

Central Administrative Tribunal, Principal Bench

O.A. No. 1867 of 1997  
MA 1814, 1815 of 1997

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New Delhi this the 11<sup>th</sup> day of May, 2000

Hon'ble Shri S.R. Adige, Vice Chairman(A)  
Hon'ble Shri Kuldip Singh, Member (J)

1. Laxmi Narayn Gupta  
S/o Shri Sham Lal  
R/o 219-F, Arya Nagar, Ghaziabad.
2. Ygya Naryan Misra  
S/o Shri Ram Abhishek Misra  
R/o 346-D Sen Rly. Colony,  
Ghaziabad.
3. Ramesh Chand Arora  
S/o Shri Daulat Ram  
R/o C-233, Sector-9, Vijay Nagar,  
Ghaziabad.

...Applicants

By Advocate Shri G.D. Bhandari.

Versus

1. Union of India through  
The General Manager,  
Northern Railway HQ/Baroda House,  
New Delhi.
2. Divisional Railway Manager,  
Northern Railway,  
New Delhi.

...Respondents

By Advocate Shri B.S. Jain.

Order

By Hon'ble Shri Kuldip Singh, Member (J)

The three applicants have filed this common OA seeking setting aside and quashing of the impugned seniority list (Annexure A-1) of Clerks.

2. The facts in brief as alleged are that applicant No.1 was appointed as Electrical Khalasi on 15.10.1979, applicant No.2 was appointed as such on 20.1.77 and applicant No.3 as appointed as such on 20.11.1979 (the dates of appointment of Electrical Khalasis seem to be wrong as in the subsequent para it is alleged that in October, 1979 they were put to work on

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Group 'C' post)). The applicants further allege that the Department had invited applications for Group 'C' ministerial cadre vide Annexure A-4 and thereafter the applicants were selected and were put to work as Material Checker, Booking Clerk and Tool Checker w.e.f. October, 1979.

3. Then in the month of February, 1982 when the applicants were about to be reverted, they filed a Writ Petition before the Delhi High Court which was ultimately transferred to the Central Administrative Tribunal. As a Transferred Application it was registered as TA 782/85. The TA was finally disposed of with a direction to the respondents that the applicants will be given two more opportunities to appear in the selection test and further that they will not be reverted on the grounds that they have not qualified in the prescribed test.

4. Thereafter, a selection test was held sometime in February, 1992 and a panel was prepared and the applicants were empanelled on 20.8.93 and they were shown in the seniority list of clerks from the date they have been empanelled.

5. Applicants not being satisfied with the position of the seniority, made various representations that their ad hoc service as clerks should also be counted and as such they have prayed for a proper fixation in the seniority list.

6. The main ground of the applicants is that they were promoted as clerks on the basis of a selection held on 9.8.79, which is clear from the minutes of PNM meeting dated 29.7.94. It is also pleaded that since the applicants had been promoted

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in the year 1979 against 33.1/3% quota in terms of Rule 189 of the IREM, so they are entitled to be given seniority from 1979 in Group 'C' post.

7. It is also pleaded that the respondents have also extended the benefit of ad hoc promotion to certain other persons as mentioned in para 5.4 of the OA and similar treatment should have been given to the applicants and there is no reason to give a hostile treatment to the applicants.

8. The respondents contested the application. They have taken a preliminary objection that the applicants have not come to the court with clean hands.

9. It is also pleaded that the application is not maintainable and is barred by the principles of res judicata because in the earlier TA 782/85, the applicants had prayed that their ad hoc service should be counted for seniority and substantive prayer in the present OA is also similar, as such the present application is barred by the principles of res judicata.

10. They have further pleaded that besides this, the application is also barred by time and on that ground also it should be dismissed.

11. As far as the initial appointment of the applicants as Electrical Khalasi is concerned, the same is admitted but it is stated that the applicant No.1 was appointed on 19.1.77 and applicants No.2 and 3 on 20.1.77.

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12. It is further stated that the applicants were promoted on 5.10.1979 as clerks only on ad hoc, local temporary, basis as it is clear from Annexure A-5 wherein it has been specifically mentioned that the promotion will not bestow on them any right and they can also be replaced by the newly selected hands at any time. It is admitted that earlier reversion order was passed because at the time of initial promotion the applicants were locally tested by AEE/RSO and they were put to officiate as stop-gap arrangements. In the year 1979, they were not due for promotion as per channel of promotion. Selections have taken place in the years 1980-82, 83, 85 and 89, but the applicants did not appear in the above selections.

13. It is further pleaded that the applicants have been assigned due seniority from the date of their empanelment, i.e., from 20.8.93. It is denied that the applicants are entitled to count their period for which they had worked on ad hoc basis.

