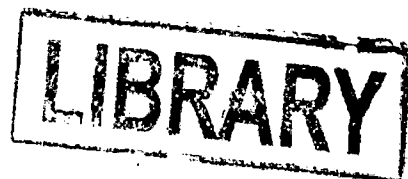


**CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA**



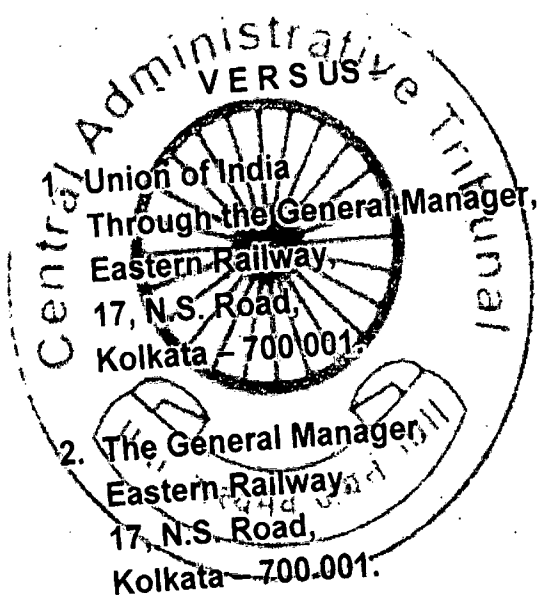
No. O.A. 754 of 2011

Date of order: 26th September, 2018

Present : Hon'ble Ms. Bidisha Banerjee, Judicial Member
Hon'ble Dr. Nandita Chatterjee, Administrative Member

Shri Mantu Dutta Chowdhury,
Son of Snehatosh Dutta Chowdhury,
Aged about 43 years,
Unemployed,
Residing at Ramesh Pally,
No. 11 Rail Gate,
P.O. Nabapally, Dist. North 24 Pgs.,
Barasat,
Pin - 700 126.

.. Applicant



3. The Chief Personnel Officer,
Eastern Railway,
17, N.S. Road,
Kolkata - 700 001.

4. The Divisional Railway Manager,
Eastern Railway,
Sealdah Division,
Sealdah, Kolkata.

5. The Senior Divisional Personnel Officer,
Eastern Railway,
Sealdah Division,
Sealdah, Kolkata.

6. The Senior Divisional Operating Manager,
Eastern Railway,

Sealdah Division,
Sealdah, Kolkata.

7. The Station Superintendent / Manager,
Eastern Railway,
Sealdah,
Kolkata.

.. Respondents

For the Applicant : Mr. S.K. Dutta, Counsel

For the Respondents : Mr. P.B. Mukherjee, Counsel

ORDER

Per Dr. Nandita Chatterjee, Administrative Member:

An Original Application has been filed under Section 19 of the Administrative Tribunals Act, 1985 seeking the following relief:-

- "(a) An order quashing and/or setting aside the impugned order dated 3.5.2010 as well as the communication dated 2.8.2010.*
- (b) An order directing the respondents to reconsider the case of the applicant as has been considered in respect of the applicants in O.A. No. 1999 of 1993 namely, Sri Sukumar Roy & ors. and in the event the documents are found to be similar as produced by the applicants with the documents to O.A. No. 434 of 1997 as so far as the certificates and identity slips/cards are concerned the respondents may be directed to grant similar benefits as have been extended to Sri Sukumar Roy & ors. with all consequential benefits within a period as to this Hon'ble Tribunal may seem fit and proper.*
- (c) An order directing the respondents to produce/cause production of all relevant records.*
- (d) Any other order of further order/orders as to this Hon'ble Tribunal may seem fit and proper."*

2. Heard Ld. Counsel for both sides, perused pleadings and documents on record. A supplementary affidavit has been filed by the applicant on 15.1.2013. Written notes of arguments have been filed on behalf of the applicant. No written notes, however, have been filed on behalf of the respondents within the scheduled date.

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3. The case of the applicant, as inferred from the pleadings and written notes of arguments, are that:-

That, the applicant along with others was engaged as an Unapproved Substitute and had worked, as such, from 23.4.1983 to 31.7.1986 under the control of the Station Superintendent, Sealdah.

