

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 648/1999

New Delhi this the 3rd day of April, 2003

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

1. Shri Sukhdev Singh,
S/O Shri Roshan Lal,
SSE/BR/M, Delhi
Safdarjung, New Delhi.
2. Sh. Om Bir Singh,
S/O Shri Chandu Lal
SSE/BR/M Delhi
Safdarjung, New Delhi.
3. Shri Harish Kumar,
S/O Shri Amrit Lal
SSE/BR/M Delhi
Safdarjung, New Delhi.
4. Shri Shiv Narain,
S/O Shri Tilak,
SSE/BR/M Delhi
Safdarjung, New Delhi.
5. Shri Balwant Singh,
S/O Shri Makan Singh,
Asstt. Bridge Engineer,
L-Tilak Bridge, New Delhi.
6. Shri Ramesh Chander,
S/O Shri Ram Singh,
Asstt. Bridge Engineer/SP1,
Lajpat Nagar, New Delhi.
7. Shri Hardev Singh,
S/O Shri Mukhtiar Singh,
S.E./BR/Spl/Dayabasti.
8. Shri Balak Ram,
S/O Shri Hori Lal,
S.E./BR/Spl/ Dayabasti.
9. Shri Jagdish Ram,
S/O Shri Kali Ram,
S.E./BR/Spl/ Dayabasti.
10. Shri Birbal,
S/O Shri Raja Ram,
SE/BR/Spl/Dayabasti.
11. Narender Kumar
S/O Shri Manohar Lal
Asstt. Bridge Enggineer/Spl
Lajpat Nagar.

B

12. Shri Khem Raj,
S/O Shri Shukru Ram,
Asstt. Bridge Engineer/Spl
Lajpat Nagar.
13. Shri James Babloo,
S/O Shri Johan,
S.E./BR/M/Ambala Cantt.
14. Shri Ashok Kumar,
S/O Shri Ramji Das,
S.E./BR/M/ Ambala Cantt.
15. Shri Shakti Kumar
S/O Shri Chandī Dass,
SSE/BR/Spl-1/Shakurbasti,
Delhi.
16. Smt. Sarakutty Jose,
W/O Shri C.T. Jose,
Asstt. Bridge Engineer/
Line Tilak Bridge.
17. Shri Birbal Singh,
S/O Shri Daryav Singh,
SSE/BR/M/BE.
18. Shri Ramswarath Roy,
S/O Shri Kuldip Roy,
SSE/BR/Spl-1/ Shakurbasti,
Delhi.
19. Shri Davendra Pd. Verma,
S/O Shri Mahavir Singh Verma,
SSE/BR/M/ MBD.
20. Shri Baldev Singh,
S/O Shri Dhain Singh,
Asstt. Bridge Engineer
L-Moradabad.
21. Shri Ghan Shyam,
S/O Shri Kishan Dutt,
SSE/BR/M/ Moradabad.
22. Shri Devatman Jha,
S/O Shri Roop Narain
Asstt. Bridge Engineer/
Line/Allahabad.
23. Shri Lalita Prasad Maurya,
S/O Shri Ram Awatar,
Asstt. Bridge Engineer/Line ;
Allahabad.
24. Shri Ashok Kumar Singh
S/O Shri Shiv Shankar,
SE/BR/M/Allahabad.
25. Shri Murli Dher,
S/O Shri Maikoo,
SE/BR/M/CNB.

P/

32

26. Shri Rajendra Singh,
S/O Shri R.C.Singh,
SE/BNM/ Allahabad.
27. Shri Radhyashyam,
S/O Shri Tulsi Ram,
SE/BN/M/Allahabad.
28. Shri Piar Singh,
S/O Shri Kashi Ram,
SE/BN/Spl-1/SSB.

..Applicants

(By Advocate Shri C.Hari Shanker)

VERSUS

1. The Secretary, Ministry of
Railways, Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.
3. The Chief Personnel Officer,
Northern Railway, New Delhi.
4. The Chief Bridge Engineer,
Northern Railway, Baroda House,
New Delhi.
5. The D.R.M., Northern Railway,
New Delhi.
6. The D.R.M., Northern Railway,
Ambala.
7. The D.R.M., Northern Railway,
Jodhpur.
8. The D.R.M., Northern Railway,
Moradabad.
9. The D.R.M., Northern Railway,
Allahabad.

..Respondents

(By Advocate Shri R.L.Dhawan)

O R D E R (ORAL)

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

This application has been filed by 28 applicants
stating that they are aggrieved by the wrongful action of
the respondents in not promoting them as Material Checking

ys

Clerks (MCCs) after their redesignation as Material Checkers (MCs), which posts were earlier designated as Storemen.

