

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.1488/89

DATE OF DECISION: 22.05.1992.

YOGESH CHANDER SARIN & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA

...RESPONDENTS

CORAM:-

THE HON'BLE MR. P.K. KARTHA, VICE-CHAIRMAN (J)

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

FOR THE APPLICANTS

SHRI B.S. MAINEE, COUNSEL.

FOR THE RESPONDENTS

SHRI O.N. MOOLRI, COUNSEL.

1. Whether Reporters of Local Papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*

I.K. Rasgotra
(I.K. RASGOTRA)
MEMBER(A)

P.K. Kartha
(P.K. KARTHA)
VICE-CHAIRMAN

May 22, 1992.

(8)

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(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. I.K. RASGOTRA, MEMBER (A))

The grievance of the applicants S/Shri Yogesh Chander Sarin, applicant No.1, Amrik Singh, applicant No.2, Vinod Kumar, applicant No.3, and Charanjeet Lal, applicant No.4 in this Original Application, filed under Section 19 of the Administrative Tribunals Act, 1985 is that although they have been working as Typists from 1973 their services have been regularised only with effect from 18.1.1988. They contend that their seniority should be reckoned from the date of their adhoc promotion.

2. The facts of the case in brief are that the applicants were appointed in Class IV posts on the Northern Railway, as per particulars given below:-

<u>Name</u>	<u>Date of Appointment</u>
1. Yogesh Chander Sareen	17.10.1961
2. Amrik Singh	17.4.1971
3. Vinod Kumar	6.2.1971
4. Charanjeet Lal	16.12.1964

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As the respondents were in need of Typists to fill up the regular posts, they invited applications from Class IV staff having requisite qualifications for appearing in the selection. The selection test was held on 10.7.1973 when 36 candidates appeared for the selection. Eight of the selected candidates were appointed on 28.8.1973 while another 5 candidates were appointed on 27.11.1973 as Typists from the same panel. All the four applicants were promoted in 1973 based on the above selection as Typists in grade Rs.260-400 apparently against regular vacancies where they have continued to work continuously. The said orders, however, read:-

"Following staff are appointed to officiate Typist Grade Rs.110-180 (AS) as a temporary local arrangement pending selection."

Obviously, therefore, the selection according to which the applicants were promoted on purely local adhoc basis was some sort of screening test. The applicants were directed to appear in a selection test vide notice dated July, 1976 to be held on 22.8.1976 which comprised English/Hindi written test. All the four applicants were invited to appear in this test. They were, however, not placed on the panel which was declared on 26.11.1977 (page 17 of the paperbook). The applicants filed a Suit but during its pendency the respondents decided vide minutes of the Permanent Negotiating Machinery (PNM) held on 20.11.1985 " in view of their long officiating service as Typists they should be exempted from the written test and selection should be finalised by holding only viva voce test after they have withdrawn the Court case." The applicants accordingly withdrew the said Suit which had stood transferred to this Tribunal /and their services were regularised in terms of respondents Order dated 18.1.1988, after they had cleared the viva voce test, which was held on 6.1.1988. The applicants submitted representation to claim seniority from the date of appointment on purely adhoc basis in March, 1988 vide representation

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at page 21 of the paperbook. Their claim, however, was not conceded by the respondents.

3. By way of relief the applicants have prayed that the respondents be directed to assign seniority to the applicants from their adhoc promotion in 1973 which was followed by regularisation in 1988 without any interruption. They further pray that the respondents be directed to give promotion to the applicants to the higher grades from the date their juniors have been promoted and fix their pay in accordance with their seniority in higher grade with payment of arrears.

4. Shri B.S. Mainee, learned counsel for the applicants urged that since the adhoc appointment as Typists in respect of the applicants has been followed by regularisation/^{they are}entitled to seniority from the date of original promotion on adhoc basis in accordance with well established law. The learned counsel in support cited our judgement in OA No.1521/89 Inderjit Luthra & Anr. Vs. Union of India & Others and OA No.1627/89 B.B. Mathur & Ors. Vs. UOI & Ors. decided through a common judgement on 15.5.92.

