

Rese rved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALIAHABAD BENCH

ALIAHABAD.

Allahabad this the 19th day of September 1997.

ORIGINAL APPLICATION NO. 1007 OF 1995.

CORAM : Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

1. Mahabir Prasad Misra, S/o Late Sri Atma Ram Misra, Working as Junior Clerk, Carriage and Wagon, Workshop, Bareilly City.
2. Yogendra Kumar Dubey, S/o Surender Singh Dubey, Working as Junior Clerk, Carriage and Wagon Workshop, Kashganj Junction, Etah.
3. Jagdish Chandra, S/o Sri Matthu Lal, Working as Junior Clerk in the office of Divisional Railway Manager (Mech.) N.E. Railway, Izatnagar, Bareilly.

.... Applicants.

(By Advocate Sri Sanjay Kumar Om)

Versus

1. The Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Chief Personnel Officer, N.E. Railway, Gorakhpur.
3. Divisional Railway Manager, N.E. Railway, Izatnagar, Bareilly.

4. Divisional Personnel Officer, N.E. Railway,
Izatnagar, Gorakhpur.

..... Respondents.

(By Advocate Sri G.P. Aggarwal)

ORDER

By Hon'ble Mr. D.S. Baweja, A.M.

1. This application has been filed with a prayer to quash the order dated 22.9.1995 and to direct the respondents to regularise the applicants as Junior Clerks with all consequential benefits as legally entitled.

2. This application was originally filed jointly by four applicants. However subsequently applicant no. 2 Shri Ajai Kumar Mishra filed a Misc. application to withdraw his name from the array of the applicants as the respondents. This prayer was allowed and his name has been deleted accordingly. The applicants no. 3 and 4 have been renumbered as 2 and 3.

3. The applicant no. 1 while working in Group 'D' was promoted on adhoc basis in Group 'C' as Junior Clerk in the grade of Rs 260-400 (Rs 950-1500) to work as Coal Issuer / Tool Checker/ Store Issuer under Assistant Loco Foreman, Kathgodam, North Eastern Railway. Similarly applicants no. 2 and 3 were also promoted on adhoc basis as Junior Clerk vide order dated 5.4.1984. The applicants contend that since then they have been working continuously on adhoc basis without any break. The applicants also submit that they appeared in the selection for promotion to the post of junior Clerk and qualified in the same. However, vide order dated

vide order dated 22.9.1995, the applicants have been reverted to Group 'D' posts as Shed Messenger and Engine Cleaner etc. The applicants represented against the reversion vide letter dated 22.9.1995. The present application has been filed on 28.9.1995 challenging the order dated 22.9.1995 as arbitrary, illegal, in violation of the extant rules and Articles 14 and 16 of the Constitution of India.

3. The grounds advanced in support of their case are as under :-

- i) The applicants have been working as Junior Clerks for 12-13 years, and therefore have acquired substantial right for their regularisation.
- ii) No notice whatsoever has been issued to the applicants. No disciplinary proceedings had been initiated and, therefore, the action of the respondents is in violation of Railway Board's circular dated 9.6.1965.
- iii) There are several vacancies available and there is no reasonable justification to revert the applicants.
- iv) The applicants have lost seniority in their original cadre as several juniors have been promoted in Group 'C' in their normal channel of promotion.

4. The respondents have contested the application through the Counter reply. The respondents contend that the posts of Store Clerks, Coal Issuers, Tool Checkers known as Junior Clerks are filled by 40% from Group 'D' staff through departmental examination and 60% through direct recruitment. The applicants appeared in the departmental examination but did not get selected. However the applicants were promoted on adhoc basis against the vacancies of the direct recruits and continued as such with the specific stipulation that whenever the regularly recruited candidates are available they would be reverted. Accordingly on the availability of the direct recruits, the applicants have been reverted to their substantive posts. In view of this, the respondents assert that no irregularity has been committed. The respondents also submit that the applicants appeared in the subsequent departmental selections but could not be selected. The respondents further make averment that no vacancies are existing and with the closure of steam sheds, the staff had become surplus and staff working on adhoc basis has been reverted. It is also contended that since the promotions were not on regular basis, as per the laid down conditions, the applicants could be reverted. As regards the promotion of the juniors as Group 'C' in the normal channel of promotion, the respondents submit that when they were aware of the same, they should have represented but this was not done. The respondents aver that they would be given proper opportunity for passing the prescribed trade test and if successful on first chance, the due seniority as per the rules will be allowed. In the light of these averments,

the respondents proxy that the application has no merit.

