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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD.

Original Application No. 481 of 2005.

ALLAHABAD THIS THE 23rd DAY OF DECEMBER 2005.

Hon'ble Mr. K.B.S Rajan, Member-J
Hon'ble Mr. A.K.Singh, Member-A

1. Ayodha Singh, Son of late Kalika Prasad Singh, Resident of 190, Naina Garh, Prem Nagar, Jhansi.
2. Kailash Nath Kaushik, Son of late Bani Prasad Kaushik, Resident of Prem Nagar, Jhansi.
3. Mahesh Chandra Shukla, S/o Haqhu Nath Prasad, R/o 1320, Prem Ganj, Cipri Bazar, Jhansi.

.....Applicants.

(By Advocate : Sri A.K. Srivastava)

Versus.

1. Union of India, through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi Division, Jhansi.
3. Senior Divisional Personnel Officer, North Central Railway, Jhansi Division, Jhansi.

.....Respondents

(By Advocate : Sri D. Awasthi)

O R D E R

By Hon'ble Mr. K.B.S Rajan, J.M

The three applicants serving as ad hoc Material Checking Clerks/Asst. Time Keeper in the Railways since early eighties, have been aggrieved by their not having been regularized in their respective posts on the ground that they could not qualify in *viva voce*. Hence, they have sought for the following relief(s)

"(a) This Tribunal may graciously be pleased to direct the respondents to regularize the

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service of the applicants as Assistant Time Keeper, Material Checker and Junior Clerk from the date from which they are working on adhoc basis and he pleased to direct the respondents to fix the seniority and promotion to next higher grade to the applicants accordingly.

(b) to issue a writ, order or direction in the nature of certiorari quashing the impugned order/revised seniority list dated 15.1.2003 and dated 15.3.2004 as Annexure 9 & 9A are so far as the applicants are concerned and the letter No. P/PF/AS/PW-6 dated 28.3.2005 as Annexure-1"

2. The facts of the case as narrated in the OA are as under:-

"(i) The applicants are working on Adhoc promotion with effect from 12.9.1986, 29.7.1982 and 3.3.83 respectively performing the duties of Material Checker.

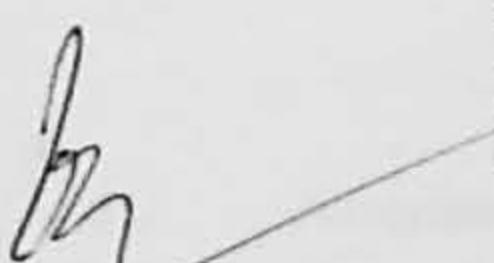
(ii) A letter was issued in favour of applicants for the replacement of the pay scale of Rs.225-308 to Rs.260-400, which is now Rs.3050-4590.

(iii) They have been placed in revised pay scale of category III i.e. Rs.950-1500 which is now Rs.3050-4590. An office order was issued by the respondent No. 3 dated 2.7.1996 in a matter of regularization of the staff working on adhoc basis.

(iv) The Hon'ble Principal Bench, New Delhi decided on 4.9.90 Om Pal Singh Versus Union of India and others for adhoc basis working as Material Checkings Clerks.

(v) The applicants have filed representation that names be added as per their seniority in the seniority list 24.1.2003 but no reply nor any action is being taken.

(vi) The respondents have stated that the applicants failed to avail the opportunities of appearing in selection. The applicants have appeared many times but deliberately they were not given their right.



(AD)

3. Per contra, the respondents contend as under:-

(a) The applicants have filed this 2nd Original Application with identical claim, which is barred by the principle of constructive resjudicata. Earlier Original application being No. 694/92, Roop Singh & others Vs. Union of India & others has been filed in the Hon'ble Tribunal where the applicants raised similar issues. The earlier original application No. 694/92 was disposed of on 21.3.2001 by this Hon'ble Tribunal with the direction that the case of the applicants to be considered as per rules for regularization whenever the vacancy is available.

(b) The applicant are themselves to blame for not getting the Group 'C' post of Office Clerk as inspite of the several opportunities given to them on the basis of various notifications. The applicants have not appeared in selection examination and unless and until they qualify the selection examination, they will not get Group 'C' post of Office Clerk, which is a selection post.

(c) It is averred that the adhoc arrangements cannot be claimed for regularization in same post without passing selection examination. It was simply replacement of pay scale of Rs.225-308 (RS) into pay scale of Rs.260-400 (RS). Rests of contents stated in paragraphs under reply are denied.