5. The learned counsel for the respondents Shri O.N. Moolri submitted that the Application is hopelessly time barred, as the relief is being claimed from 1971 onwards. The cause of action arose on 18.1.1981 whereas the applicants chose to file the OA before the Tribunal on 7.7.1989. There is also no application for condonation of delay of the applicants. In their reply to paragraph 4.7-4.10 of the O.A. the respondents have submitted that the applicants were called for selections during the period of their adhoc officiation but they could not qualify in the selection test under the extant rules. It was only later that the requirement of written test was dispensed with and keeping in view the long officiation only those who cleared the

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viva voce test were decided to be promoted on regular basis. Since the applicant had failed in the written test they have no claim for regular promotion from the date(s) they were put to officiate on adhoc basis. The learned counsel, therefore, stated that the issue really involved is whether the applicants who had failed to pass the written test but later on were promoted by special dispensation should be allowed the seniority with respect from the date(s) when they were put on local officiation. If such a claim is conceded the learned counsel submitted that it would upset the well settled seniority as those candidates who passed the written test and were promoted on regular basis on the basis of written test and viva voce would become junior to the applicants, even though they failed to qualify in the written test and were promoted under a special dispensation.

6. The applicants have filed a rejoinder in which they have repelled the averments of the respondents that the applicants had failed to qualify in the written examination held in 1976. They have also refuted the contention of the respondents that the case is time barred on the ground that they followed up the matter diligently and there have been replies from the respondents which indicated that the matter was alive. The cause of action, according to them arose only when their representations regarding the revision of seniority were not ultimately considered by the respondents. The respondents also relied on the following decisions of the Tribunal:-

- i) OA No.1143 of 1988 Shri Veer Pal Vs. Union of India decided on 29.8.1988
- ii) OA No.842 of 1988 Shri Manbar Singh & Ors. Vs. Union of India & Ors. decided on 5.9.1988; and

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iii) OA No.1521/89 Inderjit Luthra & Anr. (supra).

7. We have heard the learned counsel for both parties and perused the record very carefully. We observe that admittedly the applicants were initially appointed as Typists based on their qualifying in the typing test as a temporary local arrangement pending selection in 1973. In the selection held in response to the notice of the respondents issued in July, 1976 the applicants did not find place in the panel of the selected candidates, as is apparent by the respondents letter No.758-E/212-III-P4 dated 26.11.1977. The obvious inference is that the applicants had not made the grade. The matter was later on discussed in the PNM meeting held on 19/20.11.1985 and the minutes of Item No.486 relevant to the applicants was recorded as under:-

"It was decided that in view of their long officiating service as Typist they should be exempted from the written test and selection should be finalised by holding only viva-voce test after they have withdrawn the court case."

Accordingly, the written test was dispensed with and in the viva-voce test held on 6.1.1988 the applicants were declared successful vide their order dated 18.1.1988. We are, therefore, of the opinion that the applicants cannot be given the benefit of adhoc officiation from the year 1973, as they had failed to make the grade in the selection held in 1976 for which the results were declared on November 26, 1977. They, however, continued to officiate as Typists till the written test was dispensed with vide General Manager's order recorded in Minute 486 of the PNM meeting held on 19/20.11.1985 and the selection finalised on the basis of viva-voce test on 18.1.1988. The claim of the applicants, therefore, for reckoning seniority from 1973 cannot be legally sustained as in the selection held in 1976 they were not empanelled, since they had failed to make the grade.

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Nonetheless, the fact remains that they have continued to officiate despite their failure to make the grade in the selection held. We feel that it would be in the interest of justice if the respondents consider assigning the seniority to the applicants below all those who were regularised vide order dated 26.11.1977, keeping in view the fact that their continuous local officiation from that date was followed by regularisation on 18.1.1988. We order accordingly. The respondents are directed to implement the above orders most expeditiously but preferably within 16 weeks from the date of communication of this order.

There will be no order as to costs.

(Signature)
(I.K. RASGOTRA)
MEMBER(A) 22/5/92

(Signature)
22/5/92
(P.K. KARTHA)
VICE-CHAIRMAN

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May 22, 1992.