

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA NO.69/87

DATE OF DECISION:22.05.92.

JAI PARKASH & OTHERS

...APPLICANTS

VERSUS

UNION OF INDIA & OTHERS

...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*

Subh
(I.K. RASGOTRA)

MEMBER(A)

Arvind
(P.K. KARTHA)

VICE-CHAIRMAN

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JUDGEMENT

S/Shri Jai Parkash and Harbans Singh working as train clerks, Northern Railway, have filed this application aggrieved by the order No 758-/209/P-9 dated 27.9.1982 under Section 19 of the Administrative Tribunal Act 1985.

The short issue raised for adjudication in this case is whether the applicants who were promoted as Train Clerks from Group D post of skid porter and who have continued to work as strain clerks can be reverted as skid porters after having officiated in that post for almost a decade.

2. The brief facts of the case are that the applicants were appointed as skid porters w.e.f. 23.3.1968 which is Group-D post. They were promoted as Train clerks (Rs 260-400) w.e.f. 5.4.1978 on adhoc basis after selection from the candidates who had applied for the said post in response to respondents' Circular letter dated 1.8.1977 (Annexure II of the OA). According to the said Circular of

1.8.1977 the skid porters (posted on transportation side) along with some other categories with three years service who are capable of reading and writing English freely ~~and~~ were eligible for the selection. The applicants were later invited to appear in the written test for the post of train clerk in 1982-83, which they are said to have passed and as a consequence ~~they~~ were allowed to work ~~continuously~~ as ~~that~~ train clerks. They contend, ~~the~~ posts against which they worked were regular posts of train clerks and that their appointment cannot be treated as adhoc particularly when they had qualified in the written test. They apprehend reversion to the lower post in view of the Circular letter dated 1.1.1982 issued by Divisional Railway Manager enclosing a copy of Railway Board's letter dated 27.1.1992 stipulating that all skid Porter should be transferred to the Mechanical Department. Their transfer as Skid Porters under the Mechanical Department from the Transportation Department under which the Train clerks are placed would not only cause financial hardship but also jeopardise their future prospects. The applicants made representation against the proposed action of the respondents vide their letter dated 18th May 1985 but this has not yielded any results. They have prayed for the following reliefs :-

- (a) The respondents be directed not to apply the Railway Board's order dated 20.3.1981 to the applicants who are working as Train Clerks for the last 8 years.

(b) to restrain the respondents from subjecting them to selection for the post of train clerks which they have already passed and

(c) further to treat the applicants as regular employees from the date they were promoted as train clerks.

3. The stand of the respondents in their counter affidavit is that the Original Application is barred by limitation under Section 21 of the Administrative Tribunal Act 1985 as the Order impugned is of 27.1.1982. They have, however, maintained that the post of Skid Porters is under the Mechanical Department and not in the Traffic Department and, therefore, the applicants were not eligible for promotion to the post of Train clerks. According to the respondents the applicants were only put to officiate as train clerks in 1978 on local seniority basis and purely on adhoc basis against day to day absentees. They further submit that the applicants were not ^{continuous} eligible for officiation and that they have suppressed the material fact that the order of their reversion to their substantive post of skid porters was passed on 2.10.1986 and that they were actually reverted to their substantive post on 2.12.1986. The respondents further contend that the new incumbents have already joined in their place as Train clerks on 18.12.1986. They further point out that the Cadre of Skid Porters was transferred from Traffic Department to the Mechanical Department in the year 1967 when all existing skid porters were given the option to

either seek advancement in the Mechanical Department or in their channel of advancement in Traffic Department vide letter dated 26.6.1967 (Annexure R-I, Page-24 of the paper book). Only those skid porters who opted for transportation side were eligible for promotion to the post of train clerks. As the applicants joined the Railway much after the transfer of Cadre of skid porters from Traffic Department to Mechanical Department, the option available to the existing skid porters in 1967 was not applicable to them. The respondents also deny that the applicants had ever passed written test for promotion to the post of Train Clerks.

4. The applicants have filed rejoinder.

5. The learned counsel for the applicants Shri B.S. Mainee contested the plea of limitation by drawing our attention to the Respondents' order issued in October 1986 (Page-33 of the paper book) purporting to revert the applicants who had been working on local officiating basis as train clerks, Bhatinda (TNC BTI for short) since April 1978 and submitted that the O.A. was filed on 15 January, 1987 well within the prescribed time limit. The application is, therefore, not time barred. The Learned Counsel also referred to certificates filed at pages 34 and 35 of the paper book issued by the relevant authority that Shri Jai Parkash and Shri Harbans Singh applicants No.1 and No.2 respectively officiated as train clerks from 16.4.1978 & 5.4.1978 continuously

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6. We have heared the Learned Counsel of both the parties and perused the material on record carefully.

