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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA-2225/95

New Delhi this the 5th day of January, 2000.

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VICE-CHAIRMAN
HON'BLE MRS. SHANTHA SHASTRY, MEMBER(ADMNV)

1. Raghubir Singh,
S/o Shri Niranjana Singh,
R/o 47, St. No. Jhujhan Nagar,
Patiala.

2. Neki Ram,
S/o Shri Kundan Singh,
R/o 47, St. No. Jhujhan Nagar,
Patiala.

...Applicants

(By Advocate Shri B.S. Mainee)

-Versus-

1. Union of India through the
General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divl. Rly. Manager,
Northern Railway,
Amballa.

3. The Divl. Rly. Manager,
Northern Railway,
State Entry Road,
New Delhi.

...Respondents

(By Advocate Sh. B.S. Jain)

O R D E R

By Reddy, J.-

The applicants were appointed as Khalasis/Shed Messengers in the year 1961 on Class IV posts in the Northern Railway at Delhi. They were promoted to class III posts as Fuel Issuer w.e.f. 5.2.1970 and 13.9.73 respectively on ad hoc basis. Though ever since they have been working uninterruptedly, their services were not regularised. The applicants filed OA-1638/90 seeking regularisation of their services and the OA was disposed of with a direction to the respondents to consider their promotion within three months from the date of the order. As no decision was

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taken by the respondents the applicants filed another OA seeking the same relief of regularisation. Again the Tribunal gave a direction to consider the case of the applicants for regularisation. It is the case of the applicants that they were recommended for regularisation along with other staff who were promoted on ad hoc basis and out of them three have been already regularised who were junior to the applicants and the promoted people have subsequently been further promoted to the post of Senior Clerks as well as Head Clerks during 1992 and 1995, the case of the applicants has been rejected by the impugned order dated 26.5.95 (Annexure A-1) on the ground that they were not entitled for regularisation as per circular NO.2674 of the Railway Board dated 2.6.94. It is the case of the applicants that the said circular is not applicable to them as the applicants have been promoted, though on ad hoc basis, and further the juniors to the applicants have already been regularised in the said posts of Fuel Issuer.

2. Preliminary objections as to limitation and jurisdiction have been raised by learned counsel for respondents. It is contended by the learned counsel for the respondents that the applicants are not entitled for regularisation, the promotion to Class III posts are made only by way of selection by holding an examination^a and de hors the said procedure the applicants are not entitled for regularisation only on the ground that they have been promoted on ad hoc basis to class III posts and that as per the rules contained in PS 2674 the applicants are not entitled for regularisation.

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3. We have considered the pleadings as well as the contentions raised in the case, carefully.

4. The learned counsel for the applicants points out that the applicants have been working as Fuel Issuer (MCCs) for the last 25 years, having been promoted on ad hoc basis. It is not in dispute that the applicants have been promoted, though on ad hoc basis, during 1970 and 1973 and they have been working continuously without any break in the said posts. It is seen from Annexure A-4 that the applicants have been promoted earlier to three others viz. Ashok Kumar, Munna Lal and Sukhpal and all of them have been recommended under the above proceedings (Annexure A-4), by the Divisional Personnel Officer Ambala Cantt, that they should be exempted from selection/suitability and their services should be regularised in class III from the date from which they are officiating. It is also not in dispute that Ashok Kumar, Munna Lal and Sukhpal, who were admittedly juniors to the applicants have already been regularised as per the directions given by the Tribunal in the OAs filed by them. It is also not in dispute that the orders passed by the Tribunal have become final and they were not questioned by the respondents in the higher courts. It is now stated that in the proceedings dated 10.1.95 the second applicant Neki Ram has also been regularised on the ground that he had completed more than three years service as MCC in the grade of Rs.950-1500 alongwith others. Thus, out of five people who have been recommended by the Divisional Personnel Officer in

Annexure A-4 only the first applicant Raghubir Singh is left out from regularisation without any good reason.

5. It is contended by the learned counsel for the respondents that as per circular 2674 all Khalasis are not entitled for regularisation in class III posts. Only class IV staff employed in offices, with five years service irrespective of the grade, would be eligible for promotion to the posts of Clerks. The learned counsel relies upon note-I in circular 2674 in support of this contention. We do not agree. From the table given in the circular itself it is clear that khalasis of all types are eligible for promotion to the posts of MCC. Further it is not the case of the respondents in the counter-affidavit that the applicants are not working in the offices at all. Apart from this it is not open to the respondents to raise the contention as to the ineligibility of the applicants for regularisation as Fuel Issuer since the other four persons who have been working as khalasis who are shown in A-4 have been already regularised as MCCs. Then how can the 1st applicant be discriminated? The learned counsel for the applicants heavily relies upon the circular issued by the General Manager, Northern Railway to all the Divisions that MCCs have been regularised. In Om Pal Singh v. Union of India & Ors., 1990 CSJ CAT 294 the Principal Bench of the Tribunal relying upon the circular issued in June 1998 directed regularisation of the MCCs who have been working for more than three years on ad hoc basis. Again in B.R. Rahi & Ors. v. Union of India, 1995 (1) ATJ 67 the same circular has been

relied upon and the Tribunal directed regularisation of MCCs who have been working on ad hoc basis for more than three years. Hence, relying upon the ratios in the above cases, it has to be held that the applicants are also entitled for regularisation since they have been working as Fuel Issuer for more than 25 years. The first applicant is also entitled for regularisation on the ground that many of his juniors have already been regularised as MCCs. We do not see any good reason for discriminating the first applicant.

6. In the circumstances the OA is allowed. The respondents are directed to regularise the 1st applicant within a period of two months from the date of receipt of a copy of this order. No costs.

Shanta S-
(Smt. Shanta Shastry)
Member (A)

'San.'

V. Rajagopala Reddy
(V. Rajagopala Reddy)
Vice-Chairman(J)