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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2748/2001

New Delhi, this 13th day of December, 2002

Hon'ble Shri Justice V.S. Aggarwal, Chairman
Hon'ble Shri M.P. Singh, Member(A)

Smt. Urmila
Working as MCC
in Indian Railways Central Organisation
for Telecom
Shivaji Bridge, New Delhi .. Applicant

(Smt. Meenu Mainee, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. FA & CAO
Northern Railway Hqrs. Office
Baroda House, Delhi
3. Chief Project Administrator
Indian Railways Central Organisation
for Telecom
Shivaji Bridge, New Delhi .. Respondents

(Shri Rajendar Khattar, Advocate)

ORDER

Shri M.P. Singh, Member(A)

By the present OA, applicant seeks a direction to the respondents to regularise her services as Material Checking Clerk (MCC, for short) with effect from the date she has been working on the said ^{post} on ad hoc basis, as has been done in the case of her colleague Shri Babu Ram, with all consequential benefits. In this connection, applicant has placed reliance on the judgements of the coordinate bench of this Tribunal dated 28.4.94 in OA 3286/92 and dated 27.8.1999 in OA 2389/1995 in support of the reliefs prayed for.

[Signature]

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2. The admitted position is that the applicant was initially engaged as daily rated casual labour Khalasi on 13.3.81 in Metro Transport Project, New Delhi and she continued to work as such upto 18.7.1981. She was re-engaged by Respondent No.2 and worked in the said post from 19.7.81 to 6.8.1985. She was screened for regular appointment in Group D category on open line in Northern Railway, Baroda House and was declared suitable for absorption as water women (Group D) vide order dated 14.11.84. Subsequently, she was transferred from there to Deputy CPM/Tele/Tilak Bridge vide order dated 6.8.85. Later on, she was promoted on ad hoc basis as record lifter (Rs.825-1250) vide notice dated 21.4.89, wherein it was made clear that her promotion is purely ad hoc basis in Construction Organisation and will not confer any right for regular promotion and seniority. Subsequently, she was promoted on ad hoc basis as MCC vide notice dated 17.10.90 again making it clear that said promotion is purely on ad hoc basis in the construction organisation only and will not confer any right for regular promotion and seniority. She was transferred from there to IRCOT in the same post and grade on 20.10.1993 and she has been allowed to continue to work as MCC.

3. According to the respondents, in terms of para 2006 of Indian Railway Establishment Manual Vol.II, absorption of casual labour in regular Group D employment may be considered in accordance with the instructions issued by Railway Board from time to time. Such absorption is not automatic but is subject to availability of vacancies and

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suitability. The posts in Construction organisation are treated as ex-cadre posts and the law is well settled that no legal right accrues to a person who is promoted in ex-cadre posts (1989)(10) ATC 225). In the additional affidavit filed by respondents, it is stated by them that none of applicant's junior in her parent cadre at Baroda House has so far been promoted as regular MCC as alleged by the applicant. It is further stated by them that this Tribunal in a catena of judgements has held as under:

"Railway Servants hold lien in their parent cadre under a Division of the Railways and on being deputed in Construction Organisation and their having been promoted on higher posts on hoc basis and continue to function on that post on ad hoc basis for a very long time would not entitle them to regularisation on that posts in their parent division/office. They are entitled to regularisation in their turn in the parent division/office strictly in accordance with the rules and instructions on the subject."

In view of the above position, respondents would contend that the OA has no merit and be dismissed.

4. We have heard the learned counsel for the parties and considered the pleadings.

5. During the course of the arguments, the learned counsel for applicant has drawn our attention to the judgements of the apex court in Rudra Kumar Sain & Ors. Vs. UOI ATJ 2000(3) SC 392, UP State Mineral Development Corpn. Ltd. Vs. Vijay Kumar Upadhyay & Anr. 1998(1) SC 165 and Girdhari Lal Vs. UOI in SLP(C) No.14005/92 in support of the reliefs sought for by the applicant. We have carefully gone through the same and we find that the

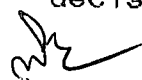


issue involved in these cases is distinguishable and none of these judgements is even remotely connected with the present case and therefore we hold that these judgements are not applicable to applicant's case.

