of the recruitment process which was questioned by the Petitioner. The Tribunal ought to have, therefore, confined its decision to that aspect. Comment upon whether the grievance of the Petitioner amounts to public interest litigation were wholly unnecessary.

The Petitioner had submitted two representations to the authorities on 3rd November, 2011 and 27th February, 2012. These representations, it appears, have not been considered as yet by the Respondents-Authorities.

In these circumstances, the impugned order of the Tribunal is quashed and set aside. The Respondents-Authorities are directed to consider the representations of the Petitioner within six weeks from today. The Respondent-Authorities shall communicate the order passed by them on these representations immediately to the Petitioner."

4. RBE 137/2010 as banked upon by the applicants in support of their claim,

is set out hereunder:-



"Sub :Appointment of Substitutes on the railways

The issue regarding revision of provisions contained in Master Circular No.20/1991 issued vide this Ministry's letter No. E[NG]-II/90/SB/10/Master Circular dated 29.1.1991 has been under consideration of this Ministry. After detailed examination by the Board, it has been decided that in supersession of the following mentioned provisions/instructions:

- [i] Para 1512 to 1515 of Indian Railway Establishment Manual, Volume-I [1989 edition];
- [ii] Master Circular No.20/91 issued vide RBE No.12/91 dated 29.01.91 including all the circulars numbering 54 quoted in Master Circular pages 8 to 10;
- [iii] Letter No. E[NG]-II/90/SB/10/MC dated 4.11.1992
- [iv] Letter No. E[NG]-II/2001/SB/2 dated 4.1.2001
- [v] Letter No. E[NG]-II/2005/SB/6 dated 12.09.2005 and
- [vi] Letter No. E[NG]-II/2008/SB/8 dated 24.06.2009

The following instructions on the subject of engagement of Substitutes in erstwhile Group 'D' categories will be applicable :-

2. Definition:

"Substitutes" refer to persons engaged in Indian Railway Establishments on regular scales of pay and allowances applicable to posts falling vacant and the process of filling up is delayed and the post cannot be kept vacant due to exigencies of work otherwise railway service may be adversely affected.

3. Circumstances for engagement of "Substitutes":

3.1 Substitutes in erstwhile Group 'D' should be engaged with the prior personal approval of the General Manager, while those in Group 'C' shall require prior approval of the Railway Board. They should be engaged only in the following circumstances:

- [i] The process of filling up of vacancies is delayed; and
- [ii] The posts cannot be kept vacant without adversely affecting the railway services;

3.2 Maximum number of Substitutes that can be engaged in a year in erstwhile Group 'D' posts

[i] Maximum number of substitutes which can be engaged in a financial year in the following categories would be 10% of the vacancies calculated as on 1st April of the year to be filled up during the financial year;

- [a] Safety;
- [b] Train operations [operating staff of Operating, Mechanical, Civil, S&T and Electrical]
- [ii] For other categories, the maximum number of substitutes that can be engaged is 2% of the vacancies in these categories.

Chief Personnel Officer [CPO] will calculate the 10% and 2% vacancies at the beginning of each financial year.

3.3 Substitutes in erstwhile Group 'D' should be engaged as per following practice/procedure.

- [i] Applications addressed to General Manager will be received in General Manager's office from various sources;
- [ii] Committee of three Senior Administrative Grade [SAG] officers, nominated by General Manager, will scrutinize applications and make recommendations which will be put up for approval of General Manager through Chief Personnel Officer[CPO];
- [iii] The applications recommended by the Committee will be forwarded to the Personnel Department for verification of certificates, etc.
- [iv] After due verification of educational qualifications, certificates etc., the eligible applications along with the requirement of substitutes received from DRMs/Heads of Units, through the Chief Personnel Officer, will be put up for General Manager's approval, by the Personnel Department;
- [v] Keeping the exigencies of services and suitability of the candidate, General Manager will decide the Department and Division /Unit where the candidate is to be engaged as per para 3.2

[vi] Formal letter of engagement will be sent to the Division /Unit by the Personnel Department;

[vii] To avoid any fraud/impersonation etc., the Division/Unit will get the letter verified/authenticated from CPO's office and then issue Engagement Letter to the candidate;

[viii] Proper records should be maintained with reference to the number of applications received, number of applications rejected etc. Records of the applications which are no longer required to be retained should be shredded/weeded out.

4. Benefits:

4.1. Substitutes engaged should be paid regular scales of pay and allowances admissible to the post against which they have been appointed irrespective of the nature or duration of the vacancy.

4.2. They should be allowed all the rights and privileges as are admissible to temporary Railway employees on attainment of temporary status on completion of four months continuous service.

4.3. The conferment of temporary status after completion of four months continuous service does not entitle them to automatic absorption/appointment to Railway service unless they are selected in the approved manner for appointment or absorption to regular posts.

4.4. The period of service of substitutes will be counted for full pensionary benefits from the date of completion of four months continuous service provided it is followed by absorption in regular service, without break.

4.5. While regularizing the services of substitutes, age limit for recruitment to erstwhile Group 'D' posts may be relaxed to the extent of their total service rendered as substitute which may be either continuous or in broken periods subject to maximum of 40 years not exceeded in case of General candidates, 43 in case of OBC and 45 in case of SC/ST.

