

5

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1107
T.A. No.

1986.

DATE OF DECISION 3.7.1987

Shri Yash Pal **Petitioner**

Shri B.S. Mainee, **Advocate for the Petitioner(s)**

Versus

Union of India & Ors. **Respondent**

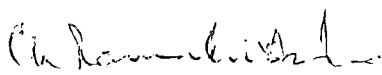
Shri S.P. Kalra, **Advocate for the Respondent(s)**


CORAM :

The Hon'ble Mr. S.P. Mukerji, Administrative Member.

The Hon'ble Mr. Ch. Ramakrishna Rao, Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement ? *Yes*
2. To be referred to the Reporter or not ? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *No*


(Ch. Ramakrishna Rao)
Judicial Member


(S. P. Mukerji)
Administrative Member

6

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: DELHI

Regn.No.OA-1107/86

Date: 3.7.1987

Shri Yash Pal

.. Petitioner.

Vs.

Union of India & Ors.

.. Respondents.

For Petitioner

.. Shri B.S. Mainee,
Advocate.

For Respondents.

.. Shri S.P. Kalra,
Advocate.

CORAM: Hon'ble Shri S.P. Mukerji, Administrative Member
Hon'ble Shri Ch. Ramakrishna Rao, Judicial Member

JUDGEMENT

(Delivered by Shri S.P. Mukerji)

Shri Yash pal and three others have filed this application under Section 19 of the Administrative Tribunals Act 1985 praying that the respondents should be directed to treat them as regular Junior Out Door Clerks ^{in the Northern Railways &} (JODCs) from the respective dates of their promotion, as such, with consequential benefits of seniority and thereby permit them to take the suitability test alongwith the other JODCs for promotion for senior clerks.

2. The brief material facts can be summarised as follows:
The applicants ^{as Class IV employees} appeared in a selection test ^{for JODC} consisting of written and viva-voice examinations in 1984 and were amongst 16 qualified candidates. Since there were only 5 regular vacancies in the promotion quota, the applicants were appointed amongst 11 others as JODC on an adhoc basis. No further examination or test for promotion as JODC was held but in October, 1986 when a test for promotion of JODCs as Senior Clerk was held, the petitioners were not called as they were working as JODCs on an adhoc basis. The petitioner's contention is that they have already taken the test for appointment as JODC, they should not be called upon to take the test again for being regularly appointed as JODC and be deemed to be eligible for Senior Clerks test.

M

3. In spite of several opportunities given to the respondents they have not filed any counter-affidavit in this case, presumably because identical cases of such adhoc JODCs. have been ^{lost} ~~noted~~ by them before us in TA-136/86 which was decided on 5.3.87 and before the Calcutta Bench of this Tribunal in Tapan Banerjee Vs. General Manager, South Easter Railway and Others. ATR 1986(1) CAT-444.

We have heard the arguments of Shri B.S. Mainee, learned Counsel for the applicants as also of Shri S.P. Kalra, learned Counsel for the respondent and gone through the documents carefully.

4. As stated above, out of 16 persons who qualified, 5 were appointed as JODC on a regular basis and 11 were appointed as JODC on an adhoc basis. The case of Shri Mohan Lal and 4 others ^{who were among such ad hoc JODCs like the four applicants in this case} was decided by us in TA No. 136/86 on 5.3.87 in which we held that the petitioners should be deemed to have been regularly appointed as JODC w.e.f. the respective date of adhoc appointment in 1981 and given all consequential benefits including benefits of pay and seniority as if they were regularly appointed from the dates of their original adhoc appointment as JODC. We can do no better then to quote from our judgement (to which one of us was a party) from para 2 thereof as follows:

"The admitted facts are that the petitioners were originally recruited as regular khalasies in the mechanical side and they were entitled to be considered for promotion as skilled workman. However, on the basis of a declaration given by them that they would not claim promotion in their present channel of promotion including the skilled posts, they were put through a regular selection procedure for promotion as JODC in the clerical cadre. Though they qualified in the tests but they were appointed in the clerical cadre on an ad-hoc basis in 1981. Their names were also excluded from the seniority list of their parent regular cadre of khalasies. They were made ad-hoc because the number of vacancies in the promotion quota had been exhausted and they were holding the posts of the direct recruitment quota. Because of the ad-hoc appointment, some of their names were not shown

even in the seniority list of JODC. Thus, they are confronted with very unenviable situation of having been dislodged from the seniority list of their parent category of khalasi without getting any placement in the seniority list of JODCs. They have now been asked to take the same selection test again by the impugned order dated 31.1.1984 which they have challenged before us.

3. It is admitted that the petitioners were put through regular selection tests (written and Viva) in 1980 and through these tests a number of other candidates were regularly appointed as JODCs. Therefore, except on the technical ground of their holding the posts of JODCs in excess of the promotion quota, there is no other reason by which their appointment as JODC can be held to be less than regular. It is also admitted that ever since their promotion in 1981 on an ad-hoc basis none of them has ever been reverted and as a matter of fact two of the petitioners have been promoted to a still higher grade of Senior Clerks. In their latest ruling the Hon'ble Supreme Court in Narinder Chadha Vs. Union of India and Others ATR 1986 (1) 49 has held that ad-hoc appointments in excess of the promotion quota and continued for prolonged period should be held to be regular and would count for seniority. An identical case like the one before us was decided by the Calcutta Bench of the Tribunal in Tapan Banerji Vs. General Manager, South Eastern Railway and Others, ATR 1986(1) CAT-444 in which it has been held that "an ad-hoc appointment made after qualifying test would not warrant the applicants to be subjected to the same test over again."

On the above basis and in view of the additional arguments given by Shri Mainee that in accordance with the Railway Board's letter No.E(NG)I/81/CSP/1 dated 12.3.81 (N.R. S.No.7790A) promotee officers appointed in excess of their quota ^hwere direct recruits have not been inducted should be deemed to be regular appointees, we allow this application also. Accordingly we direct that the applicants should be deemed to have ^{been} regularly appointed as JODC with effect from their respective date of their adhoc appointment and given all consequential benefits including benefit of pay and seniority as if they were regularly appointed from the dates of their original adhoc appointment as JODCs. The petitioners are not to be subjected to any other test for being continued as JODCs right from the date of their

m

9

: 4 :

original appointment. They should be considered for appointment as Senior Clerks on the basis of their seniority so fixed in the cadre of JODCs, if they are otherwise eligible for such consideration.

5. The application is disposed of on the above lines. There will be no order as to costs.

Ch. Ramakrishna Rao
(Ch. Ramakrishna Rao)
Judicial Member

S. P. Mukerji
3.4.87
(S. P. Mukerji)
Administrative Member