

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH
KOLKATA

No.O A.458/ 2011

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

1. Sri Dulal Pandit,
Son of Sri Masafir Pandit,
Aged about 29 years,
Residing at Engineering Colony,
Railway Quarter No. 19/B, ADPDJ,
Post Office – Alipurduar junction,
District - Jalpaiguri.
2. Sri Ganesh Roy,
Son of Late Satyen Ch. Roy,
Aged about 37 years,
Residing Rabindra Sangha,
Railway Quarter No. 1015/A,
Post Office – Alipurduar junction,
District - Jalpaiguri.
3. Sri Mamidi Lakshman Rao,
Son of Late M. Sanlu,
Aged about 41 years,
Residing at RPF Colony, Alipurduar junction,
Post Office – Alipurduar junction,
District - Jalpaiguri.
4. Ranjan Sarkar,
Son of Sri Dipak Sarkar,
Aged about 30 years,
Residing at D.S. Colony, Alipurduar Junction,
Post Office – Alipurduar junction,
District - Jalpaiguri.
5. Sri Ratan Chowdhury,
Son of Late Dwijendra Lal Chowdhury,
Aged about 35 years,
Residing at West Zitpur, Kalibari Colony,
Alipurduar Junction,
Post Office – Alipurduar junction,
District - Jalpaiguri.
6. Sri Bipul Ghosh,
Son of Late Haripada Ghosh,

Aged about 37 years,
Residing at Bholardabri,
Post Office –Alipurduar junction,
District – Jalpaiguri.

All are being Railway canteen Staff, D.R.M.
Alipurduar Junction (N.F. Railway)

... Applicants

Versus

1. Union of India
Service through the General Manager,
Northeast Frontier Railway,
Maligaoii, Gowahati,
Assam.
2. The Divisional Railway Manager,
Northeast Frontier Railway,
Alipurduar Junction,
District – Jalpaiguri.
3. The Divisional Railway Manager (P),
Northeast Frontier Railway,
Alipurduar Junction,
District –Jalpaiguri.
4. APO-III. Alipurduar Junction,
N.F. Railway,
Alipurduar Junction,
District – Jalpaiguri.
5. The Joint Director, Estt (N) II
Railway Board,
Government of India,
Ministry of Railways, Rail Bhaban,
New Delhi – 1.

... Respondents

For the applicant : Mr. R. Saha, counsel
For the respondents : None

Heard on : 30.08.2018

Order On : 26.9.18

ORDER

Bidisha Banerjee, Judicial Member

Six applicants by way of this O.A. have sought for the following reliefs:-

"8.(i) An order do issue directing the respondents particularly the respondent No. 3 i.e. the Divisional Railway Manager regularize the service of the applicants and to absorb the applicants in group - D category forthwith.

(ii) Leave be granted to move this application jointly by the applicants as they have common cause of action under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

(iii) An order do issue directing the respondents to produce all records relating to this case before the Hon'ble Tribunal so that after perusing the same conscionable justice be administrated.

(iv) And/ or such pass further order or orders direction or directions as Your Lordships may deem fit and proper."

2. The admitted facts that could be culled out from the pleadings of the parties are as under:-

(a) *A staff canteen is functioning since 1976/77 in the DRM Office APDJ.*

The canteen is neither a statutory canteen nor recognized canteen. The canteen is managed by an elected body of canteen management committee of Railway staff working, in the DRM Office building.

(b) *The Assistant Personnel Officer N.F. Railway Alipurduar Junction looking after the General Welfare of Staff, is the Ex-Officio Chairman of the staff Canteen.*

(c) *The staff Canteen/APDJ is not recognized by the regular authorities. The Railway Board is the competent authority to recognize canteen either statutory or non statutory and no facility in respect of subsidy and other benefit are received from the Railway.*

(d) *The canteen was set up as a welfare measure considering the minimum needs and demand of the office staff such as building and normal rent basis water, electricity which are provided by the local administration treating the establishment as service building.*

(e) *The staff canteen is run as a no loss and no profit business and for recognition of staff Canteen/APDJ a proposal was sent earlier but no sanction was given as per policy directive of Board.*

(f) The canteen staff is paid monthly remuneration depending upon the monthly sale proceeds of the staff canteen by the said Managing Committee of its users.

(g) GN(P)/MLG vide letter No.P/227/144/Pt.xiii (c) dated 9th October, 2006 inform all concerned Co-Operative Railway Institute including Divisions to send the name and details of staff working in quasi administrative organization who are working for at least 3 years continuously as on 10th June, 1997 and fulfill the prescribed criteria.

(h) To the said notification of GN(P)/MLG, concerned staff directly send the names to HQ/MLG for consideration of the appointment in the Railway and accordingly the eligible candidates were appointed, but the present applicants have not completed 3 years of continuous work as on 10th June, 1997;

(i) Further that in the list of quasi staff selected for work and forwarded to the division applicants do not figure eligible and as such absorption of the applicants does not arise.

(j) It is admitted that some candidates of APDJ staff canteen who had completed continuous 3 years of service as on 10th June, 1997 were considered for absorption in 2001 in terms of RBE – 103/2000 but the applicants did not complete of 3 years of continuous service as on 10-06-1997. Therefore, they were eligible to be considered as such.

