

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. No.932 of 1989

This 8th day of March, 1994

Hon'ble Mr. J.P. Sharma, Member (J)
Hon'ble Mr. B.K. Singh, Member (A)

1. Subhash Chander,
H.No. 774/B2, Pradhavan Mohalla,
Rohtak.
2. Sunil Kumar
H.No.8/16, Janakpurā
Gohana.

Applicants

By Advocate: Shri S.K. Sawhney

VERSUS

1. Union of India, through
General Manager, Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Chelmsford Road,
New Delhi.

Respondents

By Advocate: Shri B.K. Aggarwal

O R D E R (ORAL)
(By. Hon'ble Mr. J.P..Sharma, M(J)

the grievance of the applicants is that the Sr. Divisional Personnel Office, Northern Railway issued a notice in April 1989 that the staff who have been put to officiate as MCC in the grade of Rs.950-1500 but their services have not yet been regularised be reverted at once. The applicants filed the present application in May 1989 apprehending their reversion stating that the applicant No.1 Subhash Chander was appointed as casual labour Khalasi on 5.3.73 and applicant No.2, Sunil Kumar was appointed on 24.12.75. It is further averred that after a lapse of six months they attained temporary status. There was some selection for class-III posts of clerical grade on 16.12.84 and the result of written examination was declared in March 1985. But it appears that the said selection was subsequently struck down. The applicants in the meanwhile were promoted on ad hoc basis as

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Material Checking Clerk in the grade of Rs.260-400. The grievance of the applicants is that a selection was notified by the notice dated 12.7.88 and it directed that class-IV employees who were appointed on or before 24.12.80 and were officiating as MCC on ad hoc basis as on 24.3.88 may be considered in the supplementary selection for regularising them against the post of MCC. It was further stated in the said notice that no staff senior to those being mentioned in the list be left out. It was further clarified that no one other than those placed on the panel issued vide office letter of 28.3.88 are working as MCC. The result was notified on 22.3.89 and 41 persons were brought on the panel in which the name of the applicant is missing. The applicant made a representation and it was pointed out that certain juniors who are also appointed in the Construction Wing like the applicants, were called to appear in the said selection of 1988 but the applicants have been left out. In the application the applicants have prayed that the said selection be cancelled and further, the respondents be directed not to revert them and they should be deemed to have been promoted on regular basis as Store Issuer/MCC w.e.f. 1985.

2. The respondents have contested the application by filing their reply and stated that the selection of 1985 was struck down because of certain irregularities. It is further stated that in consultation with the recognised Railway unions the respondents modified the earlier selection and notified fresh selection in July 1988. The applicants were not in the range of consideration and so they were not called to appear and as they had no lien to the post they had to be reverted to their substantive posts of grade IV.

3. The applicants have also filed rejoinder reiterating almost the same facts.

4. We heard the learned counsel for the applicants yesterday and also heard counsels for the parties today. The learned counsel for the applicant gave a statement at the bar that the applicants have since been regularised in class III sometime in December 1993 and therefore there is no question of their being reverted to class IV posts as after filing this application the Bench vide order dated 29.5.89 directed status quo to be maintained till further orders. In fact the applicants at no point of time have suffered reversion to class IV..

5. The main issue to be considered is whether the applicants were eligible to be called for selection notified in July 1988. The learned counsel for the applicants has read out Rule 110 of IREM, as unamended before 1989. That rule makes out the interview obligatory but for reselection a written test has to be held according to rule. In view of this, it is said that the cut off date of 20th December 1980 referred to in the notice dated 12.7.88 is arbitrary and as such the selection done under that notice has to be quashed.

6. The application was filed in May 1989 and the result of the test was declared in February 1989. The applicants have not impleaded all those persons who have been declared empanelled by virtue of that selection to the post of MCC or class-III posts. No order can be passed quashing the selection behind the back. No person can be condemned unheard. The relief claimed for quashing the selection therefore cannot be allowed because of non-joining of the necessary parties in the present application.

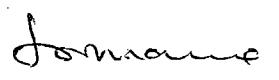
7. The question now arises is whether the applicants have been rightly left out from the selection process initiated by the notice of July 1988. The aforesaid notice does not even point out that all those who are appointed before December 1980 should be regular class-IV employees. The applicants have been regularised w.e.f. 17.7.81 and earlier to that they were casual labour

Khalasis. A right to hold a post exists when a person gets a lien to a post either by screening or by clearing the pre-appointment test. Further, the contention of the representation made by the applicants appears to be that a gangman named Satye Singh was also empanelled in class-IV and DOA as 17.7.81 has been considered in the said selection. We are not going into the details of this matter. We can dispose of this application by the order being passed hereinunder:

8. The application is disposed of with the direction that if ^{who} any of the persons ^{was} not a regular screened employee and who has been considered and allowed to appear in the selection notified in July 1988 and happens to be junior to the present applicants, in such a case the respondents shall consider the case of the ^{as given to their juniors} applicants and give them the date of regularisation ^{to} to the grade of MCC, i.e. from Rs.240-400 to Rs.950-1500 (revised). The applicants shall also be given the benefit of seniority. The respondents to consider the case of the applicants within three months from the date of communication of this order and inform the applicants accordingly.

Cost on parties.


(B.K. Singh)
Member (A)


(J.P. Sharma)
Member (J)

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