

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1097/96

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T.A. No.

DATE OF DECISION 11.1.2000

Sumit Kumar Malik & OrsPetitioner

Sh.B.S. MaineeAdvocate for the
Petitioner(s)

VERSUS

UOI through the GM (NR)Respondent
and Ors.

Sh.B.S. JainAdvocate for the
Respondents.

CORAM

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

The Hon'ble Smt. Shanta Shastray, 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? No.

Lakshmi Swaminathan

(Smt. Lakshmi Swaminathan)
Member (J)

Central Administrative Tribunal
Principal Bench

OA 1097/96

New Delhi this the 11th day of January, 2000

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

1. Sumit Kumar Malik,
S/o Shri B.B. Malik,
Wireman,
Northern Railway,
Moradabad.
2. Suresh Kumar,
S/o Shri Lok Man Singh,
Wireman,
Northern Railway,
Moradabad.
3. Hariom Gupta,
S/o Shri C.P. Gupta,
Switch Board,
Attendant,
Northern Railway,
Moradabad.
4. Chander Mohan Singh,
S/o Shri Prem Singh,
Switch Board
Attendant,
Northern Railway,
Moradabad.
5. Azanatullah Khan,
S/ Shri Wahidulla Khan,
Painter,
Northern Railway,
Moradabad.

Applicants.

By Advocate Shri B.S. Maine.

Versus

Union of India through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Chief Electrical Engineer,
Northern Railway,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
Moradabad.

Respondents.

By Advocate Shri B.S. Jain.

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O R D E R

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

The applicants are aggrieved by the failure of the respondents to regularise their services as Switch Board Attendants, Wiremen and Painter in Group 'C' posts although, according to them, they have been working in the said posts for more than 11-13 years and are still described as casual labourers with temporary status.

2. It is an admitted fact that the applicants have been initially appointed in Group 'C' posts of Switch Board Attendants, Wiremen and Painter and their grievance is that the respondents have called them for appearing in screening test for Group 'D' posts by the impugned letter dated 14.3.1996 (Annexure A-1) which they allege is illegal. They have also submitted that they had been given temporary status in Class III (Group 'C' posts) from 1.1.1986 in the pay scale of Rs. 260-400 (revised to Rs. 950-1500).

3. A preliminary objection had been taken by Shri B.S. Jain, learned counsel for the respondents that the O.A. is not maintainable in the Principal Bench of the Tribunal as the applicants are posted at Moradabad and the impugned order dated 14.3.1996 has also been issued by the DRM, Moradabad. Shri B.S. Maine, learned counsel, has controverted this submission stating that the necessary action has to be taken not by the DRM, Moradabad but Respondent 2—the Chief Electrical Engineer, Northern Railway, New Delhi to whom the applicants had also made representations. His contention is that the Chief

Electrical Engineer, Northern Railway who is at New Delhi being the Head of the Electrical department is the competent authority to issue orders for regularisation of the applicants in Group 'C' posts which is the claim raised in the O.A. Hence, he has submitted that the Principal Bench has jurisdiction to entertain the matter, in view of the fact that Respondent 2 is at New Delhi. He has relied on the provisions of Rule 6(1)(ii) of the Central Administrative Tribunal (Procedure) Rules, 1987 (hereinafter referred to as 'the Procedure Rules') and the judgement of the Full Bench of the Tribunal in Alok Kumar Singh and Anr. Vs. Union of India & Anr. (Full Bench Judgements of CAT (1991-1994) Vol.III) P.7. He has submitted that in the facts of the case, as the competent authority to issue regularisation orders in respect of the applicants is Respondent 2, the cause of action has arisen at least in part in New Delhi, if not wholly and, therefore, under Rule 6(1)(ii) of the Procedure Rules, this Bench has jurisdiction in the matter.