2. The Tribunal had earlier disposed of this O.A. by order dated 2.7.2001. Against this order, the applicants had filed CWP No. 778 of 2001 before the Hon'ble Delhi High Court which had noted the reliefs prayed for by the applicants in the O.A. and had perused the relevant documents, including the letters issued by the respondents. Referring to one such letter dated 6.8.1978, although it was noted that the letter might not have contained any positive direction to the effect that the posts held by the applicants be upgraded, in view of certain other letters dated 27.2.1998, 21.5.1998 and 15.10.1998 brought to their attention by Shri C. Hari Shanker, learned counsel, the Hon'ble High Court was of the view that the decision of the Tribunal was not correct in dismissing the O.A. summarily. Accordingly, by order dated 29.7.2002, the Hon'ble High Court set aside the Tribunal's order dated 2.7.2001 and remitted the matter to the Tribunal for consideration of the matter afresh in accordance with law.

3. In view of the above orders, the matter has been reconsidered and we have heard Shri C. Hari Shanker, learned counsel and Shri R.L. Dhawan, learned counsel for the parties and perused the relevant documents on record. In particular, learned counsel for the applicants has taken us through the aforesaid three letters dated 27.2.1998, 21.5.1998 and 15.10.1998, the order dated 29.7.2002 of the Hon'ble High Court and the other relevant

B.

documents on record. He has also submitted a brief written submissions, with copy to the opposite party, copy of which is also placed on record.

4. The main contention of the learned counsel for the applicants is that the applicants who were earlier appointed as Khalasis in Bridge Department, were promoted on ad hoc basis as Storemen. Their case is that they are entitled to upgradation as MCs with consequential benefits as, according to them, the posts of Storemen stood abolished since 1979. Consequently, learned counsel has submitted that after redesignation and subsequent upgradation to the posts of MCs, the applicants ought to be considered for promotion as MCCs, in accordance with seniority and the relevant rules, which the respondents have failed to do. Reference has been made to Railway Board's letters dated 27.9.1963 and 26.10.1972, wherein MCs in the Railways were upgraded as Material Clerks on seniority-cum-suitability basis with fixation of pay in accordance with FR 22-C.

5. On the other hand, Shri R.L. Dhawan, learned counsel has submitted that the very basis of the contentions of the learned counsel for the applicants that all the posts of Storemen in Bridges Department were redesignated as MCs is erroneous. He has submitted that as per Railway Board's letter dated 20.7.1979 which was circulated by their letter dated 3.9.1979 (Annexure A-1) which has been relied upon by the learned counsel for the applicants, the redesignation of the posts of Storeman was purely confined to the Stores Department and has nothing to do with the Bridges Department. Learned counsel has

submitted that the applicants admittedly belong to the Bridges Department and unless and until there is a decision from the competent authority, that is, the Railway Board redesignating the posts of Storemen in that Department in a manner similar to the decision taken with regard to the Stores Department, the applicants have no right either for redesignation or cosequential monetary and promotional benefits. At this stage, Shri C. Hari Shanker, learned counsel has submitted that the aforesaid decision of the Railway Board dated 20.7.1979 has been implemented in every Department of the Railways, excepting the Bridges Department. This has, however, been disputed by the learned counsel for the respondents who has submitted that the existing Railway Board's letter dated 20.7.1979 is only confined to the Stores Department.

6. As both learned counsel have referred to a number of annexures in the O.A. itself, for example Minutes of the PNM meetings and inter-Departmental correspondence which have been relied upon by both the parties, we have very carefully considered the same.

7. In the Minutes of the Joint Meeting held in the office of Chief Personnel Officer (Administration), Northern Railway dated 6.3.1995 (Annexure A-6), the parties have relied on one part or the other. While Shri C. Hari Shanker, learned counsel has submitted that the meeting had addressed the 'problem' raised before them, which is also the issue raised in the present O.A. which has, therefore, remained unresolved for the last several years by the Railway Board (Administration), a reference has been made to the effect that certain functionaries in

36

-7-

the Bridges Organisation under the Chief Bridge Engineer (CBB) have appointed Storemen after 1978 in total disregard of the Rules. It has been stated that the category of Storemen has been abolished in 1979. In this letter, it has also been stated that the category of Storemen was redesignated as MCs in terms of the aforesaid letter of the Railway Board dated 20.7.1979 and they were to be given the grade of Rs.225-308, now Rs.885-1200. There is a further sentence that this category was to be operated only in the Stores Department but the Storeman category continued to be operated in Bridge Organisation and the staff so posted continued to draw pay in a higher grade of Rs.800-1150. It is relevant to note that there is an observation in this letter that the CBE had mentioned in the meeting that he has taken steps to identify the functionaries who caused serious irregularities and is taking steps to correct the situation. The CBE was, therefore, requested to bring on record the action taken against such functionaries. Towards the end of the Minutes, we note that the then CPO-A had correctly noted that as per law laid down, 'no right accrues to any person to hold a post if it has not been given after following proper procedure. Arbitrary ad hoc appointments did not give rise to any right'. Noting that these Minutes have been finalised on 6.3.1995, it is relevant to note that similar sentiments have been expressed by the respondents in the counter affidavit filed by them on 18.8.1999 to the O.A. They have referred to the fact that the applicants were put to work as Storemen in Grade Rs.210-270/Rs.800-1150 (RPS) on various dates in Bridge Department as a temporary measure without following any Rules on ad hoc basis in ^{a p} hapazard manner.

