

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD**

ORIGINAL APPLICATION NO.599 OF 2001

ALLAHABAD THIS THE 2nd DAY OF August, 2006

HON'BLE MR. JUSTICE KHEM KARAN, VICE CHAIRMAN
HON'BLE MR. A. K. SINGH, MEMBER-A *ks*

Raj Kumar Dass, S/o Sri B.N. Dass, Aged about 37 years, R/o 98-B/1A, Rajrooppur, Allahabad.

.....Applicant

By Applicant: Shri S.S. Sharma.

Versus

1. Union of India, owing and representative Northern Railway, notice to be served to the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Chief Administrative Officer (Const.) Northern Railway, Kashmere Gate, Delhi.
3. The D.R.M., N.R., DRM Office, Nawab Yusuf Road, Allahabad.
4. The Dy. Chief Signal & Telecom. Engineer (Const.)/N.R. D.R.M. Office, Allahabad.

.....Respondents

By Advocate: Sri Amit Sthalekar

ORDER

By A.K. Singh, Member-A

O.A. No. 599 of 2001 has been filed by the applicant Raj Kumar Das (of the address given in the O.A.) against refusal by the respondents to allow him to appear in the selection test for the post of Clerk-cum-Typist to be conducted by D.R.M., N.C.R, Allahabad.

2. Brief facts of the case are that the applicant was directly appointed as a Typist initially with

Much

due approval of G.M., Northern Railway, Railway. The applicant possesses the required academic qualification inasmuch as he is a Graduate and is also having a speed of 50 words per minute in typing.

3. The case of the applicant is that he has been working as a Gestetner Operator from 15.6.1984 i.e. for the last 17 years continuously and there is no other channel of promotion for him except to the post of Clerk-cum-Typist. Hence if he was not allowed to appear in the selection test for the post of Clerk-cum-Typist, his service career will be affected adversely and he will retire in the same grade as a Gestetner Operator..

4. Even as per Railway Board orders issued under their letter dated 17.6.1996, the post of Gestetner Operator, has 'Clerk-cum-Typist' as the next promotional cadre in the channel of promotion. Hence the applicant has filed the present O.A. before us on the following main grounds:-

- (a) A hostile discrimination has been meted out to him by the respondents against the applicant inasmuch as even those persons are being considered for selection to the post of Clerk-cum-Typist by the respondent no.2 namely Chief Administrative Officer (Const.), New Delhi (as per his letter dated 2.5.2001), who were initially appointed as Khalasi and Gangman, while the applicant was directly appointed as

Mudg

Typist on adhoc basis and his appointment was duly approved by the General Manager, Northern Railway. Despite this, he is not being permitted to appear at the selection test for regularization to the aforesaid post. This hostile discrimination relates Article 14, 16 and 21 of the Constitution of India.

- (b) He was directly appointed as a Typist on 12.8.1983 and since then he has been performing duties of a Typist to the satisfaction of the authorities.
- (c) Due to urgency of work and in the interest of Administration, the applicant was assigned duties of Gestetner Operator in addition to his duties as a Typist and as such his designation was changed as Gestetner Operator.
- (d) The Clerk-cum-Typist comes as the next higher post in the cadre of Gestetner Operator in the channel of promotion for the same.
- (e) In response to circular letter dated 14.12.1994 of G.M., Northern Railway, to consider regularization of the services of Typists working on adhoc basis for more than three years, the applicant submitted his willingness to appear in the selection test for the post of Clerk-cum-Typist, which was duly forwarded by the Dy. CSTE (Const.), N.C.R., Allahabad.
- (f) The applicant possesses the requisite qualification. He has passed the BA Exams and holds the degree of Bachelor of Arts. He has completed over 20 years of service

Indy

in the Typing work and his speed of typing is 50 words per minute and hence he is fully entitled to appear at the selection test for the said post.

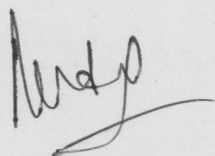
(g) The applicant was initially appointed as a Typist on 12.8.1983 and has been continuously working since then. Though his services have been regularized in Group 'D' post he is fully entitled for regularization as Clerk-cum-Typist.

(h) In case the services of the applicant are not regularized as Clerk-cum-Typist, he may have to retire as a Group 'D' employee i.e. in the grade of Gestetner Operator and will thereby suffer an irreparable injury.

5. On the basis of the above, the applicant submits that the action of the respondents in refusing him to allow to appear at the selection test for the aforementioned post is arbitrary, malafide and unfair. Hence the applicant seeks the following relief(s) in the O.A.:-

(i) To direct the Chief Administrative Officer (Const.) K.Gate, New Delhi-6, Respondent no.2 to regularize the services of the applicant as Clerk-cum-Typist in grade Rs. 3050-4590/- (RSRP) as per General Manager, N.R., New Delhi's order dated 14.12.1994 and 7.3.2001.