3. The categorical stand of the respondents in regard to the claim of the applicants for regularization is that the applicants are not eligible since they have not completed at least three years of services as on 10.06.1997.

(i) In support the respondents have placed RBE 56/2006 circulated on 03.05.2006 which reads as under:-

"Sub: Recruitment in Group 'D' category on Railways of the Staff working in quasi-administrative offices/Organisation connected with Railways.

Attention is invited to Board's letter No.E(NG)II/99/RR-1/15 dated 30.5.2000, wherein, it has been laid down that, as a one time relaxation, the Railways may consider absorption of only those staff of quasi-administrative offices/organizations who were on roll continuously for a period of at least three years as on 10.6.1997 and are still on roll, subjected fulfilment of prescribed educational qualifications required for recruitment

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to Group 'D' posts and should have been engaged within the prescribed age limit. Such absorption should be resorted to only after exhausting the list of ex-casual Labour borne on the Live Casual Labour Registers/Supplementary Live Casual Labour Registers. The Units/Bodies whose staff are proposed to be absorbed in this manner and their total number should however be first intimated to Board and the process should be undertaken only after Board's clearance. Proposals sent to the Board for such clearance should have the personal approval of the General Manager.

2. *A demand has been raised by both the Federations that those staff of quasi-administrative offices/organizations who were working in these offices as on 10.6.97 should be considered for absorption for Group 'D' in Railway services.*

3. *The matter has been considered by the Board and it has now been decided that Railways with approval of General Manager may consider absorption of those staff of quasi administrative office/Organisation who were on roll as on 10.6.97 and are still on roll subject to fulfilment of other conditions as laid down in Board's letter *ibid.*"*

(ii) Communication dated 09.10.2006 by General Manager(P), Maligaon to all Railway cooperative societies and railway institutes to take necessary action in regard to RBE 56/2006 for appointment of staff in quasi administrative office/organization who were on roll as on 10.06.1997 and were still on roll on the date subject to fulfilment of educational qualification criterion. Such organizations were requested to send names and details of staff working in quasi administrative organization who fulfilled the criteria for such consideration;

(iii) Communication dated 12.07.2011 by the SPO/Recruitment for General Manager(P), Maligaon intimating the DRM(P)/APDG that canteens run by railways were also within the purview of railway quasi administrative offices/units;

(iv) Extract of Indian Railway Establishment Code Vol. I para 602 on medical attendance and treatment rules which provides that pre-medical assistance and treatment facilities are available to the staff of consumer cooperative societies.

Para 602 of Indian Railway Establishment Code, Vol.I is reproduced below for ready reference:-

"INDIAN RAILWAY ESTABLISHMENT CODE(VOL.I)

Chapter 6

Medical Attendance and Treatment Rules

602 Section B : Extent of Application

Sub-section 9 : Quasi Railway Organisation

I. Free medical attendance and treatment facilities are available to the staff themselves of the

- (i) Consumer Cooperative Societies*
- (i) Staff Benefit Fund Committees*
- (ii) Railway Institutes*
- (iii) Railway Officer's Club*
- (iv) Station Committees*

The family members of these employees will be given free OPD treatment.

II. The family members of the staff of Consumer Co-operative Societies may be given medical attendance and treatment on per capita basis, the charge being calculated on the basis of total expenditure on medical services on All India basis excluding the cost of health service.

III. Medical attendance and treatment facilities are available to the staff and their families of the Co-operative Credit Societies and Bank on per capita basis as stated above.

Note:--*The staff of the canteens on Railways run by cooperative Societies specially formed for the purpose and in the Ministry of Railway's office may be extended free medical treatment in OPDs only. For any investigation charges are leviable.*

(MOR's decision No. 2 deal rule 902 R. T. paras 1403 (a), 2922 & 2940 (vi) of Indian Railway Establishment Manual, MOR's letter No. 64/H/7/116 , dated 31-8-1965, 71/H/1-1/18 dated 14th September, 1971 and 73/H/6-1/24, dated 1-10-1973)."


4. In the rejoinder the applicants have failed to contradict the statement of the respondents that three years' service as on 10.06.1997 was mandatory in

order to be suitably considered against Group 'D' post. However, the applicants have pleaded that they have acquired a right by virtue of more than 10 years' continuous service, but no supporting documents have been annexed along with the application.

5. The Id. counsels were heard and materials on record were perused.

6. In view of the stand of the railways that three years of services as on 10.06.1997 would evidently allow a canteen staff to be considered for regularization and in view of the fact that the applicants have claimed to have served for more than 10 years, but have failed to annex supporting documents, we dispose of this O.A. with a direction upon the applicants to file comprehensive representations annexing documents in support of their claim that they have completed 10 years of services in the canteen and are entitled to be considered in terms of RBE 56 of 2006, within 4 weeks from the date of receipt of a copy of this order. In the event such representations are preferred, the respondents shall duly consider the claim of each of the applicants in accordance with law and pass appropriate reasoned and speaking order within 8 weeks thereafter. No costs.


(Dr. Nandita Chatterjee)
Administrative Member


(Bidisha Banerjee)
Judicial Member