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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA NO. 649/94

New Delhi, this the 8th November, 1994.

HON'BLE SHRI J.P.SHARMA, MEMBER(J)
HON'BLE SHRI B.K.SINGH, MEMBER (A)

Shri Birbal Sharma s/o Sh. Bashasir Nath,
Aged about 40 years,
Working as Ad-hoc typist Grade Rs. 950-1500(RPS)
in the office of Dy. Controller of Stores,
Northern Railway, Shakur Basti,
Delhi and
Resident of 5- D-2 Railway Colony, Punjabi Bagh,
Delhi.

...Applicant

By Advocate Shri P.M.Ahlawat.

Versus

Union of India through:

1. The Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Deputy Controller of Stores,
Northern Railway,
Shakurbasti,
Delhi.

...Respondents

By Advocate Shri R.L.Dhawan.

ORDER (~~COMP~~)

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

In this application under section 19, the applicant has a grievance that General Stores Department, Shakur Basti by its notification dated 11.2.1994 proposed to hold a written suitability test of Clerk/Material Clerks for promotion as Senior Clerks grade 1200-2040/- and in the list annexed of eligible candidates for appearing in the written suitability test on 6.3.94 the name of the applicant was not included.

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2. The relief claimed by the applicant is for a direction to the respondents to regularise adhoc services of the applicant in group 'C' as clerk grade 950-1500/- from the date his junior was regularised with all consequential benefits keeping in view the judgement of the Tribunal dated 13.11.1992 in OA 807/87.

3. The respondents contested the application and stated in the reply that the Tribunal in its judgement in OA 807/87 directed the respondents to regularise the services of the petitioners in accordance with the provisions made in order No. 561-E/85/132 IV-E IID dated 31.12.1990 of the General Manager, Northern Railway. The said order dated 31.12.1990 provided that two ad-hoc typists (including applicant) working in the Shakurpur Basti may be regularised after passing the test against the vacancies of promotion quota of typist grade 950-1500/- being controlled by the Divisional Railway Manager, New Delhi. The applicant was called to appear in the written suitability test for the post of typist time and again but he has failed to appear in the test. The respondents have also referred to the recruitment rules for grade-'C' post as contained in IREM (1989 edition). According to these rules clerks in the grade of 950-1500/- are eligible for promotion as senior clerk in the grade of 1200-2040/-, Head-clerk, Assistant Superintendent etc. Similarly, typists grade 950-1500/- are eligible for

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promotion as senior typists grade 1200-2040/-, Head-typist etc. The General Manager in the letter dated 31.12.1990, referred to above, directed that the applicant can be regularised after passing the suitability test against the vacancies of promotion quota of typists grade 950-1500/-. Thus the applicant has no case. The respondents have also filed PTO No. 281 dated 25.9.1981 regarding the promotion of the applicant on ad-hoc basis which goes to show that his promotion will not confer upon the applicant any right of such promotion over and above his senior or qualified/selected staff or staff eligible for such promotion or to continue in present arrangements. In April, 1994 the applicant was informed to appear in the typing test on 15.5.1994.

4. The applicant has also filed rejoinder stating that the application is not barred by the principle of resjudicata. It is stated that the respondents have not regularised the applicant as typist violating the orders dated 31.12.1990 (Annexure A-III) and also disobeying the orders passed by the Tribunal in OA 807/87 dated 13.11.1992 (Annexure A-IV). The applicant has further re-iterated the averments made in the original application.

