

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1395/92

199

~~E.A.~~ No.

MP 1568/92

DATE OF DECISION

3.7.93

<u>Shri B. R. Rahi & Drs.</u>	Petitioner
<u>Shri L.N. Moolri</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri B.K. Aggarwal</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. N.K. Verma, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

JUDGEMENT (ORAL)**(Hon'ble Shri J.P. Sharma, Member (J))**

The applicant and five others have filed this application against the inaction of respondent No.3 in implementing the decision arrived at FNM by General Manager Northern Railway in 1987 and also not implementing the decision of the Tribunal in OA 1125/89 in case of Um Pal Singh and others. All the applicants were allowed to join in the application and they prayed for the grant of the relief that their services as Material Checking Clerk (MCC)/Clerk be regularised from the date they are working on ad hoc basis and due seniority be granted to them. By the order dated 27-11-92 the Tribunal had directed that the status quo shall be maintained with regard to the applicants and that the interim order be continued till the date of hearing.

2. Alongwith the application the applicants have filed a charge (An.A-1) wherein in column No.7 the date w.e.f.

they are working as MCC/Clerk is mentioned and for the applicants different date is given in the year 1978, 1979, 1980 and 1981. In column No.6 the date of their regular appointment in class IV has also been given which is different for each of the applicants. It goes to show that the applicants were appointed initially as Khalasi and Gangman between the period 1971-79 in the Engineering Branch of the respondent railways. The lien of all the applicants was fixed in Ferozepur Division (An.A-2). The posts of MCC/Clerk are filled up by direct recruitment and to the extent of 33.1/3% from class IV staff by the letter of General Manager (P) New Delhi dated 5-10-89 a decision was taken and communicated to General Managers that all the staff who was working for a period of 3 years or more be regularised in their appointment. The applicants submitted their representation but to no effect. Again by the letter of the General Manager (P) dated 11/13-2-91 instructions were issued that services of MCCs/ Clerks be regularised on the basis of ad hoc working of 3 years or more when the grievance was not settled by the respondents, the present application has been filed for the relief aforesaid.

3. The respondents in their reply opposed the grant of relief taking the plea that the application is barred by limitation. He further stated that only the staff substantially appointed as office Khalasi, office peon, messenger, store khalasi could be considered for regularisation as MCCs/Clers. Thus the applicants could not be regularised as they did not belong to any of the disciplines. We have heard the learned counsel of the parties at length and perused the record.

4. The learned counsel for the applicant has referred to the decision of the Principal Bench given in OA 1125/89 which was decided on 4-9-90 reported in C5J 1990 (3) p.294. The Bench observed as follows:-

"There is another reason why the applicant must

be regularised. The General Manager, Northern Railway had issued orders in the month of June, 1988 for regularisation of all those Material Checking Clerks who had put in more than three years continuous services on ad hoc basis in the Northern Railway. This had not been implemented in the case of such employees in Ferozepur Division of the Northern Railway. We are of the view that there cannot be a discrimination in the matter of implementation of the above order of the General Manager, Northern Railway. It had to be implemented in the case of all such clerks in the Ferozepur Division of the Northern Railway. We, therefore, conclude that the applicant is entitled to regularisation in service as Material Checking Clerk and he is also entitled to be assigned seniority taking into account his ad hoc service w.e.f. 20-5-1977."

5. A perusal of the above will go to show that the Bench directed that the order issued by the General Manager in June 1988 for regularisation of all those MCCs who had put in more than 3 years continuous service on ad hoc basis had to be implemented in the case of all such clerks in the Ferozepur Division of the Northern Railway. When the respondents did not comply with the directions CCP/91 was filed and respondents also filed R.A.69/91. The Principal Bench passed a common judgement and further directed the respondents to comply with the judgement dated 4-9-90. The O.A. was filed by Um Pal Singh who was also working as MCC, Northern Railway Ferozepur Division and also at Sl.No.12 of the chart annexed to the application (An.-1) The case of this applicant is therefore similar to the present applicant and on this ground alone they are entitled to the relief of regularisation having to their credit uninterrupted ad hoc service as MCC/Clerk.

6. It is relevant to note that in the PNM meeting held on 8-5-87 it was decided by the General Manager that all those staff working continuously as MCC on ad hoc basis for the period of 3 years or more may be regularised on the basis of their service record and vis-a-vis duly observing the extant instructions on the subject as a special case not to be quoted as a precedence in future. The learned counsel for the respondent however referred to Ps 2674 dated 22-9-64 filed alongwith the supplementary index sheet dated

21-4-93. It is laid down in this circular that class IV office staff would cover only those clerks/staff who were employed in offices and not on line. The learned counsel for the respondent also pointed out that channel of promotion of P.way staff in group C & D is different than the channel of promotion of class IV staff employed in office. Since the applicants were working on line as Gangman etc so they could not be given the benefit of the meeting of PNM of May 1987. However this argument has no basis in view of the fact that the respondents themselves had promoted the applicants from class IV staff as MCC/Clerk in the period between 1978-81 and they continued to work without any break. For all purposes they have difference in uninterrupted ad hoc service as Material Checking Clerk. The PNM meeting of May 1987 and the subsequent circular issued by G.M. Northern Railway no where differentiates class IV staff working in the office and those working on the line. Even the applicants belonged to class IV staff on line now they cannot be discriminated in view of the judgement of the Bench referred to above. That judgement applies to all MCC who had worked for more than 3 years and the review application filed by the Respondents in that U.A. has also been dismissed.

7. The next contention of the learned counsel for respondents is that of limitation. The application was filed in 1992 only for a direction to the respondents to give effect to the decision arrived at in PNM meeting of May, 1987 and also for implementing the judgement of LA 1125/89 referred to above. The applicants have now been reverted any time and therefore the cause of action if any in their case would have arisen only after any adverse orders to have been passed against them. Thus the application is well within time.

8. The respondents in their reply have also referred to the fact that the applicants were not eligible for consideration for selection because they were not in the zone of consideration. But that fact too becomes irrelevant because of the PNM meeting

of May 1987 referred to above.

9. In view of the above facts the present application is allowed and the respondents are directed to regularise the service of the applicants in accordance with the decision arrived at in PNM meeting of May 1987 and compliance of the judgement of OA 1125/89 ^{and} ~~has~~ assigned them seniority taking into account the entire period of continuous service as MCC within their quota. The respondents to comply with the directions within 3 months from the date of receipt of copy of this judgement. No orders as to costs.

N.K. Verma
(N.K. VERMA) 30.7.93
Member (A).

J.P. Sharma
(J.P. SHARMA) 30.7.93
Member (J)