

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

O.A. No. 801/92 Charanjit Lal
O.A. No. 802/92 Nand Lal Mahar

DATE OF DECISION 30.8.93

(1) Shri Charanjit Lal

(2) Shri Nand Lal Mahar

Petitioner(s)

Shri B.S. Maini

Advocate for the Petitioner(s)

Versus

Union of India

Respondent

Shri HK Gangwani

Advocate for the Respondent(s)

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The Hon'ble Mr. J.P. Sharma, Member (J)

The Hon'ble Mr. N.K. Verma, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?

JUDGEMENT

(Hon'ble Shri J.P. Sharma, Member (J))

Shri Charanjit Lal applicant in OA 801/92 is at present working on ad hoc basis as Booking Clerk in the northern railway. His grievance is non-action of the respondents to regularise his service in class III as Booking Clerk though he has been continuously working on that post for more than 5 years and also has passed the written examination as per selection to that post. The applicant also had the apprehension of reversion to the substantive post of class IV when he was engaged as a casual water man on 7-12-1978.



The relief claimed by this applicant is that the respondents be directed to regularise the services of the applicant as a Booking Clerk from the date he has been working and also to make payment of the salary of Booking Clerk for the period he worked as Booking Clerk

at Railway Station, Kaithal.

12 Nand Lal Mahar is the applicant in OA 802/92 and he is also working on ad hoc basis as Booking Clerk in the northern railway and has also the same grievance as Shri Charanjit Lal of non-action of the respondents in not regularising the service as Booking Clerk though he has been working on that post and has been working continuously from July, 1987. He has also the apprehension of reversion to substantive post of class IV which he joined as casual water man on 17-2-78.

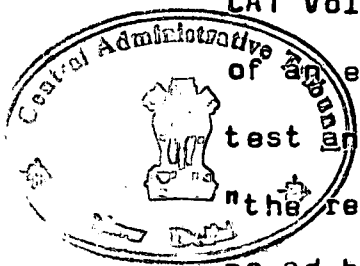
The relief claimed by this applicant is also the same as claimed by the other applicant in OA 801/92 praying that his service as Booking Clerk be directed to be regularised and he be also paid salary of the post of Booking Clerk during the period he has worked at Kaithal.

Since similar points of facts and law are involved in both the O.As they are disposed of by common judgement. Both the applications have been heard together and the learned counsel for the respondent has also made available the official record for the selection for the post of Goods Clerk against promotee quota. The same record has also been seen by the learned counsel for the applicant who is common in both the O.As.

The Division Bench by the order dated 26-3-92 passed in both the O.As separately giving interim direction to the respondents that the applicants be not reverted from the present post where they are working. That interim order continues till today.

The respondents have contested this application and they have taken the stand that the applicant was working on ad hoc basis as Booking Clerk and neither of them has passed the selection/^{test} held in 1989 and therefore could not be empanelled. None of the persons junior to the applicants have been regularised. The applicants have no case and the application is liable to be dismissed.

We have heard learned counsels of both the sides in both the cases. There was selection for the post of Goods Clerk against promotee quota 33.1/3% upto 20 June 1989. Nand Lal belongs to general category originally engaged as water man, obtained 28 marks out of 35 in the written, 9 marks in record of service out of 15, 10 marks in personality & address out of 20 and 3 marks in interview out of 15. He obtained 12 marks in seniority out of 15. Thus he obtained total 62 marks out of 100. Similarly the applicant Shri Charanjit Lal was also initially employed as waterman, got 28 out of 35 in written, 4 out of 15 in interview, 8 out of 20 in Personality & address, 9 out of 20 in service record and 11 out of 15 in seniority- total 60 out of 100. Thus both the applicants have qualified in the selection. However, the result shows that sincere there were 17 vacancies, the persons who were senior to the applicants have been empanelled and the applicants did not qualify for empanelment. It is admitted to the ld. counsel for the applicant that no person junior to the applicant has been empanelled. We have also seen the result sheet and we find that even those who have obtained even more marks percentage in total than the applicants have not been empanelled. Thus the applicants can have no grievance on that account. The contention of the learned counsel for the applicant is that in view of the judgement of Jethanand case passed in the Review Application No.135/89 decided on 21-5-90 reported in Full Bench Judgement CAT Vol.II 91 Edition it has been held that regularisation of an employee holding an ad hoc post, passing of selection test and not empanelment is required. In fact, it is observed "the requirement of empanelment may be necessary only where no ad hoc promotion has already been made and fresh promotions are required to be made initially on a regular basis". In the present case both the applicants have failed in the 1991 selection but that will not deprive them of the benefit of the judgement of the Jethanand case. Earlier the ratio of the case of Jethanand as given in the original judgement



14 decided on 5-5-89 reported in Full Bench Judgements of CAT 86-89 page 353 it was held that the employee should have undergone a selection test and empanelled for the promotion/selection post only then he has a right to hold the selection/promotion post. In view of the judgement in the Review Application of Jethanand, empanelment is not necessary now.

The counsel for the respondent however argued that both the applicants did not pass the selection test and averred this as a fact in the reply filed separately in both the applications. However, it is not a correct statement because the procedure for selection is a qualifying standard prescribed, by which a person securing 60% marks and he is senior enough then he will be empanelled and promoted in comparison to his junior even though he may have secured more percentage of marks than a junior. In view of this since this is a limited departmental examination and is based on selection cum seniority, so only those who come within the range of vacancies would be empanelled but still those who have passed or qualified in selection may not be empanelled but they will not be reverted from ad hoc appointment and will not be subjected to further selection but will be regularised in their appointment when the vacancies are available in order of their seniority. The ld. counsel for the respondent could not therefore show any rule or authority whereby after qualifying the selection such persons have to again appear in the selection or that they are to be reverted. In fact the golden rule in railways of 18 months ad hoc service prevents the authorities to revert an ad hoc appointee but the same has been interpreted in Jethanand case that such ad hoc appointee must clear the selection test and qualify the same otherwise he may be reverted.

In view of the above facts and circumstances, the present applications are partly allowed and the respondents are directed to regularise the services of the applicants

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on the basis of their seniority having qualified in the 1989 selection as and when their turn comes and the vacancies are available for them on a group 'C' post. Regarding the payment of salary for any period, there is no specific evidence to that effect and that relief is disallowed. The respondents to comply with the judgement within three months of the availability of the vacancies as said above.

There is no orders as to costs.

(N.K. Verma)
Member (A)

(J.P. SHARMA)
Member (J)

Pro nounced by me

True copy

Attested

*(J.P. Sharma)
member (J)*

AM (Sd)

30/8/23

PRITAM SINGH
Court Officer
Central Administrative Tribunal
Principal Bench
Faridkot House, New Delhi

