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Central Administrative Tribunal  
Principal Bench  
New Delhi

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O.A. No. 443/91

New Delhi, this the 31st day of August, 1995

Hon'ble Shri J.P. Sharma, Member (Judicial)  
Hon'ble Shri B.K. Singh, Member (Administrative)

Raghbir Singh s/o  
Shri Surat Singh  
Booking Clerk, Makroli Station,  
Delhi Division of Northern Railway.

Resident of

Railway Quarter No. T - 2/1  
Makroli (Haryana),  
District - Rohtak.

...Applicant

(By Shri Raghbir Singh in person)

Versus

Union of India through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway,  
Chelmsford Road,  
New Delhi.
4. The Divisional Commercial Supdt.,  
Northern Railway, D.R.M.'s Office,  
Chelmsford Road,  
New Delhi.

..Respondents

(Shri R.S. Mahendru, Advocate)

ORDER

by Hon'ble Shri J.P. Sharma, Member (J):

The applicant since 7th Feb., 1979, has been working  
as a Gatekeeper (Class IV Group 'D') at Jind station of  
J.

Northern Railway, Delhi Division. He has passed the matriculation examination. He belongs to S.C. community. By the order dated 22nd March, 1985, an ad-hoc appointment of Booking Clerk from Class-IV staff was made and the D.C.S., Delhi passed an order that Shri Raghbir Singh, Gateman JHI & Shri Munni Lal Luggage Porter, JHI are posted as temporarily B.C. on ad-hoc basis. They were given 15 days local training at MKLI & BKDE respectively. After completion of local training they should be directed to ACS Delhi for judging the suitability & post them as temporary B.C. on ad-hoc basis. In pursuance of the aforesaid order of March, 1985 it appears that <sup>since</sup> / 13.5.85 the applicant started working as Booking Clerk at Railway Station, Makroli(MKLI). The Divisional Personnel Officer, New Delhi from the D.R.M. Office, New Delhi issued a notice that in pursuance of the Chief Personnel Officer, Baroda House, New Delhi vide letter dated 26.7.1990 the Prob coaching clerks (ST Candidates) who have taken T-7 course training at Zonal Training School, Chandausi were put to work on temporary basis subject to the receipt of the result from Zonal Training School, Chandausi as indicated against their names. Against item No. 18, one Sh. Birdha

Ram Meena, ST was posted as Booking Clerk at MKLI. Since a duly selected candidates are being posted by the order dated 25.1.1991, the applicant in Feb., 1991 filed the present application that he apprehends reversion at the hands of the respondents and he prayed for the grant of the relief that the impugned order dated 25.1.1991 be quashed and the applicant be deemed to continue in the post of Booking Clerk in Class-III category on regular basis.

At the time when this application was filed, by the order dated 4.3.1991 status-quo of that day was ordered to be maintained by the respondents in regard to the post held by the applicant till further orders. The respondents, however, did not file any counter and it appears that interim order is continued. Since the applicant was reverted in the mean time and a resort was also made in Cr 171/91 by the applicant but the notice was discharged by the order dated 23rd September, 1992 as the respondents have restored the applicant to the post of Booking Clerk from 11th September, 1991. No payment was made for the period in between from the date of reversion upto the date of restoration to the post of Booking Clerk because the stand taken by the respondents that the applicant has absented himself from duty was taken for consideration. Since then the applicant has been working

under orders of the court/tribunal on the post of Booking Clerk.

On notice, respondents contested this application and stated that the applicant is not entitled to the grant of any relief stating that the vacancies in the Coaching Clerks (Booking Clerks) are filled by direct recruitment through the Railway Recruitment Board to the extent of 66 2-3% and by promotion from Class-IV eligible staff to the extent of 33 1/3% through a positive act of selection. The applicant did not apply for the selection alongwith others group 'IV' employees when applications were invited for holding the selection for amongst Class-IV eligible staff for promotion as Booking Clerk in the year 1986. This fact is not denied by the applicant in the rejoinder and it is observed that the applicant was not informed about the selection. The respondents have also taken the stand that the post of Booking Clerks and Goods Clerks are two distinct and separate cadre though both cadres are in the Commercial Department. The channel of promotion in the said posts, The syllabus on training and duties of these two categories is quite different. The selection to fill up these posts in two separate cadres are also separate as per Railway Board's instructions. The respondents have also taken a definite stand that the applicant

was not promoted at any time as Booking Clerk but there was only a proposal to post the applicant temporarily as a Booking Clerk on ad-hoc basis (Annexure A-VI). The said proposal was subject to the applicant's passing suitability test for the ACS, Delhi which he never passed. No orders at any point of time was issued by the competent authority for promoting the applicant. Only in a local arrangement as a gatekeeper the applicant was posted as Booking Clerk on ad-hoc basis. Further, the respondents have stated that there was a sanctioned post of Booking Clerk from 17-5-1986 to 31st August, 1986 thereafter the applicant never preferred any claim for the period after 31st August, 1986. The applicant who prepares the skeleton salary bills of Makrauli Station, charged his pay as Gatekeeper only, and the applicant himself did not claim the pay for the post of Booking Clerk. The promotion on ad-hoc basis cannot be regularised unless the selection, notified by the authorities is successfully passed by the applicant. The applicant did not apply for the post of Coaching Clerk (Booking/Parcel Clerk) held in 1986. As regards the selection for the post of Goods Clerk held in October, 1988, the applicant did not qualify in that selection. The annexure A-14 filed by the applicant shows that he only qualified in the written test and was called for viva-voce but he was not empanelled as it is not qualified. Thus, the applicant is not entitled

to the relief prayed for in the O.A. The respondents have filed a panel of the selection of Goods Clerk as Annexure R-I in which his name does not figure.

