

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH; NEW DELHI

O.A. NO. 914/2002

NEW DELHI THIS THE 5TH DAY OF MAY 2003

HON'BLE SHRI JUSTICE V S AGGARWAL , CHAIRMAN
HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Surya Kant
aged about 45 years,
S/o SH> Janki Dass,
C/o Chief Enquiry Supervisor,
New Delhi Railway Station,
New Delhi - 110001

.....Applicant

(By Shri Anis Suhrabardy, counsel for applicant)

VERSUS

1. Union of India
Through General Manager - Northern Railway,
Headquarters Office Baroda House, New Delhi
2. Divisional Railway Manager,
Northern Railway,
DRM Office, State Entry Road, New Delhi.
3. Divisional Personnel Officer,
Northern Railway, DRM Office,
State Entry Road, New Delhi
4. Senior Divisional Commercial Manager,
Northern Railway,
DRM Office, State Entry Road, New Delhi.
5. Chief Enquiry Supervisor,
New Delhi Railway Station,
Northern Railway,
New Delhi.

.....Respondents

(By Sh. Rajinder Khattar, counsel for respondents)

O R D E R (ORAL)

BY HON'BLE SHRI GOVINDAN S. TAMPI, MEMBER (A)

Applicant in this OA is aggrieved at the respondents' reluctance in granting him regularisation after three years of service with attendant facilities and ^{higher} pay.

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2. Heard S/Shri Anis Suhrawardi and Rajinder Khattar learned counsel for the applicant and the respondents respectively.

3. The applicant had originally worked as Mobile Checking Clerk (MBC) for 59 days from 26.5.81 to 15.7.81. Thereafter he was re-engaged on 15.11.90, following the order dated 4.6.90. OA No. 896/88, filed by a few MBCs was disposed of with direction for i) regularising MBCs engaged prior to 17.11.86, as completion of three years, ii) conferment of temporary status as those MBCs who have completed 4 months service and iii) payment of back wages from the date of termination to re-engagement at the rate at which they were employed. (This was applicable only to those who were dis-engaged and re-engaged following Hon'ble Supreme Court's orders dated 18.3.88 and 30.9.88). The instant applicant fulfilled all the above conditions and should have accordingly earned all the above benefits, more so as he had also completed the training at Chandousi. On re-engagement, the applicant was posted at Central Telephone Enquiry Office, New Delhi as MBC on 15.11.90 and granted temporary status on 21.3.91 in the scale of Rs. 975-1540/- . On 22.7.91, he was posted at Station Enquiry Office, New Delhi, thus having continuous service of more than 11 years. He was in fact performing the regular duties of E&RC and therefore should have been placed in the scale of Rs. 1200-2040/- instead of Rs. 975-1540/- . Regularisation process began by the written test, results of which were declared on 4.12.2000, where- after he was sent for Chandausi training on 9.12.2000. His result was declared on 12.2.2002 and he was sought to be regularised from that date; while he was entitled to be regularised on completion of three years service, with the

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benefit of seniority and the higher pay scale of Rs. 1200-2040/- (Rs.4500-7000). This OA has been preferred as the respondents have declined to do so.

4. Grounds raised in the OA are as below:

- i) respondents have not abided by the repeated orders of the Tribunal;
- ii) respondents in action has forced him to approach the Tribunal in this matter;
- iii) the applicant's claim for grant of seniority and regularisation was fully justified;
- iv) respondents have illegally and unjustifiably discriminated the applicant;
- v) respondents have not been able to justify their action, in denying the applicant his dues;
- vi) by the impugned order No. 844/E/MBC/P-2 dated 12.2.2002, respondents have only sought to justify their illegal action;
- vii) the decision of the Tribunal dated 4.6.90, having become final the respondents should have fallen in line and granted the applicant the benefit.

5. All the above pleas were reiterated by Sh. Anis Suhrawardy , learned counsel for the applicant.

6. In the counter filed on behalf of the respondents, and reiterated during the oral submissions by Sh. Rajinder Khattar, learned counsel, the pleas raised by the applicant are hotly contested. The applicant has been working as MBC in the pay scale of Rs. 975-1540/- , continuously since 21.3.91. He has however never been posted as E&RC, as claimed . Following his screening and passing the pre-requisite training course from ZTC/CLI (Zonal Training Centre, Chandausi) his posting orders on regularisation as Commercial Clerk have been issued on 12.2.2002 and 11.4.2002,

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as directed by the Railway Board. Still on the basis of the stay granted by the Tribunal in this OA he is continuing as E&RC in the revised scale of Rs.4500-7000/-.