14. We have heard the learned counsel for the parties and have gone through the records.

15. The short question for decision in this case is whether the applicants are entitled to reckon their seniority with effect from the year 1979 when they were appointed as Clerks vide Annexure A-5. It is admitted that the applicants were appointed on ad hoc basis and the Annexure A-5 makes it clear that "it will not bestow upon them any benefit and it should be also be brought to their notice that they can be replaced by the duly selected hand at any time".

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16. The learned counsel appearing for the applicants referred to Rule 189 of IREM, 1989 which permits the Railway authorities to promote Group 'D' employees to the vacancies of Group 'C' in the post of Commercial Clerks, Ticket Collectors, Train Clerks, Number Takers etc. and a quota of 33.1/3% had been reserved for Group 'D' staff, so one of the plea of the applicants is that they had been promoted against this quota right in the year 1979 itself and they are entitled to count their ad hoc service w.e.f. 1979. But we find that this plea of the applicants has no merits because when the applicants were to be reverted in the year 1982, they immediately rushed to the Delhi High Court with a Writ Petition asking for a stay against their reversion. The Writ Petition was ultimately transferred to this Tribunal and was decided by this Tribunal vide judgment dated 15.3.91 (Annexure A-18) which clearly mentions that the applicants were appointed on ad hoc basis. A perusal of this judgment also shows that this Tribunal vide its judgment had expressed in unequivocal terms that the applicants were ad hoc employees but relying upon a Full Bench judgment in Jetha Nand's case, the reversion order was quashed and it was held as follows:-

" The petitioners shall continue in the posts held by them on ad hoc basis prior to their reversion. They (respondents) shall give two more opportunities to the petitioners to appear in the selection test and till this is done, they shall not be reverted on the ground that they have not qualified in the prescribed test."

17. The above portion of the judgment makes it clear that the applicants were holding the post only on ad hoc basis and they were supposed to appear in the test to get themselves regularised. Thus the applicants cannot now take the shelter under Rule 189 to say that since they have been locally tested,

as such they have promoted in the 33.1/3% quota for promotion from Group 'D' to Group 'C'. The contents of the letter Annexure A-5 filed by the applicants themselves also show that the applicants were only given promotion on ad hoc basis with a specific stipulation that "they could be replaced by duly selected hand at any time and this promotion will not bestow on them any right".

18. Now coming to the question whether the applicants are entitled to reckon their period of ad hoc service towards seniority. It is a well settled law now that a person who has been appointed on ad hoc basis and his appointment is not according to the rules then the officiation in such post cannot be taken into account for considering the seniority and on this issue there is a celebrated judgment of The Direct Recruit Class-II Engineering Officers' Association Vs. State of Maharashtra and Others reported in AIR 1990 SC page 1607, the conclusion of the judgment given in this case is extracted hereinbelow:-

"(A) Once an incumbent is appointed to a post according to Rule, his seniority has to be counted from the date of his appointment and not according to the date of his confirmation.

The corollary of the above rule is that where initial appointment is only ad hoc and not according to rules and made as a stop-gap arrangement, the officiation in such post cannot be taken into account for considering the seniority.

(B) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

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19. In this case since Annexure A-5 makes it clear that the applicants could be replaced by duly selected persons, that goes to show that at the time of appointment the applicants were not duly selected but were made to officiate because of the exigency of work so their case squarely fall within the parameters of corollary to Rule (A) of the judgment in The Direct Recruit's case (Supra), so applicants cannot be said to be entitled to reckon the period of their ad hoc service.

20. Before parting with this judgment we would also like to mention that in this case respondents have taken an objection that the application is barred by time.

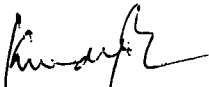
21. The applicants at the time of filing of the OA had also filed an application (MA 1815/97) for condonation of delay which has not yet been decided. Admittedly the applicants were empanelled in the year 1993 and they were assigned seniority in the year 1993 and it is stated that the applicants were informed vide Annexure R-1 that they will be assigned the seniority from the date of their empanelment as clerks. The applicants has also filed the same letter which is Annexure A-13 which shows that the applicants were fully aware that they had been assigned the seniority right from the date they received R-1 which is dated 18.8.94. The present OA has been filed on 7.8.97. Thereafter the seniority list was also issued which is dated 15.3.95 but the fact remains that the cause of action had arisen on 18.8.94 when they were specifically informed that they will be assigned seniority from the date of their empanelment. Thereafter Union had also taken up the case with the authorities which was also decided sometime in July, 1995 but still the OA has been filed on 7.8.97. Thus, the OA is highly belated and there is no sufficient cause shown why the OA could not be filed

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earlier. Hence, we are of the opinion that the application is barred by time as per the provisions of the A.T. Act and the same is liable to be dismissed on the ground of limitation alone.

22. For the reasons stated above, the OA has no merits and the same is dismissed. No costs.

  
(Kuldip Singh)  
Member (J)

  
(S.R. Adige)  
Vice Chairman(A)

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