

(2003) 01 AHC CK 0033
In the Allahabad High Court
Case No : C.M.W.P. No. 10866 of 2002

Sujeet Kumar Singh and Others	Vs	APPELLANT
Union of India (UOI) and Others		RESPONDENT

Date of Decision : 10-01-2003

Acts Referred:

Citation : (2003) 5 AWC 3895

Hon'ble Judges : Rakesh Tiwari, J;M. Katju, J

Bench : Division Bench

Advocate : Anupam Kumar, for the Appellant; Tarun Verma, Amit Sthalekar and Govind Saranm and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard learned Counsel for the parties.

2. The Petitioners have filed this writ petition challenging the impugned orders of their termination of service dated 8.3.2002, Annexures-2a, 2b and 2c to the writ petition passed subsequent to the judgment of the Central Administrative Tribunal, Allahabad, dated 5.3.2002, Annexure-1 to the writ petition. The Petitioners have also sought a direction in the nature of mandamus commanding the Respondents to consider the case of their absorption/regularisation against existing vacancies in different regions in accordance with the Rules and Master Circular issued by the Railway Board dated 29.1.1991 and thereafter the remaining seats may be filled up out of the selected candidates.

3. The brief facts of the case are that three vacancies of Pharmacist in Grade III in the scale of Rs. 4,500-7,000 and one post of Radiographer in the scale of Rs. 4,500-7,000 in the non-gazetted cadre of para-medical category, in Diesel Locomotive Works, hospital were required to be filled in by the administration in the beginning of the year 1998. According to the Rules laid down in Rule 109 read with Rules 162 and 164 of Indian Railways Establishment Manual. Volume I, 1989 edition, the above vacancies were to be filled by direct recruitment through

Railway Recruitment Board (hereinafter referred to as R.R.B.). Accordingly, indents in two phases for recruitment of one post of pharmacist and one post of radiographer were sent to R.R.B., Allahabad, vide letter No. 27/5/56 E/Med/Part-IX, dated 15.1.1998 and another indent for 2 posts of pharmacist Grade III Rs. 4,500-7,000 was placed on R.R.B. vide letter No. 27/5/56E/Med/Part-IX, dated 26.2.1998. Thus, the total indents were for 3 posts of Pharmacist and 1 post of radiographer. Copies of the aforesaid letters dated 15.1.1998 and 26.2.1998 are Annexures-C.A. 1 and C.A. 2 respectively. In view of the time factor and delay in getting the selected candidate from R.R.B., Allahabad, and difficulty in managing the increased work load in D.L.W. Hospital, it was decided by the competent authority to engage substitute employees as a temporary measures against the above posts till regularly selected candidates become available.

4. Petitioner Nos. 1 Surjeet Kumar Singh and Petitioner No. 2 Anand Kumar Mishra were informed about the terms and conditions of service by means of letter dated 24.12.1998, specifically stating that they could be offered temporary employment on daily wages for a period of three months or till the directly selected candidates for the post are available after selection by the R.R.B., Allahabad, only if these conditions were acceptable to them. Petitioner No. 3 was also offered employment as substitute Radiographer for a period of three months or till regularly selected candidates on the same terms. Relevant paras 1, 3 and 10 of letter dated 24.12.1998, appointing them as substitutes are being quoted below:

5. Since a panel of two pharmacists and one radiographer of directly selected candidates was yet to be received, the services of the Petitioners were continued as substitutes in terms of the conditions of appointment laid down in their letters of appointment as substitutes read with the provisions contained in Note 2 under para 3 of the Railway Board's Master Circular dated 29.1.1991.

6. According to the provisions contained in para 4.4 of the above Railway Board's Master Circular dated 29.1.1991, a substitute on conferment of temporary status does not become entitled for automatic absorption/appointment in the Railway Service unless they are appointed through selection or are absorbed after screening by the Screening Committee.