The applicant has also filed rejoinder.

Besides taking the plea that he was never informed about the selection of 1986, is not substantiated because the applicant very well knew that without clearing the selection, he cannot be appointed from group 'D' post to group III post on regular basis. The only contention raised in the rejoinder is that the applicant has worked from 1985 to 1991 and as such he cannot be replaced by a regularly selected employees. This contention of the applicant is totally untenable in view of the case of Full Bench titled Jetha Nand v/s UOI decided by Principal Bench on 5.5.1989 reported in Full Bench Judgement Vol.I 1989 edition p.465.

The applicant has only highlighted and reiterated the averments made in the original application.

We have heard the learned counsel Shri R.K.Relan earlier who gave a statement at the Bar that a similar case is pending of another employee and so the case was adjourned. Subsequently, Shri Romesh Gautam argued the matter and also filed written arguments but on the date of final hearing Shri Gautam could not present himself and counsel for the respondents was present. The counsel for the respondents has filed a copy of the judgement of O.A. 493/91 dated 21st

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April, 1995 decided by the Principal Bench in the case of Mangal Sain v/s UOI and Ors. in which also Sh. Mangal Sain challenged the order dated 25.1.1991 which according to said petitioner amounted to his reversion and he sought direction that he be deemed to be continued on the post of Booking Clerk on a regular basis. In that case also, the petitioner was holding the post of Booking Clerk since November 1983 but he was not regularised and was being replaced by selected other/ candidates. In that case, the Principal Bench considered a number of judgements and ultimately placed reliance on the case of State of Haryana v/s. Piara Singh - 1992(3) SLJ Page 34 and Dr. A. Pargaonkar Vs. State of Maharashtra - JT 1994(5) SC P. 378 where it is held that ad-hoc appointee has to make way for a regularly selected candidates irrespective of the duration for which such ad-hoc appointee functions. In that case also the petitioner was <sup>not</sup> appointed by the competent authority, but was merely put to work as Booking Clerk on ad-hoc basis through a purely local arrangement, by somebody who was not the competent authority to do so and the relief prayed for was disallowed and the interim order was vacated. The facts of this case are also similar to the same inasmuch as Shri Mangal Sain was also belonging to the reserved category. He also joined as a Waterman on group-D on 6.5.1974, thus, the facts of this case are fully covered by the latest decision referred to above in which the impugned order of 25.1.1991 has been upheld. We are in

full agreement with the ratio of that case and thus the case of the applicant also deserves the same fate.

However, we have considered the written submissions made by the applicant's counsel. The contention of the applicant's counsel is that under rule 114 of IREM stipulates that there will be reservation for SC and ST candidates in all promotion from class-IV to Class-III. This has not been denied by the respondents and this is also not the issue. It is not the case that the applicant was eligible having passed the selection and has been denied the benefit of communal roster. The applicant can only come according to the rules after selection. A reserved category candidate has also to pass the selection though by relaxed standard. Thus the applicant cannot get any benefit only because certain promotional posts are reserved for SC & ST candidates. In the written arguments Railway Board circular of 31.08.1974 of reservation has been dealt at length. However, that is not the main issue to be decided in this case. The main issue is whether the applicant who was a group 'D' employee can be promoted on regular basis without passing through the selection prescribed under various circulars of the Railway Board to group 'C' post of Booking Clerk. Merely because the applicant was posted to discharge the function of Booking Clerk for a short-time would not by itself entitle him for regular promotion. The

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applicant was told to be replaced by the regularly selected candidates by the impugned order dated 25.1.1991 and one ST candidates Shri Birtha Ram Meena was appointed as Booking Clerk at Makroli. It is because of the appointment of said Shri Meena that the applicant filed this Original application. Though the applicant was working as Gateman and was also directed to be reverted but because of CCP No. 171/91 decided on 23rd September, 1992 the respondents have allowed him to continue with effect from September, 1991 as Booking Clerk in view of the interim order passed in the present original application. The applicant cannot get any benefit of the interim order and has to establish that he has passed the selection in the promotional quota of departmental candidates 33 1/3% or has reached the seniority stage to come within the 10% quota reserved for promotion. The applicant has not appeared for the selection of Coaching Clerk held in 1986 and his pretext that he was never called for to appear in the said test cannot be accepted. He has not been using the opportunity made available and even if he was not given the opportunity as alleged, admitting for the sake of arguments, the applicant should have at that time represented against the same or sought a judicial review of the matter. The applicant having not done so cannot on his own lapse claim that he should now be regularised.

