

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 21st day of November, 2001.

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiuddin, J.M.

I. Original Application No. 376 of 1999.

1. Vinod Kumar,  
s/o Late Shri Ram

2. Prem Prakash,  
s/o Shri Visheshwar Prasad,

3. Ram Autar,  
s/o Shri Tilak Ram

All are working as Accounts  
Clerk under Divisional  
Accounts Officer, Izatnagar,  
Bareilly.

(Sri K.K. Mishra, Advocate)

..... Applicant

Versus

1. Union of India through  
The General Manager (P)  
N.E. Railway, Gorakhpur

2. Financial Advisor &  
Chief Accounts Officer,  
N.E. Railways, Gorakhpur

3. Divisional Railway Manager (P)  
N.E. Railway, Izatnagar,  
Bareilly.

4. Senior Divisional Accounts  
Officer, N.E. Railway,  
Izatnagar, Bareilly.

(Sri AK Gaur, Advocate)

..... Respondents

A N D

II. Original Application No. 375 of 1999.

1. Ramesh Chandra,  
s/o Shri Hori Lal

2. Om Prakash,  
s/o Shri Hari Narain,

Both working as Accounts  
Clerk under Divisional Accounts Officer,  
Izatnagar, Bareilly.

(Sri K.K. Mishra, Advocate)

..... Applicants

Versus

1. Union of India through  
The General Manager (P)  
N.E. Railway, Gorakhpur.
2. Financial Advisor &  
Chief Accounts Officer,  
N.E. Railway, Gorakhpur
3. Divisional Railway Manager (P)  
N.E. Railway, Izatnagar,  
Bareilly.
4. Senior Divisional Accounts Officer,  
N.E. Railway, Izatnagar, Bareilly.

(Sri AK Gaur, Advocate)

..... Respondents

ORDER (oral)

By Hon'ble Mr. S. Dayal, A.M.

This application has been filed for setting aside the order dated 17-3-1999. A direction has also been sought to the respondents to absorb and regularise the applicants on the post of Accounts Clerks and give them all consequential benefits.

2. The applicants have claimed that they were promoted from Group 'D' to Group 'C' post against six vacancies notified on 21-2-1991. The eligibility criterion fixed by the Divisional Accounts Officer in the notification contained the qualification of Bachelor of Arts and three years of service in Group 'D' post. The applicants were subjected to written examination and viva voce and thereafter on selection posted as Clerks in the grade of Rs.950-1500 on temporary basis in the office of P.C. Arrear Cell Accounts Office by order dated 14-5-1991. The service details of the applicants had been sent by the Divisional Accounts Officer to the General Manager (Personnel), N.E. Ry, Gorakhpur on 10-6-1994. The applicants have claimed that they were entitled to protection granted by the Railway Board vide their Circular dated 27-6-1983, which provided that the employees who had worked continuously for 18 months could be reverted only after taking action

under Discipline and Appeal Rules. It is claimed that Senior Divisional Accounts Officer, N.E. Rly again referred the case of the applicants to Financial Advisor and Chief Accounts Officer, N.E.Rly for regularisation of the applicants against 27 vacancies. The applicants have stated that the notification dated 21-2-1991 contained specific mention to the effect <sup>/to</sup> that selection had been held to improve extra work and the said arrangement was continued till the work was over. The applicants have claimed that the work is still continuing. They have also claimed that certain other persons who were empanelled alongwith them have not been reverted. In the backdrop of this, the said applicants have claimed relief.

3. We have heard arguments of Sri KK Mishra, counsel for the applicants and Sri AK Gaur, counsel for the respondents and perused the record.

4. Learned counsel for the applicants has urged before us that the applicants were regularly selected and that they fulfil all the eligibility conditions. We have considered this contention of the learned counsel for the applicants. We find that the applicants were those who had done their graduation. The promotion from Group 'D' to Group 'C' is done on the basis of ~~minimum &~~ qualification required for the post of Accounts Clerk. The learned counsel for the applicant has stated before us that the minimum qualification for the post on promotion to Accounts Clerk was Intermediate. It is clear to us that by mentioning the qualification as graduation, the Divisional Accounts Officer and Audit Officer, Izzatnagar set up qualification at higher level which would have dis-entitled a number of other claimants who have not passed graduation.

