

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(4)

D.A. No.2384/95/98

Date of Decision: -1998
30.8.1999.

Shri Raj Kumar Pandit & Anr. ...Applicants

(By Advocate Shri Anis Suhrawardy)

Versus

Union of India & Ors.

...Respondents

(By Advocate Shri O.P. Kshatriya)

CORAM:

HON'BLE MR. JUSTICE V. RAJAGOPALA REDDY, VC(J)

HON'BLE SHRI/MRS. SHANTA SHAstry, MEMBER (A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES.
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?

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

Cases referred:

Central Administrative Tribunal
Principal Bench: New Delhi

OA No. 2384/95

(5)

New Delhi this the 30th day of August 1999

Hon'ble Mr. Justice V. Rajagopala Reddy, VC (J)
Hon'ble Mrs. Shanta Shastray, Member (A)

1. Shri Raj Kumar Pandit,
S/o Shri Khilari Pandit,
R/o: Railway Quarter No. 414-P,
Punjab Line, Railway Colony,
Ghaziabad (U.P.)
2. Shri Mohan Lal,
S/o Shri Hari Chand,
R/o 3058, Mohinder Pal
Rani Bagh, Shakurbasti,
Delhi-110034.

...Applicants

(By Advocate: Shri Anis Suhrawardy)

Versus

1. Union of India,
through its Chairman Railway Board,
Rail Bhawan, Baroda House,
New Delhi.
2. The General Manager,
Northern Railway,
Baroda House, New Delhi.
3. Chief Administrative Officer (Construction),
Northern Railway,
Kashmiri Gate, Delhi-110006.
4. Dy. Engineer (Construction),
Northern Railway,
Shivaji Bridge,
New Delhi.

...Respondents

(By Advocate: Shri O.P. Kshetriya)

ORDER (Oral)

By Reddy, J.:

Heard the counsel for applicant and the respondents.

2. The applicants were appointed as Khalasi in Group-D category in 1975 in Northern Railway. Thereafter they were promoted as a skilled Khalasi as an Artisan. The services of the applicants were,

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however, utilised as Typists w.e.f. 18.12.85 and 1.9.85 respectively. It is the case of the applicants that since 1985 they were continued to work in the posts of Typists and hence they were entitled for regularisation as Typists. It is the case of the respondents that the applicants are only Khalasis and have not been regularised in Group 'D' and that after regularisation and screening they may be considered, in promotion quota, as Typists. It is, however, admitted that they have been working as Casual Typists in the grade of Rs. 950-1500 w.e.f. 8.12.85 and 1.9.85 respectively in the construction organisation, due to the non-availability of regular Typists. It is the case of the respondents that since the applicants' services have been utilised as Casual Typists they have been paid in the higher grade of Rs. 950-1500 and this arrangement was purely on adhoc basis. It is also contended that Regularisation or Recruitment of Typists has to be done only as per the Recruitment Rules.

3. The applicants though they have been originally appointed as Khalasis they have not been regularised in Group 'D'. The applicants were entrusted the work of the posts of Typists, in view of the non-availability of regular typists and as such they have been allowed the scale of Typists, in the grade of Rs. 260-400 (Rs. 950-1500) (RPS). The only question is whether the applicants were entitled for regularisation in the post of Typists. The posts of Typists are governed by the Recruitment Rules and all the said posts have to be filled up in accordance

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with the said Recruitment Rules from amongst the persons found eligible, by way of direct recruitment or by way of promotion. The applicants are not even regularised in Group-D post. The learned counsel for respondents has referred to para 175 of the Indian Railway Establishment Manual 1989 edition, which provides that:

(1) the vacancies in the category of Typist, Grade-II in the scale of Rs. 950-1500 will be filled as under:

i) 66-2/3% by direct recruitment through the Agency of the Railway Recruitment Boards;

and

ii) 33-1/3% by promotion by selection of specified Group 'D' staff.

iii) The standard of qualification and proficiency in typing has also been mentioned.

4. It is not shown that the applicants are eligible in accordance with the Recruitment Rules of Typists to be appointed as Typists. It is true that for over a decade the applicants have been shouldering the responsibilities of Typists. But the law is settled that unless a person is eligible as per the Recruitment Rules and vacancies are available, they cannot be promoted or regularised in the post of clerks. Learned counsel for applicant brings to our notice the Judgment in OA- 232/92 of Jodhpur Bench of the Tribunal. In the said case the applicant was working as Store Khalasi and he was entrusted with the duties of Typists and was working

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as a casual typist. The contention of the respondents was that the applicant was not entitled to be promoted as he was not even screened in Group-D posts. The Tribunal, however, while allowing the OA directed the respondents to promote the applicant to the post of typist against any vacancy that may exist in the promotion quota for general category. If no such vacancy exists, then he may be promoted against the next available vacancy in promotion quota for general category. Under the Recruitment Rules as seen above, the persons regularised in Group-D posts alone are entitled for promotion by way of selection to a certain quota of posts for Typists.

5. It is, however, the case of the respondents that applicants have refused to appear before the screening Committee for being regularised in Group-D posts and unless the applicants were regularised in Group-D posts they cannot be considered for promotion to the posts of Typists. It is also the case of the respondents that even after the regularisation in Group-D posts they can be considered for promotion to the post of Typists only if they are found eligible as per the Recruitment Rules for promotion to the post of Typists.

6. The Supreme Court in U.O.I. & Ors. Vs. Moti Lal & Ors. clearly held that Mates, being Class-III post and thus a promotional post, it is not permissible to regularise a person as Mate. On the same analogy, the posts of Typists being promotional posts, the Group "D" posts, the applicants who are not even regularised in Group "D" cannot be

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considered for regularisation as Typists. Such a process is contrary to Recruitment Rules. Hence, the Judgment of Jodhpur Bench in OA-232/92 should be held as per incuriam.

7. It is, however, submitted by the learned counsel for applicants that applicants are not even regularised in Group-D post though they are entitled for regularisation atleast in Group-D posts. In the circumstances, we direct the respondents to screen the applicants for the purpose for considering them for regularisation in Group-D posts. With this direction the OA is dismissed. No costs.

Shanta S.
(Mrs. Shanta Shastry)
Member (A)

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

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