

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

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REGN. NO. O.A. 1903/92.

DATE OF DECISION: 11.5.1993.

Tilak Raj.

... Petitioner.

Versus

Union of India & Ors.

... Respondents.

REGN. NO. O.A. 1904/92

Ms. Kiran Rampal & Anr.

... Petitioners.

Versus

Union of India & Ors.

... Respondents.

CORAM:

THE HON'BLE MR. JUSTICE S.K. DHAN, VICE CHAIRMAN.
THE HON'BLE MR. S.R. ADIGE, MEMBER(A).

For the Petitioners.

.. Shri B.S. Mainee,
Counsel.

For the Respondents.

.. Shri D.S. Mahendru,
proxy for Shri P.S.
Mahendru, Counsel.

1. To be referred to the reporters or not? yes

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice S.K. Dhan,
Vice Chairman(J))

In these applications, the same order dated 21.7.1992 passed by the Deputy Chief Engineer/Const/PINR is being impugned. The other prayer that the respondents may be directed to regularise the services of the petitioners as Material Checking Clerk (MCC) is also common in both the cases. Both applications have been heard together and, therefore, they can be conveniently disposed of by a common order.

2. Replies have been filed on behalf of the respondents in both the cases. Counsel for the parties have been heard.

3. The material facts are these. The petitioners were originally engaged as Gangman/Khalasis (Class IV staff) on 16.1.1989. The petitioner in O.A. 1903/92 was appointed as Material Checking Clerk in the Construction Division on purely ad hoc basis. The petitioners in O.A. No. 1904/92 by separate but similar order were appointed to officiate

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as Temporary Store Issuer in purely temporary local and ad hoc arrangement. It was made clear that this appointment would not confer any prescriptive right upon them for promotion over their seniors. It appears to be an admitted position that the petitioners were Class IV employees and they had been appointed on temporary and ad hoc basis to Class III posts.

4. By the impugned order dated 21.7.1992, the petitioners were sought to be reverted to work in their original capacity as Gangman/Khalasis.

5. The argument advanced on behalf of the petitioners is that they having been allowed to work on a higher post for a sufficient length of time, their cases should be considered for regularisation on that post. On the contrary, the respondents have come out with a case that even till today, the services of the petitioners have not been regularised as Class IV employees. Therefore, the question of considering their cases for Class III posts does not arise. Reliance is placed by the respondents upon Rule 188 as contained in the Railway Establishment Manual (Vol. I). According to this Rule, promotion to Material Checkers etc. should be wholly filled by promotion from Group 'D' railway servants who have put in 5 years service. In the case of posts which are in the normal avenue of promotion to Group 'D' railway servants, promotion should be made from amongst the railways servants of the Deptt. concerned in each promotion unit on the basis of seniority-cum-suitability after holding such written and/or practical tests as may be considered necessary. In the case of posts which are not in the normal avenue of promotion, promotion should be made on the basis of selection after holding such written and/or practical test as may be considered necessary and from panel drawn. It is emphasised on the basis of this Rule by the learned counsel for the respondents that the post of Material Checker is a selection post and it is implicit in Rule 188 that only regularly appointed persons

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can be considered for promotion. The learned counsel for the respondents also relied upon Rule 2005 as contained in the Railway Establishment Manual (Vol.II). This Rule, in substance, provides that casual labour treated as temporary are entitled to be regularised. We are concerned with Clause (b) of the said rules which emphasises that casual labour who acquire temporary status, will not, however, be brought on the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through Regular Selection Board for Group 'D' posts in the manner laid down from time to time. Here again it is emphasised that before a person can be considered, he should have been selected through regular Selection Board for Group 'D' post. Thus, according to the respondents, the petitioners having not been regularly appointed to the Grade 'D' post as yet, they cannot claim any right of regularisation of their services as Material Checking Clerk.

6. On the contrary, learned counsel for the petitioners/a number of authorities and also upon an alleged circular of the Railway Board. The first case relied upon is that of Om Pal Singh Vs. Union of India, 1990(3) Current Service Journal 294. This appears to be a case where a person who had been regularly appointed to Class IV, was allowed to work in a number of years as MCC. In that situation, directions were issued by this Tribunal to consider the case of Om Pal Singh for regularisation. This case is not apposite.

7. The other case relied upon is that of Satish Kumar Sharma and Ors. Vs. Union of India & Ors. 1991(3)(CAT)SLJ-391. The applicants there were engaged on a project as skilled artisan staff as Mason Mistry and according to their category and grade, they had been granted temporary status. The Tribunal felt

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that it would neither be just nor fair to compel the applicants who were diploma holders and who had been working against Class III posts for six to eight years to seek regularisation against much lower post in Class IV. In this case, it appears, the applicants had been engaged as casual labourer against Class III posts and they had worked for six to eight years on that post and that is why a direction was given that the respondents should take early steps for regularisation of the services, if necessary by preparing a scheme. This case is distinguishable on facts as in the present case the persons were initially appointed on Class IV post as Casual Labour.

8. The next case relied upon is that of Francis Xavier Vs. Union of India and ors., 1990(1)ATR (CAT)422. In this case, the petitioner before the Tribunal had been recruited as Casual Driver. He had approached the Tribunal with the principal prayer that a direction may be given that he was eligible to be recruited as a Driver. He also prayed that a direction be given to the respondents to consider his case on merits ^{and} in accordance with law. It appears that such a direction was given. This case is distinguishable from the facts of this case.

9. The last case is a decision of the Apex Court in the case of State of Haryana & Ors. Vs. Piers Singh & Ors. 1992(3) SLJ P-34. In this case, a large number of appointments were made to Class III and IV services in the States of Punjab and Haryana on ad hoc basis i.e., without reference to Public Service Commission or the Subordinate Services Selection Board and without adhering to Employment Exchange requirements. The question for consideration was as to whether the services

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of such employees should be regularised. The direction of the Supreme Court, which is really relevant to the present case is:

"If for any reason, an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case of regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State".

Here the thrust of the submissions made on behalf of the respondents is that the petitioners are neither eligible nor qualified, according to the rules, to be regularised as MCC or Class III. Strong reliance has been placed by Shri Mainee, learned counsel for the petitioners, on the observations made by their Lordships that if a casual labour is continued for a long spell, the presumption may arise that there is regular need for such a post, and the authorities may consider his case for regularisation. These observations will certainly have relevance if a person is eligible and qualified for being regularised. These observations should be read in the context of the earlier observations and not dehors them. This case, therefore, is not apposite.

10. Reliance is also placed by Shri Mainee on para 5.4 of the application. According to the contents of the said paragraph, the Railway Board laid down certain norms that casual labour recruited/promoted to skilled/high skilled post against casual vacancies may be absorbed in skilled grade after passing the requisite trade test to the extent of 25% of the vacancies reserved for departmental promotees. The reply given is that the said instructions of the Railway Board are not applicable in the case of the petitioners as the post of MCC is a selection post. We are satisfied that the said circular has no application to the case of the petitioners.

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9. It is unfortunate that the petitioners were allowed to work for a considerable length of time on a higher post even on ad hoc basis and without their cases being considered for regularisation as Class IV employees. The authorities concerned shall take immediate steps to regularise the services of the petitioners as Class IV employees and thereafter consider the cases of the petitioners for being absorbed as Class III employees. The petitioners would be given preference over their juniors and freshers, if and when the appointments are made to Class III Posts.

10. With these observations, these applications are disposed of, but without any order as to costs.

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(S.R. ADIGE)
MEMBER(A)

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VICE CHAIRMAN (J)

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