

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. NO. 747 OF 2004

New Delhi, this the *7th* day of October, 2004

Hon'ble Shri V.K. Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)

Surya Kant Sharma & Ors. ...Applicants

-Versus-

Union of India & Ors. ...Respondents

Present: Shri Amit Anand, counsel for applicants.

Shri R.L. Dhawan, Counsel for respondents.

1. To be referred to the Reporters or *not?* Yes
2. To be circulated to outlying benches or *not?* Yes

S. Raju
(Shanker Raju)
Member (J)

**Central Administrative Tribunal
Principal Bench**

...

OA No. 747 of 2004

New Delhi, this the 7th day of October, 2004

**Hon'ble Shri V.K.Majotra, Vice Chairman (A)
Hon'ble Shri Shanker Raju, Member (J)**

1. Surya Kant Sharma
s/o JankiRam
Working as CC,
New Delhi.
2. Dev Raj s/o Shyam Lal Sethi,
R/o A-249/250, Chokhandi,
DD Colony, New Delhi-18.
3. Vijay Kumar s/o Sh. Baldev Raj Duggal,
81/19, Krishna Nagar,
Delhi – 51.
4. Miss Manju Bala s/o Santosh Chadha,
r/o 13 Block Geeta Colony,
New Delhi.
5. Ms. Reena d/o late Sh. Sanjeev Malhotra,
R/o Chitranjan Park,
New Delhi.
6. Ms. Anita Nagi d/o Ravinder Singh,
Working as MBSNDLS
7. Sh. Rajan Sadana
s/o late Sh. J.R. Sadana
C-213, A Pandav Nagar,
Delhi -92.
8. Ms. Dimple Chadha,
r/o Uttar Nagar 56 A,
New Delhi.
9. Niroopama Pahwa
s/o Sh. H.R. Pahwa,
R/o 81/38 Sector-18,
Rohini, New Delhi.

10. Ganga Prakash s/o Prem Prakash,
R/o NDLS.

11. Tarun Kumar s/o K.B. Lal,
A-4/28, Sector - 18,
Rohini, Delhi.Applicants

(By Advocate: Shri Amit Anand)

-versus-

Union of India through:

1. The Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi.
2. The Manager,
Northern Railway,
Baroda House,
New Delhi.
3. Divisional Railway Manager,
State Entry Road,
New Delhi.
4. Sr. Divisional Personal Officer,
State Entry Road,
New Delhi.
5. Shiv Singh Meena (ST)
s/o C.R. Meena.
6. Dharam Bir Raheja
S/o B.D. Raheja.
7. B.S. Meena (ST)
S/o Rajpal Meena.
8. Rajiv Kumar s/o Chander Kiran
9. Vikram Kumar s/o Jawahar Lal
10. Kishan Dutt s/o Hari Singh
11. Chander PK Mukherjee s/o Vishwanath
12. Sharan Pal Singh s/o Manohar Singh

13. Rashmi s/o Jagdish Raj
14. Vinod Kr. Sharma s/o B.D. Sharma.
15. Sanjay Bhardwaj s/o Chander Bhan
16. Rattan RaGuri s/o Jagdish Prasad
17. Bharat Bhushan s/o Gulshan Kumar
18. Poonam Rani s/o Rajinder Kumar
19. Smt. Neelam s/o Naresh Kumar
20. Ramesh Chand Goswami s/o O.P. Swami
21. Nand Kishore s/o Shyam Lal
22. Rameshwar Dayal s/o Gunda Lal (SC)
23. Mohan Lal s/o Narain Dass
24. Smt. Suman Bhattacharya s/o Surender Singh
25. Bhagat Singh s/o Moti Singh
26. Km. Anubha Sharma s/o R.K. Sharma
27. Km. Sarav Mangal s/o Prakash
28. Arvind Singh s/o Subhir Singh
29. Sonal Behal s/o N.P. Behal
30. Arita Rani s/o Narender Singh
31. Pawan Kumar s/o Dhyarampal (SC)
32. Anchal Gupta s/o N.C. Gupta
33. Madan Gopal s/o Radhey Shyam
34. Mukesh Kr. Mishra s/o S.N. Sharma
35. Yash Pal Singh Chaudhary (SC)
S/o R.S. Chaudhary
36. Devender Pal Singh s/o Malkhan Singh
37. Yogeshwar Narain (SC) s/o Laxmi Narain

38. Devinder Kumar (SC) s/o Jagbir Singh
 39. Smt. Indira Kumari (SC) s/o Ramesh Chand
 40. Kailash Chand Meena (ST) s/o Shiv Lal
 41. Suresh Kumar (SC) s/o Pratap Singh. ...Respondents

(Respondents nos. 5 to 41 served through respondent no. 3)

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Shri Shanker Raju, Member (J):

Applicants impugn Railway Board's order dated 12.03.2004 denying relaxation of requirement of three years' service for eligibility for appointment to the post of Enquiry-cum-Reservation Clerk (for short, 'ECRC').