7. Preliminary objections raised by the respondents are that the applicant was attempting to mislead the Tribunal as far as the Tribunal's order dated 4.6.90 issued while disposing of OA No. 896/1988. The directions in the order were to regularise MBCs who were engaged prior to 17.8.88 by absorption against regular vacancies on completion of 3 years service, and subject to fulfilment of other conditions. It is clear therefore, that the regularisation was to be issued in the same pay scale of the cadre and grade and not in any promotional post. As the applicant had been appointed as MBC against the post of Commercial Clerk he has been regularised accordingly. No other interpretation could emerge from the decision of the Tribunal. The post of E&RC was a promotional grade of Commercial Clerk which is filled by selection basis and the applicant cannot be given that job by-passing the Recruitment Rules. However, the applicant had ^{acquired} ~~acquired~~ to the promotion of Commercial Clerk, as he had presented himself for the written test as well as ^{for} ~~the~~ training at Chandausi for regularisation in the grade of Commercial Clerks. He cannot therefore, ^{more} ~~asked~~ for anything ^{higher} ~~higher~~. The applicant had been granted temporary status on completion of 120 days as MBC and has also been paid the arrears due to him. His services as Commercial Clerk in the grade of Rs. 975-1540/ (revised to Rs. 3200 - 4900/-) were being regularised in the order of priority based on ^{his} ~~the~~ number of days as Casual Labour Mobile Booking Clerk (CLMBC), ^{his} ~~the~~ question of ^{his} ~~regularisation~~ with retrospective effect does not arise. Following the order of the Tribunal, MBCs were regularised and are being regularised on seniority based on their ^{days of} ~~working~~ against the regular

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posts, as and when it becomes available. Seniority is reckoned in such cases on passing the pre-requisite induction course from the Training School at Chandausi. When Commercial Clerks are posted under Sr. Station Manager at New Delhi to work in the Enquiry Office, though they are only MBCs in the regular scale of pay attached to said post and assisting the Enquiry Clerks from time to time. They are not on the roles of E&RC Cadre. Unless and until the MBCs are regularised as Commercial Clerks and promoted in turn as R&RCs they cannot claim the higher grade of scale Rs.1200 - 2040/- . The applicant, not having been posted in ^EERC but only as a MBC, cannot claim that he should be given higher post and higher grade. All the points to the contrary raised by the applicant are baseless and did not deserve acceptance.

8. In the re-joinder, the applicant prays that as he had 11 years continuous service after his pre-engagement and he has been performing the duties of E&RC his regularisation and grant of seniority should have been in that scale and grade and keeping in mind the principle of "Equal pay for Equal work" he should be granted scale of pay of Rs. 4500 - 7000/- .

9. We have very carefully deliberated by the rival contentions. The applicant is seeking the benefit of the following directions of the Tribunal issued on 4.6.90 while disposing of the OA No. 896/1988.

- "i) Regularise the Mobile Booking Clerks who were engaged prior to 17.11.1986 by absorption against regular vacancies on completion of 3 years' services and not 1095 actual working days (emphasis supplied). This will be, however, subject to the fulfilment of other conditions as provided in the Railway Board's Letter dated 21.4.1982 and 20.4.1998).

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- ii) Confer temporary status with all attending benefits on the applicants after they have completed four months service as Mobile Booking clerk in accordance with the terms of their engagement. The period of four months shall be counted irrespective of number of hour put in any particular day, having regard to the fact that the services of the Mobile Booking Clerks were liable for full days .
- iii) Make payment of back wages from the date of termination of services in accordance with orders dated 5/12.5.1988 till the date they were taken back on duty consequent to the recall of the Hon'ble Supreme Court orders dated 18.3.1988 at the same rates at which they were employed prior to the date of termination of the services. This will be applicable only to the those Mobile Booking Clerks whose services were disengaged and re-engaged in consequences of Hon'ble Supreme Court orders dated 18.3.1988 and recall of the said order vide Hon'ble Supreme Court orders dated 30.9.1988."

10. According to him, therefore, he should have been granted regularisation on the completion of 3 years of service and granted higher grade of E&RC. However, it would appear that he has not carefully read the directions of the Tribunal, which calls for regularisation of the MBCs, who are engaged prior to 17.11.86 by absorption against regular vacancies on completion of 3 years service and not 1095 actual working days and subject to fulfilment of other conditions. It would be clear, therefore that the person would be eligible for absorption after 3 years of service but subject ^{to} availability of regular vacancies. The completion of the period of 3 years only grants the individual concerned eligibility for absorption and not automatic absorption. The applicant has not been able to show that his posting has been ^{made} against a regular post ^{again} ~~to~~ 2 which he could have been regularised earlier. As soon as the vacancy became available the respondents have initiated and completed the process of regularisation which resulted in the issue of the impugned order dated 12.2.2002. The applicant could not have asked for anything more than that. The second plea raised by the applicant that he should have been granted the higher pay

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scale of Rs. 1200 - 2040/- (Revised Rs.4500 - 7000/-) also does not have any merit. It is clearly pointed by the respondents that the applicant was appointed as MBC as against the sanctioned post of Commercial Clerk which was in the grade of Rs. 975-1540/- . That being the case, keeping in mind the directions of the Tribunal he could have been regularised only in that cadre and grade. This is exactly what respondents have done. The applicant has not been able to produce any evidence that he was ever appointed as E&RC , though he has made averments that he was working in that capacity. Respondents have pointed out that he was only working in the counter to assist the E&RC, such being the case the applicant's demand that he be granted the higher scale of E&RC of Rs. 1200-2040/- (Revised to Rs.4500- 7000/-) on the basis of the principle "equal pay for equal work" cannot be endorsed.

11. In the above view of the we are convinced that applicant has not made out any case for our interference on either of the reliefs he had sought. The OA therefore fails and is accordingly dismissed. Needless to say that interim relief granted on 03.4.2002 is also vacated. No costs.

(Govindaraj S. Tampi)
Member (A)

Patwal

(V.S. Aggarwal)
Chairman