

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No.O.A.96/1996

Present : Hon'ble Mr. D. Purkayastha, Judicial Member

Hon'ble Mr. G.S. Maingi, Administrative Member

KANTI KUMAR DAS

VS.

UNION OF INDIA & OTHERS

For the applicant : Mr. R.K. De, counsel
Mr. D.P. Bhattacharya, counsel
Mr. A.K. Roychoudhury, counsel

For the respondents : Mr. M.K. Bandopadhyay, counsel

Heard on : 07.09.99

Order on : 28.9.99

ORDER

G.S. MAINGI, A.M.

Heard both the counsels.

2. This application bearing No.O.A.96/1996 has been filed by the applicant, Kanti Kumar Das who is holding the post of Clerk Gr.II under the Eastern Railway. The facts of this case are that the applicant was selected in the post of Clerk Gr.II in the scale of pay of Rs.950-1500/-(RP) through the process of direct recruitment through a competitive examination conducted by the Railway Recruitment Board and posted at Malda in the Work Charge Department on 16.8.1988. At the time of his appointment, 53 Group 'D' Khalasis/Gangmen etc. were holding ad hoc appointment in the post of Clerk Gr.II though their appointments were not in accordance with the recruitment or appointment procedure for appointment to the post of Clerks, that 33 1/3% vacancies are required to be filled up by promotion through a positive act or selection from specified Group 'D' employees and the remaining 66 2/3% vacancies are to be filled up through direct recruitment. This representation of selection for vacancies is prescribed in

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para 174 of the Indian Railway Establishment Manual(Vol.I). It has already been laid down that these promotee officers are also eligible for appointment in higher posts in normal channel of promotion, that the lien of the applicant was retained in the Civil Engineering Department of Eastern Railway, Malda Division from the date of his initial appointment in the Railway Service i.e. on 16th June, 1988, that after serving for a few years outside his parent department i.e. Civil Engineering Department, the applicant was released for his parent department and transferred vide order dated 6.2.1995, that the provisional seniority list of Junior Clerks in the scale of pay of Rs.950-1500/-(RP) working in the Civil Engineering Department, was issued by the Personnel Officer of Malda Division vide order dated 23.10.92, that this seniority list was not circulated and thereafter no opportunity was made available to the applicant for challenging it. The applicant has further stated that his name did not figure in the seniority list and he, therefore, submitted representation dated 12.9.95 addressed to the Divisional Railway Manager, Eastern Railway, Malda with a copy to the General Manager, Eastern Railway but he did not receive any reply nor any response was communicated to him. He also came to know that those Khalasis/Gangmen etc. who had been promoted purely on ad hoc basis without any right of absorption, were ordered to be regularised from the date of their ad hoc appointments and their appointments were regularised by an order dated 22nd October, 1992 which included names of 53 Group 'D' Khalasis/Gangmen etc. The applicant has highlighted the accredited policy of the Office of the Chief Personnel Officer/Eastern Railway, Calcutta for reckoning seniority of ad hoc appointments, the date of regularisation and the date of ad hoc appointment/promotion. The applicant made a second representation on 1.11.95 after a month and a half after submission of previous representation on 12.9.95. He had requested further rectification of the seniority list. It has been explained by

made, how the ad hoc appointments were given and regularised subsequently except the first 4 or 5 pages which appear to be the pages of a proper file. Rest of the pages are xerox copies of various letters, circulars which create a suspicion in our mind that the original file has not been produced. In the xerox copy of the letter No.E.174/1Engg.HQ(New) dated 17th August 1992, there is a paragraph which states that the matter was put up to the Competent Authority(CPO) who has kindly passed the following orders :-


"I agree. But a proper check to be conducted for 7 staff whose SR were not made available so that even for these small Nos no mistake remains."

Had the original file been produced, we could have understood as to who was the competent Authority and whether he applied his mind judiciously, properly and as per instructions of the Railway Board. No doubt the railways are a mammoth organisation but when the grievances of its employees are aired, it is their responsibility to examine the matters promptly, effectively and properly and they must dispose of the representations at the top speed. It appears from the xerox copy of the letter dated 17.8.92 that some sort of check up was to be conducted in the matter of regularisation of panel of Office Clerk Gr.II for which the service records of 7 candidates were not made available to one, Sri P.C. Purkait. It clearly implies that the respondents were aware that some irregularities in the regularisation of the ad hoc appointees were made. In addition to paragraphs 174, 189 and 302 of the Indian Railway Establishment Manual, the matter of grant of seniority of direct recruits vis-a-vis the promotee employees stands finalised in terms of the judgment of the Hon'ble Supreme Court reported in AIR 1990 SC-1607 in the case of The Direct Recruitment Class-II Engineering Officers' Association and others Vs. The State of Maharashtra and others and also in the judgment of the Apex Court in the case of O.P. Singla and Another Vs. Union of India & Others and Sadhu Ram & Others Vs. Union of India & Others reported in AIR 1984 SC-1595.

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5. The conclusions which can be drawn from the details as brought to our notice are clear that the regularisation of the appointments of the Ad hoc appointees have not been done in a proper manner and if someone has objected to this regularisation and submitted representation, those have not been properly looked into and disposed of satisfactorily. We would expect the respondents to dispose of the two representations of the applicant filed on 12.9.95 and on 1.11.95, Annexure A-6 and A-9 to the application by following the principles of natural justice and also keeping in view the various provisions of the Indian Railway Establishment Manual, Vol.I. Liberty is granted to the applicant to agitate the matter before this Tribunal if necessary in case decision is not taken by the railway authorities. The respondents would dispose of the 2 representations of the applicant within a period of 3 months from the date of communication of this order. The application is disposed of.

6. No order is passed as to costs.

 28.9.98
(G.S. MAINI)
MEMBER(A)

 28.9.98
(D. PURKAYASTHA)
MEMBER(J)

s.m.