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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA No. 838/90

New Delhi this the 22nd Day of February, 1995.

Hon'ble Sh. N.V. Krishnan, Vice-Chairman (A)

Hon'ble Dr. A. Vedavalli, Member (J)

1. Rama Shankar Tiwari,
S/o Sh. Ram Dular Tiwari,
U.D.C. Cash II Branch
Rail Bhawan,
New Delhi.

2. Bhim Singh Negi,
S/o Ansingh Negi,
U.D.C. Budget Branch,
Rail Bhawan,
New Delhi.

...Applicants

(By Advocate Sh. R.D. Upadhyay)

Versus

Secretary, Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi. ...Respondent

(By Advocate Sh. U. Srivastava, proxy for Sh. H.K. Gangwani)

ORDER(Oral)

Hon'ble Mr. N.V. Krishnan:-

The two applicants before us are employed under the Railway Board. They are aggrieved by the Annexure 'F' provisional seniority list dated 7.5.87 in which they have been placed at serial No.204 and 205.

2. The first applicant - Ram Shankar Tiwari was offered appointment on 22.1.76, vide Annexure R-1 of the respondent, which was stated to be purely on an ad hoc basis against the post temporarily excluded from the purview of the Railway Board Secretariat Clerical Cadre and with a further condition, that his service could be terminated at any time without notice or without reasons and that he will be replaced by the regularly selected Lower Division Clerks (LDC) of the

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I.S.T&M on the results of the competitive examination.

The second applicant Bhim Singh appears to be similarly appointed on 5.2.76.

3. The applicants have a claim that their seniority should be counted from the date of appointment itself based on the memorandum dated 14.4.80 (Annexure 'E') issued by the Railway Board to the General Manager of Railways and to certain other organisations that the Ministry has decided that the four kinds of ad hoc appointments referred to therein and made during 1974 to 1977 may be treated as regular with effect from the date on which they were originally appointed. The instructions therein apply to the four categories of persons appointed on an ad hoc basis ^{category} as mentioned therein. One person appointed as per the Ministry of Railways orders. Admittedly, the applicants have been appointed on ad hoc basis by the Annexure R-1 orders by the Ministry of Railways (Railway Board). They, therefore, claim that seniority of the applicants should count from 22.1.76 and 5.2.76 respectively in the case of the first and the second applicants.

4. It is next stated that the applicants were regularised as LDCs on 18.11.81 as would be clear from the information given in column 5 of the seniority list at Annexure 'F'. It is contended that even if, for arguments sake, it is considered that the applicants can count their seniority only from the date of regularisation, i.e., from 18.11.81, it would be clear from the perusal of that seniority list that this

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principle has not been followed in as much as there are a large number of persons who have been appointed much later than the two applicants and yet have been placed over the applicants. In fact, the persons at serial No. 201 and 202 ^{ce} ~~who~~ have been appointed only in July 1982 and there are persons appointed even as late as December, 1982 who are placed above the applicants. Hence, the alternate prayer is that they be kept in the list above all persons who have been appointed after 18.11.81.

5. The applicants have also a case that in any case, the ad hoc service rendered by them for such a long period ought to have been counted for the purpose of seniority even after they were regularised in November, 1981.

6. The respondents have filed a reply contesting these claims. Their reply is based on the provisions of the Railway Board Secretariat Clerical Service Rules, 1970. It is stated that ad hoc appointment was resorted to meet an urgent demand of Hindi Typing knowing LDCs and the two applicants were appointed on that basis. Though they were appointed on ad hoc basis, they claimed regularisation and on the basis of the representation of applicants and others it was decided to absorb them on a regular basis and accordingly, the two applicants were absorbed in the Railway Board Secretariat Clerical Service on 18.11.81. Their seniority has been determined in accordance with the aforesaid rules. It is stated that, in accordance with Rule 14, these persons who have been recruited

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from other sources (i.e. neither directly recruited by examination nor by promotion) will be placed below direct recruits of that year's batch. In other words, such persons should be placed below the direct recruits of 1981 batch, irrespective of the dates on which such direct recruits joined. However, as a matter of fact the applicants have been placed only below the direct recruits of the 1980 examination.