(ii) To direct the Chief Administrative Officer (Const.)/N.R., K.Gate, Delhi, Respondent no.2 to consider the case of applicant for regularization as Clerk-cum-Typist in grade of Rs. 3050-4590/-(RSRP) in the selection going to be held as per his letter dated 19.3.2001. (Annexure A-1 & A-2).



(iii) To direct the respondents to allow all the consequential benefits in favour of the applicant in this case.

(iv)

(v)"

6. The Respondents, on the other hand, have opposed the O.A. on the following grounds:-

(a) According to the respondents, the applicant was initially appointed as Casual Typist on 12.8.1983 by Signal Inspector/Kanpur, a subordinate in charge of S&T/Construction project where he continued as such upto 14.6.1984. Thereafter, he was assigned the job of Gestetner Operator in a casual capacity. On completion of required working days, he was granted temporary status w.e.f 14.8.1984. He was initially in the grade of Rs. 260-400/-P.M. which was subsequently revised to Rs. 3050-4590/-P.M.

(b) While working as a Gestetner Operator on casual basis, he got himself screened and empanelled as S&T Khalasi, a Group 'D' post vide merit no. 81 of the panel circulated under D.R.M., Allahabad's letter dated 15.7.1997. Accordingly, he was appointed as S&T Khalasi in the grade of Rs. 2550-3200 as per order dated 20.1.1998. He was also regularized in the grade w.e.f. 15.7.97.

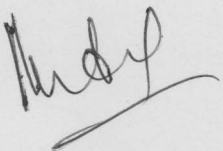
(c) There are separate channels of promotion for different posts as per rules framed by the Railway Board. The channel of Promotion for S&T Khalasi (in the grade of Rs. 2550-3200) is to the grade of Helper

Wdyp

Khalasi and skilled Artisans and MCMS
(Grade Rs. 5000-8000).

- (d) The certain Group 'D' staff too specified in General Manager (Personnel), N.R. letter dated 17.6.1996 have avenue of promotion to office Clerk-cum-Typist as per para 174 (b) of Chapter I of I.R.E.M. Vol.I.
- (e) Any appointment or promotion made locally on adhoc basis does not confer upon any employee any right to hold such post on a regular basis ignoring the claim of his seniors.
- (f) The applicant has been assigned his due position in the seniority list of S&T Khalasi in the Grade of Rs. 2550-3200/- which is also properly notified by D.R.M., Allahabad. Accordingly, the applicant has to seek further advancement to the post of Helper Khalasi and Skilled Artisans in the Grade of Rs. 3050-4590/-.
- (g) His claim for advancement to the post of Clerk-cum-Typist and his request for appearance at the selection test for the said post merely on the basis that he has been working as Gestetner Operator on adhoc-basis in the Construction Organization is not at all in accordance with the rules framed by Railway Administration and, accordingly merits outright rejection.

8. On the basis of the above, respondents pray for dismissal of the O.A as devoid of any merits.

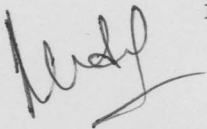


9. Opportunities for personal hearing were extended to both the parties on 29.5.2006. The applicant was represented by Sri S.S. Sharma, Advocate, while respondents were represented by Sri S.K. Pandey Advocate, holding brief of Sri Amit Sthalekar. In their oral submissions, the learned counsels only reiterated their arguments as above.

10. We have given our thoughtful considerations to the submissions made by the learned counsels in support of their respective case and have also perused the records.

11. We find from the letter dated 27.10.2003 of the respondent no.3 namely Dy. Chief Signals & Communication Engineer/Construction N.C.R, Allahabad addressed to G.M., N.C.R., Allahabad which is enclosed as per Annexure 7 to the Misc. interim order application no. 4679 of 2003 in O.A. no. 599 of 2001) that the applicant was initially appointed as Typist on daily wages on 12.8.1983 in the Construction Organization. Since then, he continued to work there as Typist-cum-Gestetner Operator in the grade of Rs. 3050-4590/- till date.

12. According to the respondent no.2, ".....he (applicant) has been working as Typist (Gestetner Operator) in the grade satisfactorily." In para 3 of the aforesaid letter respondent no.3 further mentions "that as per Railway Board's order issued



vide letter dated 17.6.96 the Gestetner operater is having channel of promotion as Clerk-cum-Typist."

