

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

D.A.NO.715/94

New Delhi, this the 9th day of November, 1994

Hon'ble Shri J.P. Sharma, Member(J)

Hon'ble Shri B.K. Singh, Member (A)

Shri Anil Kumar,
Son of Shri Ishwar Dev,
14/3, Railway Colony,
Delhi Kishan Ganj,
Delhi.

... Applicant

By Advocate: Shri P.M. Ahlawat

Vs.

Union of India
Through

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

2. The Deputy Controller of Stores,
Northern Railway,
Shakurbasti, Delhi. ... Respondents

By Advocate: Shri R.L. Dhawan

O R D E R

Hon'ble Shri J.P. Sharma, Member(J)

The applicant was initially appointed as Khalasi on regular basis in the office of Deputy Controller of Stores, Northern Railway, Shakurbasti, Delhi in 1980. He was promoted as Typist grade Rs.260-400(RS) on adhoc basis. He has also been working in different offices as Typist on adhoc basis. It is averred in the application that the category of Typist has been changed as Clerk subject to the approval

...2.

(b)

of the competent authority vide COS's letter dated 15.10.90 (Annexure A-2). It is stated that the applicant was called to appear in the viva-voce test of the selection in the promotee quota of 33 1/3% of Clerks grade Rs.260-400 (RS) in June 1985 ^{and} ~~as~~ he ^{has} ~~been~~ qualified the selection held on 5.12.84. The applicant however could not be empanelled for want of availability of sufficient vacancies. The General Manager vide letter dated 31.12.90 issued instructions for regularisation of adhoc MCC/Clerks/ Typists against promotee quota who have completed 3 years of adhoc service and those who have already qualified in written and viva-voce test and 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 to viva-voce test and (C) those who have failed in both the tests would have to undergo the test again. A copy of this letter is filed with the O.A. (Annexure A-4).

2. The applicant has prayed for the grant of the reliefs that a direction be issued to the respondents to regularise the adhoc services of the applicant in Group 'C' as Clerk Grade Rs.950-1500 from the date his junior was regularised with all consequential benefits, keeping in view the judgement of the Tribunal dated 13.11.92.

3. The respondents in their reply have taken the stand that the applicant earlier alongwith 79 others filed O.A. No.807/87 before the Principal

(A)
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Bench seeking regularisation in the present appointment. The said application was disposed of by the judgement dated 13.11.92 in which direction was given to the respondents to regularise the services of the petitioners of that case in accordance with the provisions made in the letter dated 31.12.90 of the General Manager, Northern Railway (Annexure A-4). The applicant in pursuance of that direction was taken up for regularisation after passing the suitability test against the promotee quota of Typist Grade Rs. 950-1500 being controlled by the Divisional Railway Manager, New Delhi. The applicant was called to appear in the suitability test for the post of Typist time and again but he failed to appear in the test. The present application is barred by principles of res-judicata.

3. The applicant has also filed the rejoinder reiterating the same facts.

4. We heard the learned counsel of the parties at length and perused the records.

5. We decided a similar case in O.A. 649/94 by the judgement dated 8.10.94. The applicant of that case Shri Birbal Sharma was also petitioner in O.A. 807/87 and that O.A. was disposed of by the judgement dated 13.11.92 whereby on the statement of the counsel appearing in that case it was directed that the case of the petitioner of that case will be considered for regularisation in terms of the letter dated 31.12.90. The relevant portion of the

(A)

letter of General Manager has been quoted above.

The issue which has already been considered earlier cannot be considered now. The Bench which considered the case of the petitioners of O.A. 807/87 have clearly directed that the case of regularisation should be considered in the light of the letter of General Manager dated 31.12.90.

The said letter is quoted below:

"The matter of regularisation of MCCs/Clerks has been considered and it has been decided to regularise the MCCs/Clerks as per following procedure.

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 MCCs/Clerks against promotee quota;

- (A) Those who have already qualified the written and viva-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 to viva-voce test.
- (C) Those who have not passed the written 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 Depot may be regularised after passing suitability test against the vacancy of promotee quota of typist grade Rs.950-1500(RPS) being controlled by DRM/INDLS.

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

6. If the applicant falls in any of the above category mentioned in the General Manager's letter then only he can be regularised. If the respondents have not complied with the direction given by the Tribunal in O.A. 807/87 by the judgement dated 13.11.92 then it was open to the applicant to move for execution of that order by filing a Civil Contempt Petition according to rules.

If the applicant has not done so, then he cannot come for a fresh judicial review regarding the grievance of non regularisation. The contention of the applicant that the category of Typist and Clerk Grade Rs. 950-1500 has been merged cannot give him a further cause of action to again call for a judicial review of his earlier grievance which has been finally decided and disposed of in O.A. 807/87. The application therefore is barred by principles of constructive res-judicata.

7. The application is therefore dismissed as barred by principles of res-judicata leaving the parties to bear their own cost.

(B.K. SINGH)
MEMBER (A)

(J.P. SHARMA)
MEMBER (J)

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