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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

DA No.560/2001

New Delhi this the 9th day of May, 2002

Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J)
Hon'ble Shri Govindan S.Tampi, Member (A)

Sh.Nanda Ballabh,
S/O Late Sh.Chinta Mani,
Working under Deputy Chief
Engineer (Construction)
State Entry Road, New Delhi.

(By Advocate Shri K.K.Patel)

..Applicant

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Union of India through:-

1. The General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Chief Administrative Officer
(Construction), Northern Railway
Head Quarter Office: Kashmiri Gate,
Delhi-6
3. Divisional Railway Manager,
Northern Railway, New Delhi.
4. Deputy Chief Engineer (Construction)
Northern Railway, State Entry Road,
New Delhi.

..Respondents

(By Advocate Shri H.K.Gangwani)

O R D E R (ORAL)

(Hon'ble Smt. Lakshmi Swaminathan, Vice Chairman (J))

In this application, the applicant has prayed for a direction to the respondents to include his name for regularisation in the post of Clerk-cum-Typist in the panels issued on 6.3.2000 and 6.6.2000. It has been clarified during the arguments that the letter dated 6.3.2000 is a ^{Panel 18} provisional and the letter dated 6.6.2000 issued by the respondents is the final panel position of 23 persons who

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had earlier been working as ad hoc Material Checking Clerks (MCCs) in the Construction Organisation who have been found suitable to be placed on the panel for regularisation as Clerk-cum-Typist in various Divisions.

2. According to the applicant, as per the notice issued by the Construction Division dated 10.8.1993, the applicant has been allowed the grade of Rs.950-1500 for the period w.e.f. 15.3.1986 and in that letter, it has been stated that he is still continuing in that grade due to non posting of regular MCCs. In this notice the pay of the applicant has been shown to be fixed as Rs.950/- from 15.3.1986 and Rs.1070/- from 1.3.1993. Shri K.K.Patel, learned counsel also relies on another letter issued by the respondents dated 12.11.1991 which has been filed in a compilation on 7.5.2002. In this letter, the respondents have stated that "now the result of the following employees and declared suitable for the post of Kh/Chairman/Cleaner/Peon/Dressor/Ballowmen in Gr.Rs.750-940 (Rs) and Signalmen/G.Man/Trolleymen/ Chowkidar/Gateman in Grade Rs. 775-825 as shown against each is revised with the approval of the competent authority" against 40% construction reserve and applicant's name is shown at Sl.No.586 as Store Khallasi. It is further stated that the persons who have been empanelled, including the applicant, are regularised in the Grade Rs.775-825 w.e.f. 1.4.1984 as per the Railway Board's orders. In the light of these orders, Shri K. K. Patel, learned counsel has submitted that the applicant fulfils the required number of

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three years ad hoc service as MCC and he has also been regularised in Group 'D' post in the grade of Rs.775-825 earlier, that is from 1.4.1984. He has also submitted that the applicant had passed the Screening Test (Written test and Viva voice test) for selection to the post of MCC and there is no reason why his name should not be included in the aforesaid orders issued by the respondents dated 6.3.2000 and 6.6.2000. He relies on the order of the Tribunal(PB) dated 6.11.2001 in Sulakhan Singh Vs. UOI through Genl.Manager(NR) and Ors.(OA 781/2001)

3. The respondents in their reply have submitted that during the process of selection, it was detected that the applicant was not eligible to be called in the Selection as he was regularised as Group 'D' only on 2.8.1989. Therefore, the selection committee had taken a decision that the applicant had been called erroneously as he did not fulfil the required condition i.e. three years ad hoc service as MCC prior to December, 1991.

4. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

5. The main contention of the respondents is that the applicant has not completed three years ad hoc service as MCC. However, from the letter issued by the respondents dated 10.8.1993 relied upon by the applicant it is seen that the applicant had worked as MCC w.e.f. 15.3.1986 and even in August, 1993 he had continued in that capacity. In the

circumstances, we are unable to agree with the contentions of the respondents that the applicant had not completed three years requisite service on the relevant date in December, 1991. It is also relevant to note that they had apparently allowed the applicant to appear in the written tests held on 1.10.1999 and 11.10.1999 on the ground that he was having the three years ad hoc service as MCC and he had qualified the same. Learned counsel for the applicant has submitted that by the respondents' letter dated 6.10.1999, the applicant had been called for the viva voce test which was held on 11.10.1999.

6. Therefore, the contention of the respondents that they had called him erroneously for the written test as he had not completed three years of service does not appear to be correct on the basis of the letters relied upon by the applicant and referred to above. From the reply filed by the respondents, it is not clear whether the applicant had been allowed to appear in the viva voce test and if so whether he had passed. This is a matter of record for the respondents to see and verify. There is no dispute that he has passed the written test held in 1991.

7. In the above facts and circumstances of the case, the OA is allowed with the following directions to the respondents:-

(i) They are to verify from their records and ascertain whether the applicant did appear for the Viva Voce test for selection for regularisation to the post of MCC on 11.10.1999;

(ii) In the light of the documents relied upon by the applicant as he has completed three years service as MCC clerk, accordingly if he has passed the viva voce test, he shall be entitled to all consequential benefits in accordance with the relevant law, rules and instructions;

(iii) If the applicant has been erroneously disallowed from appearing in the viva- voce test held on 11.10.1999, they are directed to hold the viva voce test within two months from the date of receipt of a copy of this order. In the event the applicant passes the viva voce test, he shall be deemed to have passed the same as on 11.10.1999 and shall be entitled to all consequential benefits as ordered above;

(iv) While dealing with applicant's case, they shall also keep in view the Railway Board's letter dated 9.12.1975 read with the letter dated 25.1.1976 (Annexure P-2 of the OA) which have been upheld by the Hon'ble Supreme Court in Shri R.C.Srivastava Vs. UOI & Ors. (SLP(C) No. 9866/1993).

No order as to costs.

(Govindan S. Tampli)
Member (A)

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(Smt. Lakshmi Swaminathan)
Vice Chairman (J)

Lakshmi Swaminathan