

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA.2068/90

Date of Decision: 20-8-92

Shri Ashwani Kumar

Applicant

Shri B.S. Mainee

Counsel for the applicant

Versus

Union of India & Ors.

Respondents

Shri Shyam Moorjani

Counsel for the respondents

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

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

JUDGEMENT

(of the Bench delivered by
Hon'ble Member Shri B.N. Dhoundiyal)

The issue raised in this OA filed by Shri Ashwani Kumar, a Personnel Inspector of Northern Railway is whether he is eligible for promotion to the post of Assistant Personnel Officer by counting the period of his ad-hoc officiation, in the post of Personnel Inspector which was followed by regularisation.

2. The applicant joined as LDC on 13.6.79. He was promoted as Senior Clerk on 31.7.82 and having opted for the Inspectorate branch and having applied for selection in response to a letter dated 25.5.85, issued by the Divisional Personnel Officer, he was promoted on ad-hoc basis as Personnel Inspector on 22.8.85. Though the posts were permanent, regular selection was not held and *By*

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and this promotion was given to him on the basis of his seniority-cum-suitability. The written examination and the viva voce were held much later and the final panel was declared only on 8.7.88. According to the applicant, his services as Personnel Inspector was regularised on 8.7.88 and according to the respondents on 8.8.88.

3. The selection for the next higher post of Assistant Personnel Officer, Group 'B' cadre was initiated by the General Manager, Northern Railway vide his letter dated 28.11.89. The applicant also applied for selection and appeared in the written examination on 7.7.90. He was one of the 29 successful candidates out of 840, who appeared in the examination. The next stage of selection was a viva voce test. The impugned order dated 5.10.90 issued by Senior Divisional Personnel Officer, Northern Railway, withheld the name of the applicant for viva voce test scheduled to be held on 9.10.90. The reason given for this action was that in terms of General Manager Northern Railway letter dated 28.11.89, only service rendered after regular selection was counted and since the applicant was regularised as Personnel Inspector only in 1988, he had not rendered 3 years service in this grade to qualify for the selection. Citing a number of judgements delivered by this Tribunal and the Supreme Court, the applicant contends that the ad-hoc service rendered by him against regular posts has to be counted as qualifying service. He represented against this order to General Manager, Northern Railway on 25.9.90 and filed this OA praying that the impugned order dated 5.10.90 be set aside and quashed and he be allowed to appear in the viva voce test and be given regular appointment, if successful.

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4. This Tribunal passed an interim order on 8.10.90, directing the respondents to provisionally allow the applicant to appear in the viva voce test to be held on 9.10.90. This order was complied with and the result of the test was kept in the sealed cover. It was opened in the Court during the final hearing on 14.8.92. The applicant had been declared successful.

5. We have heard the arguments addressed at the Bar and perused the documents placed on record. The following condition relating to length of service is given at para (iv)(a) of letter dated 28.11.89 of DRM, Northern Railway (Annexure A-6):-

"Employees working in Grade minimum of which is Rs.1400/- and in higher Group 'C' Grade will be eligible to appear for Group 'B' selection provided they have rendered not less than three years of non-fortituous service in the grade as on 30.9.89."

Note-1 to the letter has given clarification regarding the nature of service (whether fortituous or not) as under:-

"All service rendered to the date of announcement of the panel for selection post in Class-III will be treated as fortituous service for the purpose of reckoning the length of the service in that grade ^{6W} irrespective of who so reason for not holding timely selection. Only such service which has been put in after the declaration of the panel should be treated as non-fortituous service for this purpose upto 30.9.89."

6. The learned counsel for the respondents had also relied on the clarification given in the note to para 320
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of the IREM, which defines non-fortituous service as the service rendered after the date of regular promotion after due process. However, explaining the reason for allowing the applicant to appear in the written examination, the DRM in his letter dated 25.9.90 has referred to the Railway Board's letter dated 18.3.54, which defined fortituous service as officiating promotion as a local arrangement in leave or other short vacancies, wherein, it is administratively inconvenient to post the person eligible for such promotion. These seemingly divergent interpretations of the expression 'fortituous service' can be explained in the context of the guidelines, regarding ad-hoc promotions contained in para 216 of IREM, which envisage that ad-hoc promotions should be resorted to, sparingly and only for a short duration of 3-4 months. Ad-hoc promotions against selection posts are to be closely monitored by the Chief Personnel Officer. Selections have to be conducted regularly. In the instant case, these instructions were not followed and though the selection process was initiated in 1985, actual selections were made only in 1990. It is admitted that the applicant was the seniormost person in the lower grade when he was given ad-hoc promotion, that this promotion was against a permanent vacancy and that his continuous officiation was followed by regularisation. The respondents have argued that two permanent vacancies were transferred to newly created Ambala Division and thereafter the applicant was allowed to continue against temporary vacancies. However, at that time, the applicant had expressed his willingness to go to Ambala and it appears that the junior-most persons were shifted there. In our opinion, ad-hoc officiation of the applicant in the instant case, was not fortituous in terms of Railway Board's letter dated 18.3.54. The instructions issued by the Railway Board would also prevail over any instructions on the same subject issued by the General Manager.

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7. In Direct Recruit Class-II Engineering Officers Association Vs. State of Maharashtra; JT 1990(2) SC 264, it was observed as under:

"(8) If the initial appointment is not made by following the procedure laid down by the rules but the appointee continues in the post uninterruptedly till the regularisation of his service in accordance with the rules, the period of officiating service will be counted."

8. Following the law laid down by the apex court in the ^{of BN} aforesaid case, various Benches of this Tribunal have given relief to employees by ordering that such ad-hoc service will count for seniority.

8. In view of the above, we hold that the applicant is entitled to succeed. The application is disposed of, with the following orders and directions:-

(i) The impugned order dated 5.10.90 is hereby set aside and quashed.

(ii) The applicant shall be deemed to have put in the prescribed length of service as Personnel Inspector and to have rightly been allowed to appear for selection for the next higher post of Group 'B' Assistant Personnel Officer.

(iii) The result of his selection shall be announced and the applicant shall be given promotion as per his position in the merit list.

(iv) The respondents shall comply with the above directions expeditiously and preferably within a period three months from the date of receipt of this order.

(v) There will be no order as to costs.

B.N. DHOONDIYAL
(B.N. DHOONDIYAL) 20/8/92
MEMBER(A)

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20/8/92
(P.K. KARTHA)
VICE CHAIRMAN(J)

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