

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 290 OF 1998

ALLAHABAD, THIS THE 26th DAY OF FEBRUARY, 2004

HON'BLE MAJ GEN K.K. SRIVASTAVA, MEMBER(A)
HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Tribeni Ram,
s/o Late Cauleshar Ram,
working as Clerk under Sr. Section Engineer (C)
Eastern Railway, Chopan.

.....Applicant

(By Advocate : Shri S. Ram)

V E R S U S

1. Union of India through General Manager,
Eastern Railway, Calcutta.
2. Sr. Divisional Personnel Officer,
Eastern Railway, Chanbad.
3. Sr. Divisional Engineer (Coordination),
Eastern Railway, Dhanbad.

.....Respondents

(By Advocate : Shri Amit Sthaleker)

O R D E R

By Hon'ble Mrs. Meera Chhibber, Member (J)

By this Original Application, applicant has sought the following reliefs:-

- (a) The Hon'ble Tribunal may graciously be pleased to direct the respondents to count his adhoc service for seniority w.e.f. 05.07.1982 with all consequential benefits.
- (b) The Hon'ble Tribunal may be pleased to direct the respondents to regularise the services of the applicant at Chopan on the post of office Clerk where he is working since 24.10.1984.

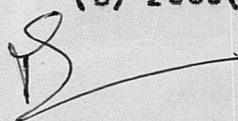
(c) Any other suitable order or direction which is deemed fit and proper in the circumstances of the case may be issued.

(d) Cost of the application."

2. It is submitted by the applicant that he was initially engaged as Khalasi under Signal Inspector(Construction). He was given officiating promotion as clerk. In 1991 he was reverted along with few others but applicant filed O.A. which was dismissed, Being aggrieved applicant filed SLP and Hon'ble Supreme Court disposed off the matter by giving direction to give all the benefits given Full Bench Judgment in the case of Jethanand. As a result of it applicant was allowed to work as Clerk vide order dated 01.10.1991.

3. Thereafter applicant appeared in written test and qualified for office clerk Gr.II in the scale of Rs.950-1500/- but viva voce was held only on 09.04.1996 and 10.04.1996 which was declared on 27.03.1996(Annexure A-2). The applicant with others were given training and vide letter dated 07.11.1996 applicant along with others were posted at different places(Annexure A-3) Since applicant was handling important work, the AE/Chopan vide his letter dated 21.12.1996 requested the Divisional Engineer IV Dhanbad to retain applicant at Chopan as it is not possible to spare him as no clerk to deal with store and other miscellaneous works ultimately the Chief Inspector of Works allowed the applicant to be continued on same place with next arrangement(Annexure A-7). Applicant requested to regularise him on same post and give him seniority from 05.07.1982(Annexure A-10). Since the same has not been given he was forced to file the present O.A. seeking benefit of adhoc promotion as it was followed by regularisation. He relied on following Judgments:-

- | | |
|------------------------|------------------------------|
| (A) 1992 SCC (L&S) 153 | (B) 1990(13)ATC 212(Para-(7) |
| (C) 1998 SCC (L&S) 321 | (D) 2000(3) SCC 89 |



(E) 2000 SCC (L & S) 1055.

4. Respondents on the other hand have opposed this O.A. on the ground that by means of the present petition filed in 1998 the petitioner is seeking a direction to count his adhoc service for purpose of seniority w.e.f. 05-07-1982 with consequential benefits and for regularisation of his services w.e.f. 1984 hence the present petitioner is grossly barred by limitation and is liable to be dismissed on this ground above.

5. On merits they have submitted that applicant was initially engaged as Khalasi in the scale of Rs.196-232(RS) under Assistant Telecom Engineer (Construction) & from 07.09.1978 under Signal Inspector (Coast) Ohra on 13.08.1980 in same pay & grade. He was put to officiate on estimate post as material clerk (Ad-hoc) in the scale of Rs.260-400/- w.e.f. 05.07.1982 on pay of Rs.260/- in (coast) vide order dated 03.07.1982 & continued there till 23.10.1994 in Signal & Telecom department construction department purely on temporary estimated sanctioned post. Thereafter, no sanction of post was given therefore applicant was withdrawn and posted as clerk Grade II on adhoc basis on same pay temporarily keeping his lien in open line in Signal & Telecom department in the category of Khalasi vide office order dated 06.09.1994. He joined duty on 24.10.1994.

6. Pursuant to the Supreme Court direction applicant's reversion was kept in abeyance and he appeared in selection for the post of clerk Grade II but could not qualify. He was given further chance. He again appeared in 1995 and was empanelled for the post of clerk along with other staff vide office letter dated 18.06.1996. He was at Sl. No.11 and was posted vide office order dated 07.11.1996. His seniority was accordingly fixed as per panel position.

7. They have explained that seniority in Grade II has to be



count from the date when he got regular promotion as it could be given only after due selection and it is not a case of regularisation. They have further submitted that applicant cannot claim posting to a particular place of his choice on the basis of some internal correspondence of subordinate officers.

8. They have submitted that since applicant had no right to hold the class III post till he was selected by a positive act of selection and was holding the class III post only on ad-hoc basis, he cannot be given benefit of ad-hoc service, therefore, the O.A. may be dismissed.

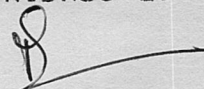
9. We have heard both the counsel and perused the pleadings as well as judgments relied upon by the counsel. It would be important to quote the final conclusion as arrived at by the full bench in the case JETHA NAND reported in 1990(13)ATC 212. The following questions were adjudicated upon in the full Bench.

