

Date of order : 5.1.2000

O.A.NO. 195/1996

Kumari Heera Manj Messy, aged about 32 years, Daughter of Late Shri Pratap Messy, presently working as Despatch Clerk, under Deputy Chief Engineer (Construction)(I), Northern Railway, Jodhpur.

.....Applicant.

versus

1. The Union of India through the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Chief Administrative Officer (Const.), Northern Railway, Kashmiri Gate, Delhi.
3. The Deputy Chief Personnel Officer (Const.), Northern Railway, Kashmiri Gate, Delhi.
4. The Deputy Chief Engineer (Construction)(I), Northern Railway, Jodhpur.
5. The Divisional Personnel Officer, Northern Railway, Divisional Railway Managers Office, Jodhpur.

.....Respondents.

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Mr.N.K.Khandelwal, Counsel for the applicant.
Mr.R.K.Soni & Mr.S.S.Vyas, Counsels for the respondents.

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CORAM :

Hon'ble Mr. A.K.Misra, Judicial Member

Hon'ble Mr.Gopal Singh, Administrative Member

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MR.A.K.MISRA :

1. Applicant has moved this O.A. with the prayer that the order of the respondents dated 8.11.95 (Annex.A/1) be declared illegal and be quashed and the respondents be directed to regularise the services of the applicant on the post of Clerk w.e.f. 28.12.90 with all consequential benefits. It is further prayed that the Circular dated 11/15.2.91 be declared applicable to all categories of persons working in clerical cadre.

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2. Notice of the O.A. was given to the respondents who have filed their reply to which applicant has filed a detailed rejoinder.

3. It is alleged by the applicant that she was appointed as Khalasi against Scout quota vide order dated 1.1.90. Thereafter, she was transferred on her own request to Construction Organisation vide letter dated 23.11.90. The applicant joined her duties in Construction Organisation on 28.12.90 as per the Chief Engineer's order dated 27/28.12.90. Thereafter, she continued to work as Despatch Clerk in the said organisation and had drawn pay in the pay scale of Rs. 950-1500 (RPS). The applicant has completed three years of continuous service as Clerk and, therefore, in terms of Headquarters Office letter dated 11/15.2.91 (Annex.A/8), her services are required to be regularised as a Clerk. She made repeated representations in this regard but her representations were turned-down and she was informed vide Annex.A/11 on 17.11.95 that she cannot be regularised on the post of Material Clerk as she is not working on that post. This communication is based on Divisional Railway Manager's communication Annex.A/1. She has challenged the action of the respondents on the ground that action of the respondents is against the spirit of Circular dated 11/15.2.91, similarly situated persons who were working in the Construction Organisation have been regularised, ~~whereas~~, the applicant has been discriminated and the action of the respondents is arbitrary. The respondents have filed their reply in which it is stated that the Circular under which the applicant claims to be regularised, does not apply in her case. She had been working in the Construction Organisation as a Despatch Clerk and not as a Material Chasing Clerk, therefore, she cannot be regularised in terms of the said circular. Moreover, she had not even completed two months of service on the date of circular whereas it was necessary for regularisation that a Clerk should have completed at least three



3/11/95

years of continuous working in the Construction Organisation so as to claim benefit of the said Circular dated 11/15.2.1991. The claim of the applicant is ill-founded and deserves to be dismissed.

4. We have heard the learned counsel for the parties and have gone through the case file. Both the learned counsels developed their arguments on the basis of their pleadings.

5. Before we proceed to decide the case in view of the rival arguments it would be beneficial to quote the said letter in extenso.

"NORTHERN RAILWAY

Headquarters Office
Baroda House,
New Delhi.

No.561-L/85-132/EIID (Lease) Dated 11.2.1991.

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Chief Admn.Officer(Const.),
Northern Railway,
Kashmiri Gate
DELHI.

Sub : Regularisation of service of M.C.Cs.

Ref : Your letter No. 961-E/2/C/URMU/1040 dated 12.12.90.

The above issue has been examined in detail and it is advised that the MCCS who are working on adhoc basis for more than 3 years in const.organisation will be regularised as such by their respective parent deptt. where they hold their lien i.e. from where they have been drafted to const. organisation. Further action in this regard may, therefore, please be taken accordingly.

For General Manager"

6. From the contents of the afore-quoted letter, it would appear that such persons who had worked for more than 3 years as M.C.Cs on the date of issue of this letter, would be considered for regularisation. Though, there is no specific mention that Clerks working in Construction Organisation are required to be considered in terms of the letter yet for argument sake we may hold that this letter is equally applicable to the Clerks who are



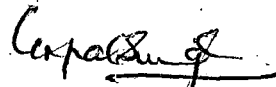
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working on ad hoc basis in the Construction Organisation. It is noted that applicant was inducted in service only on 1.1.90 as a Khalasi and had started working as a Clerk in the Construction Organisation on 28.12.90, therefore, she cannot claim to be covered by this letter. Only those persons who had completed three years as M.C.Cs on ad hoc basis in the Construction Organisation, were required to be considered. Thus, in our opinion, the applicant has no claim and the O.A. deserves to be dismissed.

7. It is also noted that from time to time the Railway organisation has been issuing letters for regularisation of such ad hoc workers in the Construction organisation, therefore, this letter cannot also be made applicable to those persons who had completed three years subsequent thereto. This letter does not mention any such condition that those who are completing three years in future as ad hoc Clerk in the Construction organisation, shall also be considered in terms of the letter Annex.A/8. Therefore, the arguments of the learned counsel for the applicant that the applicant has now completed three years as a Despatch Clerk in the constructional organisation and, therefore, deserves to be regularised by the respondents, carries no weight and deserves to be rejected.

8. In view of the above discussions, we are of the opinion that the O.A. does not bear any merit and is required to be dismissed.

9. The O.A. is, therefore, dismissed. The parties are left to bear their own costs.


(GOPAL SINGH)
Adm. Member


(A.K. MISRA)
Judl. Member

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