5. The applicants have filed rejoinder reply controverting the submissions of the respondents. The applicants contend that the vacancies are still available and the applicants can be regularised against the same. The grounds raised in the original application have been reaffirmed.

6. As per order dated 29.9.1995, it was directed that the operation of the impugned order shall remain stayed till the next date. This stay order was extended from time to time till the pronouncement of the order.

7. We have heard Shri Sanjay Kumar Om and Shri G.P. Aggarwal, the learned counsel for the applicants and the respondents respectively. We have also carefully perused the material on the record.

8. From the averments of the either side, the admitted fact emerges that the applicants were promoted as Junior Clerk on adhoc basis while working in Group 'D' after having failed in the selection for the regular promotion. The applicant no. 1 appeared in the selection in 1982 while the applicants no. 2 and 3 appeared in 1984. The applicants contend that they qualified in the selection but could not be placed on the panel on account of being lower in seniority. However the applicants have not brought only material on record. The respondents have on the other hand contested the claim of the applicants stating that they were not finally

selected and placed on the panel. In any way the contention of the applicants is not tenable. A candidate who appears in the selection and is not placed on the panel, then his status will be that he failed in the selection. Whether such a candidate passed in written test or both the written test as well as viva-voce test is of no consequence and he will be required to appear in the next selection when due. Thus the applicants cannot claim of any benefit or having appeared in the selection before being promoted on adhoc basis. Thus the applicants were promoted on adhoc basis against the vacancies of direct recruits available and continued as such. The respondents have also submitted that for promotion against the departmental quota the selection for the post of Junior Clerks were held subsequently also and applicants had appeared in the same and failed. The respondents have not furnished the details of the selections held subsequently. The applicants in the rejoinder reply have however not specifically controverted this fact and have only reiterated their averments with regard to the selections held in 1982 and 1984. From these facts it is clearly established that applicants were continuing on adhoc promotion inspite of having failed in the selection against the vacancies meant for direct recruitment quota.

9. Keeping in view the findings recorded above, we take up the claim of the applicants for regularisation of services as Junior Clerk. For this purpose, the main issue which requires to be determined is whether the applicants are entitled for regularisation on the ground of having worked on adhoc basis for several years

without undergoing the prescribed selection process. The applicants have argued that after working on adhoc basis for a period of 12-13 years, they acquire substantial right for regularisation on the post of Junior Clerk. The counsel of the applicants during the hearing relied upon the following judgements in support of his contention :-

- i) H.C. Puttaswamy and others vs. the Hon'ble Chief Justice of Karnataka High Court, AIR 1991 Supreme Court 295.
- ii) State of Haryana and others vs. Piara Singh and others (1992) 21 ATC 403.
- iii) Hem Raj and others vs. U.O.I and others (1997) 35 ATC 63 (FB).

10. We will review the above referred judgements to see if there are of help to the case of the applicants. In the case of "Puttaswamy and others" their Lordships of Supreme Court have held that the appointments made without following the recruitment rules of consulting Public Service Commission are invalid. However appoints made were directed to be treated regularly appointed on humanitarian ground considering the circumstances of the case. This was not a case of adhoc promotion and thus this judgement does not lend any support to the case of the applicants.

11. We will not go through the judgement in case of State of Haryana Vs. Piara Singh as the same has been reviewed in the judgement of Full Bench in case of Hem Raj and others Vs. U.O.I. In this judgement following question was referred to Full Bench :-

"Where an employee wholly appointed on regular basis in Group 'D' service as per the recruitment rules has been given adhoc promotion in Group 'C' post purely on adhoc basis till regular incumbant joins and replaces him, such employee can be regularised in the service against the quota fixed for them dehors the rules only on the basis of continuous adhoc service." After considering the various judgements of the Apex Court, the Full Bench has answered as under :-

"Normally where an employee initially appointed on regular basis in Group 'D' service as per the recruitment Rules has been given adhoc promotion / appointment to Group 'C' purely on adhoc basis till a regular selection and appointment is made he cannot be regularised against the provisions of the Recruitment Rules for if that is done, the Recruitment Rules would be rendered nugatory. But in such cases where adhoc appointee continued for a long time and where no regularly selected candidate is waiting posting and if circumstances are such that his reversion would undue hardship or is inequitious, the Government or the appropriate authority as the case may be can regularises his services by making suitable exception or provision without offending the reservation policy of the State.

