

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH  
NEW DELHI

O.A. No. 1902 of 1992 decided on 1.4.1998.

Name of Applicant : Shri Vikas Sharma

By Advocate : Shri B.S. Mainee

Versus

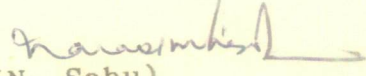
Name of respondent/s The G.M. Northern Railway & ors

By Advocate : Shri P.S. Mahendru

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/~~No~~
2. Whether to be circulated to the other Benches of the Tribunal. - ~~Yes~~/No

  
(N. Sahu)  
Member (Admnv)

1-4-98

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.1902 of 1992

New Delhi, this the 1st day of April, 1998

Hon'ble Mr. N. Sahu, Member (Admnv)

Shri Vikas Sharma, S/o Shri Rajinder Pal Sharma, Material Checking Clerk under Dy. Chief Engineer (Constn), Northern Railway, Patel Nagar, New Delhi C/o Shri B.S.Maine, Advocate, 240 Jagriti Enclave, Delhi-110092

- APPLICANT

(By Advocate Shri B.S.Maine)

**Versus**

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Administrative Officer (Constn), Northern Railway, Kashmeri Gate, Delhi.
3. The Dy. Chief Engineer (Constn), Northern Railway, Patel Nagar, Station Complex, Rana Road, New Delhi.
4. The Inspector of Works (Constn)/H.O., Northern Railway, Patel Nagar, New Delhi.

- RESPONDENTS

(By Advocate Shri P.S.Mahendru)

**ORDER**

By Mr. N. Sahu, Member (Admnv) -

The prayer in the amended O.A. filed on 13.10.1997 is for regularisation of the applicant's services as Material Checking Clerk (in short 'MCC') on which post he is claimed to have been working for the last 10 years, with all consequential benefits. The next prayer is to quash an order dated 21.4.1997 (Annexure -A-1A) in terms of which he is stated to be regularised as a Group 'D' employee. The applicant at para 1 of the O.A. impugns the order of the Deputy Chief Engineer (Construction) dated 21.7.1992 under which it was directed that all



Class-IV staff who were put to work locally as MCC should be put back to work in their original capacity as Gangman/Khalasi with immediate effect. The applicant's name is at serial no.5 in a list of 8 such persons. It is also mentioned that pay of these employees will be drawn in their basic grade of Gangman/Khalasi with immediate effect.

2. The basic facts are that the applicant was appointed as a casual Sub Overseer Mistry (in short SOM) on 14.11.1980 and worked up to 30.6.1981 under Inspector of Works, M.T.P. Tilak Bridge, New Delhi. The service record of the applicant no.90827 shows at column 7 page 2 that his initial appointment was SOM(unqualified). The narration up to 30.6.1981 confirms that he worked as SOM unqualified. It was from 1.7.1981 that the narration shows in terms of days of work; presumably the wages were paid according to the number of days he worked. The narration continues like this - right up to 31.12.1984 and thereafter no other narration of work. Up to this date, no doubt the work has been continuous with very rare and occasional breaks. In the original record of service provided by the respondents the applicant was described as a Khalasi from 1.7.1981. The averment at para 4.2 of the O.A. is that the applicant had been performing the duties as MCC after 30.6.1981 continuously. It is stated that he should have been paid in the MCC grade of Rs.950-1500 but the respondents had been paying him the salary of a casual Khalasi in the grade of Rs.196-232.





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in the scale of MCC. It was in this background that the applicant claims for regularisation of his services as MCC.

5. After notice, the respondents state that the applicant was utilised as MCC on a purely local adhoc arrangement since 15.5.1991 and thereafter by the impugned order dated July 21, 1992 he had been put back to his substantive post of Khalasi. He was only working as a temporary status Khalasi till 15.5.1991. During utilisation of his service as MCC he was paid minimum wages of Rs.950/- per month. Therefore, reckoning his service from 1991 it is stated he did not complete three years of service nor was he regularised in Group 'D' services. Only an official who completed three years of service is eligible to be considered for selection to the post of MCC.

6. There was an interim stay on 23.7.1992 to the office order dated 21.7.1992 at Annexure-A-1. This interim stay continues till today. The applicant, therefore, during all these five years continued to work as MCC by virtue of the stay order of this Court.

7. The applicant's ground for regularisation is that under Rule 2007(3) of the Indian Railway Establishment Manual the respondents should have regularised him against 25% quota of the vacancies reserved for departmental promotion. The grievance of the learned counsel for the applicant is that



this rule has been totally ignored and was never implemented. The application of this rule has been raised by the learned counsel. I will extract the same as under -

"Casual labour engaged in work charged establishment of certain department who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period can straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labours who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test".

