

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 741/1996

New Delhi this the 08th day of February, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI M. P. SINGH, MEMBER (A)

Prem Pal Singh S/O Rajbir Singh,
Working under Chief Admn. Officer
(Construction), Northern Railway,
Kashmiri Gate,
Delhi.

... Applicant

(By Shri O. N. Moolri, Advocate)

-Versus-

1. Union of India through
Chief Administrative Officer
(Construction), Kashmiri Gate,
Delhi.

2. Chief Engineer (Bridges),
Northern Railway Hqrs.,
Baroda House, New Delhi.

3. Deputy Chief Engineer (Bridges),
Bridges Workshop,
Lucknow (UP).
... Respondents

(By Shri Rajinder Khattar, Advocate)

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Applicant who is posted on the ex cadre post
(Construction Organisation) in the capacity of
Material Checking Clerk, by the present O.A. seeks
regularisation and consequent seniority in the
seniority list.

2. Short facts giving rise to the filing of the
present O.A. are as follows :

(6)

Applicant joined the respondent Railways as a Class-IV employee on 3.6.1975. He was granted regularisation as a Storeman and was promoted as Material Checker on 16.4.1984/22.8.1984. He was deputed from the open line to the Construction Organisation ex cadre on 25.9.1985. Applicant had thereafter appeared for the written test for the post of Material Checking Clerk. He was provisionally promoted as Material Checking Clerk in his parent department w.e.f. 1.10.1992.

3. Certain colleagues of the applicant had approached the Lucknow Bench of this Tribunal by filing O.A. No.133/91 with a prayer for implementing the Railway Board's letter dated 16.8.1978 and for preparation of a common seniority list of Material Checkers and Material Checking Clerks w.e.f. 1.1.1973 for promotion. The Tribunal, by its judgment and order passed on 28.8.1992, directed as under :

".....applicants are entitled to count their seniority from the date they were so upgraded and placed in the same pay scale and their seniority will be counted from that date. Those who are material Clerks before that date, obviously will rank senior to them but those who became Material Checkers subsequent to their gradation and placement in the same scale, will rank junior to them and accordingly this application is allowed to the extent that the order dated 19.4.91 is quashed and the respondents are directed to prepare a fresh seniority list in accordance with law and in the light of the observations made above, within a period of three months from the date of receipt of a copy of this judgment and give promotions to the applicants in accordance with their seniority and placement without requiring them to undergo written test or viva-voce for the post of Material Clerks....."

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4. As far as the applicant is concerned, by the present O.A., he claims regularisation to the post of Material Checking Clerk where he is employed on ad hoc basis. He claims regularisation on the basis of the letter of the General Manager dated June, 1987 under which he has become entitled for regularisation on completion of three years as Material Checking Clerk on ad hoc basis. In addition, applicant has passed the written as also the viva voce test held on 25.9.1985.

5. Shri Rajinder Khattar, the learned advocate appearing on behalf of the respondents, has, however, contended that the applicant is holding an ex-cadre post (Construction Organisation). He has retained his lien in his parent department. As far as the post of Material Checking Clerk is concerned, the same is available only in the ex-cadre post. The same is not available in his parent department. He has further placed reliance on the minutes of the meeting of the Permanent Negotiating Machinery (PNM) held on 7th and 8th May, 1987, which has, inter alia, provided as follows :

"2. Item No.53/86 - Cancellation of selection for the post of Material Checking Clerk on Delhi Division.

M.J.
After discussing it was decided by the G.M. that all those staff who are working continuously as Material Checking Clerks on adhoc basis for the period of three years or more may be regularised on the basis of their service record and viva-voce duly observing the extant instructions on the subject as a special case not to be quoted as a precedent in future.

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If there are still more vacancies after regularising the said staff, as per para 1 above, to fill up these normal selection may be held and completed very early"

6. According to the learned counsel for respondents, the regularisation which is contemplated is by way of one-time-measure; the same should not be quoted as a precedent in future.

7. In our view, reliance placed on the aforesaid minutes is misplaced as the same can have no binding effect. What will be binding are the instructions contained in the letter of the General Manager dated 11/15.2.1991 which recites as under

"The above issue has been examined in detail and it is advised that the MCCs who are working on adhoc basis for more than 3 years in const. organisation will be regularised as such by their respective parent deptt. where they hold their lien i.e. from where they have been drafted to const. organisation. Further action in this regard may, therefore, please be taken accordingly." (Emphasis supplied).

8. In our view, the case of the applicant is squarely covered by the aforesaid instructions issued by the General Manager. The applicant has completed more than three years in the Construction Organisation. In terms of the instructions issued, he has become entitled to regularisation in his parent department where he holds his lien and from where he has been drafted to the Construction Organisation. Moreover, the applicant having passed the written examination

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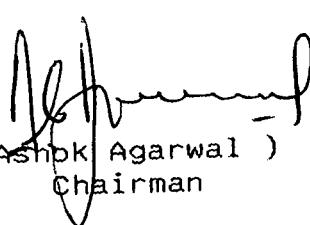
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also the viva voce tests has become entitled to regularisation.

9. In our view, since the applicant has been in continuous employment on ad hoc basis as a Material Checking clerk since 1984, he will be entitled for regularisation with effect from the date of his initial appointment to the post on ad hoc basis.

11. In our judgment, if one has regard to the aforesaid facts, namely, the instructions issued by the General Manager in his letter dated 11/15.2.1991 and also by the fact that he has successfully passed the written as also the viva voce test for the purpose, applicant will be entitled to regularisation with effect from the date of his initial appointment to the post of Material Checking Clerk. Applicant will also be entitled to all consequential benefits arising out of the implementation of the present order on regularisation.

12. The O.A. is accordingly allowed. There shall, however, be no order as to costs.


(Ashok Agarwal)
Chairman


(M. P. Singh)
Member (A)

/as/