In appropriate cases the Tribunal also can direct the competent authority to consider such regularisation.

12. Keeping in view what is held above by the Full Bench and taking in consideration the facts of the present case, we are of the considered opinion that issue of any direction to regularise the applicant would not be appropriate on account of the following reasons :-

i) Before being promoted on adhoc basis the applicants had appeared in the regular selection but were not placed on the panel.

ii) The applicants appeared in the subsequent selections for regular promotion but were not successful.

iii) The applicants were promoted against the vacancies of the direct recruits with specific provision that they will be reverted on the availability of the direct recruitment candidates.

As per the averments of the respondents, the applicants have been reverted on the availability of direct recruits. The applicants have not controverted this and have only reacted that they could be considered for regularisation against the quota of 40% meant for departmental promotion for which vacancies are available.

13. Thus though the applicants have been working on adhoc basis for several years but they did not qualify in the selections held for regular selection. Such employees who do not qualify in the ^{claim} selection for regular promotions cannot ~~the~~ benefit of regularisation without passing selection and being placed on the panel on the plea of working on adhoc basis. If such a claim is allowed with consequential benefits, then it will result in an anomalous situation. The applicants will derive benefit inspite of failing in the selection over those who are regularly promoted. On not being selected for regular promotion the respondents should have reverted them. The respondents instead have allowed them to continue on adhoc basis in view of the vacancies of direct recruits available. The applicants cannot turn around and claim regularisation without passing selection which is condition precedent to being regularly promoted. In this view of matter, we are of the considered opinion that the case of the applicants is not appropriate to issue direction to regularise their promotion as junior Clerk as envisaged in the judgement of Full Bench as discussed earlier. This relief prayed for is thus not sustainable.

14. With regard to relief of quashing the impugned order dated 22.9.1995 reverting the applicants to Group 'D'. We note that the applicants have assailed the impugned order on the plea that no show cause notice was given and reversion was in violation of the provisions of the Railway Board's letter dated 9.6.1965. We will first take up the contention based on the Railway Board's letter dated 9.6.1965. The copy of this letter has not been brought on

on record. However we note that the provisions of this letter dated 9.6.1965 was the issue of adjudication by the Full Bench in case of Jetha Nand and others Vs. U.O.I others and decided on 5.5.1989. With regard to reversion of the employee who has been working on higher post on adhoc basis without selection, the Full Bench in para 59 (v) has held as under :-

" A Railway employee holding a promotional post in adhoc 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 reverted after 18 months. "

As stated earlier, the applicants did not qualify in the selection for regular promotion and thus as held by the Full Bench, their reversion even after working for more than 18 months will not be in violation of the provisions of Railway Board's letter dated 9.6.1965. The applicant has relied upon the judgement in the case of R.N. Mukherjee and others Vs. U.O.I and others, wherein case of Railway employee, reversion after serving for more than 18 months in the promotional post for any reason other than unsatisfactory work has been held as unsustainable. This judgement is dated 22.6.1986 i.e., after the judgement of the Full Bench in Jetha Nand's case. This judgement of the Full Bench perhaps escaped the notice of the Division Bench. The judgement of Full Bench will prevail over the Division Bench and this Division Bench judgement will not help the case of the applicant. The second contention is that no show cause notice was given. The applicants were promoted on adhoc basis with specific stipulation

that they will be reverted on the availability of the directly recruited candidates. The applicants have been reverted on the availability of such candidates. In such an event, we consider that there is no infirmity has been caused in not issuing show cause notice which would vitiate the impugned order. The case of Dharm Pal Verma Vs. U.O.I (1988) 8 ATC 762 has been referred in support of his contention during the hearing. On going through this judgement, we observe that facts in that case were distinguishable from the present case. Dharam Lal's case was that he was continuing in service after successful completion of probation period and the Tribunal held that reversion could not be effected without notice or assigning any reasons. This is not the situation in case of the applicants as we have detailed in the discussions earlier and, therefore, this judgement is not applicable to the case of the applicants.

15. On consideration of the facts and the legal position, we come to the conclusion that the application lacks merit. The same is accordingly dismissed with no order as to costs. The stay order dated 29.9.1995 is vacated.

ANM

Sd/

MEMBER (A)

Sd/

MEMBER (J)

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