2. Brief factual matrix of the case is that the applicants had been initially engaged as Mobile Booking Clerks and their services were dispensed with. However, in a number of OAs, directions have been issued to re-instate them and regularize their services within a period of three months as per Board's Circulars dated 21.4.1982 and 20.04.1986. Applicants on re-instatement had been conferred temporary status and were given the regular scale of pay of Rs. 3200-4900 (RPS).

3. A Circular dated 31.01.2003 was issued by the respondents for selection to the post of ECRC in the grade of Rs. 4500-7000/- against 75% promotee quota. The requirement was that the

Commercial Clerks should have at least three years' regular service in the grade.

4. Applicants applied for the post on the ground that they had been working in the regular scale from 1991 onwards and had completed three years' of regular service but they were not considered on the ground that after CP-2 course, none of the applicants had completed three years of regular service. A representation was preferred.

5. Respondents, vide their letter dated 16.10.2003, subject to relaxation by the Board, allowed the applicants to participate in the selection where they had been subjected to a written test and were declared successful. Applicants had also appeared in viva voce.

6. Subsequently, their names were not included in the panel of ECRC issued on 19.03.2004 denying relaxation of three years' service, which has given rise to the present original application.

7. Learned counsel of the applicant Shri Amit Anand contended that the Board's letter is illegal and is discriminatory under Articles 14 and 16 of the Constitution of India. Applicants, who had been working at different pay scales since 1991, had been discriminated in the matter of CP-2 course as their batchmates, who had already been subjected to the test in 1996 and qualified in the selection held in 1998, are working as ECRC. There is no reasonable ground and justification as to why the applicants had not been subjected to similar training course. Moreover, learned counsel states that in

OA 551/2002 (**Nand Kishore & Ors. vs. Union of India & Ors.**)

(17)

decided by this Tribunal on 30.4.2004, the following observations have been made:-

“Vide letter dated April 21, 1982, the condition for absorption against regular vacancies of volunteer/Mobile Booking clerks was possession of minimum qualifications required for direct recruitment and a minimum service of three years as Volunteer/Mobile Booking Clerks. The screening for absorption was to be done by a Committee of officers including the Chairman/a Member of the Railway Service commission concerned. Vide letter dated 20.4.1985, it was further prescribed that to be eligible for screening a candidate should inter alia be within the prescribed age limit after taking into account the total period of his engagement as volunteer/Mobile Booking Clerk screening a candidate should inter alia be within the prescribed age limit after taking into account the total period of his engagement as Voluntary/Mobile Booking Clerks. Clearly, respondents' letters dated 21.4. 1982 and 20.4.1985 do not prescribe any training for these applicants who had been engaged as Mobile Booking Clerks before 17.11.1986. Obviously, their regularization was in the nature of a special recruitment which was to be governed by the conditions prescribed in letters dated 21.4.1982 and 20.4.1985. As these circulars do not prescribe training and on fulfilment of all conditions prescribed in these circulars, applicants had been screened by a High Level Committee, they were supposed to have been regularized on completion of three years and not 1095 actual working days. Naturally, their seniority has also to be related to the date of their initial appointment as Mobile Booking Clerks”.

8. Having regard to the above, it is contended that regularization of the applicants is to be done not on the basis of any Rule but the Circulars as one time measure. As they had already been screened, their seniority is to be reckoned i.e. regular service as Commercial Clerk from the date of their initial engagement.

9. Learned counsel states that nowhere in para 129 of I.R.E.M. (Volume-I) regular service is required under 75% quota meant for promotion and the only requirement is completion of three years' service and suitability in all respects for the posting as ECRC. In this backdrop, it is stated that once the applicants were in possession of minimum qualification for quota in promotion and had completed three years' service as Mobile Booking Clerks, this is the only condition as mentioned in circulars dated 21.4.1982 and 20.4.1986, and as the circulars do not prescribe training, non-incorporation of the names of the applicants in the panel of ECRC cannot be countenanced and is illegal.

10. Learned counsel of the respondents Shri R.L. Dhawan took a preliminary objection that the applicants have not preferred any representation and that the MA moved for joining together has also not been signed by all the applicants.

11. On merit, it is contended that requisite three years' regular service as required in the notification is service rendered after successful passing of CP-2 course, as referred to in para 129 of IREM ibid. It is stated that the applicants had not completed three years' service and in so far as relaxation is concerned, in the light of decision of the Apex Court in **Suraj Prakash Gupta & Ors. vs. State of Jammu & Kashmir & Ors.**, 2000(4) SLR 486, essential eligibility conditions cannot be relaxed.

