

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A. NO. 64/1992

DATE OF DECISION : 27.03.92

(A)

SHRI GURPREET SINGH
VS.

...APPLICANT

UNION OF INDIA & ANR.

...RESPONDENTS

CORAM

SHRI P.C. JAIN, HON'BLE MEMBER (A)

SHRI J.P. SHARMA, HON'BLE MEMBER (J)

FOR THE APPLICANT

...SHRI S.K. SAWHNEY

FOR THE RESPONDENTS

...SHRI I.C. SUSHIR

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?

JUDGEMENT

(DELIVERED BY HON'BLE SHRI J.P. SHARMA, MEMBER (J))

The applicant has assailed order dt. 19.8.1991 passed by the Divisional Personnel Officer, Northern Railway, New Delhi (Annexure A1) by which the ad hoc appointment of the applicant as Material Checking Clerk was terminated with immediate effect and he was reverted to the post of Wks. Khallasi in the grade of Rs.750-940.

2. The case of the applicant is that employees from Group 'D' posts were put to work on ad hoc basis as Material

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Checking Clerk from time to time and some persons junior to him were regularised on the post of Material Checking Clerk without proper selection, although they were not even screened/regularised Khallasis. The applicant has filed a Memo dt.25.1.1989 issued by the Divisional Personnel Officer, Northern Railway, New Delhi (Annexure A4) on the subject of selection for the post of MCC in the grade of Rs.950-1500 and referred to Sl.No.13, 20, 23 and 29 in the list of seniority of the staff eligible for viva-voce where the names of Laxman Ram, Chaman Singh, Jagir Singh and Mohinder Singh respectively are entered. The date of appointment in Class-IV of all these above named persons is shown in column 4 and the date of officiating as Material Checking Clerk is shown in column 5. The applicant has also referred to the Memo dt.30.3.1990 (Annexure A5) issued by Divisional Office, New Delhi regarding screening of Class-IV casual labour and the list attached to this Memo goes to show that those above named persons were interviewed for viva-voce and are entered at Sl.Nos.47, 80, 43 and 42 respectively. Their date of appointment in Class-IV is shown at Casual Labour T.Nos. 5909, 5410, 5909 and 5977. The applicant was appointed as Khallasi on 7.7.1987 against the sports quota.

3. The applicant made a representation on 30.1.1989

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(Annexure A1 to the rejoinder) and on 29.3.1989, vide Annexure A2, he was also put to officiate on local ad hoc basis as Material Checking Clerk for two months against a newly created work-charged post. Since then the applicant continued to work on that post till the impugned order dt.29.3.1991 was issued whereby the applicant has been reverted along with some others to his substantive post of Khallasi.

4. The challenge of the applicant to his reversion is that even persons who have not yet been screened as Khallasi have been considered for ad hoc promotion though they had not been appointed to any substantive post even in Class-IV and as such, according to the applicant they are junior to him and considering them for promotion is discriminatory against the applicant, who has been reverted by the impugned order.

5. The respondents contested the application and categorically stated in the reply that the applicant only joined in Delhi in 1987 as a Khallasi and he was given ad hoc promotion on 29.3.1989. The promotion letter clearly indicates that his officiation was only for a short period and will not confer upon him any right for future promotion.

The services of the applicant were, therefore, utilised on local ad hoc basis in a stop gap arrangement. Otherwise the post of Material Checking Clerk is a selection post, but no selection has been held and the earlier selection held in 1984 was cancelled by the order of December, 1986 and fresh selection was to be held for those, who appeared in the selection held in 1984. It is further stated by the respondents that the staff who had put in three years' ad hoc service as Material Checking Clerk upto 3.5.1987 were only considered for regularisation as one time exception keeping in view the decision arrived at with the recognised unions. No junior to the applicant has been appointed as Material Checking Clerk nor regularised. It is further stated that the staff are first screened and regularised in the initial grade before they are considered for the post of MCC. The persons named and pointed out by the applicant in paras-4.6. and 4.7 are not junior to the applicant. It is further stated that some of the staff who were reverted, were taken back on duty in compliance with the orders of the Tribunal in their cases and keeping in view the instructions contained in the letter dt.7.1.1992 (Annexure R1 to the counter) wherein the employees, who have

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completed three years' service as MCC upto 7.1.1992 and come within the zone of consideration were required to appear in the selection for the post of MCC. It is further stated that all the other MCC staff, who did not fall within the zone of consideration, were reverted. Only the staff where there was interim stay or legal implications, were continued as MCC pending decision of their cases. It is specifically denied in the reply in para 4.13 of the counter that any person junior to the applicant is continuing as MCC. It is further stated that since the applicant does not fulfil the conditions laid down in the policy letter dt.7.1.1992 (Annexure R1) for being considered as MCC, he has not been given appointment as MCC after reversion by the impugned order.

