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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 539/2001

New Delhi, this the 6th day of February, 2002

Hon'ble Mrs. Lakshmi Swaminathan, V.C. (J)
Hon'ble Mr. S.A.T. Rizvi, Member (A)

1. Shri Rachpal Singh,
S/o Shri Suram Chand,
Under the Control of Chief
Administrative Officer (Constructions,
Head Quarter Office, Kashmiri Gate,
Delhi) Applicant
(By Advocate : Shri 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 Quarrter Office : Kashmiri Gate,
Delhi - 110 006

3. Divisional Railway Manager,
Northern Railway, New Delhi

4. Deputy Chief Engineer (Construction)
Northern Railway,
Jhalandhar) Respondents
(By Advocate : Shri H.K. Gangwani)

O R D E R

HON'BLE MR. S.A.T. RIZVI, MEMBER (A) :

Heard the learned counsel on either side at length and records also perused.

2. Aggrieved by the alleged illegal and arbitrary action of the respondents in not regularising the applicant on the post of Clerk-cum-Typist from the date *d* he was promoted to work thereon on adhoc basis, the

applicant has filed the present O.A. with a prayer for issuing a direction to the respondents to regularise him in class-III post as Clerk-cum-Typist from the date he was being utilised as Clerk in the pay scale of Rs.3050-4500 (RPS), with all the consequential benefits.

3. The facts of the case, insofar as the same are relevant for the purpose of adjudication in the present O.A., briefly stated, are the following.

4. Appointed as Khalasi on 15.12.1981, temporary status was conferred on the applicant w.e.f. 1.1.1984, and he was placed in the pay grade of Rs.196-232. Subsequently he was promoted as Storeman w.e.f. 1.3.1986 in the pay grade of Rs.210-270 on a purely temporary and adhoc basis. On the basis of an order passed on 15.8.1987, he stood appointed as Storeman with retrospective effect from 15.8.1985. The applicant was screened as Khalasi in Delhi Division in January/April 1997 and as Khalasi his paper lien has been fixed under the AEN/PNP by respondents' letter dated 19.9.1997. As Khalasi he was placed in the pay grade of Rs.750-940. The applicant's service in group 'D' has been regularised, according to the respondents, w.e.f. 2.4.1997. He was appointed as Material Checking Clerk (MCC) on adhoc basis w.e.f. 4.1.1993. His claim is that the pay benefit pertaining to the post of MCC has been given to him in respect of the period from 15.8.1985 to 3.1.1993, and he has actually worked as MCC during the said period, and was placed in the pay grade of Rs.950-1500. Though a paper lien was created in his

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favour as Khalasi in Delhi Division as above, he has continued to perform the duties of a MCC to date. Several persons junior to the applicant named and listed in paragraph 4.3 of the O.A. were called for selection to the post of Clerk-cum-Typist, but he was not invited.

5. The learned counsel appearing on behalf of the applicant has, in support of his claim, relied on a number of circular letters issued by the respondent-authorities for initiating selection proceedings for the purpose of regularising those who had been working as adhoc MCCs. Reliance has been placed by him in particular on the Circulars dated 31.12.1990, 11.2.1991 and 13.2.1997. Notifications were issued, according to the learned counsel, for conducting selections for the said purpose on 7.9.1999 and 20.1.2000. Representations made by the applicant for being included as a candidate in the above selection proceedings have not elicited any response. The representations in question were filed on 22.9.1999, 7.2.2001 and 16.2.2001.

6. Reliance has also been placed by the learned counsel appearing on behalf of the applicant on the order passed by this Tribunal on 6.11.2001 in OA No. 781/2001 in which, on conclusion being reached that the applicant had either worked as adhoc MCC or else had drawn pay in the pay grade of Rs.950-1500 applicable to the post of MCC for more than 3 years as on 31.12.1991, a direction was given to the respondents to consider the claim of the applicant in that case for regularisation as MCC. It was

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observed in the aforesaid order that by completing the aforesaid period of three years the applicant had become eligible for being considered for regularisation as MCC.

7. The learned counsel appearing for the applicant has next proceeded to place reliance on yet another order passed by this very Bench of the Tribunal on 30.3.2000 in OAs No. 1697/1996 and 1854/1996. The facts stated in the aforesaid order reveal that out of the three applicants in the OAs in question, two were promoted as adhoc MCCs respectively from 25.1.1989 and 31.5.1989. The third applicant had, of course, been promoted as MCC w.e.f. 27.3.1997. All these applicants had completed more than three years of work as adhoc MCCs. By placing reliance on the decision taken in the PNM meeting dated 6/7.6.1988 to the effect that all the MCCs working on adhoc basis for more than three years should be regularised, the Tribunal in the aforesaid OAs decided the matter in favour of the applicants by directing the respondents to consider the claim of the applicants in the aforesaid OAs for regularisation on the post of MCC by taking into account the entire period of continuous service rendered by them as MCC. In passing the aforesaid order, the Tribunal had in turn placed reliance on an earlier order passed again by this very Tribunal on 31.7.1993 in B.R. Rahi & Ors v. Union of India in OA No. 1395/1992. We have noted that at least two of the applicants in the aforesaid OAs could not be said to have completed three years of service as adhoc MCCs by 31.12.1991, and yet they were directed to be considered for regularisation as MCCs.)

8. In the present OA, having regard to the facts stated in paragraph 4 above and the respondents' letter dated 3.2.1999 placed on record by the applicant along with his rejoinder which clearly shows that the applicant had officiated as MCC from 15.8.1985 to 4.1.1993 in the pay grade of Rs.950-1500, and noting that subsequently ~~he was~~ [✓] admittedly appointed as an adhoc MCC from 4.1.1993, we ~~have~~ [✓] arrived at the conclusion that the applicant in the present OA has either officiated as MCC or has worked as adhoc MCC all through from 15.8.1985 onward. Clearly, therefore, he had completed more than three years of service as officiating MCC before 31.12.1991. On this basis and in keeping with the decision rendered by this Tribunal in OA No.781/2001 (supra) we are left with no option but to give directions in this case on the same lines on which directions were given by this Tribunal in the aforesaid O.A.

9. The learned counsel appearing on behalf of the respondents has placed reliance on the very same circulars/instructions which provide that on completion of three years of service as adhoc MCC by May 1987 or alternatively by 31.12.1991, the incumbents became entitled for being considered for regularisation as MCC on the basis of scrutiny of service record etc. The claim made by him that the applicant had not completed three years of service as adhoc MCC by 31.12.1991 has already been dealt with by us in the aforesaid paragraphs, and we have clearly found that there is no force in the aforesaid contention raised on behalf of the respondents. ^d

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10. In the aforesated circumstances, we find considerable force as well as merit in the OA, which is allowed. The respondents are directed to consider the applicant's claim for regularisation as MCC and to grant him all the consequential benefits in accordance with the relevant instructions. The respondents are further directed to comply with the aforesaid direction in a period of three months from the date of receipt of a copy of this order. There shall be no order as to costs.

S.A.T. Rizvi

(S.A.T. RIZVI)
MEMBER(A)

Lakshmi Swaminathan

(MRS. LAKSHMI SWAMINATHAN)
VICE CHAIRMAN(J)

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