

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Dated : This the 15th day of April 2005.

Original Application no. 498 of 2001

Hon'ble Mr. D.R. Tiwari, Member (A)

Hon'ble Mr. K.B.S. Rajan, Member (J)

Surya Bali, S/o Shri Jagannath

R/o 99-A, Railway Colony,

FIROZABAD.

...Applicant

By Adv : Sri S.S.Sharma

V E R S U S

1. Union of India owing and representing
'Northern Railway', notice to be served to
the General Manager, Northern Railway, NEW
DELHI.

2. The Divisional Railway Manager,
Northern Railway, D.R.M. Office,
Nawab Yusuf Road,
ALLAHABAD.

2. The Divisional Supdt. Engineer/Coordination,
Northern Railway, DRM Office,
Nawab Yusuf Road,

ALLAHABAD Respondents

By Adv : Sri A. Tripathi

O R D E R

By K.B.S. Rajan, JM

The grievance of the applicant in this case is that non inclusion of his name in the panel for promotion to the post of clerk in the Grade of Rs 950-1500 (Rs 3050-4590) is violative of the instructions for the Railways contained in their circular 19.3.1976 (annexure A7) wherein it has been stated that while forming panels, employees who have been working on the post on ad hoc basis quite satisfactorily, are not to be declared unsuitable in the interview and in particular any employee reaching the field of consideration should be saved from harassments.

2. Brief facts of the case of the applicant are as under:-

(a) The applicant at the time of filing this OA was working as Material Checking clerk in the pay scale of Rs.2750-4500 under the Assistant Divisional Signal Engineer, Firozabad. Earlier he was appointed as Khalasi in 1974. Later on he was selected as Storesman and thereafter promoted as Material Checking Clerk.

(b) Vide letter dated 18.8.88, the General Manager, Northern Railway, New Delhi had communicated a decision to the

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D.R.M. Northern Railway, Allahabad for all the Material Checking clerks in the Grade of Rs. 260-400 if they were working on adhoc basis for over three years in that capacity and such a regularization should be after subjecting them to a selection on viva-voce basis.

(c) similar concession was made available in respect of Material Checking Clerks working on adhoc basis in the construction organization as well, vide letter dated 11/15.2.1991.

(d) In the case of the applicant, though he had put in more than three years of service on adhoc basis in the pay scale of Rs. 950-1500 (RPS), as a clerk the benefit of regularization was not given to him, though he was called for a written test under the promotional quota from amongst Group 'D' employees, in which he was successful. Viva-voce was held in May 1994 in which the applicant participated while the applicant was sanguinely hoping for empanelment as a regular clerk in the panel of clerk grade against the promotes quota declared vide letter dated 08.12.1994, in the list of 40

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candidates, surprisingly and shockingly his name was found omitted.

(e) The applicants had preferred a representation bring out therein the spirit of letter dated 19.3.1976 (referred to in para 1 above) and requested the respondents to consider his case accordingly.

(f) The respondents had however not acceded to the request of the applicant, instead, reverted him from the post of clerk to the post of Material Checking Clerk. This reversion therefore forced the applicant to pen a number of representations in March and August 1996, October 1997, August 1998 and March 1990 (Ann A10).

(g) The applicant could learn that a similar situation occurred in the case of one Sri Kishan Singh who was reverted from the post of Clerk to the post of Storeman the said Kishan Sing moved the C.A.T. (Principal Bench) in OA no 676/96 in which the said Kishan Singh became victories and the Hon'ble Principal Bench directed the respondents to include the name of the applicant in the said OA in the panel of the selected candidates and it is also held that the applicant should be

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regularized from the date his junior in the panel was so promoted in the post of clerk grade Rs. 950-1500 with all consequential benefits. The said order of the Tribunal (Ann A-11) was implemented vide order dated 26.2.2001 (Ann A-14).

(h) As the applicant's case was similar to that of Kishan Singh the applicant submits that he is also entitled to the benefit as his case is similarly placed.

3. While the facts of the case as mentioned above have not been disputed by the respondents, the learned counsel for the respondents stated that the OA is barred by limitation. A feeble attempt was also made to distinguish between construction organization, which is a project organization and the Zonal Railways.

4. We have considered the rival contentions and perused the records.

5. As regards the preliminary objection relating to limitation, it is seen that the applicant has filed the OA in April 2001 relying upon the Judgment of the Principal Bench in OA 676/96. His case in our opinion falls in that category of *M.R. Gupta Vs. Union of India & Ors, 1995 SCC (L&S) 1273* wherein it has been held that in so far as fixation of pay is

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concerned the cause of action recurs and repeats every month. Again the 5th central Pay Commission in paragraph 126.51 had stated that if a law point has been decided by a Court in respect of a person, others similarly placed could expect that the Government would extend the same benefit to such similarly placed persons without driving them to move the matter before the Court. Considering the same, we are of the considered opinion that there is no delay. Hence the preliminary objection on limitation raised by the learned counsel for the respondents is over ruled.

6. As regards the merit of the matter, the circular of the Railways (Ann A7) is unambiguous. The same reads as under :

"Serial no. 6494:- Circular no. 831-E/63/2-X (E-IV, dated 19.3.1976

Sub :-Record Note of the meeting of the Deputy Minister of Railways and the Railway Board which the Head-quarters of the personnel Department of the Railway Administration held in New Delhi on 27.11.75.

A copy of the extract from the Record Note circulated vide Board's letter No. 75-E(SCT)15/48, dated 9.12.75, as received vide their office letter no. E(NG)1-75 PMI/264 dated 25th, Jan. 1976 is reproduced below:-

"2.2 Panels should be formed for selection posts in time to avoid adhoc arrangements. Care should be taken to see while forming panels that employees who have been working in the post on adhoc basis quite satisfactorily are not declared unsuitable in the interview. In particular any employee

reaching the field of consideration should be saved from harassment."

In this connection, the General Manager has observed as follows :

"Long term adhoc arrangements should be made strictly according to seniority and suitability to avoid embarrassment."

Please ensure strict compliance of this decision particularly in respect of scheduled cast/scheduled Tribe candidates."

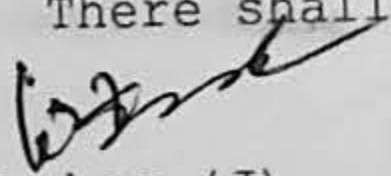
7. There is no indication that the above circular is applicable only to the construction Organization (Project Organization) or that the circular does not apply to a Zonal Railway. In fact the subject of the circular reads "Record note of the meeting of Dy. Minister of Railways and the Railway Board with the Headquarters of the personnel department of the Railway Administration held in New Delhi on 27.11.1875" This clearly shows that the Circular has universal application in the entire Indian Railways.
8. The applicant fulfilled the condition of three years of service on adhoc basis and there is no indication that his performance was not satisfactory. His case is squarely covered by the Judgment of the Principal Bench in OA 676/96 (supra). Again taking into account the recommendation of the 5th Central Pay Commission as stated in para 5

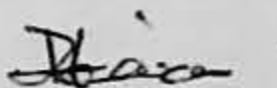
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above, the applicant is entitled to the claim of empanelment as L.D.C.

9. In view of the above, this OA succeeds. It is declared that the applicant is entitled to have his name included in the panel of regular L.D.C. vide letter dated 08.12.1994 published on 08.12.1994 (Ann A6). We order accordingly. He should also be regularized from the date his junior in the panel was so promoted in the post of clerk in grade of Rs.950-1500 with all consequential benefits. This order shall be complied with, within a period of six months from the date of communication of the order.

There shall be no order as to costs.


Member (J)


Member (A)

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