7. When the matter came up for final hearing today, the learned counsel for the applicants reiterated the pleadings, which we have summarised above. He states that 10% of the posts is to be filled up by promotion from Group 'D' employees (Rule 9(a)) and the balance of 90% by direct recruitment vide clause (b) of Rule-9. The proviso to clause (b) states that, if sufficient number of qualified candidates are not available either from the Group 'D' persons for the 10% posts or from others for the 90% posts on the results of the examination held for that purpose, the vacancies may be filled provisionally or on a regular basis in such manner as may be prescribed by the Central Government in the Ministry of Railways. It is contended that the applicants are covered by this proviso because they were not recruited under either clause (a) or clause (b) of Rule 9. Hence, irrespective of what is stated in the letter of appointment (Annexure R-1) viz. that this is an ad hoc appointment, as the applicants have been recruited in terms of the proviso to Rule 9 (b), referred to above, the appointment is a provisional appointment, if not a

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regular appointment. He, therefore, claims the benefit of the service from the date of appointment for seniority.

8. This argument cannot be considered for certain sound reasons. We notice that in this regard there are no pleadings in the O.A. No foundation has been laid by the applicants for making such a claim. This has been raised by way of arguments for the first time before us which cannot be permitted.

9. In regard to seniority, the respondents have stated as follows:-

"4.4 Since no Seniority can be assigned for the adhoc employees whose services were liable to be terminated at any time without any notice on either side and without assigning any reasons and who were to be replaced by the regularly selected LDCs, these persons (the applicants along with others of their batch) were assigned seniority from the date of their absorption in the Railway Board's office i.e. 18.11.81, based on the precedents of similarly placed adhoc LDCs appointed from the Open Market through Employment Exchange in 1964-65 and 1971-73 who were assigned seniority from 1973 and 1981 respectively, i.e. from the dates of their absorption in the Railway Board's office. Accordingly, the batch of the Hindi Typists appointed during 1975-76 were placed junior to the direct recruit LDCs coming on the basis of the results of the Open competitive Examination, 1980, held for the purpose by the Staff Selection Commission (previously Institute of Secretariat Training and Management) even though the latter might have joined in the Railway Board's office later than 18.11.91, the date of absorption of the applicants."

10. We see force in this argument. The respondents produced Section III of 'The Railway Board Secretariat Clerical Service Rules, 1970'. Rule 14 deals with seniority. In respect of Lower Division

Grade it is provided that where wards of employees who died in harness are appointed under Rule 9(1A) otherwise than in accordance with the competitive examination the recruits of the competitive examination held in that year under sub-rule (1) of Rule 9. It is on the analogy of this provision that the placements have been made in the seniority list. We are unable to see how this can be faulted, when the applicants too have been appointed de hors the provisions of the Rules.

11. The respondents have further stated that the orders at Annexure 'E' dated 14.4.80 on which the applicants rely do not apply to staff of the Railway Board. They apply only to staff of the Zonal Railways. In other words, the Annexure-E direction that ad hoc appointments made under certain circumstances during 1974 to 1977 be treated as regular appointment with effect from the date of original appointment, applies only to the staff of the Zonal Railways. This stand of the respondents is consistent with the provisions regarding seniority applicable to the staff of the Railway Board governed by Rule 14. Hence, this executive instruction will not apply to them.

12. The learned counsel for the applicants also submits that as the applicants were given regular pay scale from 1978 vide Annexure 'A', their seniority should be counted from that date. That has nothing to do with seniority - granting pay on pay scale is not the same as appointing on a regular basis.

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13. We are of the view that under no circumstance ad hoc service of any nature de hors the Rules, can count for seniority purposes, for, that will adversely affect persons who have been recruited directly in accordance with the provisions of Rules.

We, therefore, do not find any merit in this O.A. It is dismissed. No costs.

A. Vedavalli

N.V. Krishnan
22.2.85

(Dr. A. Vedavalli)
Member(J)

(N.V. Krishnan)
Vice-Chairman(A)

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