

Central Administrative Tribunal, Principal Bench

Original Application No.1720 of 2002
M.A.No.1362/2002

New Delhi, this the 25th day of February, 2003

Hon'ble Mr. Justice V.S. Aggarwal, Chairman
Hon'ble Mr. Govindan S. Tampi, Member(A)

1. Prem Singh,
Aged 48 years,
S/o Shri Baboo Singh
Telephone Clerk,
Under Loco Foreman,
Northern Railway,
Tughlakabad,
New Delhi.
2. Bansi Lal,
Aged 52 years,
S/o Shri Sajjan
Telephone Clerk,
Under Loco Foreman,
Northern Railway,
Tughlakabad,
New Delhi.
3. Shiv Narain,
Aged 48 years,
S/o Shri Kanhiya
Telephone Clerk,
Under Loco Foreman,
Northern Railway,
Tughlakabad,
New Delhi.
4. Mool Chand,
Aged 60 years,
S/o Shri Birbal
Retd. Telephone Clerk,
Northern Railway,
Tughlakabad,
New Delhi.

.... Applicants

(By Advocate: Shri K.N.R. Pillai)

Versus

1. Union of India, through
General Manager,
Northern Railway,
Baroda House, New Delhi
2. The Divisional Railway Manager,
Delhi Division
Northern Railway,
State Entry Road,
New Delhi.

.... Respondents

(By Advocate: Ms. Anju Bhushan)

O R D E R (ORAL)

By Justice V.S. Aggarwal, Chairman

Applicants were working as Junior Outdoor Clerks (JODCs). They were appointed on ad-hoc basis in the year 1979 except one who was appointed in the year 1980. They were all regularised in the post of JODC in the year 1997 after they passed the prescribed test. Relying on Rule 188 of the Indian Railway Establishment Manual (IREM) (Volume-I), the applicants sought fixation of their seniority from the respective dates of their appointment on ad-hoc basis. The said claim of the applicants was denied.

2. The applicants preferred O.A.1220/2000. It was decided by this Tribunal with a direction to the respondents to consider the applicants' representation for grant of seniority.

3. By virtue of the present application, the applicants claim that their seniority should be counted from the date of their initial promotion i.e. 4.5.1979 and 16.5.1980 in the case of fourth applicant. They should be considered for inclusion in the cadre list of Senior Clerks with consequential benefits.

4. Learned counsel for the applicants submitted that in pursuance of the aforesaid order of this Tribunal, the case of the applicants has been considered but the respondents have incorrectly placed reliance on para 189 of IREM Volume-I. According to the learned counsel, para 188 of IREM would apply to those who are promoted from Group 'D' to the lowest rung of Group 'C'. The post of

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JODC held by the applicants does not fall in any of the higher grades in Group 'C' and the representation has wrongly been rejected. In support of his claim, he relied upon the decision of the Supreme Court in the case of T.Vijayan and Ors. Vs. Divisional Railway Manager & Ors. reported as JT 2000 (4) SC 196 and also of Rajbir Singh & Ors. Vs. Union of India & Ors., AIR 1991 SC 518.

5. In the case of Rajbir Singh, keeping in view the facts of the said case, the ad-hoc service was allowed to be counted for seniority and the Supreme Court had held:

"3. Considering all these facts and circumstances and also considering the well-settled decisions of this Court we are constrained to hold that the period of 11 years of ad hoc service has to be taken into consideration in determining the seniority of these appellants. The decisions in Ashok Gulati's case (AIR 1987 SC 424) referred to herebefore has no semblance of application to this case as the facts of that case are totally different from the facts of this case. It has been tried to be contended before us by the learned counsel appearing on behalf of the respondent that since the employees who are likely to be affected by this judgment has not been impleaded, the relief should not be granted until and unless they are impleaded in this case. We are unable to find any merit of this submission for the simple reason that the question of law involved in this case whether a person appointed on a officiating basis to a substantive vacancy and working there for a considerable period of years is entitled to have his period of ad hoc service to be reckoned while being regularised in the promoted posts."

