

(1)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2648 /19 2000

DATE OF DECISION : 4.9.2001

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K. Majotra, MEMBER (A)

Smt. Suman Bala

... Applicant(s)

Union of India & ors. -Versus-

... Respondent(s)

Advocates :

Mr./Ms. B.S. Mainee for Applicant(s)

Mr./Ms. P.M. Ahlawat for Respondent(s)

1. Whether to be referred to Reporter? Yes
2. Whether to be circulated to other Benches? No


(ASHOK AGARWAL)
CHAIRMAN

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2648/2000

This the 4th day of September, 2001.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V.K.MAJOTRA, MEMBER (A)

Smt. Suman Bala W/O R.K.Sandil,
working as Skilled Khallasi/Casual Typist
under Assistant Engineer (Soil Mechanics),
Office of Chief Admn. Officer (Constn.),
Northern Railway, Kashmere Gate,
Delhi.

... Applicant

(By Shri B.S.Mainee, Advocate)

-versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Chief Administrative Officer (Constn.),
Northern Railway, Kashmeri Gate,
Delhi.
3. Senior Engineer (Constn.),
Quality Control in the office of
Chief Administrative Officer (Constn.),
Northern Railway, Kashmeri Gate,
Delhi.
4. Divisional Railway Manager,
Northern Railway, State Entry Road,
New Delhi.

... Respondents

(By Shri P.M.Ahlawat, Advocate)

O R D E R (ORAL)

Hon'ble Shri V.K.Majotra, Member (A) :

The applicant was initially engaged as a casual typist on 10.5.1983 under respondent No.4, through letter dated 27.4.1984 (Annexure A-4). She worked as such from 10.5.1983 to 3.3.1984. In the second spell she worked from 4.5.1984 to 11.7.1984. She was re-engaged on 2.2.1985 and was accorded temporary status on 1.8.1985. Her pay was fixed in the grade Rs.225-308. It is claimed that the applicant has been working continuously as a

ll



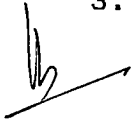
- 2 -

casual typist since 2.2.1985 in the grade Rs.225-308. As the applicant had not been placed in the scale of Rs.950-1500 though she had been functioning as typist all along, she filed OA No.676/1994 praying for directions to the respondents to fix the salary of the applicant in the grade Rs.950-1500 with all consequential benefits of arrears and increments etc. The Tribunal allowed the aforesaid OA on 31.5.1999 with a direction to the respondents to pay her salary equivalent to the grade of typist with effect from 18 months prior to the filing of the OA, i.e., 4.4.1994 upto date. Not only that the respondents were asked to pay-up the difference of amounts which became payable to her by adjusting the pay and allowances already given to her, the respondents were also imposed a cost of Rs.5000/- for deliberate obstruction of justice. According to the applicant, in pursuance of the aforesaid judgment, the respondents had granted pay scale of Rs.950-1500 and also paid difference of pay to the applicant, but simultaneously vide order dated 31.8.2000 at Annexure A-1 sought reversion of the applicant to the post of khallasi (unskilled) grade Rs.750-1500 (revised to Rs.2550-3200). The applicant's representations dated 13.6.2000 and 8.9.2000 to the effect that in view of the fact that her services had been utilized as typist for the last fifteen years, she should be regularised as a typist, i.e., a skilled worker, have been rejected and she has been reverted to the post of khallasi in the pay and grade of khallasi, i.e., Rs.750-1500 (revised Rs.2550-3200). The applicant has pointed out that one Sheikh Abdul Alim who was also working as casual typist in Construction Organisation, as

the applicant, has been regularised as typist by the respondents resulting in hostile discrimination against the applicant at the hands of the respondents. The applicant has accordingly sought direction to the respondents to continue her as typist in the pay scale of typist. She has also sought regularisation of her services in the post of typist on the basis of her having worked for fifteen years as typist.

