

Central Administrative Tribunal
Principal Bench

O.A. 1181/96

New Delhi this the 17 th day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).
Hon'ble Smt. Shanta Shastry, Member(A).

Shiv Kant Dubey,
S/o Shri Kamal Kant Dubey,
R/o 18/21, F-Gali No.1,
East Moti Bagh,
Delhi-7.

Applicant.

By Advocate Shri P.M. Ahlawat.

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.

2. The Divisional Railway Manager,
Northern Railway,
Bikaner Division,
Bikaner.

3. The Loko Foreman,
Northern Railway,
Sarai Rohilla,
New Delhi.

Respondents.

By Advocate Shri R.L. Dhawan.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

The applicant who states that he has been performing duty as Material Clerk (Material Checker) since 14.3.1983, is aggrieved that he has not been regularised in that post although juniors to him have been regularised as Material Clerks. The applicant has, therefore, filed this O.A. for a declaration to the effect that the action of the respondents is illegal and against the principles of natural justice and violative of Articles 14, 16 and 21 of the Constitution of India and that he should be deemed as a regular employee in the post of Material Clerk in the grade

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of Rs. 950-1500 for all purposes. He has himself stated that he has been granted the grade of Rs. 950-1500 w.e.f. 14.3.1983 with annual increments along with arrears by respondents' order dated 26.2.1996.

2. The brief facts of the case are that the applicant was appointed in Railway Service on 22.4.1980 and was working as Fitter Khalasi in Sarai Rohilla (Loco Shed). He has submitted that he was posted as Material Checker (now re-designated as Material Clerk)/Fuel Issuer in the higher grade of Rs. 950-1500 from 14.3.1983 and since that date he has been working as Material Clerk without any break in service. According to him, there has been no complaint and he has been working to the entire satisfaction of his superiors. Shri P.M. Ahlawat, learned counsel, has submitted that the applicant, who was posted as Material Clerk from 14.3.1983 has not been given the higher grade of Rs. 950-1500. The applicant had filed an earlier O.A. 630/90 which was disposed of by the Tribunal's order dated 7.7.1994 (copy placed at pages 25-29 of the paper book). In that order, the Tribunal had come to the conclusion, based on the records that the applicant had been functioning as Material Checker prior to 1.1.1986 and from 1.11.1986 upto the date the status quo order was passed on 10.4.1990. In the circumstances, they had directed the payment to the applicant as Material Checker from 14.3.1983 to 1.1.1986 and from 1.11.1986 at the rate of pay as admissible to the post. With reference to other reliefs, it was ordered that the respondents may continue the applicant as Material Checker

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on ad hoc basis as permissible under the Rules. As regards regularisation, the applicant will be considered as per the procedure prescribed.

3. The applicant's grievance is that his case has not been considered and he was not allowed to appear in the selection for the post of Clerks (Material Clerks/Fuel Clerks, etc.) vide letter dated 20.9.1992. He was also not allowed to appear in the selection vide order dated 19.9.1992. According to him, the respondents have regularised certain other persons who were similarly situated but he has been ignored. He made a representation on 23.4.1996 to which he had not received any reply. Shri P.M. Ahlawat, learned counsel, has contended very vehemently that as the applicant has been working as Material Clerk since 14.3.1983 and other similarly situated persons have been regularised in the posts of Material Clerks, he should also be considered and regularised in that post. He has relied on respondents' order dated 13.2.1997 on the subject of regularisation of staff working in a particular post for more than three years continuously and claims that as the applicant has put in more than 10 years as Material Checker he ought to be regularised. He has also contended that the letter dated 13.2.1997 issued by the respondents refers to all Material Checking Clerks who have put in more than three years service on ad hoc basis and he has, therefore, very arduously submitted that there was no reason that the respondents should not be directed to regularise the applicant as a clerk.

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4. The respondents in their reply have submitted that the application is misconceived and not maintainable under law. Shri R.L. Dhawan, learned counsel, has also submitted that the application is barred by res judicata having regard to ~~a number~~ ^{the} ^{of} orders passed in O.A.630/90. Learned counsel has also submitted that the applicant is not eligible for promotion as Material Clerk in terms of the channel of promotion chart circulated under letter of the Railway Board dated 22.9.1964 (Annexure R-I). He has ~~further~~ ^B submitted that the posts of clerks in the grade of Rs.950-1500 are filled in terms of Paragraph 174 of IREM (Vol.I). He has further submitted that in the case of Group 'D' staff eligible for promotion by selection as Clerks, the same has been specified by letter dated 22.9.1964. According to the respondents, the applicant is a Group 'D' employee working as Fitter (Khalasi) and is, therefore, not eligible for promotion as Clerk as this is not in his channel of promotion. They have relied upon the judgement of this Tribunal in Girish Chander & Ors. Vs. Union of India & Ors. (OA 336/92) CAT-Jodhpur, ^{Bench B.C.} dated 1.12.1994 (copy placed on record). They have further submitted that the applicant had been erroneously put to work as Material Clerk by Respondent 3, that is Loco Foreman, Delhi Sarai Rohilla on 14.3.1983, who is not the competent authority and, therefore, there was no question of regularising his services as Material Clerk in contravention of the relevant rules and instructions. He has relied on the channel of promotion ~~charge~~ ^B as given in Annexure R-I attached to the Railway Board circular dated 22.9.1964. Shri P.M. Ahlawat, learned counsel, has stoutly contended that the 1964 circular has been superseded by a later circular of 1983 and in any case this circular refers to all

