

Central Administrative Tribunal
Patna Bench, Patna.
[Circuit Court at Ranchi]

O.A /50/398/2012

Order Reserved on :- 16.01.2019
Date of Order:- 30.01.2019

C O R A M
Hon'ble Shri J. V. Bhairava, Member [J]
Hon'le Shri Dinesh Sharma, Member A)

1. Arun Kumar Jha, Son of Uma kant Jha.
2. Sunil Kumar shrivastava, son of Bishwanath Prasad
3. Swapan Kumar Das, son of Late Horolal Das
4. Pappu Kumar Ram, son of Iala Ram
5. Anil Kumar Rai, son of Late Nakul Rai.
6. Dhurandhar, son of Lal Babu singh
7. Sarvodaya Ram, Son of Rama Ram
8. Dharmendra Jha, son of Ram Lakan Jha
9. Parsuram Yadav, son of Bhikhari Yadav
10. Vijay Kumar Jha, son of Satyadeo Jha
11. Anil Kumar Son of Janak Paswan
12. Pramod Kumar Shrivastava, son of Lal Babu Shrivastava

All Mess Staffs/Workers (Casula Labour) Zonal Training Center, East Central Railway, P.S.-Sadar (M7uzaffarpur), District- Muzaffarpur (Bihar).

....Applicants

By Advocate : Shri G. Saha

Vs.

1. Union of India through the Chairman, Railway Board, Rail Bhawan, New Delhi.
2. The General Manager, East Central Railway, Hazipur, District- Vaishali.
3. The General Manager (Personnel), East Central Railway, Hajipur, District- Vaishali.
4. General Manager (Personnel), North Eastern Railway, Gorakhpur.
5. Divisional Railway Manager, Sonepur Division, East Central Railway, Sonepur, District- Saran.
6. Divisional Railway Manager (Personnel), Sonepur Division, East Central Railway, Sonepur, District- Saran.
7. Principal Zonal Training School/Center, East Central Railway, Muzaffarpur.
8. Madan Mohan Thakur, son of Sri Fulena Thakur.
9. Raghunath Bhagat, son of Nand Lal Bhagat, both Mess Staffs/Workers (Casual Labour). Zonal Training Center, East Central Railway, P.S.- Sadar (Muzaffarpur), District- Muzaffarpur (Bihar).

..... Respondents.

By Advocate : Shri S.K. Ravi

O R D E R

Per J.V. Bairavia, M [J] :- The instant O.A has been filed by the applicant alongwith eleven other applicants cumulatively seeking relief for issuance

of direction upon the respondents to held screening test for absorption of the applicants against any Group 'D' post similar to similarly situated person of training Center, Gorakhpur who have been screened and absorbed against the Group 'D' post by the respondents vide Memorandum dated 01.06.1989 and office order dated 31.10.1991 with retrospective effect alongwith consequential benefits. (Annexure A/11 series refers). It is further prayed to held that the respondents are duty bound to conduct screening test and the applicants are legally entitled to be absorbed in the regular Group 'D' establishment of the railway on the basis of the result of such screening test, similar to similarly situated persons.

2. The brief facts of the case as submitted by the applicant is as under :-

[2.1] It is contended that the applicants are continuously discharging his duty as a Casual Labour/Mazdoor in Mess of Zonal Training School, Muzaffarpur since long. Vide letter dated 02.06.1984, the General Manager (P) North Eastern Railway, Gorakhpur informed the Principal, Zonal Training Center, N.E. Railway, Muzaffarpur that the decision taken by the Member of Board of Directors of ZTC, MFP on 25.10.1983 of GM(P) dated 04.01.1984 was put up before the General Manager and he had approved the recommendation to the effect that the Casual Labour engaged in in Mess of ZTS/MFP should be provided avenue for screening and regular absorption in traffic Department of Sonepur Division. (Annexure A/2 refers).

[2.2] Though, the applicants had requested the respondents to consider their claim for their regularization and appointment as per the direction of the General Manager, the respondents have not taken any action and therefore, the applicants had filed various representation before the competent authority but they have not taken any action on their genuine grievance. The applicants thereafter approached this Tribunal through O.A. 244/2003 with a prayer to direct the respondents to hold screening test and on the basis of the result. The said OA was

disposed of vide order dated 27.04.2003 (Annexure A/4) with a direction to respondent no.3 i.e i.e General Manager (P), East Central Railway, Hajipur to consider the representation of the applicant as per scheme of regularization of Casual Labour and to pass a reasoned and speaking order in accordance with law within a period of three months. However, the respondents were sitting tight over the matter and did not pass any order in compliance of the direction issued by this Tribunal . Thereafter, the applicant filed a Contempt Petition i.e CCPA No. 155/2003. During the pendency of CCPA, the General Manager (P) ECR, Hazipur passed order dated 10.11.2003 thereafter contempt petition of applicant become infructuous. It is further contended that in the meantime the respondents started harassing the applicants adopting different methods including giving threatening that they will be ousted from the service. Thereafter the applicant filed O.A 1060/2003 which was dismissed vide order dated 20.04.2005. (Annexure A/5 refers).