"If a Class IV employee in the railways has continuously worked on ad hoc basis for a period of 18 months or more in a class III post:-

- (a) Does he acquire any right?
- (b) Is any test mandatory before he is regularised?
- (c) Is he entitled to be regularised in class II service without passing the test on the sole ground that his work has been satisfactory?
- (d) What is the effect if he has appeared in the test and failed?
- (e) Is he entitled to be given a further opportunity to sit in the test or not?
- (f) When can he be reverted to his class IV post?

After discussing all the circulars and various paras from the manual and judgments of Hon'ble Supreme Court Full Bench answered the above questions as follows:-

- (i) The right to hold the selection/promotional post accrues only to those employees who have undergone a selection test and empanelled for the promotion/selection post and continue as such for 18 months



or more. An ad-hoc employee will also get the right if he has passed the selection Test.

- (ii) We hold that a test is mandatory before a class IV employee can be promoted permanently to class III post.
- (iii) The mere recording of satisfaction or even good entries in CR of the employee is not enough to entitle the employee holding a promotional post in an ad-hoc capacity to claim that his services be regularised in class III post.
- (iv) If the employee has appeared in the selection test and has failed, his services cannot be regularised in the promotional post. But he will be entitled to be given further opportunity to appear in the selection test.
- (v) A railway employee holding a promotional post in ad-hoc capacity can be reverted to his original post at any time before the expiry of 18 months. Secondly if he has not qualified in the selection test, he is liable to be reverted even after 18 months.

10. A bare perusal of Judgment makes it clear that even Full Bench was of the view that a test is mandatory before Class IV employee can be promoted permanently to class IV post. In the instant case admittedly applicant had not passed any test when he was asked to officiate on higher post of Grade III, therefore, naturally his promotion in Grade III cannot be said to be a regular promotion. On the contrary it was at best a stop gap arrangement made due to administrative requirement. Such an arrangement cannot give any right to the applicant to claim his seniority in Grade III post as he had no right to hold that post. It is also not disputed by the applicant that his case was dismissed in the Tribunal he joined as Khalasi on 24.10.1994. However, ^{after} the order was passed by Hon'ble Supreme Court his reversion order was kept in abeyance and he was given a chance to appear in the test. He failed in the 1st attempt and could qualify only June 1996. Therefore, he was given regular promotion vide order dated 07.11.1996. Naturally in these circumstances respondents fixed his seniority in Grade III from the date he assumed the charge after he was duly selected. We



We don't find any irregularity in the decision taken by the respondents because prior to his regular promotion. He was officiating on Grade III post de hors the rules.

11. As far as the judgments referred to by applicant's counsel are concerned, they are not applicable to the present set of facts. In the case of Raflir Singh reported in 1992 SCC (L & S) 153 the head note itself shows that applicant therein were promoted to class III posts on adhoc basis after passing regular tests etc. therefore this case is clearly distinguishable as admittedly in the case in hand before us applicant had not passed any test before, he was allowed to officiate in higher post.

12. Similarly the case of Raj Kishor Vishvamarma reported in 1998 SCC (L&S) 321 is also distinguishable because there the applicants were appointed by relaxing the rules in accordance with rules and they continuous ad-hoc appointment was followed by regularisation through Public Service Commission whereas in the present case it is not even remotely connected because applicant was asked to officiate on grade III post merely on ad-hoc basis de hors the rules as promotion according to rules could be given only after passing the selection test which process admittedly was not undertaken earlier. Moreover, there had been a break also in applicant's application in higher post because after his case was dismissed in the Tribunal he had joined as Khalasi in October 1994. It was only subsequently that his reversion was kept in abeyance when the orders were passed by Hon'ble Supreme Court. Hon'ble Supreme Court had also directed to follow the judgment of Jetha Nand wherein it was clearly held that it was necessary to pass the selection test before one could be promoted as Grade III employee and merely having worked on the higher post satisfactorily cannot be a ground for claiming regularisation. It is thus, clear that applicant's



case is not covered by the Judgment of Raj Kishor as well.

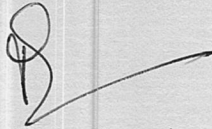
13. The Judgment of T. Vijyan is also on a different footing because there ad-hoc promotion of first Fireman pending regular selection was permitted under Rule 216 whereas no such rule has been shown by the applicant as far as his promotional post was concerned.

14. He lastly relied on Rudra Kumar Sain's Judgment reported in 2000 SCC(L & S) 1055 but this judgment also cannot advance the case of applicant in any way because here also appointments were made of those persons who were qualified under Rule 7 of Delhi higher judicial service Rules 1970 and their applicants were made after due consultation with the High Court and they were continued as such for fairly long period, it was in these circumstances that Hon'ble Supreme Court held that their applications cannot be said to fortuitous or adhoc whereas in the instant case applicant was merely asked to officiate in higher post without any test dehors the rules, he cannot be said to have worked continuously on the said post as in 1994 he did join as Khalasi and he also failed in the selection in the 1st attempt therefore, by no stretch of imagination it can be said to be a case where he was promoted as per rules worked continuously and was ultimately regularised. On the contrary in Jethanand's case itself full bench had made it abundantly clear that nobody can have a right to hold the higher post unless he has passed the selection test. Admittedly applicant had not passed the selection test when he was asked to officiate in higher post therefore, his promotion was dehors the rules. Moreover, he could not even qualify in the 1st attempt and passed the test only in 2nd attempt therefore, respondents have rightly counted his seniority in higher post as per the panel prepared in 1996.

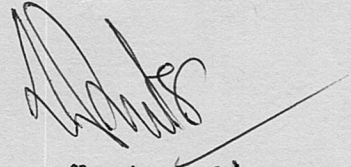


// 8 //

15. We find no merit in the O.A. the same is accordingly
dismissed with no order as to costs.



Member (J)



Member A)

shukla/-