That, a similarly placed employee, Shri Sukumar Roy, who had approached the Tribunal in O.A. No. 1099 of 1993 praying for similar benefits had been enlisted in the Live Casual Labour Registrar and had been subsequently absorbed and that, one Shri Subol Chandra Pramanik, who had also approached the Tribunal for similar benefits, have been enlisted under the directions of the Tribunal.

That, the applicant had approached the Tribunal earlier in O.A. No. 434 of 1997 for enlistment of approved list of Substitute for training and also for appointment against regular vacancies. The Tribunal disposed of the said O.A. by directing the respondents to reconsider the entire issue and to pass an appropriate speaking order. In the said speaking order, however, the applicant's claim was rejected on the following grounds:-

- (i) That his engagement as unapproved Substitute has not been approved by the competent authority.
- (ii) The identity card issued to him did not bear any machine printed serial number and, as such, he was in possession of a fake identity card.
- (iii) That, he managed to work as a Substitute in liaison with the local Station Master, who was not authorised to engage him in any capacity whatsoever.
- (iv) That, the claim of the applicant on his engagement was not supported by any appropriate appointment order.

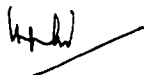
[Signature]

According to the applicant, in terms of Para 2001 (5) of IREM Vol. II there was no provision for providing Machine Printed Identity Cards to casual employees.

The applicant in support of his claims, has advanced the grounds that the speaking order dated 3.5.2010 was in clear violation of rights guaranteed under Article 14 of the Constitution of India and that the rejection of his claim is highly discriminatory and is not sustainable in law.

4. Per contra, the respondents have argued as follows:-

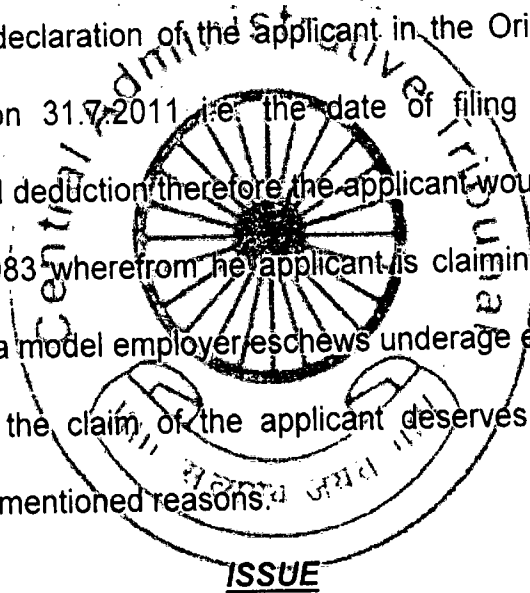
- (i) That, although the applicant has claimed that he has worked as a Substitute in the Sealdah Division of Eastern Railway in a post with regular pay scale and had completed 120 days' of service which entitles him to temporary status, no competent authority in the Personnel Department had ever issued any service certificate to the applicant.
- (ii) That, in compliance to the directions of the Tribunal in O.A. No. 434 of 1997, the applicant was accorded a personal hearing on 22.3.2010, wherein he had failed to submit any engagement order as issued by the competent respondent authority and the identity cards and the working/service certificates furnished by the applicant were manufactured and fraudulent.
- (iii) The said service certificate was purportedly issued by the Station Superintendent, Sealdah, Eastern Railway, who was not authorised to issue such certificate under any circumstances. In support of their contention, the respondents have furnished the format of service certificate as Annexure R-1 to the reply to bring home the fact that there is a prescribed format for the purpose of issue of the service certificate and that the service certificate produced by the applicant is an aberration of the same.
- (iv) The respondents have further argued that a decision in another O.A. as relied upon by the applicant, does not provide a replicable cause of action as each case has to substantiate itself on its own merit as per Hon'ble Apex Court decision in **Bhoop Singh v. Union of India & ors. AIR 1992 SC 1412.**



(v) The respondents have also cited *Pankaj Gupta & ors. v. State of J&K & ors. (2004) 8 SCC 353* and *State of U.P. v. Rajya Khanij Vikash Nigam Sangharsha Samiti (2009) 1 SCC (L&S) 237* wherein it was held by the Hon'ble Apex Court that incumbents illegally appointed are not entitled to claim continuity in service and had no enforceable right for absorption, contrary to rules laid down in this regard.

