

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I
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C.A. No. 1904/90

DATE OF DECISION 14.2.91

Shri Raj Kumar

....Applicant

Vs.

Union of India & Others

....Respondents

C.A. No. 1907/90

Shri Praveen Kumar

....Applicant

Vs.

Union of India & Others

....Respondents

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

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

....Shri B.S. Maine

FOR THE RESPONDENTS

....Shri B.K. Aggarwal

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY SHRI J.P. SHARMA, HON'BLE MEMBER (J))

Both the above named applicants have separately filed the applications under Section 19 of the Administrative Tribunal Act, 1985 praying for the relief to quash the impugned orders (Annexure A-1) directing the respondents to continue the applicants as Material Checking Clerk/Store Issuer.

Annexure A-1 is a D.O. letter No.229/E/2/Const./Surplus, dated 27.8.1990. It was sent by the Railway

Head Quarters Office, Kashmere Gate by Shri V.S. Dutta, Chief Engineer/Construction/Kashmere Gate addressed to Shri A.A. Khandey, Deputy Chief Engineer, Shivaji Bridge, New Delhi. The subject in this D.O. is 'Posting of Clerks Gr.950-1500 RPS' and is in reply to a letter dated 20.8.1990 sent by Deputy Chief Engineer. The contents of the letter are, "The matter was discussed with you. S/Shri Satish Kumar and Prem Pal Singh, should be accepted and given duties on your unit and ad hoc arrangement of two temporary status staff as Clerks be reverted immediately. A review of the strength of clerical staff in your unit reveals that the strength is on higher side. These orders may please be complied with immediately and compliance reported."

2. Since both these applications deal with the same impugned D.O. letter (Annexure 'A-1'), so these cases are taken together and are disposed of by common judgement.

3. O.A. NO. 1904/90

Raj Kumar, applicant was appointed on 13.4.1985 as a Khallasi on compassionate ground on the death of his father. The applicant was promoted as a Material Checking Clerk by the Order dated 6.12.1989 (Annexure 'A-4'). This is a notice which shows that the applicant, Raj Kumar was posted as Material Checking Clerk, Grade 950-1500(RS) with effect from the date of duty resumption under A.E.N./C-II/GZB. However, subsequently Satish Kumar and Prem Pal Singh, Material Checking Clerks reported for duty in the Office of Deputy Chief Engineer (Construction) in pursuance of the letter of the Chief Administrative Officer (Construction) dated 13.8.1990. On ^{receipt of} this letter, on 20.8.1990 (Annexure 'A-5'),

10

the Deputy Chief Engineer informed the Chief Administrative Officer that there is no vacancy under him, so both-Satish Kumar and Prem Pal Singh were directed back to the same office. The Deputy Chief Engineer also suggested that as regards reversion of ad-hoc employees, normally the junior most have to be reverted as per rules, for which whole of Delhi area is clubbed together to avoid further complications. It is in pursuance of this letter dated 20.8.1990 that the impugned D.O. letter (Annexure 'A-1') was sent to Deputy Chief Engineer by Chief Engineer. The grievance of the applicant is that he is being reverted, though the juniormost staff promoted on ad-hoc basis is still working. It is contended in para 4.14 of the O.A. that a number of Class IV staff, who were juniors to the applicant including those who have not even been regularised in Class IV service, are still working as Material Checking Clerks, but the applicant has been picked up for reversion in an illegal manner. The respondents in their counter denied this contention stating that no names of the juniors have been disclosed. It is further stated that if any junior is working, it is either because of stay granted by this Hon'ble Tribunal or having been placed in the seniority list after having passed the suitability test. It is further stated by the applicant that he is working as a Class III employee on ad-hoc basis since November/December, 1989.

The respondents in their reply categorically stated in para 4.4. that the applicant was promoted on 6.12.89 locally on ad-hoc basis whereas juniors to the applicant passed the selection test and on the basis of selection, they occupied a place in the seniority list which was circulated on 25.5.89 inviting objections, if any. No objection was filed by the applicant

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against that seniority list. It has been further stated that in view of the instructions received from General Manager dated 19.6.1990 (Annexure 'R-1'), the applicant was to be reverted because Khalwas/i/Gangman are not permitted to be promoted as Material Checking Clerks. Annexure 'R-1' dated 19.6.1990 stipulates, "That already Gangman/Trolleyman have wide avenue of promotion. They can go as Keyman, Gangmate, P.Way Mistry, PWI Gr.I, II. The Gangman also can go in workshop by option and seek avenue of promotion as Artisan Gr.III, Gr.II, Gr.I. In view of the position brought out above, another opening of advancement cannot be provided to Gangman/Trolleyman towards Ministerial side as MCCs/Clerks also as Typist." This was decided in PNM meeting with NMU held on 19th June, 1990. During the course of the arguments, the learned counsel for the respondents have filed a letter No.831-E/168-IV/E-IV dated 23.11.1989, addressed to the Chief Administrative Officer (Construction), Kashmere Gate, Delhi reiterating that another opening of advancement towards MCCs/Office Clerks cannot be provided to Gangman/Trolleyman towards Ministerial side. The respondents have also prayed that the Stay Order granted against reversion of the applicants be vacated. It is further stated that the applicant has not alleged in the application that the two incumbents being absorbed, i.e. Satish Kumar and Prem Pal Singh mentioned in the letter dated 20.8.90 are junior to the applicant. In para 4.9 of the counter, the respondents stated that the applicant has been declared surplus as no post is available in the Unit where he can be continued as M.C.C. by local promotion on ad hoc basis. It was further stated that the applicant did not pass the suitability test whereas two clerks mentioned in the letter dated 13.8.90 have passed