2. In their counter the respondents have contended that they have complied with the directions of the Tribunal contained in order dated 31.5.1999 in applicant's OA No.676/1994. According to them, they have paid to the applicant pay of typist for the period for which she had worked as a typist. The respondents have stated that the applicant had been accorded temporary status w.e.f. 4.2.1986 erroneously. It is further stated that according to the channel of promotion of engineering department, a khallasi grade Rs.750-940 is promoted as senior khallasi/khallasi helper grade Rs.800-1150 on the basis of seniority and trade test. The channel of promotion of office clerk/typist grade Rs.950-1500 is upto 66.67 percent by direct recruitment from open market and 33.33 percent from amongst eligible Group 'D' staff like office khallasi, daftry, junior clerk etc. having three years' regular service. According to the respondents, the applicant does not fall in the feeder category for the post of typist.

3. The applicant has filed a rejoinder as well.





- 4 -

4. We have heard the learned counsel on both sides and considered the material on record. The learned counsel for the applicant stated that though the applicant had been initially designated as skilled khallasi, she has been working as a typist ever since her initial appointment and has functioned as such for the last 15 years. He stated that as the applicant's OA No.676/1994 was allowed and the respondents were imposed a heavy cost as well, by way of victimisation, the respondents have reverted the applicant two levels below the category of typist through the impugned order dated 31.8.2000 (Annexure A-1). He stated that whereas as a typist the applicant should have been continued in the scale of Rs.3050-4950, she has been pushed down to the scale of Rs.2550-3200 which is that of an unskilled khallasi, against the recommendations dated 18.12.2000 of Senior Engineer (C), Soil Mechanics, under whom she had been working. The learned counsel relied on the ratio in the matter of Badri Prasad & Ors. v. Union of India & Ors., OA No.1941/1999 decided on 15.2.2001 wherein, relying on the decision in a similar case of Vijay Prakash & Ors., OA No.555/1999 decided on 31.8.2000, it was held that the applicants having rendered long ad hoc services in the Construction Division could not be denied the benefit accrued to the similarly situated Storemen as per the ratio laid down by the J&K High Court in their order dated 28.7.2000. The Tribunal had issued direction for regularisation of the applicants therein after ascertaining the minimum eligibility criteria and also subjecting them to qualifying tests etc. The applicants were also held entitled to consequential benefits, if

lb

found fit, from the date their services were utilized as clerks. The learned counsel also relied on Ram Kumar & Ors. v. Union of India & Ors., 1996 (1) SLJ 116 (SC) in which the railway casual labourers working in 'C' category were directed to be screened and regularised after screening in 'D' category but their pay and allowances were protected uptill their promotion in 'C' category. It was further held that the employees who had worked for more than five years should be regularised in Class-III posts in terms of Railway Board's instruction dated 20.1.1985. The learned counsel last referred to order dated 29.4.1997 in OA No.428/1992 : Sheikh Abdul Alim v. Union of India & Ors., in which after discussing the case of Ram Kumar (supra), the respondents were directed that if the applicant had rendered more than five years' service, Railway Board's instructions of 14.8.1996 be given effect to, i.e., screening test should be held within two months from the date of receipt of a copy of the order, and in case the applicant passed the test, the respondents would take further action for regularisation of the applicant in the post of typist against the 25 percent of promotion quota in terms of the rules and law.

5. On the other hand, the learned counsel for the respondents stated that casual labourer, in terms of paragraph 2007(3) of the Indian Railway Establishment Manual Volume-II, engaged in work charged establishment, on getting promoted to semi-skilled, skilled and highly skilled categories due to non availability of regular departmental candidates and continue to work as casual

