

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH ALLAHABAD**

Dated: This the 16/11 day of Nov 2010

Original Application No. 223 of 2005
(U/S 19, Administrative Tribunal Act, 1985)

**Hon'ble Dr. K.B.S. Rajan, Member (J)
Hon'ble Mr.D. C. Lakha, Member (A)**

*Bhagwan Sharma S/o Sri Sukh Lal Sharma, aged about 45 years,
R/o 1010/8M, Rajroopur, DPS Nagar, Allahabad.*

..... *Applicant*

By Adv. : Shri S.S. Sharma

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1. *Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.*
2. *The General Manager, North Central Railway, Headquarters Office, Allahabad.*
3. *The General Manager, Northern Railway, Baroda House, New Delhi.*
4. *The Chief Administrative Officer/ Construction, Northern Railway, Kashmiri Gate, Delhi.*
5. *The Chief Electrical Engineer, North Central Railway, Headquarters Office, Allahabad.*
6. *The Divisional Railway Manager, North Central Railway, DRM Office, Nawab Yusuf Road, Allahabad.*
7. *Deputy Chief Electrical Engineer/ Construction, Northern Railway, DRM Office, Allahabad.*

..... *Respondents*

By Adv. : Shri K.P. Singh

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ORDER

(Delivered by Hon'ble Dr. K.B.S. Rajan, Member (J))

This is a remanded matter. Earlier, the applicant had filed this OA which was allowed vide order dated 04-08-2005. And, when the respondents to this OA had taken up the matter with the Hon'ble High Court, the High Court had passed the following judgment:-

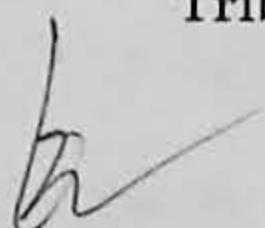
"We have heard the learned counsel for the parties and perused the record. We have gone through the impugned judgment and order and are of the considered opinion that the issues raised by the present petitioners before the Tribunal have been brushed aside without giving any consideration whatsoever. The present petitioners, being the respondents before the Tribunal had raised three points on the basis of which the order against the respondent employee had been passed but those issues have not been considered by the Tribunal and the judgment had been delivered making reference to certain judgments but while doing so the Tribunal has not even pointed out as to how those judgments were applicable to the facts of the case being dealt with by the Tribunal.

Sri S.S. Sharma, learned counsel for the respondent could not justify the judgment and agreed that the matter may be remanded for deciding it afresh.

In view of the submissions made by the learned counsel for the respondents, the judgment and order dated 4.8.2005 passed in Original Application No. 223 of 2005 is hereby set aside and the case is remanded back to the Tribunal to decide the case afresh in accordance with law.

In view of the above, the writ petition succeeds and is allowed. There shall be no order as to costs."

2. That is how, the matter has been remanded back to the Tribunal for deciding the case afresh in accordance with law.



3. Brief facts of the case: The applicant was engaged as a casual B.T. Wire man on 05-01-1982 and was granted Temporary status w.e.f. 01-01-1984 as a Khalasi in the grade of Rs 196-232/750-940 (RP) in Group D category. He was promoted in a temporary capacity as M.C. in the grade of Rs 225- 308 (RS) w.e.f. 27-03-1987. The said scale of M.C. was revised to Rs 225 – 308 (Revised Scale Rs 950 – 1500) w.e.f. 11-09-1995. Vide Annexure A-4 order dated 18-08-1988 issued by the G.M. Northern Railway, all the Material Clerks in the grade of Rs 260 – 400 working on ad hoc basis for more than 3 years be regularized after subjecting to a selection on Viva Voce Basis only. Thus, through another order dated 11/15-02-1991 (Annexure A-5 the G.M. directed the Chief Administrative Officer (Constn), Northern Railway, that all MCC/Clerk who are working on ad hoc basis for more than 3 years in Construction organization would be regularized as such, by their respective parent department where they held their lien from where they had been drafted to the Construction Organization. Thus, the D.R.M. of Allahabad division who was to intimate the names of eligible ad hoc MCC/Clerk for more than 3 years, vide Annexure A-6 order dated 23-04-1991, wherein the name of the applicant should have also figured in, did not do so; instead, the applicant was regularized the services of the applicant in Group D post vide order dated 18-08-1994. Later on vide DY. C.E.E. (Constn) Allahabad letter dated 03-02-1998 (Annexure A-7), the name of the applicant was also sent to the Sr. Divisional Personnel Officer, Northern Railway for necessary action for regularization in Group C.