Admittedly the applicants have been working as train clerks since 1978 till their orders for reservation were issued in October , 1986. Thereafter they have been protected by an interim order dated 20.1.1987 passed by the Tribunal. It is also not disputed that the applicants were promoted as Train clerks in response to the Circular letter dated 1.8.1977 issued by the respondents inviting applications from the various categories including skid porters who were posted on transportation side. Further, the applications for the post of train clerks were to be submitted through the subordinate Incharge of the concerned Assistant Personnel Officer (APO). If the applicants were not working on the Transportation side as Skid Porters the subordinate incharge ordinarily would not have forwarded their applications to the Competent Authority. Assuming that subordinate Incharge failed to do so, APO concerned would not have processed the applications of the applicants when they were ineligible for appearing in the Selection.

In the circumstances, we cannot but infer that at the relevant time the applicants were working as skid porters on the Transpotation side. This fact is substantiated by the Order of the respondents of October, 1986 reproduced below :-

NORTHERN RAILWAY D.R.M OFFICE, NEW DELHI

NOTICE

The following Class IV employee viz skid porter grade 196-260 who are locally officiating as Trains clerk grade Rs260-400 reverted to their parent cadre and will seek further advancement

in their own parent cadre C&W Department.

1)	Shri Harbans Singh	Locally officiating TNB BTI Since 4.78
2)	Shri Jai Parkash	Locally offg TNC BTI Since 4.7.8
3)	Shri Ram Babu Chaudhary	Locally offg TNC TKD since 12.78
4)	Shri Subajee Ram	Locally offg TNC TKD Since 12.78

Suprentendent P9 to please issue their posting orders on their own cadre C&W Department according to their seniority immediately.

Dates of changes may be advised immediately.

Sd/-
for Sr Personnel Officer
N. Rly, New Delhi.

No. 220-E/160-XIIP Dated /10/1986

Forwarded to the following for information and necessary action :-

CMH/TKD SS/BTI DAO/DeJill Supdt BillsDRM Office
NDLS Supdt P.9 for necessary information."

Further the respondents have failed to produce any material in support of the plea that applicants were working only on adhoc basis against the absentee vacancies and not continuously from the date ~~at~~ they were appointed on ad hoc basis. There is, however, nothing on record to indicate that the applicants had passed the written examination for the post of train clerks whch is a Group 'C' post. We are not persuaded to accept the respondents' contention that skid porters belong to the Mechanical Department right from 1967. If that be so, there was no need to include the category of skid porters in the Circular dated 1.8.1977 inviting applications

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for selection for the post of train clerks.

In the facts and circumstances of the case, we cannot but come to the conclusion that at the relevant point of time the applicants were eligible for consideration for selection to the post of train clerks; they were duly selected and posted as such on ad hoc basis. There is, however, no material to substantiate the plea of the applicants that they had passed the written examination. Equally, the respondents have failed to bring it, on record if the applicants had appeared in the written examination and had passed the same or failed in the said examination. There is only a bald denial of the contention of the applicants in the Counter-affidavit. **In Suresh Chand Gautam and Others Versus Union of India and Others O.A. No.1676/90 and T-106/86** decided on 9.7.1991 - the full Bench of the Tribunal has held that :-

"According to Rule 109 of the Indian Railways Establishment Manual, Class IV Railway servants can be promoted to Class III posts on a regular test, as may be considered necessary. Rule 110 of the Railway Establishment Manual provides that for promotion to higher posts in Class III the candidates should qualify in the prescribed test. Therefore, we are in complete agreement with the decision of the Full Bench in Jetha Nand's case that a pass in the Selection test is mandatory before a Class IV employee can be promoted to a Class III posts."

7. In the above conspectus of the case we set aside and quash the order of October, 1986 issued

by the respondents purporting to revert the applicant as Skid Porters. The Interim Order passed on 20.1.1987 is made absolute. The respondents, however, shall be at liberty to hold a written/practical test for regularising the applicants for the purpose of promotion from Grade 'D' post to Grade 'C' post in accordance with Rule 109 and 110 of the Indian Railway Establishment Manual after giving them due notice.

The O.A. is disposed of as above with no orders as to the costs.

Deby
(I.K. Rasgotra)
Member (A)

Ans
22/5/82
(P.K. Kartha)
Vice Chairman (J)