

CENTRAL ADMINISTRATIVE TRIBUNAL
KOLKATA BENCH, KOLKATA

LIBRARY

No. O.A. 1469 of 2013

Reserved on : 18.11.2019

Date of order: 19.11.2019

Present : Hon'ble Dr. Nandita Chatterjee, Administrative Member
Hon'ble Mr. Swarup Kumar Mishra, Judicial Member

Shri Tribhuwan Nath Shukla,
Son of Rama Sankar Shukla,
Aged about 28 years,
Residing at 66,
Sanatan Mistri Lane,
(Oriya Para),
P.O. Salkia,
Dist. Howrah - 777 106.

Applicant

VERSUS -

1. Union of India,
Through the General Manager,
Eastern Railway,
Fairlie Place,
Kolkata - 700 001.

2. The Divisional Railway Manager,
Eastern Railway,
Howrah.

3. The Sr. Divisional Commercial Manager,
Eastern Railway,
Howrah.

4. The Chief Parcel and Luggage Inspector,
Howrah.

... Respondents

For the Applicant : Mr. A. Chakraborty, Counsel

For the Respondents : Mr. S. Banerjee, Counsel

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ORDER**Per Dr. Nandita Chatterjee, Administrative Member:**

The applicant has approached the Tribunal under Section 19 of the Administrative Tribunals Act, 1985 praying for the following relief:-

"(a) An order do issue directing the respondents to appoint an officer of the Railway who will consider the cases of the applicants and if they are found to be eligible, and if they satisfy the condition they may be considered for regularization.

(b) An order do issue directing the respondents to regularize the applicant in Group - D posts in the Railway if they are found eligible for appointment.

(c) Leave may be granted to file his application jointly under rule 4(5)(a) of the CAT Procedure Rules, 1987.

2. Heard both Ld. Counsel, examined pleadings, documents on record and considered the rival contentions.

3. The applicant relies on the Hon'ble Apex Court's orders dated 22.8.2003 in Writ Petition (Civil) No. 457 of 1998 and Writ Petition (Civil) 121 of 2000 in which the Hon'ble Apex Court had considered the claim of the writ petitioners, namely, the Parcel Porters and the Porters Union, and had directed, inter alia, as follows:-

"1. The Assistant Labour Commissioner, Lucknow, is directed to again scrutinize all the records already placed by the petitioners and also the records to be placed by the respective contractors and the railway administration and discuss and deliberate with all parties and ultimately arrive at a conclusion in regard to the genuineness and authenticity of each and every claimant for regularization. This exercise shall be done within six months from the date of receipt of this judgment.

2. Subject to the outcome of the fresh enquiry and the report to be submitted by the Assistant Labour Commissioner, the Railway Administration should absorb them permanently and regularize their services. The persons to be so appointed being limited to the quantum of work which may become available to them on a perennial basis. The employees so appointed on permanent basis shall be entitled to get from the date of their absorption, the minimum scale of pay or wages and other service benefits which the regularly appointed railway parcel porters are already getting.

3. The Units of Railway Administration may absorb on permanent basis only such of those Railway Parcel Porters (petitioners in this batch) working in the respective railway stations concerned on contract labour who have not completed the age of superannuation.

4. The Units of Railway Administration are not required to absorb on permanent basis such of the contract labour Railway Parcel Porters who are not found medically fit/suitable for such employment.

5. The absorption of the eligible petitioners in the writ petitions on a regular and permanent basis by the Railway Administration as Railway Parcel Porters

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does not disable the Railway Administration from utilizing their services for any other manual work of the Railways depending upon its need.

6. In the matter of absorption of Railway Parcel Porters on contract labour as permanent and regular Railway Parcel Porters, the persons who have worked for longer periods as contract labour shall be preferred to those who have put in shorter period of work.
7. The report to be submitted by the Assistant Labour Commissioner should be made the basis in deciding the period of contract labour work done by them in the railway stations. The report shall be finalized and submitted after discussions and deliberations with the railway administration and the contractors and all the representatives of the writ petitioners of writ petitioners themselves.
8. While absorbing them as regular employees their inter se seniority shall be determined department/job-wise on the basis of their continuous employment.
9. After absorption, the contract labourers will be governed exclusively by the terms and conditions prescribed by the railway administration for its own employees irrespective of any existing contract or agreement between the respondent and the contractors. No claim shall be made by the contractors against the railway administration for premature termination of their contracts in respect of the contract labourers.
10. The railway administration shall be at liberty to retrench the workmen so absorbed in accordance with law. This order shall not be pleaded as a bar to such retrenchment.
11. This judgment does not relate to the persons who have already been absorbed.