5. It is clear from the notification that the recruitment was made specifically for opening P.C. Arrear Cell and the incumbents on the post of Account Clerks in the cell were also given the work on arrears of Nirwah Nidhi and reconciliation of monthly and annual accounts. The posts were to continue till the works were completed. It was also stipulated that the administration could revert any Accounts Clerk and send him back to his department. It is clear from the notification that the posts were to be filled up on ad hoc basis.

6. It is clear from the impugned order that the proposal for regularisation of the applicants on the post of Accounts Clerk in the scale of Rs.950-15000 was not found to be valid in the light of the rules. We have also found that for this ad hoc promotion the respondent no.4 had notified prescribed qualifications which were not the usual qualifications for promotion to Accounts Clerk.

7. Learned counsel for the applicant has relied on Jethanand and Urs. Vs. Union of India and Urs., 1990 (13) ATC 212. Learned counsel for the applicant states that this judgement requires an official to be subjected <sup>/to</sup> disciplinary proceeding if the official has completed 18 months of service on ad hoc basis. We find from the judgement relied upon that passing of prescribed test and empanelment is necessary before an official can get benefit of the said judgement. In the instant case the qualifications prescribed in the notification dated 21-2-1991 are such as excluded those who had not passed graduation and, therefore, no empanelment could have been done on the basis of such notification.

*(Signature)*

8. Learned counsel for the applicants has also relied upon the Full Bench decision in Hemraj and Ors. Vs. Union of India & Ors, 1997 (35) ATC 63. It has been mentioned in the judgement that if appointments are made on ad hoc basis to Class III or Class IV posts and the appointees continued for fairly a long time, equitable protection should be given for regularisation of their services as has been held by the Apex Court in the case of State of Haryana Vs. Pyara Singh, 1992 21 ATC 403. It has also been held that in cases where ad hoc appointees continued for a long time and no <sup>selected</sup> regularly/candidate is awaiting the post and if the circumstances are such then reversion to group post of that post would cause undue hardship or is inequitable, the Government or the appropriate authority can regularise the services by making suitable exception to provisions without reverting the reservation policy of the State.

9. we are of the view that where the promotions were not made in accordance with the Recruitment Rules initially and the official was promoted, would not be entitled to benefit of this law case. The learned counsel for the applicants then mentioned that one Smt. Nirmal Tripathi has been regularised while the applicants had not been regularised and this amounts to discrimination, which has been held to be bad in law by the Apex Court decision in Executive Engineer, Electricity Distribution Division, U.P. State Electricity Board, Bareilly Vs. Hydro-Electric Employees Union and Others, AIR 1999 S.C. 1520. The Apex Court has held that where the benefit of regularisation was granted to those workers, who had completed 240 days in a year in one Division, it cannot be denied to workmen of another Division. In the case before us the applicants had clearly been recruited

for temporary works and dehors<sup>1</sup> recruitment rules.

Therefore, the ratio of the decision does not apply to the case before us.

10. We, therefore, find that the case of the applicants lacks merits and the OA is dismissed accordingly. There shall be no order as to costs.

11. We have considered the case of applicants in OA No.375/1999 also in the context of this case. As the arguments of both cases were heard together.

We find that in this case also Annexure-A-2 prescribes qualification of Intermediate and the notification contained the condition that the posts of 8 Accounts Clerks were to be filled up on ad hoc basis as ex cadre post for a limited period and were to be continued till the work was completed. The persons promoted could be reverted at any time. In this OA also the qualification prescribed was Intermediate by D.R.M. (Personnel), Izzatnagar, while we find in para 1717 of the IREM, Vol I that the qualification for the post of Accounts Clerk was Matriculation or its equivalent with not less than 50% marks. The natures of these posts were also similar and the nature of post we have already dealt in our order in OA No.376/1999 and, therefore, this OA also is dismissed as lacking in merits. There shall be no order as to costs.

*D. M. Singhvi* *Shay*  
Member (J) Member (A)

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