(2)

the suitability selection test and have occupied a place in the seniority list issued on 25.5.1989. S/Shri Satish Kumar and Prem Pal Singh stood at Sl.No.77 and 90 in that seniority list, having been promoted on 24.7.1984 and 19.6.1984 respectively as M.C. Clerks. The applicants in the rejoinder in para '4.9' stated that the applicants were never given a chance to appear in the suitability test.

4. O.A. No. 1907/90

Praveen Kumar was appointed as a Casual Labourer earlier and was regularised as a Class IV employee w.e.f. 16.3.1980. The applicant was promoted for the first time as Material Checking Clerk, Class III on 15.1.1990. It is further stated in the application that the Class IV staff who had been promoted in Class III on ad hoc basis, should not be reverted unless repeated opportunities are given to them to pass the selection and they fail in the same. It is further stated that the large number of juniors to the applicants are already working as Material Checking Clerks and have not yet been reverted. The applicant has annexed a list to the application (Annexure 'A-6') which is the seniority list. In the seniority list, column 6 shows the date of their regularisation in Class IV and column 8 indicates the date of promotion on ad hoc basis in Group 'C'.

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persons at 102, 103, 104, 108 and 114 to 121 are said to be junior to the applicant.

The respondents contested the application and stated that the applicant has never worked as a Casual Store Issuer. The applicant worked only as a Khallasi/Gangman. It is further stated that the juniors to the applicant passed the selection test and on the basis of selection, they occupied a place in the seniority list issued on 25.5.1989 inviting objections, if any. No objection was filed by the applicant against that seniority list. It is further stated by the respondents that the applicant has been reverted firstly because he was declared surplus, having no post and secondly in view of Annexure 'R-1' (quoted above). It is further stated that juniors to the applicant were appointed as MCCs during 1984 and 1985 after they had passed the suitability test. The applicant could not have been given ad-hoc promotion in January, 1990 as per instructions contained in Annexure 'R-1'. In the rejoinder filed by the applicant, it is not denied that the applicant did not pass the suitability test.

5. We have heard the learned counsel for both the parties at length. While hearing the learned counsel for the applicant on 19.9.1990, the respondents are directed that the applicants should not be reverted from the post of Clerk till 3.10.1990 and further status-quo was ordered to be maintained till further orders.

6. In view of the interim directions by the Bench to maintain status-quo, both the applications have been heard on merits at the admission stage.

12

7. The first contention of the learned counsel for the applicants is that the applicants could not be reverted as those who were appointed after them are junior and that it is the juniors to the applicants who should be reverted first. The date of appointment as Casual Labourer of Praveen Kumar is 25.10.1971 and the date of appointment of Raj Kumar as Khallasi on compassionate ground is 13.4.1985. A seniority list was issued on 21st August, 1987, but in the seniority list, names of the present applicants did not figure. This is the provisional seniority list of Class IV staff promoted on ad-hoc basis as Clerks.

8. It has been further pointed out that the applicants at Sl.No.102, 103, 104, 106 and 114 to 121 of seniority list (Annexure 'A-5') are junior to him and have since been promoted and if the question of any reversion arises then these persons should have been reverted. In fact, seniority list at Annexure 'A-2' at page 10 goes to show that all the 12 applicants named therein were appointed from March 18, 1980 onward still September, 1984 as Gangmen, but were promoted as M.C.Gs. between January, 1984 and September, 1985. The applicant, Praveen Kumar made a

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representation in December, 1988, but did not come to the Court six months thereafter and the alleged junior to him continued to work as material checking clerk. The applicants have not challenged the seniority list at any point of time. In the provisional seniority list dated 21-8-1987 which the applicant has filed at note 2 at the bottom it is written that the seniority list should be given wide publicity and objections to it regarding any omission be made within 30 days positively failing which the seniority list will be finalised on the basis of particulars available. After one year Shri Praveen Kumar has made a representation and he has said nothing about this seniority list. The applicant Shri Praveen Kumar was not even promoted before 15th January, 1990. In para 4.9 of the counter the respondents have specifically stated that S/Shri Satish Kumar and Prem Pal Singh stood at Sl.No.77 and 90 in the seniority list dated 25th May, 1989 and they have been promoted on 24th July, 1984 and 19th June, 1984 respectively as M.C.Clerks. In the rejoinder to para 4.9 of the counter these facts are not specifically denied. What has been said by the applicant Shri Praveen Kumar in the rejoinder is that "the applicant was never given a chance to appear