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The applicant ofcourse has passed the Goods Clerk examination but ultimately he was not empanelled and the respondents have with their counter filed a list of empanelled candidates. The applicant has not challenged in any manner that he was arbitrarily ignored though he qualified to be empanelled. That is not the issue also in this case. The contention of the applicant's counsel that the applicant cannot be reverted where direct recruitment joins is not acceptable in view of the decision of the case of State of Haryana V/s. Piara Singh (Supra) ad-hoc appointee has no lien on the post and he can be replaced by duly selected candidate and not by another ad-hoc employee. By the impugned order, the applicant was replaced by the duly selected candidate and the applicant on that account cannot challenge the selection or deprive the selected candidate for promotion against the post held by him.

The learned counsel has referred to certain decisions of the Tribunal but in view of the latest authorities already referred to in the case of Mangal Sain v/s UPI (Supra) cannot claim regularisation without passing the prescribed pre-appointment test. The case of Prithvi Singh V/s. UOI in OA No. 1910/89 decided on 9.7.1990 is totally on different matter. In that case on appeal made by the petitioner Prithvi Singh, Additional Divisional Railway Manager

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quashed the reversion order dated 29.7.1987 considering all those facts the relief was granted to the applicant Shri Prithvi Singh. In that case also records were not filed by the respondents before the Tribunal. The case of Jetha Nand v/s. UOI and Ors. decided by Full Bench on 5.5.1989 was considered. There it is mentioned that if he is not qualified in the selection test, he can still be reverted though he is continued in ad-hoc capacity for more than 18 months. An observations has also been made that chances may be afforded to such ad-hoc employees to clear the selection. In view of this in Prithvi Singh case it was directed that after taking back the applicant to duty as Parcel Clerk, he should be given reasonable opportunities to clear the selection for group 'C' post and if he fails in the selection then he should be reverted. This case, therefore, does not help the applicant.

Reliance has been placed on a judgement of the Hon'ble Supreme Court arising out of S.L.P. (SLP(C) No. 3292/87 Bihari Singh & Ors. Vs. Union of India decided on September 27, 1991. In that case the promotion was made from class-IV staff to the higher post of class-III staff subject to their performance and even he was not found fit, then he should be reverted. The Hon'ble Supreme Court refrained to express any opinion regarding the promotion on the basis of selection as no rules were placed at that time. The Hon'ble Supreme

Court only considered that the promotion order indicated that promotee shall not be reverted unless found unfit so on the basis of the promotion order since they were not declared unfit the reversion order cannot be justified. In the present case the applicant was specifically told in the appointment letter itself a copy of which is enclosed with the rejoinder and the order dated 9.5.1989 reads that Raghbir Singh is directed to work at Makroli Station purely on ad-hoc basis till permanent arrangement is made. Thus, he was posted locally as Booking Clerk and the claim of other eligible were not considered at that time. This appointment letter, therefore, itself gives sufficient indication to the counsel of the applicant that the promotion is only stop gap arrangement till permanent hand joins. When on 25.1.1991 a duly selected candidate was posted, the applicant has challenged that order. The applicant cannot disappont selected candidate to assert his claim of regularisation as he has been working only on stop-gap arrangement.

The learned counsel has also filed a copy of the judgement of O.A. No. 2364/90 decided on 20.8.1991 in the case of Amar Nath V/s. U.O.I. In that case also there was no direction for regularisation but only it was observed that the applicant should not be reverted from the post of Booking Clerk unless he has been given repeated opportunities for qualifying the selection test and he should be reverted only if he does not qualify even after the repeated opportunities. In this reported

case the Principal Bench has placed reliance on the case of Jacob M. Puthutarambil & Ors. v/s. Kerala Water Authority & Ors. (1990)(2) SCALE Vol.II P. 588. In a subsequent judgement the Hon'ble Supreme Court held that this judgement does not lay a ratio and the Hon'ble Supreme Court in its power under Article 142 has observed that who are serving on the establishment for longer spells and have requisite qualification for the job should not be thrown out and their services should be regularised as far as possible. This direction by the Hon'ble Supreme Court cannot be taken as a ratio in all the cases. It was purely in context with the case of the Kerala Water Authority.

Thus, the aforesaid judgement also does not help the applicant.

We find no rule, law or circular where a Class-IV employee though of reserved category had been directed to be regularised and to continue on post even though the selected candidate is available for replacement. The question of reservation will arise only after the applicant qualifies the selection. There is no relief prayed for in this O.A. that respondents be directed to give other opportunity to the applicant as he did not avail of any opportunity in 1986 for want of knowledge or was not being called for the selection.

In view of the above facts and circumstances, we find that the applicant has no case for regularisation or that quashing of the order dated 25.1.1991, we reiterate

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that we are in full agreement with the case of Mangal Sain who also challenged the impugned order dated 25.1.1991 and the O.A. was dismissed by the Principal Bench by the order dated 21st April, 1995. The application is, therefore, dismissed as devoid of merits leaving the parties to bear their own costs, and the interim order of maintaining the status-quo dated 4.3.1991 is vacated.

(B.K. SINGH)  
MEMBER (A)

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

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