4. Shri B.S. Maine, learned counsel, has also made his submissions on the merits of the case relying upon a number of judgements of the Tribunal and the Hon'ble Supreme Court (copies placed on record). We have also heard Shri B.S. Jain, learned counsel on merits, who has drawn our attention to the reply filed by the respondents that it is likely that the applicants would be regularised in Group 'C' posts despite the impugned order requesting them to come for screening in Group 'D' posts. Shri Jain, learned counsel, has contended that as the applicants are only casual labourers, they have to be screened in Group 'D' posts initially and thereafter they could be considered for regularisation in Group 'C' posts in terms of Para 2007 of

IREM (Vol. III) which paragraph has also been relied upon by the applicants' counsel. He has also contended that if the Principal Bench was to assume jurisdiction in this matter, as contended by Shri B.S. Maine, learned counsel, then there would be no need to have the other Benches outside New Delhi and all of them could be located in the NCT of New Delhi along with the Principal Bench as the seat of power of the Union of India is in New Delhi.

5. Before going into the merits of the case, in the present case, as the preliminary objection has been raised on the jurisdiction of the Principal Bench to adjudicate on this matter, we have to first address ourselves ^{on} this point. Admittedly, the applicants have been initially appointed in Group 'C' posts and they are claiming that they should be regularised in these posts as they have put in more than 11-13 years of service. This O.A. has been filed on 22.5.1996 in which the applicants have stated that instead of regularising them in Group 'C' posts, the respondents have sent them the letter dated 14.3.1996 calling them for appearing in screening test for Group 'D' posts. This letter has also been stated to be the impugned order which is annexed and marked as Annexure A-1. From the memorandum of parties and the verifications signed by the applicants, it is seen that all of them are working in the office of Respondent 3— The Divisional Railway Manager, Northern Railway, Moradabad. The impugned letter dated 14.3.1996 has been issued from the office of DRM, Moradabad which is addressed to the other offices at Moradabad informing them that it has been decided that a screening test will be held for regularisation of Group 'D' employees working under the

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various offices at Moradabad for which they are to take necessary action as per the list enclosed. It is, therefore, seen that the applicants have impugned an order issued by the Railway authorities at Moradabad to other offices in the same place regarding employees who are also working at Moradabad, including the applicants.

6. Rule 6(1) (i) and (ii) of the Procedure Rules provides as follows:

"6. Place of filing application. - (1) An application shall ordinarily be filed by an applicant with the Registrar of the Bench within whose jurisdiction -

- (i) the applicant is posted for the time being, or
- (ii) the cause of action, wholly or in part, has arisen:

Provided that with the leave of the Chairman the application may be filed with the Registrar of the Principal Bench and subject to the orders under Section 25, such application shall be heard and disposed of by the Bench which has jurisdiction over the matter".

7. In Alok Kumar Singh's case (supra) which has been relied upon by the applicants' counsel, the Tribunal has held as follows:

... Rule 6(1)(i) gives two options to the applicant. He may file the O.A. with the Registrar of the Bench within whose jurisdiction (a) the applicant is posted for the time being or (b) the cause of action has arisen, whether wholly or in part. There is a disjunctive 'or' after clause (i) of Rule 6(1)(i). This means that the applicant had two choices to file the O.A., one before the Tribunal which has jurisdiction on the basis of the place where he was posted then and, secondly at a place where the cause of action had arisen whether wholly or in part. The question which is relevant for the purposes of this Full Bench is clause (ii) viz. where has the cause of action arisen in the present case? A further question would be: Whether any part of the cause of action had arisen within the jurisdiction of this Bench of the Tribunal? In other words, whether a part of cause of action had arisen within the jurisdiction of the Allahabad Bench? There is no allegation anywhere that any of the three orders issued by the respondents from

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Delhi was received by the applicant in Delhi. It is also not disputed that the orders were transmitted by post. On the last occasion, i.e. 9.3.1988, the order was handed over to the applicant Shri Ajai Srivastava (OA 167/89) at Mussoorie. On the earlier two occasions the orders were sent to his home address or to the address of his father, who is a practising lawyer in Allahabad. It obviously means that he received the order either at Allahabad or in Mussoorie.