8.

These admissions on the part of the respondents speak volumes about the manner in which they have been acting for the last several years, particularly with regard to the concerned officers in the Bridge Department. It is also relevant to mention that what action, if any, has been taken against the concerned officers who have acted de hors the Rules, adopting adhocism on pick and choose policy in a hapazard manner, without following any Rules, is left vague, although in the Minutes of the PNM meeting dated 6.3.1995 itself, it is stated that the CBE had mentioned that he would identify the functionaries who caused the serious irregularities and take steps to correct the situation. No such steps seem to have been taken by the respondents till this O.A. was filed by the applicants on 11.3.1999.

8. After the aforesaid meeting, there appears to have been further meetings held by the concerned officers of the Department, to which Shri C. Hari Shanker, learned counsel has drawn our attention, namely the letter dated 13.10.1997 (Annexure A-11) and the letter dated 27.1.1998 (Annexure A-13) followed by other letters. In these letters, it appears that the respondents were trying to regularise the Storemen of Bridge Department against the vacancies existing in respective Divisions in the light of GM (P) letter dated 13.10.1997. Needless to say, any such regularisation can be done only in accordance with the Rules applicable to the case and not in such a hapazard or ad hoc manner, as hitherto adopted by various functionaries of the respondents. This has not only created confusion but has also led to these infructuous

38

litigations. This litigation which has started in the Tribunal in the month of March, 1999 has also gone upto the level of Hon'ble High Court and is again before us for further reconsideration. In the meanwhile, we see no reason why the respondents who have acted in an irregular and illegal manner could not have taken remedial steps for the last several years. In the letter dated 13.10.1997 on the issue of regularisation of Storemen working in the Bridge Department, that is persons like the applicants, it has been stated that a decision has been taken that they would be regularised as "Material Clerks" against the vacancies of Divisions after following due procedure within 60 days. Here again, it is noted that the respondents have carelessly mentioned the expression "Material Clerk" and not "Material Checker".

9. From the above facts and circumstances of the case, it can undoubtedly be concluded that this litigation could have been avoided if the concerned officers of the Railway Administration had acted in accordance with the Rules at the relevant time which, according to their own counter affidavit, they have failed to do. However, taking into consideration the Railway Board's letter dated 20.7.1979, which admittedly relates to the redesignation of the posts of Storeman in Stores Department, we are unable to agree with the contentions of Shri C. Hari Shanker, learned counsel that a similar decision by the competent authority has been taken with regard to redesignation of the posts of Storemen in the Bridge Department. It is not disputed that for being considered for promotion/regularisation to the posts of MCC, the relevant Rules have to be followed. In other words, only eligible persons who qualify according to the

laid down procedure for promotion can be considered in the higher posts of MCCs. Therefore, the contention of the learned counsel for applicants that the applicants who were admittedly Storemen in Bridge Department have to be redesignated as MCs and then promoted as MCCs on the same lines is not accepted, as the Railway Board's letter dated 20.7.1979 would not automatically apply to their case. However, considering the fact that the issue of regularisation/promotion of the Storemen in the Bridge Department who have been working and paid salary as Material Checkers has been engaging the attention of the respondents for a number of years, we see no reason why they should not take an appropriate decision in the matter, keeping in view all the relevant facts and Rules, including the Railway Board's letter dated 20.7.1979. In this regard, we are unable to agree with the contention of the learned counsel for the applicants that a decision by the Headquarters, Northern Railway is sufficient for the purpose of redesignating Storemen in Bridge Department as MCs because that decision will have to be taken by the competent authority i.e. the Railway Board as done by them in the letter dated 20.7.1979 for another Department.

10. In view of what has been stated above, the O.A. is disposed of with the following directions:

- (i) Respondent No.2, that is the General Manager, Northern Railway, New Delhi shall place the relevant files on the question of redesignation of Storemen in Bridge Department in which considerable correspondence has been taking place at various levels before the Railway Board for an appropriate

decision, as done in other concerned Department. This shall be done within three months from the date of receipt of a copy of this order;

(ii) The Railway Board shall also pass orders with regard to regularisation of the 28 applicants in this O.A., taking into account the peculiar facts and circumstances of the case, including the fact that they ^{have} stated that the concerned officers of the Bridge Department have been acting in an illegal and improper manner;

(iii) Respondent No. 2, shall also take necessary action to fix responsibility on the concerned officials for the aforesaid illegal and improper actions which has led to the present protracted litigation, considering also the fact that the applicants are Group 'D' employees;

(iv) In the facts and circumstances of the case, the respondents are directed to pay costs of Rs.500/- (Rupees five hundred only) to each of the applicants in the O.A. It will be open to the respondents to recover this amount from the concerned officials after fixing responsibility as above.

(Govindan S. Tampi)
Member (A)

'SRD'

(Smt. Lakshmi Swaminathan)
Vice Chairman (J)