4. Arguments were heard and the documents perused.

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5. The learned counsel for the applicant vehemently argued that their case is fully covered by the judgment of the Apex Court in the case of Pritpal Singh vs Union of India & Ors (JT (2005) 11 SC 308).

6. On the other hand, the learned counsel for the respondents contended that the said case of Pritpal Singh is not applicable to the facts and circumstances of the case.

7. At the very outset it is held that from the facts and circumstances, there is no res-judicata or constructive res-judicata as the impugned order is a sequel to the earlier order of the Tribunal and the new cause of action has arisen.

8. The following are the admitted facts.

- (a) That the applicants are functioning on ad hoc basis for the past score of years plus in the pay scale of Rs 225 - 308 , which was later on revised to Rs 260 - 400 (and now Rs 3,050 - 4590). This pay is comparable to the pay of a clerk in the 'open line'.
- (b) Applicant No. 1 Shri Ayodhya Singh had qualified in the written examination under the one-third quota for the post of clerk vide order dated 17-01-1995 as admitted in para 19 of the Counter.
- (c) Applicants 2 and 3 stood qualified in the written examination in respect of Material



Clerk/ATK, as admitted in para 19 of the Counter.

9. In so far as the case of Pritpal Singh (supra) is concerned, it centers around the right of an adhoc employee to get regularized in the post subject to qualifying in the written examination. The Railway Board Circular extracted in the said judgment 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."

10. In the instant case, admittedly Applicant No.1 stands qualified for the post of clerk in the 'open line' but could not figure in the final result, presumably he could not clear the viva. As such, on the basis of the above circular and the judgment in the case of R.C.Srivatsava vs Union of India and Others (C.A. No. 9998of 1995) and Pritpal Singh (Supra), the said applicant No. 1 is entitled to be considered for promotion as clerk in the open line on the basis of his position in the selection panel for the post of clerk in Group 'C' prepared on the basis of the written examination of the year 1995.

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The case of Pritpal singh squarely applies to the case of Applicant No. 1 and the same relief as made available to Pritpal Singh would be available to this applicant Shri. Ayodhya Singh.

11. In so far as the other two applicants are concerned, since they stand qualified in the test for the post of Material clerk/ATK, as admitted by the respondents in para 19 of the counter, they are entitled to confirmation in the said post from the year when they had passed the written examination or two years of probation, if any such rule prevailed at the material point of time. This conformation would enable the said applicants to be eligible for promotion in the same line instead of open line for which qualifying in the written examination is a must. If no higher promotions are available to above the post of material checking clerks/Asst. Time Keepers they would at least be entitled to ACP

12. The OA is allowed in the following terms:

(a) The impugned order dated 28-03-2005 is quashed and set aside.

(b) The respondents shall consider Applicant No. 1 Shri Ayodhya Singh for promotion on the basis of his position in the selection panel for the post of clerk in Group 'C'

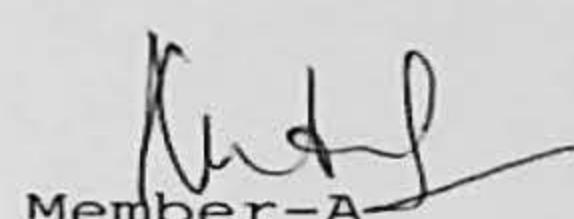
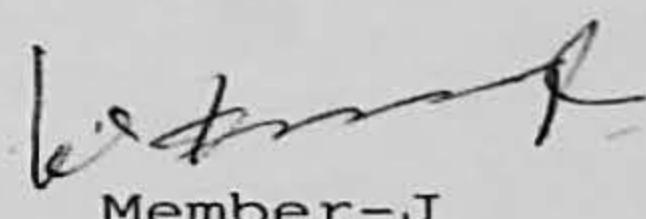
(12)

prepared on the basis of the written examination of the year 1995 and on selection and appointment to the post of clerk in the 'open line' grant him his due seniority on that post with consequential benefits.

(c) The respondents shall consider Applicant No 2 and 3 for regularization in the post of Material Checking Clerk/Asst. Time Keeper, as the case may be in which they have for the past decades been functioning on ad hoc basis from retrospective effect and afford necessary seniority in the said posts and the applicants on their regularization would be eligible for consideration to the higher posts if any on the basis of their seniority or other benefits such as ACP etc.,

13. The above directions shall be complied with, within a period of six months from the date of communication of the order.

No cost.


Member-A
Member-J

Manish/-