4. Independent of the above, the applicant applied for regular appointment as Clerk under the 33-1/3% quota in April, 1998 and was declared fit to appear in the viva voce on 30-06-1988. An OA had been filed (Sri Brhamanand Mishra & ors vs Union of India & ors) before this Bench which directed the respondents for declaration of the result and accordingly the result was declared. However, the name of the applicant did not appear in the select list.

5. Coming back to regularization of ad hoc MCC/Clerks, as per the Rules, the CPO, Northern Railway by his letter dated 02-09-1999 revised the procedure for regularization of MCC/Clerk working on ad hoc basis in the Construction Organization and directed the C.A.O/Construction to regularize the services of the eligible persons as under:-

(a) Those who completed 3 years service as MCC/Clerk on ad hoc basis upto 8-5-1987 should be regularized as MCC/Clerk on the basis of viva voce and service records only;

(b) Those who completed 3 years of service as MCC/Clerk on ad hoc basis upto 31-12-1991 should be regularized as MCC/Clerk on the basis of written test and viva voce.

6. In the above manner, the process was conducted and the applicant's name was also included in the second category. The

applicant was successful in the written test, vide serial No.13 of letter dated 06-10-1999 and was spared for viva voce vide Annexure A-15. In the list of candidates who had cleared the viva voce, the name of the applicant did not, however, figure in vide Annexure A-16. In this connection, according to the applicant, vide Annexure A-17 Railway Board circular dated 25-01-1976, "**Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment.**" Apart from the above, as early as in 1995, the Apex Court had occasion to consider in the case of *R.C. Srivastava v. Union of India* the above provisions and the judgment inter alia reads as under:-

"2.2. Panel should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment."

7. Applying the abovesaid Railway Board circular in *R.C. Srivastava* the Apex Court came to the conclusion that the appellant therein was wrongly denied selection on the basis of marks given to him in the viva voce test. Consequently, the Apex Court directed that R.C. Srivastava should be considered to have been selected for the post of Law Assistant in the selection for the said post as per the panel prepared on 29-11-1992.

[Signature]

8. There are certain other decisions also, which held that in so far as those MC/Clerks who are on ad hoc basis for more than 3 years, they have to qualify in the written test and they shall not be disqualified on account of securing less marks in the interview. The applicant, on the strength of the above decisions of the Courts, vide para 4.33 of the OA, challenged the action of the respondents in not regularizing his appointment as regular clerk.

9. Respondents have contested the O.A. They have primarily placed contentions as under:

(a) Casual labourers engaged in the projects, as a rule belong to Group D only. After working for 120 days, they are subjected to screening.

(b) After screening, they are considered for absorption against the post of Maintenance Department (open line) only.

(c) Statutory instructions Chapter II, contained in IREM Vol II govern their regularization. Para 2005 (b) and 2511(b) specifically proved that such casual labourers who acquire temporary status will not, however, be brought into the permanent or regular establishment or treated as in regular employment on Railway until and unless they are selected through regular selection Board for Group D posts in the manner laid down. Para 2006 of the IREM refers.

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(d) Prior to absorption in the regular cadre and the date of regular appointment, their seniority shall be determined vis-à-vis other regular/temporary employees. Such regularization too is subject to availability of posts.

(e) According to *Ram Kumar vs Union of India (1988) SCC 329*, and *State of Assam vs Kanak Chandra as reported in AIR 1967 SC 864* a casual labourer is not the holder of civil post unless and until he is appointed to Group D post after screening/selection.

(f) Certain benefits have accrued to the casual labourers in view of the decision in the case of *Inder Pal Yadav vs Union of India* and thus they are treated at par with the open line casual labourers. Para 2005 specifically provides that no temporary post shall be created to accommodate such casual labourers who acquire temporary status.

(g) The Full Bench Judgment of the Jaipur Bench of the Tribunal laid down the law about the right of the individuals who are put to work in an ex-cadre organization.

(h) Construction organization is a work charged organization.