[Signature]

employees for long periods, can be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of 25 percent of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labourer who are recruited directly in skilled categories in work charged establishment after qualifying in the trade test. Drawing strength from the order dated 11.5.2000 in *Bhanwar Lal v. Union of India & Ors.*, SLJ 2001 (2) (CAT) 39, the learned counsel stated that promotion cannot be given if the employee is not in the direct line of promotion and even if one is in the direct line of promotion, it is subject to passing the test. According to him, in the case of *Ram Lubhaya & Ors. Union of India & Ors.*, 2001 (1) ATJ 40 wherein applicants who were holding lien against Group 'D' posts of khallasis/gangman in civil engineering department, were deputed to work in construction division on ad hoc basis. They were promoted to Group 'C' posts in the construction division where they continued as such on ad hoc basis for a period of 15 years. Their claim for regularisation against the posts of MCCs in construction division was not accepted as their promotions had been on ad hoc basis against work charged posts. The learned counsel also referred to order dated 17.1.2000 in OA No.1181/1996 : *Shiv Kant Dubey v. General Manager, Northern Railway & Ors.*, wherein, again, it was held that the applicants would be considered for promotion in their own channel in the mechanical engineering department in accordance with the laid down procedure.

h



- 7 -

6. We do not find anything against the claim of the applicant in the provisions of para 2007(3) IREM Vol.-II. The case of Ram Lubhaya (supra) had been considered in the case of Badri Prasad (supra) wherein applicants who were working in the construction division for a number of years, like the present applicant, on the basis of the ratio laid down by the J&K High Court in their order dated 28.7.2000 (supra), were held entitled to regularisation in Class-III posts as clerks. In the case of Sheikh Abdul Alim (supra) and Ram Kumar (supra) also, in terms of the instructions of the Railway Board dated 14.8.1996, directions were made that cases of applicants for regularisation should be considered after holding screening tests.

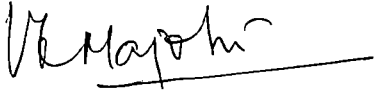
7. Here is a case where in the previous OA, after detailed discussion, the Tribunal had taken strong exception to the attitude of the respondents in utilizing the services of the applicant as typist for fifteen years but not according her her dues. The applicant was held entitled to grant of pay scale of typist and the respondents were directed to pay her salary equivalent to the grade of a typist with effect from 18 months prior to the filing of OA No.676/1994, i.e., 4.4.1994 onwards. The respondents were also imposed heavy costs. It is crystal clear that the respondents have displayed unbound vengeance in passing the impugned orders. Instead of considering the case of the applicant sympathetically for

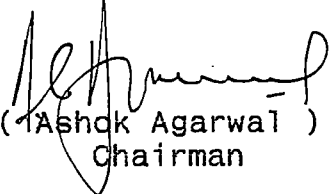
regularisation, they downgraded the applicant after paying her past dues in the post of typist as directed by the Tribunal. The services of the applicant have been utilized for a long period of 15 years by the respondents without according her any reward or benefit in return. It is out and out exploitation of the hapless. Arbitrary downgrading of the applicant against the spirit of Court's order is prima facie contemptuous. We direct, therefore, initiation of separate proceedings against the respondents under the provisions of the Contempt of Courts Act, 1971.

8. Relying on the ratios in the matters of Badri Prasad (supra), Sheikh Abdul Alim (supra) and Ram Kumar (supra), in the facts and circumstances of the present case, we find that the instructions of the Railway Board dated 14.8.1996 are certainly applicable to the case of the applicant. Annexure A-1 dated 31.8.2000 is quashed and set aside excepting for payment of difference of pay in terms of the Tribunal's order dated 31.5.1999. The respondents are also directed to consider the case of the applicant for regularisation by holding screening test for her for the post of typist, within two months from the date of receipt of a copy of this order. In case the applicant passes the test, the respondents shall take further action for regularisation of the applicant in the post of typist against the 33.33 percent of promotion quota as per rules.

b

9. The OA is disposed of in the aforestated terms. In the facts and circumstances of the case, we also impose costs on the respondents, quantified at Rs.25,000/- (rupees twentyfive thousand) which, too, shall be paid by the respondents to the applicant within the same time limit as specified above.


(V.K.Majotra)
Member(A) 4.9.2001


(Ashok Agarwal)
Chairman

/as/