(16)

in the suitability test". The promotions are always made on the basis of existing seniority list and if one does not challenge the seniority list then he cannot assail the promotions of others alleged junior unless the seniority list is challenged on the ground that the persons who are shown as senior should be junior to such person. The learned counsel for the applicant therefore could not substantiate the fact that the applicant Shri Praveen Kumar is senior to Shri Satish Kumar and Prem Pal Singh who are at Sl.No.77 and 90 of the seniority list dated 25-5-1989 while the applicant's name do not appear in the list. Applicant Shri Ram Kumar has been appointed as regular Khalasi on 13-4-1985 on the death of his father. Before his being appointed as a Khalasi, both Shri Prem Pal and Shri Satish Kumar were working as M.C.C. The contention of the applicant's counsel that the person shown at Sl.No.102 to 121 except those at Sl.No.105, 106, 107, 109 to 113 are junior to the applicant cannot be accepted for want of proper date as well as inaction on the part of applicants when the provisional seniority list was issued in August, 1967.

9. The learned counsel for the applicants further argued that the junior most should have been reverted but for promotion to class III post the applicant has to pass a selection test which they have not rejoinder. done. This fact is admitted by the applicants in the L.

The person who has not passed the selection test cannot claim as of right promotional post. He can be reverted. In the present case Shri Praveen Kumar has worked as M.C.C. from 15-1-1990 and the other Applicant Shri Ram Kumar has worked on the same post from December, 1989. The impugned order i.e. D.O. letter was sent by the Chief Engineer to the Deputy Chief Engineer on 20-8-1990 and by that time, the applicants have hardly worked for 8 or 9 months.

10. The learned counsel for the Applicants relied on the Full Bench decision of Jethanand versus Union of India, only to the limited extent that if one fails in suitability test, then adequate number of chances be made available to that person. However the ratio in Jethanand case is that the Railway servant should first be qualified and found suitable by a test, to be empanelled for appointment to the promotional posts. It is only then that he acquires the prescriptive right to hold the post. Such a person acquires further right when he completes 18 months officiation in the promotional post. In the present case on both the counts the Applicant cannot favourably get any relief for continuing on the promotional post. (Jethanand versus Union of India F.B.J. page 353).

11. The learned counsel for the respondents also argued that after November, 1989 the avenue of promotion as M.C.C. from Gangmen is not available

and he referred to the Railway Board's letter dated 23-11-1989 referred to above and the letter of Chief Administrative Officer dated 19-6-1990 (R-1). The learned counsel for the Applicant pointed out that the Rules have not been amended and the vacancies which are available should be filled according to the extent Rules and the Board's letter of November, 1989 and the letter of the Chief Administrative Officer of June, 1990 cannot be made applicable to those vacancies. In fact it has not been made out nor alleged in the applications by the Applicants that particular vacancies were existing of the period. In any case the vacancies should be filled up as per extent Rules unless otherwise is alleged and established. The promotion of the Applicants as M.C.C. after 23rd November, 1989 is therefore against the directions issued by the Railway Board, and as said, that promotion cannot be said to be according to executive instructions and cannot have any force or validity.

12. The Applicants have challenged the D.O.letter to get over limitation as otherwise they cannot now challenge the promotion of alleged juniors who have been promoted three or four years ago to the promotional post of M.C.C. after passing the suitability test. The simple answer by the learned counsel for the Applicant that the Construction Division is a big organisation and the Applicants could not know the total position, does not impress

us as the applicants themselves are working in Delhi or Ghaziabad. Since the applicants did not challenge the promotions of the alleged juniors at the relevant time, and also they did not make any representation for being allowed to take suitability test, they cannot now be heard.

13. The relief claimed by both the parties is to quash the D.O. letter sent by the Chief Engineer to Deputy Chief Engineer which is not an order, but an administrative communication asking Deputy Chief Engineer to comply with the earlier directions sent to him which was replied by Deputy Chief Engineer on 20.8.1990. In fact Shri Satish Kumar and Shri Prem Pal Singh have passed, suitability test and are approved for the promotional post of M.C.C. so they have to be absorbed in place of those persons who have not cleared the suitability test. The Deputy Chief Engineer only pointed out that there is no vacancy to absorb these persons and it shall not be proper to revert the present applicants who were working under him on the post of M.C.C. The Chief Engineer directed the Deputy Chief Engineer by the impugned letter to comply with the same. In fact this is the letter which is desired to be quashed by the applicants. The applicants have not come for the redress of grievance of seniority matter for which cause of action arose much earlier and is now barred by limitation.

14. We are, therefore, of the opinion that both the applications are devoid of merit and are dismissed without any order as to cost. They Stay Order granted is vacated.

J. P. Sharma
(J.P. SHARMA) 14.2.91

MEMBER (J)

I. K. Rasgotra
(I.K. RASGOTRA) 14/2/91
MEMBER (A)