8. The learned counsel says that the last sentence of this rule would apply to the applicant because he was directly recruited as SOM and worked there for some time. In support of his claim he states that there was a PNM meeting on 7.6.1988 which recognised the injustice done to persons like the applicant and directed relief to persons by way of regularisation who have put in adhoc service for more than three years. The learned counsel cited the following decisions - Ram Kumar and others Vs. Union of India & others, 1996 (1) SLJ 116; Raghu Nath Dubey Vs. Union of India, 1996 (1) ATJ 193; Shiv Kumar Sharma & others Vs. General Manager, Central Railway, Bombay V.T., Bombay, 1996 (1) ATJ 296; B.R.Rahi & others Vs. Union of India, 1995 (1) ATJ 67; Gopal Singh & another Vs. Union of India through Secetary, Ministry of Posts & another, 1990 (2) ATJ 63; V.K.Damodaran Vs. The Defence



Pension Disbursing Officer, Kottayam & others, 1991

(2) SLJ (CAT) 159; and Neelam Gopal Mohan Vij Vs. G.M., Western Railway, (1987) 2 ATC 364.


9. The gist of the argument of learned counsel for the applicant is that the actual services rendered by the applicant as MCC can not be ignored. The respondents have not taken a clear stand as to why they have not considered the applicant's case under the 25% quota. It is unethical on their part to extract the services as Class-III MCC but pay him the wages as a Khalasi. It is only after 1991 that payments were made to him as MCC. The learned counsel referred to the rules on the subject of adhoc arrangements which state that normally only the empanelled employees should be appointed against selection post but in case where no empanelled employee is available and it becomes inevitable to make local arrangements such an arrangement should be a short term arrangement not exceeding three months. For periods exceeding three months, the specific sanction of the CPO should be obtained. The seniority of persons who are eligible for such an arrangement should be strictly respected and such arrangement should be brought to the notice of the General Manager by the CPO.

10. The learned counsel for the respondents contested each and every contention of the applicant and made the following submissions - He stated that there was no case made out in the pleadings that the promotee quota has not been exhausted. What is not

in the pleadings cannot be raised at a later stage at the time of argument. Referring to Annexure-A-3 Shri Mahendru submits that this letter was only a recommendation and has no evidentiary value to decide. It is submitted that it was only by the order of July 21, 1992 that the applicant was taken back as a Khalasi. His permanent post was that of a Khalasi. Any promotion to MCC is governed by strict rules and any promotion dehors the rules cannot be recognised. He cited the following decisions of Hon'ble Supreme Court in support of his claim that the adhoc service, however long it may be, cannot confer any right to promotion or regularisation in a higher grade - E.Ramakrishnan & others Vs. State of Kerala & others, 1997(1)ATJ 131 and Sreedam Chandra Ghosh Vs. The State of Assam 1997(1) ATJ 133.

11. The next point made by the learned counsel for the respondents is that this 25% quota is to be filled only from amongst regular railway servant and not casual labour. The applicant was not a regular railway servant till 1991.

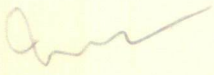
12. The basic issues arising in this case are - (i) was the reversion from MCC to the post of Khalasi unjustified? (ii) what is the impact of the service of the applicant for the last 10 years working as adhoc MCC? and (iii) the respondents have passed an order on 21.4.1997 seeking to regularise the applicant as Khalasi Group 'D' after holding the screening. This is annexed as Annexure-IA to MA 1299/97. Is this justified?



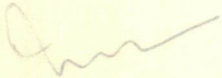


13. The impugned Annexure-IA (M.A.No.1299/97) states that there was a supplementary screening from 11.12.1996 to 13.12.1996 in respect of 34 left out casual labourers and after screening their names have been interpolated in the revised panel issued on 28.2.1997. The applicant's name find place at serial no.18 of this list. The applicant's designation was stated to be MCC. His date of initial appointment was 14.11.1980 in the general category. He was engaged by the IOW MTP Delhi. He was declared fit as a Khalasi. It is noted that the entry of putting him in grade Rs.950-1500 for adhoc service is to be made in his service register and attested.

14. The first question is whether the applicant was initially recruited as MCC in accordance with the recruitment rules. The general principle is that 75% of the vacancies in the categories of Office Clerk, Typist, Commercial Clerk, and Accounts Clerk are filled by direct recruitment through Railway Service Commission. The minimum educational qualification is Matriculation or its equivalent with 50% marks in aggregate. The rest of the vacancies are filled from suitable Class-IV staff and Class-III staff of lower grades. With regard to Office Clerks, the vacancies are to be filled by way of 2/3rd from direct recruitment and 1/3rd by selection of specified Group D staff. It is, therefore, clear that the initial appointment of the applicant as MCC or SOM is adhoc, local stop