5. We have heard the learned counsel for the parties at length. When the case has already been heard and the arguments concluded on 26.10.1994, on 2.11.1994 the applicant has also filed M.A. ^{No 3727/94} with filing number 9978. In this MA the applicant has placed certain relevant facts on record. Alongwith this MA the applicant has also annexed DRM's office letter dated 18th January, 1988 which declares the result of certain candidates as typists but the name

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of the applicant is not there. The applicant has also filed the copy of order No. 47 dated 30.7.78 alongwith this MA with regard to Shri Kishan Chand who was a newly recruited candidate for appointment as Hindi Typist and that his appointment was temporary on ad-hoc basis subject to replacement by regular candidate provided by Railway Service Commission, Allahabad. We have taken this into account also. The recruitment rules for group 'C' post as contained in IREM by promotion from group 'D' of the staff are eligible for promotion as Clerk grade 950-1500 against the 33-1/3% promotee quota. The remaining 66-2/3% vacancies of clerks are filled up by direct recruitment through Railway Recruitment Board. The respondents have clarified the position that due to non-availability of selected candidates against 66-2/3% quota ad-hoc promotion of group 'D' staff as Typist was resorted to and speed test was conducted. Since he qualified in the speed test he was promoted as Typist on purely adhoc basis w.e.f. 11.9.1981 in the then grade of Typist i.e. 110-180/- now Rs. 950-1500/- up to this stage there is no dispute. However, the applicant has filed OA No. 807/87 alongwith 80 others. In that case the counsel representing the applicant and another petitioners of that case submitted that the grievance of the petitioners herein will be redressed if the orders of the General Manager are implemented. Order of 31.12.1990 is produced below:-

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"All the 85 ad-hoc MCCs-Clerks who have completed 3 years of continuous adhoc service based on their seniority after adjudging their suitability by subjecting them to the prescribed test should be regularised subject to the availability of the posts of MCC's/clerks against promotee quota;

A) Those who have already qualified the written and vica-voce test and have obtained 60% aggregate marks may be exempted from re-test.

B) Those who have qualified only written test may be exempted from the same and subjected only viva-voce test.

C) Those who have not passed the written test and viva-voce test should be subjected to both.

The regularisation should be done from the date of availability of vacancy against promotee quota in group 'C' in Grade Rs. 950-1500/-(RPS) and the Roster point should be followed accordingly. Similarly two adhoc typists working in Shakurbasti Deptt,. may be regularised after passing suitability test against the vacancy of promotee quota of typist grade 950-1500/- (RPS) being controlled by DRM/NDLS.

This has the approval of C.P.O.".

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5. The Tribunal, therefore, directed that the respondents should regularise the services of the petitioners of that case in accordance with the provisions made in the order dated 31.12.1990 of the General Manager, Northern Railway. .

6. The above application was, therefore, disposed of after considering the arguments of the counsel of the parties and the statement given by the counsel for the respondents Sh. Ramesh Gautam. In the present application also the relief claimed by the applicant is also the same i.e. a direction be issued to the respondent to regularise the ad-hoc services of the applicant in grade 'C' as clerk grade 950-1500/- from the date his junior was regularised with consequential benefits. This relief was fully covered in the earlier OA No. 807/87 decided on 13-11-1992. The contention of the learned counsel for the applicant is that the case is not barred by principle of resjudicata because the issue was not considered by the Tribunal earlier in OA 807/87. The main point for ^{consideration} in this case is that if a person has earlier approached the judicial forum for redressal of his grievance and the same has been contested between the parties, that issue cannot be raised afresh in subsequent application, thus, the present application is not at all maintainable. If the applicant felt that the judgement of 807/87 has not been seriously implemented by the respondents it was open to the applicant to go in for execution of that order by filing a contempt petition. If he has not done

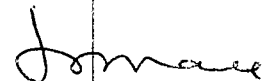
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so then that will not give right to file a fresh application for the same relief. Though in para No. 1 of the application, the applicant has assailed the selection for the post of Senior Clerk but it appears that he has not yet been regularised in the feeder post. In view of this the present application is totally devoid of merits and is dismissed leaving the parties to bear their own costs. MA No 3727/94 is also *disposed of* *le*



(B.K.SINGH)

MEMBER(A)



(J.P.SHARMA)

MEMBER(J)

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