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Khalasis, which includes the applicant who was admittedly working as Fitter Khalasi in the Mechanical department. Shri R.L. Dhawan, learned counsel, has submitted that in terms of the final direction of the Tribunal in OA 630/90, the applicant has also been considered for regularisation as per the prescribed procedure but as the applicant was not eligible for promotion as Clerk, the same has not been acceded to. The respondents have further stated that he will be considered in his own channel of promotion in the Mechanical Engineering Department.

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

6. A preliminary objection of res judicata has been raised by the learned counsel for the respondents, on the basis of the order dated 7.7.1994 in O.A. 630/90. In that order, the Tribunal had observed that the respondents may continue the applicant as Material Checker on ad hoc basis ^{and} considering ^{it} him for regularisation as per the procedure prescribed. In the circumstances, the plea of res judicata would not apply to the facts and circumstances of the present case and it is accordingly rejected.

7. Shri P.M. Ahlawat, learned counsel has very vehemently submitted that the respondents ought to consider the applicant's case for regularisation in terms of their own letter dated 13.2.1997. This letter, however, deals with the regularisation of staff working in a particular post for more than three years continuously under CAO/C, New Delhi with reference to Item No. 102/96 of GM PNM with URMU. The order also refers to regularisation of Material

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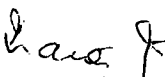
Checking Clerks working in construction department on ad hoc basis. Admittedly, the applicant is working as a Fitter Khalasi in the Mechanical Department and this circular would, therefore, not be applicable to his case. Further, the Tribunal's order dated 7.7.1994 has also clearly stated that regularisation of the applicant will be considered as per the prescribed procedure. The respondents have stated that the applicant had been erroneously put to work as Material Clerk by the Loco Foreman, Delhi Sarai Rohilla who is not the competent authority to do so. The applicant has also accepted that for the period he was officiating as Material Clerk, as per the Tribunal's order dated 7.7.1994 in O.A.630/90, he has been paid the officiating allowances. Paragraph 174 of IREM (Vol.I) read with the Northern Railway circular dated 22.9.1964 relied upon by the respondents shows that they have drawn up a channel of promotion chart to encompass almost all categories of Class IV staff entrusted with semi-clerical duties irrespective of the department in which they are working. The Jodhpur Bench of the Tribunal in Girish Chandra's case (supra) had also directed that Group 'D' staff in the Engineering, Mechanical and Electrical and Signal and Telecommunication departments and also Group 'D' staff who had not completed 5 years service, who were not eligible were ordered to be removed from the list of qualifying candidate except to the extent such staff may have been included in the promotion groups in the Northern Railway before issue of impugned notice dated 3.3.92, with the approval of the competent authority. We also note that the respondents have stated that the applicant shall be considered for promotion as per his own channel as per prescribed procedure. Nothing has been brought on record by

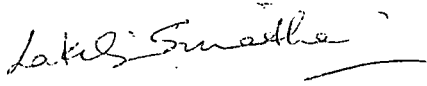
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the learned counsel for the applicant to controvert these averments. The applicant, therefore, does not appear to have any enforceable right for consideration for promotion as Clerk merely because he has been continuously working, though appointed initially on ad hoc basis, as Material Checker/Clerk on 14.3.1983. However, we note the submission of the respondents that he will be considered for promotion in his own channel in the Mechanical Engineering department in accordance with the laid down procedure. Reliance placed by the applicant's counsel on Railway Board's letter dated 19.5.1984 regarding enhancement of the quota for promotion of Group 'D' staff to Group 'C' will also not help him in the present facts and circumstances of the case. We have also considered the other contentions of the applicant but in view of what has been stated above, we find no merit in the same as the applicant can only be considered for promotion as per the prescribed procedure, that is in his own line of promotion in accordance with the rules and instructions.

8. In view of the above, we find no merit in the application. O.A. accordingly fails and is dismissed. No order as to costs.


(Smt. Shanta Shastry)
Member(A)


(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'