6. On the other hand, the learned counsel for respondents has drawn our attention to the judgement of the Delhi High Court dated 12th August, 2002 in CWP No.2916/2002 and other connected cases. These petitions were filed by the petitioners similarly placed like the applicant herein and involving the same issue as is raised in the present OA, whose OAs were dismissed by the Tribunal. The Delhi High Court dismissed their petitions being devoid of merit. The learned counsel has further drawn our attention to yet another judgement dated 13th August, 2002 in CWP No.5057/2001 of the Delhi High Court by which the order of the Tribunal dated 15.2.2001 in OA 1941/1999 involving a similar issue was set aside by the High Court. In the said OA 1941/1991 applicants working as Gangman/Khalasi were claiming promotion to Group C posts and the Tribunal allowed that OA directing respondents to regularise the applicants therein in Class III posts.

7. It would be relevant to reproduce the observations made by the Delhi High Court in its judgement dated 13.8.2002 in CWP No.5057/2001 which are as under:

"So far as judgements of the learned Tribunals are concerned, the same are not binding on this Court. We may notice that in most of its judgements, the learned Tribunal had not considered the core issue nor had referred to the act that regularisation cannot be a mode of recruitment. The Tribunal failed to notice a large number of decisions of the apex court wherein it has clearly



been held that an order of regularisation must be based upon the relevant provision of the statute or statutory rules, which may be framed therefor.

"We may notice that the apex court in Civil Appeal No.12947 of 1993 vide order dated 25.10.1996, having regard to the decision of the Allahabad Bench of the Tribunal dated 31.8.1992 passed in OA No.555 of 1989 titled Vijay Prakash & Ors. V. UOI & Ors., issued the following directions:

'Delay condoned.

In the facts and circumstances of the case including the fact that the concerned employees have all worked in that capacity for over a decade, the direction given by the Tribunal for regularisation of those suitable found fit after screening is just and does not call for any interference under Article 136 of the Constitution. The question of law raised in the special leave petition is not required to be considered on these facts and is therefore left open for decision in appropriate case.

The special leave petition is dismissed'.

By reason of the said directions, therefore, no law has been laid down and the Supreme Court only refused to exercise its discretionary jurisdiction in view of the facts involved therein. The Supreme Court admittedly did not consider the question of law raised in the special leave petition. Thus the said decision does not have any precedential value.

Keeping in view the fact that post of MCC/Office Clerk is a promotional post, we are of the opinion that such a promotion post could not have been filled up through regularisation. The statutory rules, laid down for filling up the promotional post, must be dealt with strictly in terms thereof. The learned Tribunal unfortunately failed to consider the provisions of IREM as referred to hereinabove whereupon reliance had been placed by the petitioner herein and it merely proceeded on the basis that as the respondents had been working for a long time, their services be regularized.

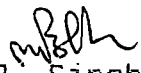
8. The learned counsel for respondents has also drawn our attention to the judgement dated 7th November, 2002 by which OA 2399/2001 touching upon the similar issue was dismissed by the coordinate Bench of this Tribunal, following the ratio of Delhi High Court's judgements referred to above. In view of the above position,

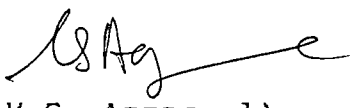


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reliance placed by applicant's counsel on the Tribunal's judgements mentioned in para 1 above would not render any assistance to the applicant.

9. Having regard to the aforesaid judgements of the Delhi High Court and also the judgement of this Tribunal (mentioned in para 8 above), which are binding on us, we are unable to grant the reliefs prayed for by the applicant. Resultantly, we find the present OA devoid of merit and the same is accordingly dismissed. No costs.


(M.P. Singh)
Member(A)


(V.S. Aggarwal)
Chairman

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