6. We have heard the learned counsel for the parties at length and have gone through the record of the case. It is undisputed that the applicant joined as Khalasi on 7.7.1987. It is also not disputed that MCC is a Class-II post which is filled up by selection procedure and the applicant himself in para 4.5 stated that Rule 189 of Railway Establishment Manual Part-I lays down the procedure for selection. The applicant has also stated that the selection which was held in 1984 has been subsequently cancelled and no selection has since been held and Class-IV employees have been promoted on ad-hoc basis as MCC. The grievance of the applicant is that when he was not promoted, he made a representation and he

was given ad hoc promotion as MCC by the office/letter dt.29.3.1989 (Annexure A2). However, the applicant has since been reverted because he did not fulfil the conditions of regularisation laid down in the memo dt.19.8.1991 (Annexure A1). This letter specifically lays down that in terms of Principal Bench of the Central Administrative Tribunal's judgement in OA 1676/90 dt.9.7.1991, the ad hoc arrangement of non selected persons can be terminated if such reversion is warranted for administrative reasons. In view of the above, as many as 15 persons who are either Khallasi or gangmen and were given ad hoc promotion, were reverted to their substantive posts of Class-IV. The learned counsel for the applicant argued that some persons junior to the applicant have been regularised as MCC without selection, although they were not even screened/regularised as Khallasi. This is in fact emphatically denied in the counter by the respondents that no junior to the applicant as MCC was regularised without selection. The learned counsel for the respondents also argued that the staff are screened and regularised in the initial grade before they are considered for MCC and the persons named and

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indicated by the applicant in para 4.6 of the application are senior to the applicant. The respondents have also clearly stated that ^{only} the staff, who had put in 3 years

of service as MCC upto 8.5.1987 were considered for regularisation as one time exception keeping in view the decision arrived at with the recognised unions.

The applicant in the rejoinder to para 4.5 of the counter

wherein the above fact is stated, only averred that the respondents have no right to deviate from the provisions of the statutory rules in collusion with the recognised unions to benefit their favourites. It is further

argued by the learned counsel for the respondents that

the Railway Board has issued the instructions in

the letter dt.7.1.1992 (Annexure B1 to the counter) that

the employees who have completed 3 years' service as MCC upto 7.1.1992 and fall within the zone of consideration were required to appear in selection for the post of MCC.

Pending selection such persons have been given ad-hoc promotion. As a result of this policy of the Railway Board, some of those persons who were reverted by the impugned order have again been posted as MCC. As

the applicant is not senior enough

and had not completed 3 years as MCC on 7.1.1992, he could not be posted as Material Checking Clerk. The applicant was given ad hoc promotion on 29.3.1989 and

he was reverted by the impugned order dt.19.3.1991. In view of this fact, the applicant cannot equate himself with those Class-IV employees who had already officiated as RCC for 3 years and are beneficiaries of the policy of the Railway Board enunciated in the letter dt.7.1.1992 (Annexure R1). Thus, on this account, the applicant should not harbour any grudge and there is no discrimination as the applicant is still junior to all those persons who have been so promoted on ad hoc basis.

7. The learned counsel for the applicant has not given any details in the application or in the rejoinder, of such facts which may show that the applicant has become senior to those persons who have been given ad hoc promotion as RCC. The learned counsel only points out that certain Class-IV employees who were not screened and regularised in Class-IV have been given ad hoc promotion as RCC while the applicant came on a substantive vacancy of Khallasi in the sports quota on 7.7.1987. The respondents have rebutted this contention. The learned counsel for the applicant wanted to draw certain inference on comparing persons listed at Serial

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Nos.42, 47, 48 and 80 of Annexure A5 and having their corresponding No. at Serial Nos.13, 20, 28 and 29 of Annexure A4. But in fact, Annexure A4 is the seniority list of staff eligible for viva voce and was issued in January, 1989, and Annexure A5 is dt.30.3.1990 and is screening of casual labour and the list filed is not exhaustive and is only an extract. Thus reading both together, screening list of casual labour dt.30.3.1990 and the seniority list of staff eligible for viva-voce in MCC does not lead to the conclusion that the applicant is senior in any respect to those who have been called for MCC viva-voce and have subsequently been given ad hoc promotion as MCC. The argument of the learned counsel, therefore, has no basis.

8. It is also argued by the learned counsel for the applicant that the applicant has not been called for the selection. But according to the extant rules and the policy enunciated in the letter dt.7.1.1991 (Annexure B1), the applicant is not even eligible having not put in 3 years of service on ad hoc basis as MCC. Thus on this account also, the applicant cannot have any legitimate grievance.

9. In view of the above discussion, we find that the application is totally devoid of merit and is accordingly dismissed leaving the parties to bear their own costs.

Sharma

(J.P. SHARMA) 27.3.92
MEMBER (J)

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(L.C. 27/3/92)
(P.C. JAIN)
MEMBER (A)