13. In para 4, 5, 6 and 7 of the letter dated 27.10.03, the respondent no.3 further states:

- "4. That Sri Raj Kumar Das has been working and performing duties of both the post i.e. Typist as well as Gestetner Operator since his appointment on 12.8.1983 to till this date satisfactorily. Accordingly, he is entitled for regularization of his service as Typist/Clerk-cum-Typist as per order of General Manager/N.Rly and Rly. Bd's as mentioned in the aforesaid para."
- "5. That a selection for regularization of adhoc typist was scheduled to be held on 18.1.2002 in the office of Chief Administrative Officer/Const./N.Rly., Kashmeregate, Delhi-6 and name of Sri Raj Kumar Das was also considered and he was called to appear in the said selection. However, it was not held on that date."
- "6. That later on it has been decided by the G.M./P/NR/NDLS vide letter dated 11.9.2003 as communicated to all concerned by the CAO/Const/Kashmeregate, Delhi vide letter dated 30.9.2003 that suitability test will be held by respective division where he has been provided with lien for regularization of adhoc typist."
- "7. That the G.M./P./NR/NDLS accordingly vide his letter dated 11.9.2003 advised the concerned division including the ALD division to regularize the service of person as mentioned in the aforesaid letter, name of Sri Makhan Singh, working under Dy. S.C.T.E./Const./NCR/ALD working on adhoc promotion since 15.1.1988 has been advised to the ALD division but name of Sri Raj Kumar Das who has been working on adhoc basis as Typist since 12.8.1983 has not been considered and regularization as Typist/Clerk-cum-Typist along his junior Sri Makhan Singh."

14. The Dy. Chief Signals and Communication Engineer (Construction), N.C.R., Allahabad, is the senior most supervisory/controlling officer of the

Wap

applicant and in that capacity he did have the opportunity to watch the work and performance of the applicant during the relevant period. From this most reliable as well as authentic evidence on record, the following facts clearly emerge out as under:-

(i) That the applicant was initially appointed as a Typist on daily wages on 12.8.1983 in the Construction Organization and has been working as a Typist-cum-Gestetner Operator till the date i.e. 27.10.2003. This clearly suggests that the applicant has already put in over 20 years of service as Clerk-cum-Typist/Gestetner Operator. While as per G.M./N.R. order dated 14.2.1994 Typists working on adhoc basis for more than 3 years in the Construction Organization are to be considered for regularization for the post, in question. Hence there can be no question of ignoring the claim of the applicant for regularization to the aforesaid post especially when he has to his credit a long experience of over 20 years in the aforesaid sphere/area of work.

(ii) The applicant is a Graduate and his speed of typing is 50 words per minute. This fact has not been denied by the respondents. Hence, he has the necessary qualification as well as expertise and experience for the post, in question as discussed above.

(iii) It is also certified by his controlling authority that his performance in the job as a Typist has been satisfactory since 1983 till date (i.e. during the past 20 years of service as a Gestetner Operator/Clerk-cum-Typist).

Andp

(iv) There is also a channel of promotion for the post of Gestetner operator to the post of Clerk-cum-Typist as per Railway Board's order dated 17.6.1996.

15. On the basis of this most authentic and reliable evidence on record, we find that the entire story put forth by respondents as well as the arguments advanced by them in support of their case, stand completely demolished. Obviously a grave injustice has been done to the applicant in denying him the opportunity to appear at the selection test for regularization to the aforesaid post of Clerk-cum-Typist especially when he fulfills all the prescribed academic and other qualifications for the post and has also completed over 20 years of service, on adhoc basis as a Typist-cum-Gestetner Operator.

16. We also find that there is substance in the say of the applicant that a hostile discrimination has also been meted out to him vis-à-vis his junior namely Sri Makhan Singh, who, as per expressed opinion of the respondent no.3 was junior to the applicant. The applicant was appointed as a Typist in the year 1983, while Sri Makhan Singh was appointed on 15.1.1988 in the same Organization, i.e. much later than the applicant. This action on the part of the respondents is clearly violative of Article 14 and 16(1) of the Constitution of India. Article 14 and 16(1) read as under:-

Handwritten signature

"Article 14 - Equality before law - The State shall not deny to any person before the Law or the equal protection of the laws within the territory of India."

"Article 16(1) further states there shall be equality of opportunity for all citizens in matter relating to employment or appointment to any office under the State."

17. As the applicant is similarly placed and is even senior to Sri Makhan Singh as per his date of appointment i.e. 12.8.1983 and possesses an experience of over 20 years as a Typist-cum-Gestetner Operator, there is absolutely no reason why his case for regularization to the post of Clerk-cum-Typist should not have been or should not be considered by the respondents on a par with Sri Makhan Singh.

18. On the basis of the above, we find no rhyme and reason nor any basis in denial of the just claim of the applicant by the respondents as discussed above. Hence, we allow the O.A. no. 599 of 2001 and issue the following directions to the respondents:-

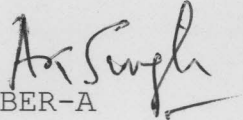
(i) The respondents will allow the applicant to appear at the selection test for regularization for the post of Clerk-cum-Typist to be held at any time in future.

(ii) That The applicant, if found suitable for regularization for the aforesaid

WSP

post, will not only be regularized on the same, but will also be entitled to all consequential benefits, as admissible to him on such regularisation, under the rules.

(iii) Parties to bear their own costs.


MEMBER-A


VICE CHAIRMAN

GIRISH/-