12. Shri Dhawan states that 75% vacancies in the category of ECRC are to be filled up amongst Commercial Clerks who had

completed three years' regular service. It is further stated that on earlier occasion, mistake was rectified and those who had not completed three years' regular service, their names had been removed from the panel. Moreover, it is stated that a wrong decision of the Government would not confer an indefeasible right. Reliance has been made on the decision of the Apex Court in the case of **State of Haryana vs. Ram Kumar Mann**, JT 1997 (3) SCC 321. It is also contended that the applicants were allowed provisionally to appear in the selection but for want of sanction by the Railway Board, they have no right to be appointed as ECRC.

13. We have considered the rival contentions of the parties and perused the material on record.

14. At the outset, we may observe that relaxation in the rules cannot be claimed as a matter of right. Moreover, essential eligibility conditions cannot be dispensed with or relaxed. This is in consonance with the decision of **Suraj Prakash Gupta's** case (Supra).

15. However, the issue is not of relaxation. The question for our consideration is whether the applicants are regular Commercial Clerks or not? An attempt on the part of the respondents to deny selection and empanelment of the applicants to the post of ECRC is on the ground that para 129 of the IREM prescribes *inter alia* conditions for direct recruitment as passing of CP-2 course as one of the essential conditions for regularization and only thereafter the service rendered for the purpose of eligibility is to be reckoned.

Accordingly, the applicants having passed the said course in 2001 have not attained the eligibility of three years' regular service. As such, they are ineligible.

16. We are not in agreement with the respondents on this issue. In fact spate of litigation went on whereby these Mobile Booking Clerks had been put back in service and have been accorded temporary status. Board's own instructions dated 21.4.1982 and 20.4.1986 clearly envisage the regularization on completion of three years' service and they do not prescribe any training for the purpose of regularization.

17. This Tribunal in OA 551/2002 (supra) set at rest the aforesaid controversy by holding that the training *is not a* ^h condition precedent and as the applicants had completed three years' service, they are deemed to be regularized and their seniority is to be reckoned from the date of their initially appointment. We have not been apprised as to whether the decision has been overturned. However, we are informed by the learned counsel that the same has been implemented.

18. Para 129 of IREM is reproduced as under"-

"129. (1) The vacancies in the category of Enquiry-cum-Reservation Clerks (ECRC) in scale Rs. 1200-2040 will be filled as under:-

- (i) 25% by direct recruitment through Railway Recruitment Board: and
- (ii) 75% by promotion by selection from amongst Commercial Clerks, Ticket Collectors who have completed three years service and are suitable in

respects for posting as ECRC involving direct contact with general public.

(2) Qualification etc. for direct Recruitment are as under:-

- (i) Educational: A university degree or its equivalent.
- (ii) Age:- Between 18 and 25 years.
- (iii) Training & Stipend: Three months on a stipend of Rs. 1200/- p.m."

19. If one has regard to the above, admittedly the notification was issued for promotion by selection under 75% quota and feeder categories were Commercial Clerks as well. The only eligibility qualification prescribed is completion of three years' service and suitability in all respects. As the applicants are deemed regular as Clerks in the light of decision in OA 551/2002, the only requirement under the rules is three years' service and nowhere it prescribes that service rendered after CP-2 course is to be reckoned as a regular service.

20. Statutory rules framed under the statute are to be complied with their requirements. These are legislative in character having force of law and these cannot be amended or substituted by administrative instructions. If the rules are silent, Government can fill up the gaps but as the training is a qualification only for direct recruits, the same cannot be read for promotion quota. We are fortified in our conclusions on the basis of decisions of the Apex Court in the cases of **State of Karnataka & Anr. vs. B.S. Malini &**



Anr., 2001(1) SCC 728 and Union of India & Ors. vs. Rakesh Kumar, 2001(4) SCC 309.

21. Moreover, we find that regularization of Mobile Booking Clerks has already been set at rest by the Tribunal in OA 551/2002. Administrative instructions or executive decisions, which infiltrate on the arena covered by judicial order is a nullity in the light of decision of the Apex Court in **Anil Rattan Sarkar & Ors. vs. State of West Bengal & Ors.**, 2001 (5) SCC 327.

22. In our considered view, the applicants were fully eligible under the rules and once they have been provisionally allowed to appear in the selection, qualified in written test and viva voce, they cannot be deprived of their right of consideration for empanelment to the post of ECRC.

23. In the result, we partly allow this O.A. and quash the impugned order. Respondents are directed to declare the result of the applicants and in the event they qualify, they may be empanelled for the post of ECRC from the date their juniors and counterparts have been empanelled and in that event they would be entitled to all consequential benefits. The respondents are directed to comply with the aforesaid directions within a period of three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)
 Member (J)
 7/10/04
 /na/

V.K. Majotra
 7.10.04
(V.K. Majotra)
 Vice chairman (A)