10. As regards the precedent as referred to in para 4.33 of the OA, the reply of the respondent is that the Railway Board Circular dated 25-01-1976 cannot supersede the statutory provisions of IREM.

11. It has further been contended that the applicant has been regularized as Trolleyman and according to the respondents, the same is the only entitlement of the applicant.

12. Applicant has preferred the rejoinder in which he has reiterated the stand taken by him in the O.A. He has denied all the contentions which are not in consistent with the contentions raised in para 4 and 5 of the O.A.

13. After hearing the parties, this Tribunal had, appreciating the fact that the case is one covered by the decision of the Apex court in the case of R.C. Srivastava (supra) allowed the O.A., vide order dated 04-08-2005. This order was challenged in the High Court and the High Court has remanded the matter for having a fresh look in accordance with law meeting the various points raised in the counter. Hence the case has been heard afresh.

14. Counsel for the applicant submitted that all the points were already considered and even if they be reconsidered, there is little scope of a decision which would be diagonally opposite to the earlier order. He has also submitted that the rules referred to in the



counter and the Railway Board's circular dated 25-01-1976 are not in conflict with each other since the rules referred to by the respondents apply to group D employees who had not been promoted on ad hoc basis as group C while the Railway Board letter relates to the case of such group D employees who had been promoted on ad hoc basis as Group C, who had put in more than 3 years and who had passed the written examination conducted for regularization. The applicant is entitled to the benefit of both inasmuch as in the normal course of seniority, he was entitled to the benefit of Rule 2005 IREM Vol. II, while, by virtue of his having worked on ad hoc basis as Clerk for over 12 years, and he having already qualified in the written test, is entitled to the benefit of the Railway Board circular dated 25-01-1976. Counsel for the applicant vociferously argued that the case is squarely covered by the following two judgments of the Apex Court:-

- (a) *R.C. Srivastava vs Union of India*
- (b) *Pritpal Singh v. Union of India, (2008) 17 SCC 687,*

15. As regards regularization as a trolley-man, the counsel stated that the same would vanish once the applicant's regularization took place as MCC/clerk.

16. Counsel for the respondents took us to various points as contained in the counter, which have been extracted as above in this order.



17. Arguments were heard and documents perused. The respondents contend that the applicant has been given regularization as per law as a trolley-man and he is not entitled to any other benefit. On the other hand, he has heavily relied upon the decision in the case of *R.C. Srivastava v. union of India* as also *Pritpal Singh vs Union of India* (supra). Though a feeble attempt had been made by the respondents that the Railway Board's orders cannot replace or supplant the IREM, it is to be pointed out here that the Apex Court has dealt with the specific clause contained in the case of MCC/Clerk. In so far as Railway Board's circular is concerned, the respondents have not whispered about the so called variation between the two with regard to Material Checkers, much less the supremacy of the IREM compared to the Railway Board's administrative orders. The regularization granted as trolley man no doubt is the entitlement of the applicant as for any other Group D employee in the construction organization, but the same is not the only entitlement, as rightly submitted by the counsel for the applicant. The applicant is certainly entitled to the benefit of the Board's order dated 25-01-1976. The contention of the respondents that the Board's order cannot supersede the Statutory Provision cannot be accepted for the reason that the two are catering to two different contingencies, as pointed out by the counsel for the applicant. Further, the Board's order has been relied upon and referred to by the Apex Court in the case of R.C. Srivatsava (supra) and there had been no such objection raised in that matter. In fact in all the previous matter, this order has been



relied upon and the Railways had clearly accepted the same. In a comparatively recent case of *Pritpal Singh v. Union of India, (2008) 17 SCC 687* the Apex Court has held as under:-

5. In this special leave petition, after service of notices, the Union of India and the Railways represented by their authorities have filed counter-affidavit. In rejoinder-affidavit filed in response to the counter, the petitioner states that while he was working on the post of Material Checking Clerk in Group 'C', he competed in the year 1996 with others for regular selection to the post of clerk. He appeared in the written examination for regular appointment to the post of clerk in "open line". He successfully cleared the written examination but was not selected for appointment because less marks were given to him in interview. Learned counsel has placed reliance on the Railway Board's Circular dated 8-12-1975, which was considered and applied in favour of similarly placed employees by this Court in *R.C. Srivastava v. Union of India*. The relevant part of the Railway Board Circular which was relied on by this Court in *R.C. Srivastava*¹ reads thus:

"2.2. Panel should be formed for selection posts in time to avoid ad hoc promotions. Care should be taken to see while forming panels that employees who have been working in the posts on ad hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment."