4.6. Substitutes who wish to apply for the posts advertised by the Railway Recruitment Boards may be given relaxation in age to the extent of service put in by them, continuous or in broken spells subject to maximum of 40 years not exceeded in case of General candidates, 43 in case of OBC and 45 in case of SC/ST.

4.7. Festival/Flood advances: The substitutes who have attained temporary status and have put in one and half years of continuous service should be granted these advances on the same conditions provided they furnish two sureties from permanent Railway servants.

4.8. Substitutes are eligible for medical facilities for self only in the out-patient Department. The service cards etc. of the employee may be utilised as identification cards for this purpose.

4.9. When substitutes are selected for absorption in regular service and sent for medical examinations, the standard of medical examination should be of relaxed standard as prescribed for re-employment during service.

5. Screening of the Substitutes for their absorption in regular service.

5.1. A person who is continued to work as a Substitute for prolonged period shall be considered for regularization of his/her services provided he/she has put in a minimum of 05 [five] years of service.

5.2 A screening Committee should be constituted to screen the substitutes with temporary status for their absorption in regular posts. Such screening Committee should consist of at least three Railway Officers of appropriate rank, one belonging to SC/ST communities and another to minority community.

5.3. Screening/Empanelment of substitute for the purpose of absorption in regular employment be restricted to only those who are in the current substitute registers.

5.4 Though no roster is required to be maintained, the intake of SC/ST/OBC while engaging substitutes against each individual category in the various departments should not be below the prescribed percentage of reservation in favour of these communities.

5.5 The Screening Committee should make good shortfall, if any, by resorting to direct recruitment from open market in each erstwhile Group 'D' category.

5.6 Screening of substitutes for absorption in regular employment may be made by the Screening Committee with reference to the vacancies available at the material time.

5.7 As long as it is established from records that the substitutes have been enrolled within the age limit, relaxation at the time of actual absorption should be automatic.

5.8 In old cases, where the age limit was not observed, relaxation of age at the time of regular absorption should be considered sympathetically. CPOs /DRMs are empowered to grant such relaxations.

5.9 Substitutes will be eligible for absorption in regular employment only if they fulfill the requisite eligibility criteria for the post in question. Relaxation in educational qualification may be granted by retraining such persons as followed in case of Group 'D' staff on implementation of 6th Pay Commission.

5.10 When called for screening, substitutes will be issued passes for their journeys and the period treated as on duty.

5.11 Gaps which may occur in service of Substitutes between two engagements should be ignored for the purpose of temporary status on completion of four months service.

6. Date of appointment

The date of appointment of a substitute to be recorded in the Service Book against the column "Date of appointment" should be the date on which he/she attains temporary status after continuous service of four months if the same is followed by his/her regular absorption. Otherwise, it should be the date on which he/she is regularly appointed/absorbed.

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9. General

9.1 These instructions will be in force from the date of issue of this circular.

9.2 Existing instructions regarding Bungalow Peon/TADK will continue to remain in force.

10. Advance Correction Slip [ACS] to Indian Railway Establishment Manual, Volume-I (1989 edition) will follow."

Citing the aforesaid provisions Id. counsel for the applicants would strenuously urge for a suitable direction upon the respondents in accordance with the provisions.

5. The respondents have emphatically admitted that both the applicants in the year 2010, applied to the General Manager, Eastern Railway for any job in Eastern Railway. The applications received in General Manager, Eastern Railway's office from candidates seeking employment as substitutes are maintained in chronological order of receipt. As per para 3.1(i) and (iii) of Board's guidelines circulated under RBE No.137/2010, considering exigencies of the railway service, the General Manager/Eastern Railway engaged few candidates as substitutes in erstwhile Gr. 'D' from the said register on priority basis.

The respondents would further submit that "Sri Maity and Mahato sought for information under RTI Act,2005 about decision taken by the General manager, Eastern Railway on their applications. Their applications were forwarded to Chief Personnel Officer/Eastern Railway's Office for reply. Since CPO/Eastern Railway's office does not maintain such register reply to their letters were communicated to both of them vide letter No.CPO/SC/Substt/RTI dated 10.4.12 and 21.2.12 respectively mentioning that receipt of their application is acknowledged by General Manager office and s CPO's office is unable to provide any information under RTI Act, 2005 in the matter. Further reply to Shri Maity under RTI Act, 2005 were sent vide letters dated 14.06.2012 and 05.11.2012 stating that his name has been registered at Sl.No.449 of the list of 2010-11. At the time of requirement of substitutes for exigencies of service during that period, the names are sent to the SAG committee, in which turn of Sri Maity had not come."

6. We heard the ld. counsels and perused the materials on record.
7. We failed to discern or decipher any rules, laws, circulars that would disentitle the applicants of suitable consideration in terms of RBE 137/2010.
8. Therefore, in the fitness of things we direct the Respondent No.1 or any other competent authority to consider the cases of the present applicants for appointment as Substitute in terms of their applications, seeking as such and pass appropriate reasoned order within three months from the date of receipt of a copy of this order.
9. While doing so, the respondents shall keep in mind the judgment and order in WPCT No.369/2012 extracted supra and if nothing stands in the way, the respondents shall grant appropriate relief as the applicants would be entitled to in accordance with law.
10. The O.A. is accordingly disposed of. No costs.


(Dr. Nandita Chatterjee)
Administrative Member

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(Bidisha Banerjee)
Judicial Member