

(12)

Central Administrative Tribunal  
Principal Bench: New Delhi

OA No.3286/92

New Delhi this the 28th Day of April, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)  
Sh. C.J. Roy, Member (J)

1. Parmanand  
s/o Shri Chander Bhan

2. Gurcharan Singh  
s/o Shri Hardit Singh

3. Ramesh Chand  
s/o Shri Bhagwan Dass

4. Prem Chand  
s/o Shri Banka Ram

5. Shri Siri Ram  
s/o Shri Prithvi Chana

6. Vijay Pal  
s/o Shri Natha Singh

7. Shri Brij Lal  
s/o Shri Daya Ram

8. Karan Singh  
s/o Shri Kaja Ram

9. Hari Kishan  
s/o Shri Lal Chand

...Applicants.

(By Advocate Sh. B.S. Mainee)  
versus

1. The General Manager, Northern Railway  
Baroda House, New Delhi

2. The Chief Administrative Officer (Constrn.)  
Northern Railway, New Delhi

3. The Divisional Railway Manager,  
Northern Railway, New Delhi

...Respondents

(By Advocate Sh. H.K. Ganganwani)

ORDER(ORAL)

Mr. N.V. Krishnan:

The applicants, nine in number, were initially appointed as Class IV employees between the period 1973 to 1980. They were promoted on ad hoc basis as Material Checking Clekrs (MCC for short) in the grade of Rs.260-400 (later revised to Rs.950-1500) during the years 1978 to 1987. A copy of

an order in respect of Sh. Vijay Pal promoting him from 22.6.1978 to work as M.C.C. in the grade of Rs.260-400 against the existing vacancy is attached at Annexure A-1.

2. It is stated that in the Delhi Division ad hoc employees were regularised after holding a viva voce test. A copy of the letter issued in this connection is at Annexure A-2 dated February, 1988. This states that it has been decided to conduct the viva voce test to regularise the MCCs against permanent posts on the basis of their service. Subsequently, in a P.N.M. meeting held on 6/7.6.88 a demand was raised on behalf of the union that the MCCs in Allahabad and Moradabad Division who have been working continuously for long periods on ad hoc basis should be regularised on the pattern of the action taken in the cases of Lucknow and Delhi Divisions. There upon, the minutes state that the following decision was taken:-

"GM ordered that the cases of AID Divns and other Divns wherein the MCCs are working on adhoc basis for more than 3 years shall be decided, on the same pattern of Delhi and LKO Divn. and orders to this effect will be issued to the DRMs for immediate compliance. At that stage, CPO pointed out to the union that similar decision has been made in the case of other Rajinder Pal Singh, Pharmacist, Bikaner Division who has been officiating on adhoc since 1973 and DRM BKN is being asked to regularise Sh. Rajinder Pal Singh."

3. The Senior Signal and Telecommunication Engineer under whom some of the applicants have been working had taken up this matter with the Senior D.P.O. vide the Annexure A-4 letter but no decision was taken thereupon. Likewise, a letter was written on 17.12.90 (Annexure A) by the Deputy C.P.O. (Construction) to the General Manager, seeking

information about the decision taken in regard to the regularisation of such cases. To this a reply was issued on 11.2.91 (Annexure A-10) stating as follows:-

"The above issue has been examined in detail and it is advised that the NCCs who are working on adhoc basis for more than 3 years in const. organisation will be regularised as such by their respective parent deptt. where they hold their lien i.e. from where they have been drafted to const. organisation. Further action in this regard may, therefore, please be taken accordingly."

4. The re-presentation of some of the applicants in this regard were forwarded by the Annexure-A-11 memorandum for regularisation but nothing has been done. It is in this circumstance that the applicants have filed this O.A. for a direction to the respondents to regularise their services as MCCS in accordance with the directive of the General Manager referred to above and to assign seniority on the basis of such regularisation.

5. For this, the applicants rely on the judgement of the Tribunal in OA-1125/89 - Om Pal Singh Vs. Union of India (1990 (3) CSJ (CAT) 294. The applicants have also filed a copy of the order of the Tribunal disposing of Review Application No.691/91 filed by the respondents in that case and C.C.P. 73/91 filed by the applicants (Annexure A-20).

6. The respondents have filed a reply in which it is contended that the applicants are entitled to regularisation only on the availability of permanent vacancies. It is stated that the applicants were put to officiate as MCCs on work charged posts and not against permanent posts. It is stated that regularisation can be made only if permanent vacancies are available and merely working for three years or more would not entitle them to regularisation.

7. The applicants have filed their rejoinder stating that they have been working against regular posts and that staff in other branches have already been regularised in accordance with the orders of the General Manager.

8. We have heard the learned counsel for the applicants and the respondents.

9. Sh. B.S. Mainee, learned counsel for the applicants points out that while there has been correspondence from the head of office where the applicants are working seeking instructions from the head office about the regularisation, the head office never issued any letter indicating that regularisation is subject to the availability of permanent vacancies. This is a plea now taken by the respondents to defeat the rights of the applicants.

10. The learned counsel for the respondents on the other hand submits that regularisation can be done only if permanent vacancies exist.

11. We have carefully considered the rival contentions. It appears that the respondents are confusing confirmation with regularisation. For confirmation alone, substantive posts are necessary. Regularisation can be done, irrespective of whether the posts are permanent or temporary or created on ad hoc basis. Regularisation refers to the manner of ~~the~~ recruitment. Thus, a person can, regularly recruited on any kind of post following the provisions of the recruitment rules. Alternatively, ignoring the provisions of the recruitment rules the ad hoc appointment can be made. What was decided in

the PNM meeting was that persons appointed on ad hoc basis but continuing for three years should be regularised after holding a test. In other words, though they have not been appointed in accordance with the rules, considering the length of service they should be subjected to only a test to judge their suitability and thereafter, if found suitable, they should be regularised and treated as if they have been appointed regularly. This does not require the existence of permanent posts.

12. In this view of the matter, we are satisfied that the applicants in the present case are entitled to similar directions as in the case of Om Pal Singh (supra). We, therefore, allow this O.A. and direct the respondents to consider regularising the services of the applicants by subjecting them to the viva voce test as was done in Delhi Division by the Annexure A-2 memorandum and on that basis regularise the services of all those applicants who clear the test and assign them seniority taking into account the entire period of continuous officiation in service as MCCs though it be on ad hoc basis. This shall be done within a period of three months from the date of receipt of this order. No costs.

(C.J. Roy)  
Member(J)

Sanju.

  
28/4/94  
(N.V. Krishnan)  
Vice-Chairman