

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.1037 of 2000

New Delhi, this the 20th day of December, 2000

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

1. Azanattulla Khan S/o Sh. Wahidulla Khan  
working as Painter at Northern Railway  
Station, Muradabad.
2. Hari Om Gupta S/o Sh. C.P. Gupta  
working as Switch Board Attendant,  
at Northern Railway Station, Chandausi  
District Muradabad. -APPLICANTS

(By Advocate: Shri Yogesh Sharma)

Versus

1. Union of India through The General Manager  
Northern Railway, Baroda House, New Delhi.
2. The Chief Electrical Engineer,  
Northern Railway, Head Quarter Office,  
Baroda House,  
New Delhi.
3. The Divisional Railway Manager,  
Northern Railway, Muradabad Division,  
Muradabad. -RESPONDENTS

(By Advocate: Shri B.S. Jain))

ORDER

By Hon'ble Mr. Kuldip Singh, Member (Judl)

Applicants in this OA are aggrieved of the fact that the respondents have not considered the case of the applicants for regularisation to the Group 'C' post along with similarly situated and junior persons as the applicants are continuously working on the said post since 13.1.1983 and 23.1.1985 respectively.

2. They are further aggrieved of the fact that the respondents have called the applicants for appearing in screening in Group 'D' post which is illegal, unjust and arbitrary.

3. The case of the applicant No.1 is that he was initially engaged as a casual labour Painter w.e.f. 13.1.1983 against a clear vacant post and since 11.5.1983, he is continuously working on the same post without any break and applicant No.2 was engaged on 23.1.1985 as Switch Board Attendant (hereinafter referred to as SBA), which is also a Group 'C' post and he has also been continuously working since then. The applicants were also granted CPC scale after decasualisation of casual labour staff vide order dated 12.3.1987.

4. It is further prayed that similarly situated persons had been regularised as per the decision in OA 309/94 but the case of the applicants were not considered. The applicants had earlier filed an OA 1097/96 which was dismissed for lack of territorial jurisdiction.

5. The applicants further claim that in view of the judgment in U.P. State Mineral Corporation Ltd. & Another Vs. Vijay Kumar Upadhyaya and Another, reported in 1998(1) SLJ (SC) 165, they are also entitled to be considered for regularisation in Group 'C' posts.

6. They further claims that as per the letter dated 10.10.1967 issued by the Railway Board, a casual labour promoted in skilled or highly skilled post or recruited in skilled posts whether on open line or workshop or elsewhere may be absorbed in regular vacancy

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in skilled grade after passing requisite trade test to the extent of 25% of the vacancies reserved for departmental promotions.

7. The respondents are contesting the OA. The main objection taken by the respondents is that the OA is time barred and it is stated that the applicants had made a representation on 18.3.96 and the OA has been filed beyond 6/18 months of 18.3.96 and the impugned orders are also dated 13.3.96. Thus the OA is clearly time barred and no application for condonation of delay has also been filed, as such the OA is liable to be dismissed.

8. It is also stated that the application has been filed on the allegation that juniors to the applicants have been regularised in Group 'C' posts but those juniors have not been made parties, so it is also bad for non-joinder of necessary parties.

9. Respondents further pleaded that though the applicants had been given scale of Rs.950-1500 as per the policy decision of the respondents, but the action of the respondents to regularise them in Group 'D' cannot be questioned since para 159 of the IREM Vol.1 does not provide for regularisation in Group 'C' and applicant have to be regularised at the first instance in Group 'D' instead of Group 'C'. However, it is admitted that certain persons have been regularised against Group 'C' posts in deference to the orders of the Tribunal in OA 569/94.

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10. I have heard the learned counsel for the parties and have gone through the record of the case.