(Emphasis added)

After referring to the decisions of the Bombay High Court in Damomal Kausomal Raisinghani Vs. Union of India & Others (AIR 1967 Bombay 355) and the Calcutta High Court in Union of India & Ors. Vs. Hindustan Aluminium Corporation Limited and Anr. (AIR 1983 Calcutta 307), the Full Bench of the Tribunal further held:

"We are in respectful agreement with the view taken in the above two decisions of the Bombay and Calcutta High Courts and are further of the view that in the present case as the order was communicated by post and in any case, communicated to the applicant within the State of Uttar Pradesh, a part of the cause of action had arisen within the jurisdiction of this Bench of the Tribunal" i.e. the Allahabad Bench.

(Emphasis added)

Later in the judgement, it was reiterated that "an O.A. can be filed before a Bench of the Tribunal where the cause of action or a part of it arose. Where an adverse order or communication is received that also gives rise to the cause of action".

8. In the present case, having regard to the aforesaid Full Bench judgement of the Tribunal, it cannot be held that any action of the respondents which has been impugned in this O.A. has arisen wholly or in part in Delhi so as to confer territorial jurisdiction on the Principal Bench. The applicants who are working in the DRM office at Moradabad are aggrieved by an order issued by that office dated 14.3.1996 which has been obviously received by them

there. The vehement contention of Shri B.S. Mainee, learned counsel that because the applicants have addressed certain representations to Respondent 2, that is the Chief Electrical Engineer who is the Head of office of the Electrical Department whose office is situated at New Delhi, for regularising them in Group 'C' posts, that means that the cause of action has wholly or in part arisen in New Delhi, is too far fetched and not supported by Rule 6(1)(ii) of the Procedure Rules. The Full Bench in Alok Kumar Singh's case (supra) has clearly laid down that under Rule 6 (1), the applicant has an option to file an OA either within the jurisdiction where he is posted for the time being or where the cause of action wholly or in part has arisen. It is not the applicants' case that the impugned order has been served on them at New Delhi or they are posted here, so as to confer jurisdiction on this Bench. Merely sending the representations to the Head of the Electrical Department of Northern Railway at New Delhi because of the letter issued by the Moradabad Office dated 14.3.1996 will not enable the applicants to file the O.A. in the Principal Bench. Otherwise, any government servant posted in any part of the country can do so and rush to the Principal Bench of the Tribunal because admittedly the Head Office of the Central Government is at New Delhi. The decision of the Full Bench of the Tribunal in Alok Kumar Singh's case (supra) does not assist the applicants as neither the impugned order was issued from New Delhi nor communicated to the applicants in New Delhi, i.e. within the territorial jurisdiction of this Bench. It is also relevant to note that under the proviso to Rule 6 of the Procedure Rules, with the leave of the Chairman the application could have been filed in this Bench subject to orders u/s 25 of the Administrative Tribunals Act, 1985. No such application has also been filed by the

applicants to obtain the orders of the Hon'ble Chairman. In the facts and circumstances, we are unable to agree with the contentions of the applicants in paragraph 2 of the O.A. that the Principal Bench has territorial jurisdiction to entertain this application.

9. The O.A. was admitted by order dated 15.10.1996 and has been taken up for final hearing in its turn. Admission of the application has to be read subject to the provisions of the relevant law and rules, including the provisions of Rule 6(1)(ii) of the Procedure Rules.

10. In view of the above, since we are of the view that the Principal Bench has no jurisdiction to deal with this O.A., particularly as there has been no order of the Hon'ble Chairman under Section 25 of the Administrative Tribunals Act, 1985; we do not consider it necessary to express any opinion on the merits of the case. In the result, O.A. fails and is dismissed leaving it open to the applicants to pursue their remedies, if so advised, in accordance with law.

Shanta
(Smt. Shanta Shastry)
Member(A)

Lakshmi
(Smt. Lakshmi Swaminathan)
Member(J)

'SRD'