6. Similarly in the case of T.Vijayan, the Supreme Court taking note of the fact that ad-hoc service was permitted under the rules in the facts, held that certain persons could take advantage of the same. In paragraph 18



of the judgement, it was held:

"18. The above para indicates that ad hoc promotion is permissible pending regular selection. Once ad hoc promotion is found to be permissible under the Rules and respondents 4 to 143 were promoted on ad hoc basis in the exigencies of service, pending regular selection, which incidentally, took sufficient time as respondents 4 to 143 who were on official duty "on line" were not available at one point or at one time to facilitate the selection, the entire period of ad hoc service will have to be counted towards their seniority, particularly as all the respondents 4 to 143 were duly selected and their services were also regularised with effect from 16.12.1991 by order dated 18.1.1992. The concerned employees, including respondents 4 to 143 had already been alerted for the process of selection which had been started in 1988. While making direct recruitment against posts which were advertised in 1985, it was given out to the present appellants that their absorption and seniority was subject, inter alia, to the finalisation of the selection to the post of First Fireman which was in progress. The appellants, as stated earlier, were selected in 1988 and were put on two years' training as Apprentice whereafter they were absorbed by order dated 18.7.90 and were issued separate and individual appointment letters in which, it was clearly mentioned that their seniority was subject to the finalisation of the selection for promotion to the post of First Fireman which was in progress. The appellants, in this situation, cannot claim seniority over respondents 4 to 143 who had already been appointed to the posts of First Fireman on ad hoc basis and were after due selection regularised on those posts."

7. We need not dwell into the said controversy in the facts of the present case. Reasons are obvious namely that the applicants had earlier filed O.A.2413/89. It was decided by this Tribunal on 12.5.94. The applicants were being reverted. This Tribunal had taken a compassionate view, obviously without conferring any right to the applicants for the past service which was ad-hoc in nature.



We reproduce the said order for the sake of facility:

"Having regard to the special facts and circumstances of this case, we consider it proper to take a lenient view of the matter and issue appropriate directions.

2. The petitioners were appointed as Class-IV employees between 1972 and 1974. They were after some test being held appointed as Telephone Attendants between 4.5.1979 and 20.5.1980. The order of appointment according to the respondents shows that they were appointed only on ad hoc basis. For the purpose of regularising their services, a test was held which the petitioners took on 10.4.1988 but all of them failed. Therefore, they were reverted by the impugned order, Annexure A.2, and a direction was issued to fill up those places by regularly appointed Telephone Attendants. It is in this background that the petitioners have approached the Tribunal for relief. During the pendency of this application, the petitioners have continued in service for nearly five years now on the strength of the interim order of the Tribunal. Thus, it is clear that the petitioners have been working for nearly 15 years or more as Telephone Attendants. It would be too harsh to enforce revision at this stage. At the same time, interest of the administration has to be safeguarded as they cannot continue those who are inadequate for the job. Having regard to the equities and special facts of this case, we consider it appropriate to direct their continuance on ad hoc basis until a test is held for assessing their suitability as Telephone Attendants. If in the test they fail, they are liable to be reverted. On the contrary, if they pass in the test, they shall be continued as regular basis.

3. For the reasons stated above, this application is allowed and the following directions are issued. As these directions are being issued having regard to the special facts and equities in this case, they shall not be treated as precedent.

1. The respondents shall not enforce the order of reversion, Annexure A-2.

2. The respondents shall hold a suitability test for promotion to the post of Telephone Attendant within a reasonable period.

3. Such of the petitioners who are successful in the test shall continue on regular basis and those who fail in the test

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may be reverted to the lower cadre."

Perusal of the said order, inter-se between the parties, puts an end to the controversy and seals their fate.

8. Applicants had taken the test and had failed. By virtue of the interim order that was passed by this Tribunal, they continued to work. This Tribunal permitted them to continue until the test is held for assessing their suitability. If they had not passed the test, they could be reverted otherwise they could continue on regular basis. As already noted above, earlier the applicants had failed in the test and they were liable to be reverted. It was only by virtue of the interim order that had been passed that the applicants had managed to continue. It was, therefore, not a service that can be counted for the purpose of seniority.

9. Resultantly the O.A. is without merit. It must fail and is dismissed.

(Govindan S. Tampi)
Member

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(V.S. Aggarwal)
Chairman.