

7

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 985/89.

New Delhi, this the 16th day of March, 1994.

SHRI J.P.SHARMA, MEMBER(J).
SHRI B.K. SINGH, MEMBER(A).

1. Shri Suresh Kumar,
son of Shri Rubal Ram,
R/o 78/5, Railway Quarters,
Subzi Mandi, Delhi,
working as Material Checking Clerk,
under Inspector of Works, Delhi Main,
Northern Railway.
2. Shri Davinder Kumar,
son of Shri Prahlad Kishan,
R/o 1/4454, Ram Nagar Exten.,
Mandoli Road, Shahdara,
working as Material Checking Clerk
under Assistant Engineer, Northern Railway,
New Delhi. ...Applicants

(By advocate Shri S.K.Sawhney)

VERSUS

1. Union of India through
General Manager,
Northern Railway,
Baroda House, New Delhi.
2. Senior Divisional Personnel Officer,
Northern Railway,
Chalmsford Road,
New Delhi. ...Respondents

(By advocate Shri B.K.Aggarwal)

O R D E R (ORAL)

SHRI J.P.SHARMA :

The applicants Suresh Kumar and Davinder Kumar were initially appointed as Khallasi in the Railways and were regularised in Class IV on 28-5-79

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and 15-7-80, respectively. The applicants appeared in the selection in 1985 for the post of Material Checking Clerk (MCC), a class III post, in the then scale of Rs.260-400 and the applicants have passed the written examination, their name appearing at serial number 18 and at serial no.12, respectively. However, this selection appears to have been abandoned and was ultimately cancelled but the applicants were given ad hoc promotion as MCC on ad hoc basis by the order dated 30-6-88 and September, 88, respectively. The respondents issued circular on 10-3-88 for the selection for the post of MCC whereby without holding a written test, it was decided that viva voce test will only be criteria for regularising those MCC who had put in 3 years' service against permanent posts. However, in the list attached to the aforesaid circular, the name of the applicants is not mentioned. The respondents again issued a circular in January, 1989 and thereto they entered into a selection restricted only to viva voce test to be held on 21-2-89. The name of the applicants is also missing from this seniority list attached to the aforesaid circular. Since the applicants have not been regularised, the impugned order of April, 89 was passed that those MCC whose services had not yet been regularised, shall stand reverted. The applicants

filed the present application in May 89 which was admitted by the order dated 12-5-89 and an interim direction was issued to the respondents not to revert the applicants from the post of MCC. The relief claimed by the applicants is quashing of the panel prepared as per circular of March, 88 and Jan., 89 of 55 and 41 persons, respectively; further to quash the order of reversion of April, 89 with the direction to the respondents that the applicants be allowed to appear in the viva voce test as on the basis of selection held in 1985 where they have passed the written test.

2. The respondents contested this application and opposed the grant of the reliefs that the applicants were appointed on the local seniority basis as MCC to meet the workload and that they could not qualify on the basis of divisional seniority. It is, therefore, prayed that the application be dismissed.

3. The applicants have also filed the rejoinder reiterating the same facts. However, it is asserted that the juniors to the applicants were allowed to officiate in preference to them and have also been regularised earlier to the applicants, the benefits having been denied to them.

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4. We have heard the learned counsel for the parties and perused the record. The interim order directed against the respondents not to revert the applicants holds the *good* even today and, therefore, applicants at no point of time were reverted from ad hoc service of MCC to their substantive post of Class IV, i.e., Khallasi. However, in the meantime, as given out by the learned counsel for the applicants, the applicants have since been regularised as MCC wef December, 1993. In view of this, the question of reversion of the applicants does not arise.

5. Regarding the quashing of the panel prepared on the basis of the circular of March, 88 and Jan., 89, the applicants of course were not included in the seniority list because of the fact that they were only working as MCC from June, 88 and Sep., 88, while the circular covered those persons in the staff who had put in 3 years service as MCC on permanent posts on 8-5-87. The learned counsel for the applicants, however, referred to rule 189 of IREM and highlighted sub-para (a)(i) and sub-rule 4(2) where for a selection, a written examination is to be held and wherever necessary, the interview be also held. The

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averment of the learned counsel for the applicants though happened to have some force but does not prayed in the relief clause that the aforesaid circular be quashed. What is prayed is that the selection of those persons on the basis of those circulars 55, 41, respectively, be quashed. Firstly, none of those ^{persons} have been made a party to this application. The scheme of giving up the written examination has been formulated by the Railway Board though it may not have been issued by the same authority, i.e., the Railway Board who have formulated rules in the Indian Railways Establishment Manual. However, we do not find any substance to quash the selection of those persons when the very scheme of giving up the written test and adopting a procedure for regularisation on the basis of interview has already been held and concluded.

6. However, one point remains whether the applicant come within the divisional seniority to get any benefit which has been given to some of the juniors as alleged in the application. None of the parties have filed the seniority of Khallasi Class IV to assess as to when the persons are appointed to Class IV and thereafter regularised on the regular posts of Class IV. However, learned counsel referred

12


to a annexure attached to the circular of March, 88, where name of 53 persons who had already been officiating as MCC from 1979 to 1982 has been highlighted that the date of appointment of those staff members ranged from 1975 to December, 80 and the persons in the bottom at serial no.47 to 53 have been appointed to class IV from August, 79 to December, 80^{le} while the applicants have already been appointed on regular posts in May, 79 and July, 80, respectively. However, we cannot take any guide to come to a firm conclusion regarding the actual berth of the applicants in the seniority list of Class IV. In view of this, it cannot be said that any junior to the applicant has been regularised on the limited examination by holding viva voce test only. However, it shall be open to the applicants to make a representation to the respondents craving for the benefits, if any, given to the alleged juniors of the applicants on the length of service they have put in in Class IV as Khallasi on regular basis and the respondents shall decide the same as expeditiously as possible.


7. In view of the above facts and circumstances, the application is disposed of as said

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13

above, with no order as to costs.


(B.K. SINGH)
MEMBER (A)


(J.P. SHARMA)
MEMBER (J)

/KALRA/