

1  
9

Central Administrative Tribunal  
Jodhpur Bench, Jodhpur

Date of order: 16.2.2001

1. O.A. NO. 332/99
2. O.A. NO. 333/99

Shukar Chand S/o Shri Hans Raj aged about 44 years,  
R/o C/o Shri Mohan Lal Prajapat, Amar Chand Fateh Chand  
Colony, Gali No. 3, Purani Loco Colony, Sector - 2.  
Railway Quarters, Jodhpur, at present employed on the  
post of MCC in the office of Dy. Chief Engineer Construc-  
tion-I, Jodhpur, Northern Railway.

... Applicant in  
OA 332/99

Vs.

1. Union of India through General Manager,  
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,  
Delhi Division, Delhi.
3. Deputy Chief Engineer (Construction-I),  
Northern Railway, Jodhpur.
4. The Chief Administrative Officer (Construction),  
Northern Railway, Kashmiri Gate, Delhi-6.

... Respondents .

...

Man Mohan Nagi S/o Shri Bhag Ramji, aged about 39 years,  
R/o C/o Shri Mohanlal, Purani Loco Colony, Railway Quar-  
ters, Jodhpur, at present employed on the post of MCC  
in the office of Dy. Chief Engineer, Construction-I,  
Jodhpur, Northern Railway.

versus

... Applicant in  
OA 333/99.

2/11

1. Union of India through General Manager,  
Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway,  
Ambala Division, Ambala.

3. Deputy Chief Engineer (Construction-I),  
Northern Railway, Jodhpur.

4. The Chief Administrative Officer (Construction),  
Northern Railway, Kashmiri Gate, Delhi-6.

... Respondents.

Mr. J.K.Kaushik, Counsel for the applicants.  
Mr. Kamal Dave, Counsel for the respondents.

CORAM:

HON'BLE MR .A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR .A.P.NAGRATH, ADMINISTRATIVE MEMBER

\*\*\*

PER MR .A.K.MISRA, JUDICIAL MEMBER :

In both these OAs the point involved and the relief claimed is common, therefore, both the OAs are disposed of by one common order.

2. OA NO. 332/99

It is alleged by the applicant that he was initially appointed as Dak Khalasi on 29.11.79 and was thereafter promoted as Storeman w.e.f. 9.11.92 in the Construction Organisation. He was employed to work on the post of Storeman/MCC and has been given due fixation in the scale of Rs. 950-1500. It is also alleged by the applicant that a formal promotion order to the post of MCC in group 'C' on ad hoc basis was issued on 9.10.93 and since then the applicant has been

2mvr

working as ECC in the construction organisation. The applicant has prayed that the order dated 16.11.99 (Annex.A/1), posting the applicant on his substantive post of Gangman in group 'D', be declared illegal and the same be quashed with all consequential benefits and the applicant be directed to be regularised on the post of MCC in pursuance of the policy of the Railways issued in the month of February, 1991. The applicant had also prayed that operation of the impugned order Annex.A/1 be stayed. Considering the prayer of the applicant, the operation of the impugned order was stayed which is continuing till today.

3. O.A. NO.333/99

It is alleged by the applicant that he was initially appointed as Store Khalasi on 5.6.81 in the construction organisation at Ambala Division and was promoted as Storeman w.e.f. 1.6.85 and was employed on the said post of Storeman/MCC and was given due fixation in the pay scale of Rs. 260-400/950-1500, vide order dated 20.4.98. A formal promotion order to the post of MCC was issued by the respondents on 2.1.93 in the pay scale of Rs. 950-1500 and since then the applicant has been continuing on the said post. The applicant had prayed that the impugned order Annex.A/1 dated 9.11.99 ordering the applicant to be posted on the substantive post of Khalasi in group 'D', be declared illegal and the respondents be directed to consider regularisation of the applicant on the post of Clerk in group 'C' in the pay scale of Rs. 950-1500 as per the policy of the Railways issued in the month

20 MV

of February, 1991. At the prayer of the applicant interim relief was granted to the applicant and the operation of the impugned order Annex.A/1 dated 9.11.99 was stayed which is continuing till today.

4. In both the OAs the stand of the respondents is common. It is alleged by the respondents that the applicants were working on the post of MCC/Clerk against the local temporary arrangement. Applicants' working on the said post does not create any right for being regularised on the said post in view of the judgement of the Hon'ble Supreme Court rendered in Union of India and others Vs. Motilal and others. It is also alleged by the respondents that after due screening the services of the applicants have been regularised on the group 'D' posts of Khalasi in their respective units vide the orders passed by the competent authority and consequently, they cannot claim regularisation on the post of MCC/Clerk on the basis of long working. The post of Clerk is also not in the promotional channel of the applicants and, therefore, keeping in view the order rendered by the Full Bench in Ram Lubhaya's case, the applicant cannot claim regularisation. The O.As are devoid of any merit and deserve to be dismissed.

5. We have considered the rival contentions. Applicants' initial appointment <sup>was</sup> on the posts of Khalasi and thereafter, their services were being utilised on the post of Storeman/MCC on ad hoc basis, is not in dispute. The only question ~~is~~, therefore, to be decided, is whether the applicants can claim regularisa-

3 M

tion on the post of MCC/Clerk on the basis of their long working in terms of the order of the Railway Board passed in the year 1991. We have also considered the rulings cited by the learned counsel for the respondents. In the order rendered by the Full Bench of Central Administrative Tribunal in O.A. No. 103/97 (Ram Lubhaya and Others vs. UOI and Others), and connected O.As, it was held as under :-

"5(a) Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to Construction Organisation, and there having promoted on a higher post on ad hoc basis and continue to function on that post on ad hoc basis ~~as~~ for a very long time would not be entitled to regularisation on that post in their parent division/office. They are entitled to regularisation in their turn, in the parent division/office strictly in accordance with the rules and instructions on the subject."

6. In view of the above principle, the applicants who were initially appointed on the post of Khalasi and were utilised on the higher post in construction organisation, cannot claim regularisation ~~on~~ the higher post. They can only be considered for regularisation in their parent cadre. In the instant case, applicants have been regularised in their parent cadre and shall have to wait for their turn for being promoted to the next higher post as per rules. Therefore, the relief claimed by the applicants in these cases for regularisation is devoid of any force. The O.A.s deserve to be dismissed.

7. The O.As are, therefore, dismissed. The interim orders staying the operation of impugned orders and extended from time to time, <sup>are</sup> hereby vacated. No orders as to co:

*Chupd*  
( A.P.NAGRATH )  
Adm.Member

*Om*  
16/12/2001  
( A.K.MISRA )  
Jydl.Member