6. Applying the abovesaid Railway Board circular in *R.C. Srivastava*¹ this Court came to the conclusion that the appellant was wrongly denied selection on the basis of marks given to him in the viva voce test. Consequently, this Court directed that *R.C. Srivastava* should be considered to have been selected for the post of Law Assistant in the selection for the said post as per the panel prepared on 29-11-1992.

7. The learned counsel appearing for the Railways made some efforts to justify the action of the Railways in repatriating the present appellant from Group 'C' post in construction organisation to Group 'D' post in "open line". It is contended that the substantive appointment of petitioner was on Group 'D' post in the "open line".

8. The learned counsel for the Railways could not dispute the fact that in regular selection for the post of clerk held in the year 1996, the petitioner appeared and passed the written examination but was declared fail due to less marks awarded

in interview. The petitioner admittedly served for a long period of six years as Material Checking Clerk. His work and performance was within the knowledge of the railway authorities. He successfully cleared the written examination. In such circumstances, only on less marks given to him in interview, he could not have been found unfit in breach of the Railway Board's circular. The circular directs that employees working for a long period on promotion post satisfactorily are not to be declared unsuitable only on the basis of interview.

9. *Based on the decision of this Court in R.C. Srivastava¹, in our considered opinion, the claim of the petitioner for appointment to the post of clerk in "open line", with due regard to his work and performance on Group 'C' post in the project and successfully passing the written examination, deserves to be considered.*

10. *Without, therefore, going into the correctness of the orders of the Central Administrative Tribunal and the High Court rejecting the claim of the petitioner for regularisation of his service on Group 'C' post, we allow this appeal on a different ground.*

11. *On the basis of his position in the selection list for the post of clerk in Group 'C' prepared on the basis of the written examination of the year 1996, the respondents are directed to consider the petitioner for selection to the post of clerk in the "open line" and on his selection and appointment grant him due seniority on that post.*

12. *The appeal is allowed with the above directions. In the circumstances, we make no order as to costs.*

18. The above case fully fits in with the case of the applicant herein. None of the contentions of the respondents as contained in their counter and in the arguments put forth at the time of hearing could eclipse the ratio discerned by the Apex Court in the case of R.C. Srivastava as well as Pritpal Singh (supra) and the applicant having qualified in the written examination having been admitted by the respondents, taking into account the irrefutable fact that the

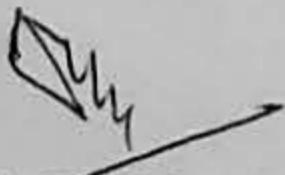


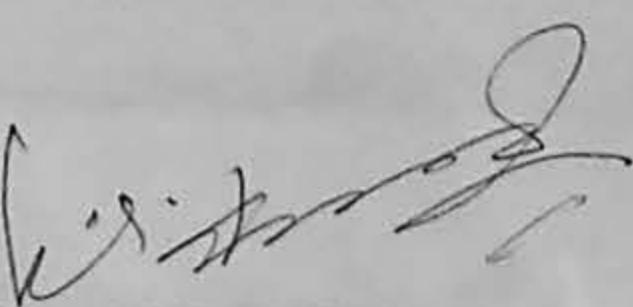
applicant had been working as ad hoc Clerk for a substantial period (as many as 12 years), the applicant has made out a cast iron case.

19. The O.A. is therefore, allowed. It is declared that the applicant is entitled to have his name included in the panel of regular LDC vide letter dated 06-03-2000 (Annexure A-16). We order accordingly. He should also be regularized and promoted from the date his junior in the panel was so regularized and promoted in the post of clerk in the grade of Rs 950 – 1500 with all consequential benefits as per rules.

20. This order shall be complied with, within a period of four months from the date of receipt of certified copy of this order.

21. Under the circumstances, there shall be no orders as to costs.


(D.C. Lakha)
Member-A


(Dr. K.B.S. Rajan)
Member-J

Sushil