
(2000) 05 CAL CK 0008
In the Calcutta High Court
Case No : W.P.C.T. No. 356 of 1998

Sisir Kumar Das and Others	Vs	APPELLANT
Central Administrative Tribunal and Others		RESPONDENT

Date of Decision : 18-05-2000

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : 104 CWN 994 : (2001) 88 FLR 133 : (2000) 2 LLJ 1618

Hon'ble Judges : Satyabrata Sinha, J;M.H.S. Ansari, J

Bench : Division Bench

Advocate : Ashish Sanyal and Utsav Ray, for the Appellant; Parantap Roy, for the Respondent

Judgement

Satyabrata Sinha, J.—This writ petition arises out of an order dated April 17, 1997 passed by the Central Administrative Tribunal, Calcutta Bench in O.A. Nos. 1477 of 1995 and 1473 of 1995 whereby and whereunder the application filed by the petitioners herein for their absorption was dismissed.

2. The petitioners admittedly were appointed as T.C. Volunteers on ad hoc basis for assisting ticket checking staff on a remuneration of Rs. 3/- per day. They filed application for regularisation after they had allegedly put in 10 years service. Such appointments were made in terms of purported Railway Board Circular No. E(NG)111-77/RCI/80 dated April 21, 1982. Services of such ad hoc employees having been terminated, they filed an application before the Central Administrative Tribunal, which was marked as Original Application No. 214 of 1986 and Original Application No. 215 of 1986, prior thereto another application being Original Application No. 10 of 1986 was filed wherein it had been directed that although such employees would be treated as "temporary employees" but they would be paid the same wages as before and there should not be break in service.

3. The said applications were allowed. A Special Leave Application was filed by the Railway Administration against the said order and was dismissed. The

Railway Authorities thereafter published a Memo dated April 13, 1989 whereby the petitioners were directed to join on the terms mentioned in the offer of appointment.

4. In a contempt proceeding, an undertaking had been given that the orders of the Tribunal would be implemented whereafter a temporary status had been given to all such employees. Similar orders have been passed not only by the Calcutta Bench of the Central Administrative Tribunal but also other Benches. However, in view of the fact that without passing an order of absorption only a temporary status had been directed to be given. Review applications were filed wherein leave had been granted for filing another Original Application. Pursuant thereto Abdul Aziz & Others filed a separate application which was marked as O.A. No. 1193 of 1989 wherein it was directed that they be given salary at a regular scale of pay of Rs. 750-940/- with effect from January 1, 1990. However, they were to appear at a screening test. All the employees appeared at the screening test but while some of them had been absorbed most of the petitioners had been transferred to Asansol Division and some of them were transferred to some other Division and the Railway Authorities refused to absorb the petitioners. Claiming that they had been discriminated against, the original application was filed by the petitioners which had been dismissed on the ground that they having been appointed on casual basis at daily rated wages did not have a legal right to be absorbed in services. It appears that the Railway Authorities not only absorbed other employees in services but also have given promotion to some of them to the post of Ticket Checking Staff (Group-III) who had passed the selection test held therefore.

5. Almost a similar matter came up before this Court in W. P. C.T. No. 247 of 1997 (Abdul Aziz and Ors. v. Union of India and Ors.) disposed of by this Bench on April 19, 2000, in which case Railway authorities filed an affidavit-in-Opposition stating that the orders of the Tribunal had been implemented. In that decision upon taking into consideration the provision of Railway Establishment Manual it was held:

"The petitioners were subjected to screening test. Such screening tests were held only for the purpose of their absorption. No question, therefore, can be permitted to be raised that the petitioners were not absorbed against regular vacancy. In any event, in view of the categorical statement made In the affidavit-in-opposition, the respondents cannot be allowed to turn round therefrom and take another plea before this Court as was done before the learned Central Administrative Tribunal."

6. However, as the petitioners therein had not passed the Selection Test for being promoted to the Ticket Checking Staff (Group-III post), the said claim of the petitioners was negated although therein the Central Administrative Tribunal had given the said relief to the petitioners thereof In the instant case, the petitioners are merely praying for absorption as Class-IV employees which had been denied to them by the learned Tribunal, inter alia, on the ground that the

vacancies do not exist.

7. Having regard to the fact that the direction of absorption as has been given by the learned Tribunal in respect of all the employees similarly situated, a question of creation, of vacancy in the said post would not arise only because the petitioners have been transferred to some other stations. Such fortuitous circumstances would not stand in their way in invoking the principles adumbrated in Articles 14 and 16 of the Constitution of India. Following Abdul Aziz (supra), we direct the Railway authorities to absorb the petitioners as expeditiously as possible and not later than two months from the date. However, in the facts and circumstances of this case there will be no order as to costs.

M.H.S. Ansari, J.

8. I agree.