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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1171/2001

This the 11th day of December, 2002

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

HON'BLE SHRI KULDIP SINGH, MEMBER (J)

Sh. Rishi Deo,
S/o Late Sh. Chaitar Ram,
Working under Deputy Chief Engineer (Construction),
Shivaji Bridge,
New Delhi.

(By Advocate: Sh. K.K.Patel)

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi-110001.
2. Chief Administrative Officer (Construction),
Northern Railway,
Head Quarter Officer: Kashmiri Gate,
Delhi-110006.
3. Divisional Railway Manager,
Northern Railway, New Delhi.
4. Deputy Chief Engineer (Construction),
Northern Railway, Shivaji Bridge,
New Delhi.

(By Advocate: Sh. B.S.Jain)

O R D E R (ORAL)

By Sh. V.K.Majotra, Member (A),

Applicant is aggrieved by impugned orders dated 6.3.2000 and 6.6.2000 (Annexure P-1 Colly.) for non-inclusion of his name in the panel for regularisation as Clerk-cum-Typist in the respective Division and further not assigning him proper seniority from 15.9.83, the date from which he was utilised as MCC/Clerk.

2. Briefly stated the facts in this case are that applicant was initially engaged as casual Khallasi on 5.10.77.

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He was regularised as such in Delhi Division w.e.f. 14.1.85 (Annexure P-3). Thereafter vide order dated 5.6.89 (Annexure P-3), he was promoted as MCC/Clerk-cum-Typist in grade Rs.950-1500 in the Construction Division. Learned counsel of the applicant contended that applicant's services have been utilised as MCC/Clerk w.e.f. 15.9.83. He had qualified in the suitability test conducted on 27.3.89 and further qualified the written test and appeared for viva voce test held on 1.10.99, 11.10.99 and supplementary on 19.1.2000 but has not been included in the panel for regularisation as Clerk-cum-Typist in violation of Railway Board's instructions dated 25.1.1976 (Annexure P-2) providing that the persons working in the post on ad hoc basis should not be declared unsuitable in the interview. Learned counsel further stated that Rule 174 (b), IREM Vol.I (Revised Edition 1989) provides for filling up 33-1/3% vacancies in the category of Office Clerks scale Rs.950-1500 by promotion by selection of specified Group 'D' staff. Learned counsel alleged that respondents have regularised a number of juniors of the applicant. Learned counsel also relied on respondents' order dated 11.2.91 (Annexure P-4) which are instructions from respondent No.1 to the effect that Material Checking Clerks working on ad hoc basis for more than 3 years in Construction Organisation would be regularised in their respective parent department where they hold their lien. Learned counsel contended that whereas the applicant had completed 3 years of service prior to December 1991, he should have been included in the panel even though he had not cleared the viva voce test as persons who had functioned as Clerks for 3 years before December 1991 had been exempted from interviews as per respondents' own instructions.

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3. On the other hand, the learned counsel of the respondents submitted that as applicant's promotion as MCC/Clerk-cum-Typist in grade Rs.950-1500 was purely on ad hoc and temporary basis confined to Construction Organisaation only, it would not confer upon him any right to claim seniority/promotion over his seniors.

4. Learned counsel further stated that whereas the applicant had cleared the written test he had not cleared the viva voce test and as such could not have been placed in the panel. He further stated that it is settled law in terms of Sunita Aggarwal vs. State of Haryana and others [2000 (3) SLJ 30] that having participated in the test applicant is estopped from questioning the selection. Learned counsel further stated that applicant had also not completed a period of 3 years as required in the post of Clerk. Whereas he had been promoted as MCC/Clerk-cum-Typist vide order dated 5.6.89, he had certainly not completed 3 years as such. Learned counsel also stated that applicant has also not challenged the instructions relating to ad hoc MCC/Clerks in Construction under CAO/C dated 2.9.99 (Annexure P-6) which stated that persons who have completed 3 years of service on 31.1.91 and have also cleared the selection procedure including viva voce test shall be permitted to continue as Clerks in Construction Division.

5. Notice dated 18.2.98 issued by Deputy Chief Engineer/Construction, Northern Railways, on verification of records, states that applicant had shouldered the higher responsibility of the post of MCC/Clerk grade Rs.260-400 w.e.f. 15.6.80 to 14.7.83 and 15.9.83 to 6.7.89. Again vide

Northern Railway Headquarters Office, Kashmere Gate, Delhi letter dated 23.2.1999, it was stated that applicant who had been promoted as Clerk grade Rs.950-1500 on ad hoc basis w.e.f. 7.7.89 would be paid wages of the post of MCC/Clerk grade Rs.950-1500 (RPS) w.e.f. 15.9.83 to the date of promotion on ad hoc basis, i.e., upto 7.7.89 as his services have been utilised for the post of MCC/Clerk. In the teeth of these two documents, respondents cannot be allowed to state that applicant had not worked for a period of 3 years as ad hoc Clerk before December 1991.

6. It is not applicant's claim that he had cleared viva voce test. Applicant has also not challenged Annexure P-6 dated 2.9.99 which required clearance of viva voce test by persons who had completed 3 years service as Clerks as on 31.12.91. Learned counsel of the applicant relied on Board's letter dated 9.12.75 (Annexure P-2) stating that while forming panels, employees who have been working in the posts on ad hoc basis satisfactorily should not be declared unsuitable in the interview. The General Manager had observed in that connection

"Long term adhoc arrangements should be made strictly according to seniority and suitability to avoid embarrassment."

6. When applicant has not challenged Annexure P-6 dated 2.9.99 it will ~~certainly~~ supersede Annexure P-2 which are not mandatory instructions and are only advisory in nature. When the process of selection included the stage of viva voce test and the applicant had participated in the test but was not included in the panel on the basis of the entire

selection, he cannot be allowed to turn around and take exception to the process.

8. Having regard to the reasons recorded and discussion made above, we find that although the applicant had functioned as Clerk on ad hoc basis for 3 years prior to December 1991, he had not cleared the process of selection and as such was rightly excluded from the panel.

9. In the result, the OA must fail and the same is dismissed. No costs.

Kuldeep Singh
(KULDIP SINGH)

MEMBER (J)

'sd'

V.K. Majotra
(V.K. MAJOTRA)

MEMBER (A)