

(23)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

OA 250/91

Date of decision : 18.11.1992

Shri Jagdish & Others

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Petitioners

Versus

Union of India; through
General Manager, Northern Railway
Baroda House, New Delhi. & Others.

Respondents

Coram :-

The Hon'ble Mr I.K. Rasgotra, Member (A)
The Hon'ble Mr. J.P. Sharma, Member (J)

For the petitioners

... Shri Shri B.S. Mainee

For the Respondents

... Shri Romesh Gautam

Judgement

(Hon'ble Mr I.K. Rasgotra, Member (A))

Petitioners in this case, Shri Jagdish and 6 others are working as Khalasi on the Northern Railway. They have prayed for the following reliefs:-

That the respondents be directed to consider the case of the applicants in accordance with the seniority along with others who are being called for selection/regularisation in terms of **Annexure A-1** Annexure A.1 is an Order of the General Manager, Northern Railway, No.561-E/85-132 IV-IID dated 31.12.1990.

The said order reads as under :-

"The matter of regularisation of MC(s)/Clerks has been considered and it has been decided to regularise

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the MCCs/Clerks as per following procedure.

All the 85 ad-hoc MCCs/Clerks who have completed 3 years of continuous ad-hoc service based on their seniority after adjudging their suitability by subjecting them to the prescribed test should be regularised subject to the availability of the posts of MCCs/clerks against promotee quota;

- A) Those who have already qualified the written and viva-voce test and have obtained 60% aggregate marks may be exempted from re-test.
- B) Those who have qualified only written test may be exempted from the same and subjected only to viva-voce test.
- C) Those who have not passed the written and viva-voce test should be subjected to both.

The regularisation should be done from the date of availability of vacancy against promotee quota in Group 'C' in Grade Rs.950-1500 (RPS) and the Roster point should be followed accordingly. Similarly two ad-hoc typists working in Shakurbasti Deptt may be regularised after passing suitability test against the vacancy of promotee quota of typist grade Rs.950-1500 (RPS) being controlled by DRM/NDLS.

This has the approval of C.P.O."

Plea of the Learned Counsel Shri B.S. Mainee is that petitioners herein should be considered for promotion/regularisation to Class-III post based on their seniority along with 85 petitioners in accordance with 13.11.1992. our judgement rendered in O.A 807/87 on 13.11.1992. It is observed from the above letter that the petitioners in this case come under Category 'C' of paragraph 2 of the

above letter of General Manager, since they have neither passed the written test nor viva voce test. They have also not been appointed as L.D.C. on ad hoc basis. The question of their completing 3 years ad hoc service, therefore, does not arise. In these circumstances, none of the conditions laid down in Annexure A-I, viz. G.M., Northern Railway letter dated 13.12.1990, are fulfilled.

2. Shri Romesh Gautam, learned counsel for the respondents submitted that promotion to Class-III can be accorded only to those Class IV employees who are declared successful in the selection test held for the purpose and only such qualified class IV staff acquire a right for consideration for promotion to higher grade. As none of the applicants had passed the prescribed selection test, they have no right for consideration for promotion to Class III posts. Shri B.S. Mainee, Learned Counsel on the other hand maintained that all the petitioners were called for selection test for the post of MCCs/Clerks in 1984. Six of the applicants appeared in the written test held on 5.12.1984 and were declared successful in the written test.

3. The above contention, however, was controverted by the learned counsel for the respondents who produced the record of the examination conducted in 1984 and

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1985 and the results for which were declared after competent approval in August, 1985. On perusal of the records we find that out of 7 applicants 6 had appeared in the examination while the 7th applicant, Shri Surinder Kumar Mishra had abstained. The other applicants who appeared in the examination, were declared failed. The learned counsel for the respondents further referred us to **(Annexure Y) annexed to M.P. 2485/91**, according to which the petitioners had also failed in the suitability test when the same was administered to Class IV employees for ad hoc promotion to Class-III. They were either not eligible to appear in the suitability test or they were declared failed in 1981, 1983 and 1985 and consequently they were not considered for ad hoc promotion as L.D.C./MCC. The Ld Counsel for the petitioner further drew our attention to the interim order passed by the Tribunal on 12.2.1991, according to which interim relief was provided to the petitioners by directing the respondents that when the petitioners in O.A. 807/87 are considered for regularisation, the petitioners in this O.A., who are eligible and who are senior to the ad hoc MCCs/Clerks in the combined seniority list should also be considered for regularisation in accordance with the instructions contained in the aforesaid letter.

4. We have heard the learned counsel for both the parties, given our careful consideration to the rival contentions, Annexure A-1 on which reliance has been placed by the petitioners is applicable only in the context of regularisation of ad hoc MCCs/ Clerks under conditions prescribed therein. These orders are not applicable to Khalasi's, who had ^{been} declared failed in the selection examination and who were not working LDC/MCC on ad hoc basis. They neither qualified in the relevant suitability test to make them eligible for ad hoc promotion to Class III, nor did they qualify in the written and viva voce test prescribed for selection for promotion to Class III post. We are also not persuaded to accept ^{the} contention of the learned counsel for the petitioners that the case of the petitioners is supported by the judgement of Kerala High Court in Kunjukrishnan Nair V/s State of Kerala, 1991(3) SLJ-108. The case of Kunjukrishnan Nair (Supra) is distinguishable from the present facts of the case.

5. In the circumstances, we do not see any merit in the case. It is now well settled that unless the Class IV employees qualify in the selection

examination for promotion to Class III, no right accrues to them for consideration for promotion/regularisation to class III post. The O.A. 250/91' is accordingly dismissed. There will be no order as to cost.

J. P. Sharma
(J.P. SHARMA)
MEMBER (J)

I. K. Rasgotra
(I.K. RASGOTRA)
MEMBER (A)

18/11/92