(vi) According to the respondents, as the applicant had never disclosed the facts of his disengagement, the initial burden of proving termination is on the applicant itself as per the Hon'ble Apex Court dictum in *Ramesh Watch Co. vs. IT cum Labour Court 2005 (5) ALT 372*.

(vii) Finally, the respondents have also pointed out a significant anomaly namely, that as per declaration of the applicant in the Original Application, he was 43 years old on 31.7.2011 i.e. the date of filing the instant Original Application. By logical deduction therefore the applicant would have only been 15 years old in April, 1983 wherefrom he applicant is claiming his working status, and the Railways as a model employer eschews underage employees. According to the respondents, the claim of the applicant deserves to be dismissed on account of the abovementioned reasons.



5. The point of determination in this matter is whether the speaking order dated 3.5.2010 is liable to be quashed and whether the applicant entitled to the relief as sought for in the instant Original Application.

FINDINGS

6.(i) At the outset, the speaking order dated 3.5.2010 is examined in detail. The same is reproduced below for better understanding of the matter in hand:-

" SPEAKING ORDER in O.A. 434 of 1997
Of Sri Mantu Dutta Chowdhury & ors. v. U.O.I. & ors.

1. In pursuance of the orders of the Hon'ble CAT/Kolkata in the matter of O.A. 434 of 1997 of Montu Dutta Chowdhury & ors. v. UOI & ors. (Petitioner No. 1), I have carefully examined the case of the applicant, Sri Montu Dutta Chowdhury, S/o Snehatosh Dutta

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- Chowdhury. The applicant was given a personal hearing by the respondent No. 3 on 22.3.2010.
2. During the personal hearing on 22.3.2010 in the office of the Sr. DPO/SDAH, all the documents available with the applicant were examined and he was made to submit Xerox copies of the same as listed below:-
 - I. Temporary Identity Card said to be issued by SS/SDAH on 28.6.83.
 - II. Working Certificate on plain paper said to be issued by SS/SDAH for the period from 28.4.1983 to 31.12.83.
 3. I have also taken into account the various relevant office records before coming to a conclusion about the eligibility of the applicant for re-engagement as substitute. The applicant could not submit copy of any office order of engagement as Substitute issued by the Divisional Personnel Department which could establish that he was engaged through proper process and with the approval of the competent divisional authority namely Divisional Railway Manager. All he could submit were plain paper notes cited as working certificates allegedly issued by the station master of Sealdah Station on different dates wherein he is said to have worked as Substitute under the then SS/SDAH w.e.f. 28.4.83 to 31.12.83, which is not backed appropriate appointment orders.
 4. The Identity card in possession of the applicant has also been verified with the registers in the selection in Divisional Personnel department which issues identity Cards to all employees in the Division. The verification report reveals that no such Identity Card has ever been issued from the section in the name of Sri Mantu Dutta Chowdhury. All Identity Cards issued officially from this office would bear a unique machine printed serial number. The fact that he was never engaged as a Substitute through proper channel and with competent authority's approval itself is a reason why no official Identity Card could ever have been issued to the applicant. This indicates that the Identity Card in the applicant's possession is fraudulent.
 5. Taking all the above facts into perspective, it is reasonably established from the documents submitted by the applicant during the personal hearing, and from available office record, that the applicant Sri Mantu Dutta Chowdhury, S/o. Snehatosh Dutta Chowdhury has never been engaged with the approval of competent authority, and the days he managed to work as substitute by tying up with the local Station Master was clearly unapproved. In this background there is no case for re-engaging him as Substitute when his earlier engagement and the work he put in as substitute was unauthorized and not approved by the competent approval. Accordingly, having reconsidered the grievances of the petitioner Sri Mantu Dutta Chowdhury, S/o Snehatosh Dutta Chowdhury afresh in terms of the order dated 27.11.09 of the Hon'ble CAT, Kolkata in O.A. 434 of 1997, his plea for his re-engagement as Substitute is hereby rejected. This speaking order would be conveyed to the applicant by registered post.

(L. TAMSOY)
 Divl. Personnel Officer/Sealdah
 & Respondent No. 3"

Upon an analysis of the same, the following is inferred:

- (a) That, the applicant did not possess any engagement order issued by a competent respondent authority authorised to issue the same. This averment has been admitted by the applicant in his rejoinder wherein the applicant has stated as follows:-

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"....It is further stated that the question of submission of engagement order did not arise at all as no such order was ever issued to this deponent"

(b) That, as per the verification report obtained by the respondent authorities, it had been ascertained that no such identity card that the applicant claims to be in possession of, was ever issued from the Section of the respondent authorities as all identity cards officially issued would bear Unique Machine Printed Number.