7. It is contended by the counsel for the Petitioners that they were appointed as substitutes on the post of Pharmacist Grade-III and Radiographer vide appointment order dated 12.1.1999. All the three Petitioners were awarded temporary status w.e.f 13.5.1999, vide order dated 28.10.1999. The claim of the Petitioners is that in terms of para 5 of the Master Circular of the Railway Board No. 20/91, dated 29.1.1991, they should have been screened for regular appointment without advertising these posts and as such the procedure adopted by the Railway in advertising these posts is violative of the instructions laid down in the above circular which is liable to be struck down.

8. Action for filling up the posts of pharmacist and radiographer was taken in

accordance with the rules in January and February, 1998, in two phases, whereas, the applicants were engaged as substitutes in January, 1999, i.e., after one year with a clear stipulation that as and when regularly selected candidates from R.R.B. become available, their services will be terminated. Thus, their claim is barred by the instant rules and law of estoppel as has been upheld by this Court vide order dated 12.7.1985 in Civil Misc. Writ U. N. Singh v. Union of India and others Petition No. 3958 of 1985, A true copy of the order of this Court dated 12.7.1998, has been annexed along with counter-affidavit as Annexure-C.A. 4 to the counter-affidavit. The cases of substitutes, who are engaged in Group D category and have rendered a long period of service as substitutes, are considered for absorption by a Screening Committee against regular vacancies of Group D when such regular vacancies become available. But in case of substitutes engaged in Group C category, who have worked for a longer period (generally more than 3-4 years), information in respect of them is furnished to the Railway Board for taking decision regarding them.

9. The counsel for the Respondents submits that the indents for recruitment of pharmacists and radiographer were placed on R.R.B., Allahabad, one year before the engagement of the Petitioners as substitutes. The number of posts indented were published by R.R.B., Allahabad, in Employment Notice No. 1/99, dated 4.9.1999, in Employment News. The applicants could have applied and faced selection for regularisation, as opportunity was available to them at the relevant time but it appears that they did not avail such opportunity. It is further submitted that as regards their claim for absorption by the Screening Committee against regular vacancy of groups C and D, the Petitioners did not apply for screening when these vacancies became available and that in any case, a substitute has no right to regularisation automatically unless the rules provide for such automatic regularisation or absorption, which is not there in the instant case.

10. It is an admitted fact that the Petitioners are only substitutes and they were appointed on temporary basis till the regular appointment were made by R.R.B., Allahabad. Since they did not participate in the selection process, they cannot challenge the process of selection. The Petitioners have been appointed on 12.1.1999 pursuant to letter dated 24.12.1998 Annexure-C.A. 3 in which it has been clearly laid down that the appointment is only till the duly selected candidates are available to the Railway Recruitment Board. Para 5 of the Master Circular provides that substitutes and temporary employees may be screened by the Screening Committee rather than the Selection Board. Thus, facing the Screening Committee is an alternate to Selection Board and a substitute has to apply and face either one of them. This does not bar the Railway Authorities to go through with a regular selection process already indented for. Since the advertisement by the Railway Recruitment Board was initiated long after temporary appointments of the Petitioners as substitutes, they could have applied for appointment on the said post and participated in the selection process or for screening process.

11. The Tribunal after hearing the parties and going through the record and after examining para 5 of the Master Circular dated 29.1.1991, held that in view of the law laid down by the Apex Court in Commissioner, Assam State Housing and Another Vs. Purna Chandra Bora and Another, , the appointment of the Petitioners was made on temporary basis and as such they had no right to the post and as such the O.A. was without merit and was dismissed.

12. The law is well-settled in Gujarat Steel Tubes Ltd. and Others Vs. Gujarat Steel Tubes Mazdoor Sabha and Others, ;; Ashwani Kumar and Others Vs. State of Bihar and Others, ; Nar Singh Pal Vs. Union of India and Others, and Nazira Begum v. State of Assam AIR 2001 SC 102, that temporary employees have no right to the post and they can have no grievance as their appointments are only temporary. We have gone through the judgments of the Central Administrative Tribunal and do not find any illegality in the impugned judgment of the Tribunal. At the most, the Petitioners could have been given preference, had they also applied for screening or had participated in the selection process, which they have not done.

13. In view of the facts stated above we find no merit in this writ petition and it is accordingly, dismissed.

14. No order as to costs.