

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2636/1992

New Delhi, this 17th November, 1999

Hon'ble Shri Justice V. Rajagopala Reddy, VC(J)
Hon'ble Shri S.P. Biswas, Member(A)

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1. F.V. Singh
Qr.No.L-73-B, Parker Road
Moradabad
 2. S.C. Sinha
Qr.No.T-140, Railway Nath Colony
Near Fire Brigade, Moradabad
- ... Applicants

(By Shri G.D. Bhandari, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
 2. Divisional Railway Manager
Northern Railway
Morabad, U.P.
- ... Respondents

(By Shri P.S.Mehandru, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

Both the applicants, working as Section Controllers (SCs for short) in the scale of Rs.1400-2600 in the office of the Divisional Railway Manager, Moradabad (DRM/MBD for short) of Northern Railway, are aggrieved by alleged wrong assignment of seniority with effect from 23.4.90, i.e. date of qualifying the departmental examination. Consequently, they seek reliefs in terms of issuance of directions to the respondents to extend the benefit of ad hoc service as SCs from the initial date of promotion i.e. 19.7.80 and 1.11.80 respectively.

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2. Initially appointed as Assistant Station Masters (ASMs for short), applicants were utilised as SCs in the control room of DRM/MBD. Because of shortage of SCs in the Division, respondents ordered promotions of six ASMs on ad hoc basis after conducting some scrutiny from amongst candidates to work in the capacity of SCs. Both the applicants were selected and promoted on ad hoc basis. A-1 seniority list of SCs dated 10.8.92 indicates both the applicants having been appointed as SCs on ad hoc basis in the year 1980.

3. It is the case of the applicants that having held the post of SCs over a long period and having worked satisfactorily without any punishment or any departmental proceedings, their ad hoc services deserved to be counted as continuous. They continued representing untiringly for the regularisation of their services as SCs from the dates of initial appointments i.e. 1980 but the respondents decided to turn Nelson's eye on their representations. Applicants have been allowed annual increments year after year and the service records of both of them continue to be untarnished and unblemished and yet have been denied illegally the benefits of continued services, the applicants contended.

4. Railway Mazdoor Union, one of the recognised trade unions over the Indian Railways, took up the issue on behalf of the applicants in the PNM meeting at General Manager's level. It was in this meeting that a decision was taken to regularise the services of the applicants as SCs. GM issued instructions on 18.5.89 (A-4) whereby six ASMs officiating as SCs on ad hoc basis were

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directed to undergo departmental training course (P-16 course) and only on their passing the said course they were to be regularised by placing them below all the selected and empanelled SCs without subjecting them to any viva-voce test. Applicants attended the training course and completed it successfully. Unfortunately, the order issued by the respondents dated 23.4.90 (A-9) indicates that services of the applicants would stand regularised only from 23.4.90. Applicants are aggrieved by this date of regularisation since it ignores 10 years of service rendered by them as SCs, though on ad hoc basis. Citing decisions of the apex court in the case of State of Andhra Pradesh Vs. Dr. N.Ramachandra Rao & Ors. (Civil Appeal No.3131-32 of 1988), the applicants would submit that the benefits of long officiation cannot be denied to a Government servant. To add further strength to their contentions, applicants have also cited the decisions of the Chandigarh Bench of this Tribunal in the case of S.D.Sharma V. UOI & Ors. ATLT 1989 II CAT 38 to suggest that though ad hoc promotion by itself does not confer any right on the said promotee for regular promotion for such a post, but when an ad hoc promotee is eventually promoted regularly or selected for such a post by the competent authority, such promotion would relate back to the date of ad hoc promotion.

5. Respondents, on the contrary, have submitted that the post of SC is in the grade of Rs.1400-2600 and is a selection post for which passing of "prescribed written test" as well as viva-voce in the shape of P-16 course is pre-requisite qualification before anybody could be considered for regular appointment in such a post. The

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question of applicants' regularisation could not be considered till 18.5.89, when it was decided by the GM(P) to regularise the services of ASMs as SCs after they have passed P-16 training course. Since passing of P-16 is an essential pre-requisite for regularisation, applicants could be regularised only after they qualify P-16 course on 23.4.90.

6. The legal issue that falls for determination in this case is the validity or otherwise of respondents' action in regularising the services of the applicants from 23.4.90 and not from 1980.

7. The position of law in respect of regularisation is now well settled. Regularisation could be made pursuant to a scheme or an order in that behalf against regular vacant posts and that too after following the rules for the relevant posts in the cadre. Merely working on a post for a number of years on ad hoc basis will not vest an employee with a right to get regularised on a post which is meant to be filled by regular recruitment under statutory rules. If any authority is needed for this proposition it is available in the case of Mukesh Bhai Chotabhai Patel Vs. Jt. Agri. Marketing Advisor, Govt. of India and Ors. AIR 1993 SC 415 decided by the apex court. It is not in doubt that none can be appointed/promoted regularly as SC without passing P-16 course which is a pre-requisite as aforementioned. It is also not in dispute that the applicants could fulfill this condition only in April, 1990. Their services from 1980, therefore, could not be considered as regular since the appointment took place on ad hoc basis. Applicants were merely utilised in the higher post with

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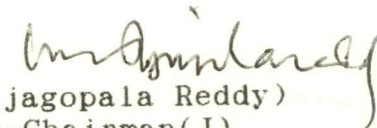
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the attendant benefits of salary and increments but did not qualify the test which is pre-condition for regular appointment as SCs. The claim for regularisation with effect from the initial date of appointment under the present circumstances of the case would also be in violation of the law laid down by the apex court in the case of Direct Recruit Class II Engg. Officers Assn. & Ors. State of Maharashtra JT 1990(2) SC 264. It was held therein that if the appointment are made not according to rules but the appointees continued for a long time, on regularisation of service the entire period of temporary/ad hoc services would not get counted for seniority. It is not in doubt that the selection of the applicants as SCs on ad hoc basis was on the basis of nominal scrutiny/finding of the applicants eligibility for working as SCs. Their initial appointments did not precede by any formal selection process or fulfilment of necessary conditions.

8. In the context of settled position of law as aforesaid, applicants have no case for regularisation from 1980.

6. The OA is devoid of merits and is accordingly dismissed. No costs.


(S.P. Biswas)
Member(A)


(V. Rajagopala Reddy)
Vice-Chairman(J)

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