11. As regards the merits of the case are concerned, the learned counsel for the applicants has relied upon the judgment reported in 1996(1) ATJ page 296 entitled as Shiv Kumar Sharma Vs. GM, C. Rly., Bombay vi Bombay, wherein it was held as follows:-

"Appointment - Regularisation - Applicants were appointed as a casual Lineman which is a Group 'C' post-Worked continuously for more than 6 years-Respondents sought to regularise them against the post of Khalasis which is a Group 'D' post-Rules provide for monthly rated casual labour skilled artisan for regularisation against prescribed quota-Relied-Respondents directed to hold the required trade test for skilled posts (Group 'C') and regularise them in Group 'C' against prescribed promotion quota vacancies, if they pass the trade test".

12. On the contrary the learned counsel for the respondents has also referred to a judgment given by the Principal Bench in OA No.809/98 wherein the applicant had prayed for being regularised as a Mason, a Group 'C' post and the said OA was dismissed.

13. However, the learned counsel for the applicant submitted that as far as the case in OA 809/98 relied upon by the counsel for the respondents is concerned, that pertained to a cadre of Masons for which no direct recruitment is permissible and the only channel was that of promotion and in that case there is also a reference to the case of Moti Lal. But in the present case the applicants are seeking regularisation in Group 'C' post of SBA and as per the Recruitment Rules for this post are

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concerned, direct recruitment to this post is permissible and on the basis of the earlier judgment in OA No. 569/94 the department had themselves permitted them to be regularised against the said post and they have so admitted in paras 4.4 and 4.5 of the counter and since the applicants also stand on the same footing and Annexure A-2 also shows that the applicants were on the same list out of which three persons have been regularised by virtue of the order in OA 569/94, so the applicants are also entitled to be regularised.

14. In view of the position that three colleagues or the applicants have already been regularised in Group C post and the Recruitment Rules for the post of SBA also permit that as regards 25% quota, the same may be given to the casual employees and in view of the judgment in Shiv Kumar Sharma's case (Supra), the Railways were directed to regularise candidates in Group 'C' posts, so on those very lines the department should have regularised these two applicants also in Group 'C' posts.

15. However, on the point of limitation the OA was strongly opposed. It was stated that the representations were filed on 18.3.96 and the present OA has been filed on 11.5.2000, so this is much beyond the period of limitation as prescribed under Section 21 of the AT Act. However, the learned counsel for the applicants submitted that since the applicants had earlier filed an OA No. 1057/96 which was dismissed on 11.1.2000 for lack of territorial jurisdiction but the applicants were given liberty to file fresh OA as per rules and, therefore, the OA of the applicants is within the period of limitation.

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Thus the applicants are claiming extension of limitation period by virtue of the orders passed in the OA. However, on going through the judgment I find that while dismissing the OA the Tribunal had observed "leaving it open to the applicants to pursue their remedies, if so advised, in accordance with law". So on the strength of this judgment, learned counsel pleaded that the OA should be decided on merits whereas the respondents' counsel Shri S.S. Jain submitted that by this order the time period cannot be extended so the OA should be dismissed.

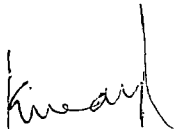
16. However, to my mind though the sentence leaving it open to the applicants to pursue the remedies if so advised do not extend the time but the fact remains that the applicants have been pursuing their remedies diligently and since some of his colleagues in pursuance of the orders passed by the Tribunal in OA 569/94 have already been regularised in Group 'C' posts and Rule 159 sub-clause (ii) as quoted by the respondents also permits persons from serving semi-skilled and unskilled staff with educational qualification as laid down in Apprentices Act can be appointed as Skilled Artisan and similarly placed persons have already been regularised, so on the prayer of the applicant, I condone the delay.

17. In view of the above, OA is allowed with the following directions:-

(i) The department shall consider the regularisation of the applicants in Group 'C' posts if they fulfil all the qualifications as per the Recruitment Rules.

(ii) The department shall conduct a trade test within a period of 3 months from today and if the applicants are declared successful, they shall be appointed and regularised in Group 'C' posts from the date the vacancy is available in their quota.

(iii) No costs.

  
( KULDIP SINGH )  
MEMBER (JUDL)

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