[2.3] Aggrieved by this, the applicant filed RA 79/2005 which was also dismissed vide order dated 21.09.2005. Being aggrieved by the order passed in OA as well RA, the applicants approached before the Hon'ble Patna High Court through CWJC No. 5552/2006. The said writ petition was disposed of vide order dated 31.01.2007 with a direction to the respondents to consider the representation of the applicant on merit and in accordance with law. (annexure A/16 refers). As per the direction, the applicants filed their representation dated 15.03.2007 before respondent no.2 and requested to hold screening test for the applicant and on the basis of result of the said screening test absorption of the applicant in any Group 'D' of the establishment be made . (Annexure A/17 refers). However, without considering all aspects of the case, the respondents no.2 i.e General Manager, E.C. Railway, Hajipur passed order on 14.09.2007 (Annexure

A/1) by which the claim of the applicants has been rejected. Thereafter the applicant filed writ petition i.e WCWJ No. 4606/2008 with a prayer to set aside the impugned order dated 14.09.2007. the said writ petition was dismissed vide order dated 14.03.2011 by granting liberty to the applicant to agitate the matter before appropriate authority. (Annexure A/18 refers). Hence the applicants have preferred the present O.A.

[2.4] The I/c for applicant submitted that the impugned order had been passed on extraneous consideration in order to defeat the legitimate claim of the applicant. The respondents failed to appreciate the fact that the applicants are continuously discharging their duty as a MESS staff on casual basis since 1979 till date and after due consideration of substantial period of time in service the General Manager (P) vide its order dated 02.06.1984 (Annexure A/2) advised to provide avenue for screening and regular absorption in Traffic Department of Sonepur Division, However, without any cogent reason the respondents have deprived the applicant from regularizing their engagement as a regular employee. It is further contended that the respondent no.7 i.e the Principal, Zonal Training School/Muzaffarpur repeatedly requested the Divisional Railway Manager (P), Sonepur for taking necessary action for compliance of the specific direction of respondent no.4 dated 02.06.1984. The respondents no.4 totally ignored the fact that due to change of controlling jurisdiction of North Eastern Railway to East Central Railway cannot defeat the legal entitlement of the applicant. Undisputedly the applicants are rendering their service since 1979 at that relevant time in North Eastern Railway was the controlling authority and subsequently it has been passed it over to East Central Railway but the fact remain that the applicants were continuing at the same place

and discharging their duty continuously therefore the order is required to be set aside.

3. The respondents, on receipt of notice, have filed their reply and submitted that :-

- [i] Sri Arun Kumar Jha, Mess Sewak is working in the mess from 09.10.1979. Rest others are working after 1979 (as per the letter of Principal dated 25.01.2001). They have not continuously discharging their duty in the mess. Time to time they are absconding from the Mess as per their own requirement and are re-engaged depending on the requirement of the mess.
- [ii] It is further contended that Sri Shatrughan, Sri Anil Kumar, Janak Kumar and Sri Pramod Kumar Shrivastava are not working in the mess. It is contended that the mess is totally private and running under locally formed Mess Management Committee with participation of trainees and institute staff. It has own By-laws. Mess servants are purely private servant of Mess Management Committee and their appointment, retrenchment and re-engagement are done by MMC as per need of the mess. They are not casual labour of Railway Department. As per the requirement of the trainees strength MMC use their authority as per BY-laws to engage a fresh one and retrench them as per their performance and their behaviours with trainees. The allegations of applicants are false and concocted. The O.A has no merit to stand therefore it may be rejected.

4. The applicant filed their rejoinder to the w.s and reiterated earlier submissions. Additionally, the applicant submitted that the applicants are continuously working as Mess servant/Casual Labour as per directions of respondents since 1979 and onwards in ZTC, Muzaffarpur, previously under NER, Gorakhpur and now ECR, Hajipur.. The Board of Directors of ZTC took a decision in 1984 which was subsequently approved by the General Manager (P), NER vide order dated 02.06.1984 that the Casual Labour engaged in Mess of Zonal Training School Muzaffarpur should be provided avenue for screening and regular absorption

in Traffic Department of Sonepur division. Consequently, the Principal, ZTC, Muzaffarpur repeatedly requested DRM(P) Sonepur for taking necessary action for compliance of specific order dated 02.06.1984. Thereafter, the General Manager (P), NER Gorakhpur himself conducted and enquiry and prepared an Enquiry Report dated 19.03.1999 and again directed to initiate the necessary process for regularization of services of applicants. Thereafter, the DRM (P) directed the Principal ZTC, Muzaffarpur to sent a list of servants/casual labours alongwith other details for holding screening test. The same was sent to the DRM (P), Sonepur but no action on the said list has been done till date. However, in the meantime, the Ministry of Railway created a new Railway Zone viz East Central Railway and Sonepur Division was made a part of the newly created East Central Railway as such the jurisdiction and control of Zonal Training Centre/School, Muzaffarpur shifted from North Eastern Railway Gorakhpur to East Central Railway, Hajipur.

5. The respondents have filed supplementary affidavit wherein it is contended that the Hon'ble Apex Court has observed that the respondents were working in a Mess run by the Trainee Officer in the Railway Staff collage Mess was not run by the railway but was run by the Trainee Officers themselves so that they could get proper meals. It is evident that the respondents were not railway employee because the mess was not being run by the Railway Administration but was run by the Trainee Officers themselves so that they could get proper meals during the training session. In view of the above the O.A is not sustainable in law and is liable to be dismissed.

6. We have heard the parties and in our considered opinion that admittedly the applicants are working in the said Mess but the Mess was not run by the Railway Administration, it was totally private and was being run under locally formed Mess Management Committee with participation of trainees and institute staff. It has own By-laws. Mess servants are purely private servant of Mess Management Committee and their appointment, retrenchment and re-engagement are done by MMC as per need of the mess. Therefore we do not find any merit in the O.A accordingly, dismissed with no order as to costs.