The applicant has reacted to the same as under in his rejoinder:-

"... the temporary identity card are bearing the signature of the competent authority as per rules and the temporary identity card was issued by the competent authority as per provisions of Railway Establishment Manual Vol. 2, Para 2001 (5) and there was no system of putting any Sl. No. in temporary identity card."

In this context, the provisions of Para 2001 (5) of IREM Vol. II is referred to and the same is reproduced below with supplied emphasis:-

"(5) In order to provide documentary proof of service, a casual labour should be given a card. A person wanting to be appointed as a casual labour should be asked to supply to the administration two passport size copies of his photograph at the time of his engagement as casual labour. This photograph duly attested by the competent authority should be pasted on his service card another copy in the casual labour register. Casual labour should be asked to deposit Re. 1/- towards the cost of service card. The following particulars should be indicated by concerned supervisory official in the Service Card:

- (1) Name of the employee (in Block letters).
- (2) Father's Name (in Block letters).
- (3) Date of birth
- (4) Age at initial casual employment, year, month.
- (5) Personal mark/s of identification.
- (6) Date of engagement.
- (7) Date of termination.
- (8) Nature of job on each occasion.
- (9) Signature of the Supervisor.
- (10) Name in full (In capital letters) & Designation of the Supervisor.

Note :- These should be cross reference to LTI Register / CL Card Number. In case of re-engagement as Casual labour previous spell of employment be checked up by Supervisors' concerned including checks from the original paid vouchers.

The service cards should be in the form of a booklet and should have stiff card board binding. On page 1 on the left side detailed instructions should be printed for the guidance of casual labourers. These instructions should be in bilingual form both in English and Hindi. In addition, Railways may add a local language of the area subject to convenience. The service card should be machine numbered and account of service cards maintained in Divisional Office.

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Casual Labour engaged for short duration like a week or ten days for work of short duration or for emergencies like restoration of breaches etc., will not, however, be issued card, nor their names entered in Casual Labour Register."

Hence, it has been clearly spelt out in IREM-II that cards are to be machine numbered, a provision disputed by the applicant.

(c) That, if the applicant had performed any duties as a Substitute in liaison with the local Station Master, such delegation of work to the applicant was unauthorized and was never approved by the competent authorities.

(ii) In the instant Original Application, however, the applicant has not set out to prove the veracity of his service certificates or identity cards; rather, the applicant has claimed that one Shri Sukumar Roy and one Shri Subol Chandra Pramanik had been engaged in the same manner as him and they have also worked as Unapproved Substitutes along with the applicant. According to the applicant, Shri Sukumar Roy was also issued similar temporary identity slip and service certificate by the Station Superintendent, Sealdah as that issued to the applicant but the said Sukumar Roy had been absorbed by the respondents on regular basis. Again, one Sri Subol Chandra Pramanik (whose case was initially rejected by the respondent authorities) had also approached the Tribunal with similar prayers and that Shri Subol Chandra Pramanik was absorbed in compliance to directions of this Tribunal in O.A. No. 94 of 2003 read with CPC No. 111 of 2005.

No details have been furnished before us, however, by the respondents whereby the distinction between the candidature of Shri Sukumar Roy and Shri Subol Chandra Pramanik vis-a- vis that of the applicant could be established.

7. Hence, we deem it fit to grant liberty to the applicant to file a comprehensive representation before the competent respondent authority with specific reference to the absorption details of Sri Sukumar Roy and Sri Subol Chandra Pramanik. Once such representation is submitted to the competent respondent authority, the said respondent authority will examine in detail the representation of the applicant and, if he is similarly circumstanced as Shri



Sukumar Roy and Shri Subol Chandra Pramanik, purportedly permanently absorbed by the respondents, the respondents will proceed to decide on the representation of the applicant in the light of decisions taken in the context of the aforesaid incumbents and communicate the same to the applicant immediately thereafter. The entire exercise is to be completed within 8 weeks of the date of receipt of representation from the applicant.

With these directions, the O.A. is disposed of. There will be no orders on costs.

(Dr. Nandita Chatterjee)
Administrative Member

(Bidisha Banerjee)
Judicial Member

SP