gap and not in accordance with the rules. The fact that he continued for a number of years in this capacity would not confer on him any prescriptive right to claim appointment in that category. Further fact that is evident is although the applicant was adhoc MCC he was paid the salary of Khalasi till 1991 and, thereafter the basic pay of MCC. It is now settled law as declared by the Constitution Bench of the Hon'ble Supreme Court in the case of Direct Recruit Class II Engineering Officers' Association Vs. State of Maharashtra, (1990) 2 SCC 715 = (1990) 13 ATC 348 that the period of continuous officiation if made by following the rules applicable for substantive appointment has to be taken into account and that if an appointment is made by way of stop-gap arrangement without considering the claim of available eligible persons and without following the rules of appointment, the claims of such an appointee cannot be equated with the experience of a regular appointee because of the qualitative difference in the appointment. In the applicants' case, it was only adhoc, stop gap & local and no rules were followed. Therefore, the respondents have not done anything illegal in confirming his position as a Khalasi in a regular grade after screening. I do not see as to how Section 21(e) of the Administrative Tribunals Act, 1985 comes in the way of such a confirmation. The applicant claims regularisation as MCC in the O.A. The department thought that the applicant's basic position was that of a Khalasi and they have regularised him as a Khalasi.

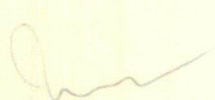




15. In the above background certain other issues arise - (i) why did not the respondents consider the applicant under Rule 2007(3)ibid? Is it their case that for the last several years no recruitment has been made to the post of MCC? (ii) If the applicant was initially engaged as a casual labour Khalasi and paid as such according to the respondents from 1981 onwards till 1991 how is it that they found appropriate to confirm him only in 1997. All other persons in the list at Annexure-IA are Group 'D', namely, Gangman or Mate, which is equivalent to a Khalasi grade. It is only the applicant who was admittedly taken as MCC.

16. The factual position is very clear. From the date of recruitment, namely, 14.10.1980 he was appointed as SOM unqualified. His casual labour card shows that he was so appointed. Even Annexure-IA shows that he was first appointed as MCC from 1981. From 1983 till 1991 he was designated and paid as a Khalasi, but was made to work as MCC. Till 1993 he worked as MCC and from 1993 onwards he continued to work as such under this Court's order.

17. As discussed above, appointment in accordance with rules is a condition precedent to count seniority. Temporary, adhoc, and fortuitous appointments are not appointments in accordance with rules and such temporary service cannot be counted towards seniority. In K.C.Joshi Vs. Union of India, (1992) Suppl.(1) SCC 272 it was held that



seniority is to be counted from the date on which appointment is to be made to the post in accordance with the rules. The previous service should be considered to be fortuitous. See Hon'ble Supreme Court's decisions in Union of India Vs. Mohinder Singh, 1992(2)SLJ 25 and Dr.Kishore Vs. State of Maharashtra, 1997 (1)SLJ 142. The basic facts in this case are to repeat that this was not a case of an applicant having been recruited for a Group C post, in highly skilled, skilled, or semi skilled categories. From 1983 till 1991 he was considered as a Khalasi and paid as a Khalasi. As the recruitment was not in accordance with the rules to Group 'C' either as SOM or MCC his rendering of the service cannot count for any reckoning. Although he claims to have worked for a large number of years, there is no order granting him temporary status in Group 'C'. Even in Group 'D' the recruitment and confirmation has to precede a screening test. There is an averment that the applicant was declared temporary status in Group 'D' from 1.1.1984. The point raised by the learned counsel for the respondents is how can the applicant be considered for promotion even in the promotee quota unless he holds a permanent post in Group 'D'? The circular relied on by him dated 14.8.1996 does not apply because he was not "directly recruited to skilled categories in work-charged establishments after qualifying in the trade test". This is an unfortunate case where the applicant did not get the benefit either in Group 'C' or in Group 'D'. It is clear from the rules that except occasional








test. The respondents can conduct this exercise and if permissible can show him against a regular vacancy on an earlier date so that his eligibility for promotion against the promotee quota of 25% to Group 'C' can fructify and get canalized soon. Under the Railway Board's letter No.E(NG)II/97/RC-3/4 dated 9.4.1997 R.B.E.No.53/97 the Board have decided that regularisation of casual labourers working in Group 'C' may be done by giving them a chance to appear in examinations conducted by the RRB or the railways for posts as per their suitability and qualification without any age bar. This age relaxation is complete and absolute. The applicant may avail of this benefit in any future chance. Since the applicant has worked as MCC till date, notwithstanding his reversion to Group 'D' he shall avail of this benefit of age relaxation and appear in any examination for Group 'C' to which he is qualified as per rules.

18. If there was any recruitment for Group 'D' earlier, the applicant could have questioned the same for non-inclusion of his name but he also did not agitate this matter till he was reverted to a Group 'D' post. In view of the settled law on the subject, although continuing a person in adhoc for an indefinitely long period is against the policy of the respondents themselves, this Court cannot come to the rescue of the applicant. This is an instance where it would be appropriate to advise respondent

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no.1 to put a stop to such casual picking of persons to a Group 'C' post when the intention was to make him only a Khalasi and taking work out of him for long years which is contrary to all the rules on the subject laid down by the Railway administration. With these observations, the O.A. is dismissed. No costs.

  
(N. Sahu) 1.4.98  
Member (Admnv)

rkv.