The applicant would also rely on the decisions of Hon'ble Apex Court in Writ Petition (Civil) No. 390 of 2012 wherein the Hon'ble Apex Court directed that an officer of the Railways be specially appointed to consider the case of the Writ Petitioners and if they are found to be eligible and if they satisfy the conditions concerned, they may be considered for regularization within six weeks from the date, keeping in mind, the earlier directions of the said Court.

The applicant would therefore pray before this Tribunal that the respondent authorities be directed to appoint an officer to consider the case of the applicant, who were not petitioners in Writ Petition (Civil) No. 390 of 2012 or Writ Petition (Civil) No. 121 of 2000.

The respondents would argue that the applicant was working with the Shalimar Labour Contract Co-operative Society Ltd. but his name did not figure in the list recommended by the Assistant Labour Commissioner as directed by the Hon'ble Apex Court.

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The applicant has furnished in his support a "service card" which shows that he was engaged in 2013 with the Shalimar Labour Contract Co-operative Society Ltd. Admittedly, he was not one of the Writ Petitioners, who had approached the Hon'ble Apex Court in 1998, 2000 or in 2012 respectively. The orders of the Hon'ble Apex Court was specific to the Writ Petitioners therein and, particularly, referred to those Railway Parcel Porters, who would, after an enquiry by the Assistant Labour Commissioner on the work done by them in the Railway Station, be enlisted in a report and thereafter considered for absorption as per law. The applicant has not been able to furnish any documents to justify that he was with the cooperative society prior to 2013. The prayer for absorption by the Writ Petitioners was directed to be finalized and closed by the Hon'ble Apex Court under its directions. Consequently it will be fallacious to extend the ratio of the Hon'ble Apex Court's judgment to an indefinite future.

Accordingly, we do not find that the applicant can claim any entitlement for consideration as a similarly circumstanced employee in terms of the said ratio of the Hon'ble Apex Court.

4. The applicant has also admitted that he had preferred another O.A. No. 372 of 2011 praying for compassionate appointment as his father had died in harness on 7.7.2006. It has been ascertained that O.A. No. 372 of 2011 has been dismissed by the Tribunal on 8.11.2016. In the aforesaid O.A., the applicant had also prayed for, inter alia, a direction that the father of the applicant No. 1, having served the Railway administration for quite a long time, should be deemed to be regularized in his service from the date of judgment of Hon'ble Supreme Court of India. Upon adjudication, this Tribunal, in its orders, had observed as follows:-

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"9. On the basis of above report of Asst. Labour Commissioner (Central), Allahabad, as per the directions of the Railway Board, 90 petitioners were called for screening vide letter No. COM/HB/HWH/Labour Contract/98/Pt.V dated 15.7.2005 written to the Secretary, Howrah Station, Parcel (Railway) Contractor Majdoor Panchayat. Out of 90 candidates 20 were found suitable and 19 were absorbed in the Railways.

10. Being aggrieved with the above situation the remaining petitioners of Writ Petition (C) 121 of 2000 again filed a Writ Petition (C) No. 640/2007 before the Hon'ble Supreme Court and the Hon'ble Supreme Court disposed of the matter on 17.11.2009.

As per directives of the Hon'ble Supreme Court, remaining 291 petitioners from the list of Assistant Labour Commissioner (Central)/Allahabad were called for screening on different dates from 07.04.2010 to 29.04.2010.

11. However, from the records submitted by the railway authorities it appears that a Death Certificate at page 46, Annexure A-23 of the documents shows that Sri Rama Shankar Shukla, (father/husband of the applicants), son of Gorakh Nath Shukla died at the age of 47 years on 07.07.2008. Therefore, it is abundantly clear that he could not be present when the screening, as per Hon'ble Supreme Court's order dated 17.11.2009, was held from 07.04.2010 to 29.4.2010 (Annexure H1, page 86 of the attached documents).

12. As a result, the relief claimed by the applicant No. 1 who is the son of Rama Sankar Shukla cannot be agreed to as Sri Rama Sankar Shukla cannot be deemed to be regularized in service from the date of judgement which was passed by the Hon'ble Supreme Court of India on 22.8.2003 as on the relevant date of screening as ordered by Hon'ble Supreme Court in a later judgment dated 17.11.2009 his father was not present because he passed away on 7.7.2008. As the father could not be screened for absorption, he cannot be deemed to be absorbed. Hence, the O.A. lacks merit and deserves to be dismissed."

5. In the instant case also, since the applicant has only furnished records of his being a member of the cooperative society since 2013, he could not have been screened in April, 2010.

6. Accordingly, this O.A. being devoid of merit, is dismissed accordingly.

(Swarup Kumar Mishra)
Judicial Member

19.11.19

(Dr. Nandita Chatterjee)
Administrative Member

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