

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.1327/1995

New Delhi this the 30th day of August, 1999.

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HON'BLE SHRI R. K. AHOOJA, MEMBER (A)

HON'BLE SHRI SYED KHALID IDRIS NAQVI, MEMBER (J)

1. Vijay Shankar Pandey S/O Radheshyam Pandey.
2. Lalit Kumar S/O Shatrughna Singh.
3. Sukhdev Pd. Kanojia S/O Bhola.
4. Kulvinder Singh S/O Bhag Singh.
5. Ashok Kumar S/O Girdhari Lal.
6. Shahid Ali Siddiqui S/O L.A.Siddiqui.
7. Mangu Singh S/O Tejpal.
8. R. K. Singh S/O Devmuni Singh.
9. M. P. Paul S/O Surnam Pal

(All working as Enquiry-cum-
Reservation Clerks, Northern Railway,
I.R.C.A. Building,
New Delhi.)

... Applicants

(By Shri B. S. Mainee, Advocate)

-Versus-

1. Union of India through .
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,,
New Delhi.

... Respondents

(By Shri R. L. Dhawan, Advocate)

O R D E R (ORAL)

Shri R. K. Ahooja, AM :

The applicants initially joined service as Coaching Clerks w.e.f. 28.4.1982 in the pay scale of Rs.975-1540. Thereafter, they claim they were adjudged suitable for working as Enquiry-cum-Reservation Clerks in the pay scale of Rs.1200-2040 and were promoted to work as such on ad hoc

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basis from various dates. They submit that initially they were not given the higher pay scale and were made to work as Enquiry-cum-Reservation Clerks in the lower pay scale of Coaching Clerks. The respondents issued order dated 29.5.1985, Annexure A-5-D, conveying their decision to the Divisional Railway Managers that all the Enquiry-cum-Reservation Clerks in grade Rs.330-560 who had been continuously officiating as such on ad hoc basis and had completed three years service on 30.4.1985 may be regularised provided there is nothing otherwise objectionable against them which may debar them from such regularisation. The applicants were, however, not given the benefit of this order although subsequently by an order dated 3.4.1987, Annexure A-5-A, certain persons similarly placed as the applicants and who had been promoted on ad hoc basis between 1980 and 1982 were regularised as Enquiry-cum-Reservation Clerks and given seniority from 1.5.1985. Subsequently, the respondents issued yet another order in 1989 on the basis of discussions with employees' unions for regularisation of Coaching Clerks who had been working on ad hoc basis as Enquiry-cum-Reservation Clerks. According to the applicants, despite representations made by them, action was not taken by the respondents for regularising their services. Ultimately, the services of the applicants were regularised by order dated 20.4.1990, Annexure A-8, but they were given seniority only w.e.f. 1.4.1990. The applicants submit that they had been making continuous representations in respect of their regularisation in terms of the respondents' instructions dated 29.5.1985 and also for grant of regular pay as Enquiry-cum-Reservation Clerks from the initial date of their ad hoc appointment, but the regularisation took place only by order dated 20.4.1990 and

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the regular pay of Enquiry-cum-Reservation Clerk was granted to them ultimately only by an order dated 12.9.1994, Annexure A-10. They submit that on the basis of their continuous ad hoc officiation followed by regularisation, they are entitled to count their seniority from the date of promotion on ad hoc basis.

2. The respondents resisted the claim of the applicants. They submit that the claim is barred by limitation. They further say that the respondents had issued a seniority list, Annexure A-1 to the OA, dated 28.5.1993 with the stipulation that if anyone had objections, the same may be submitted within a period of one month. The applicants had neither represented against the assignment of seniority w.e.f. 1.4.1990 vide order dated 20.4.1990 nor against the seniority list dated 28.5.1993; hence, the applicants could not make a grievance at this stage. They further submit that the applicants had been put to officiate as Enquiry-cum-Reservation Clerks on purely ad hoc basis and on that basis they are not entitled to seniority from the date of their ad hoc officiation.

3. Shri B. S. Mainee, learned counsel for the applicants, argued that the respondents themselves had taken a decision to grant regularisation to all those Coaching Clerks who had been officiating for a continuous period of three years and that the applicants were entitled to be so regularised but they were declined regularisation only on the ground that they were not in receipt of the regular pay scale of the post of Enquiry-cum-Reservation Clerks. It was only in 1994 that their plea that they should be given the officiating pay right from the date of ad hoc appointment was finally agreed to by the respondents. According to the

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learned counsel for the applicants, the respondents should have granted them regularisation from the due date, that is, from the date of completion of three years of continuous ad hoc officiation, but these orders were not issued. In view of this position, the applicants had a cause of action arising from the order of the respondents dated 12.9.1994.

4. Shri R. L. Dhawan, learned counsel for the respondents, submitted that the case of the applicants is squarely covered by a decision of this Tribunal in O.A. No. 691/86 with T.A. No.856/86 which was decided on 7.12.1990. By that order, similar claims were rejected on the ground that the necessary conditions for counting ad hoc service towards seniority were not fulfilled.

5. We have carefully considered the aforesaid submissions and gone through the record. The post of Enquiry-cum-Reservation Clerk is admittedly to be filled as per recruitment rules on the basis of selection. It is contended by Shri Mainee that in view of the order of the respondents dated 29.5.1985 a relaxation had been made for making appointment to the post of Enquiry-cum-Reservation Clerk not on the basis of selection but on the basis of three years' continuous officiation on ad hoc basis, and thus the applicants fulfilled the relaxed standards in terms of the recruitment rules. He further submitted that having officiated continuously in terms of the relaxed standards till their regularisation in April, 1990, the applicants were entitled to count the period of ad hoc officiation towards seniority. We are not impressed by this argument. The relaxation made by the 1985 order was in terms of those who had at that time fulfilled the requisite condition of having rendered three years' service. If the applicants had

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completed three years' ad hoc service in terms of the cut-off date, i.e., 30.4.1985 stipulated in the order dated 29.5.1985, they~~y~~ they would have in the normal course, agitated the matter at that time. It is thus clear that the applicants did not fulfil the relaxed standards on the cut-off date. It is also true that some more people were regularised in 1987 but then also the applicants did not seek the remedy of representation. We, therefore, cannot say that the applicants were appointed as Enquiry-cum-Reservation Clerks in terms of the recruitment rules as they had not been appointed on the basis of selection nor had become entitled on the crucial dates in terms of, completion of three years of continuous officiation on ad hoc basis. The applicants did not agitate the matter when they were regularised w.e.f. 1.4.1990 nor did they question the seniority list when it was published on 28.5.1993. One of the conditions of counting ad hoc service towards seniority is that the incumbent must be appointed to the post according to rules. The basic condition that the appointment of the applicants was in accordance with rules, is not fulfilled. For these reasons, the applicants cannot claim the benefit of seniority from the date of their continuous officiation on ad hoc basis.

6. In the light of the above discussion, we do not find that the applicants have a legitimate claim for counting their seniority from the initial date of ad hoc officiation. The O.A. is accordingly dismissed. No costs.

(Syed Khalid Idris Naqvi)
Member (J)

(R. K. Ahooja)
Member (A)

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