

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JODHPUR BENCH, JODHPUR**

Original Application No. 147/2003

DATE OF DECISION: 17th March, 2004

Ashok Kumar Arora son of Shri Kewal Ram, aged 53 years resident of 573, Hiran Magri Scheme, Sector-11, Udaipur. Presently working as Chief Parcel Clerk, Udaipur.

...Applicant

Versus

1. Union of India through General Manager, Northern Western Railway, Jaipur.
2. Divisional Railway Manager, Northern Western Railway, Ajmer.
3. Station Superintendent, Northern Western Railway, Udaipur.

... Respondents

Mr. Rakesh Kalla and Mr. P. Bohra, counsel for the applicant.
Mr. Salil Trivedi, counsel for the respondents.

CORAM:

**HON'BLE MR. J.K. KAUSHIK, MEMBER (JUDL)
HON'BLE MR. M.K. MISRA, MEMBER (ADMN)**

ORDER (ORAL)

Shri Ashok Kumar Arora has filed this Original Application with a prayer that the respondents may be restrained from reverting the applicant from the post of Chief Parcel Clerk with a further relief that they may also be directed to regularize the service of the applicant on the said post from the date of his adhoc promotion i.e. 12.12.1994 with all consequential benefits.

2. The Original Application was listed at admission today and with the consent of the learned counsel for the parties, the

arguments were advanced and heard for its final disposal. We have anxiously considered the pleadings and the records of this case.

3. The factual matrix of the case as borne out from the pleadings and which is necessary for resolving the controversy involved in this case, is that the applicant was initially appointed on the post of Booking Clerk on 07.10.1974 and due course he earned promotion to the post of Head Booking Clerk. He was also promoted to the post of Chief Parcel Clerk vide order dated 12.12.1994 on adhoc basis. The applicant was within the consideration zone and he was to be promoted on regular basis. He has been holding the post of Chief Parcel Clerk ever since 1994 on adhoc basis.



4. It has also been averred that the applicant was posted at Abu Road and from where on promotion he was posted to Udaipur Station where he resumed the duties on the promotion post on 18.02.1995. As per the rules all the adhoc promotees were required to be appeared in the written test conducted by the respondents. But after 9 years of promotion of the applicant no written test was conducted nor services of the applicant were regularised. All of a sudden a written test was conducted by the respondents and the applicant appeared in the same on 12.04.2002 and after a period of one year, the result was declared on 26.6.2003 where the applicant did not get a berth and his number of juniors were declared successful. The applicant apprehended a reversion after such of period and filed

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this Original Application on diverse grounds mentioned in para 5 and its sub-paras which we shall deal a little later in this order.

5. The respondents have resisted the claim of the applicant and have contested the case by filing a detailed counter reply. In the reply, it has been averred that the post of Chief Parcel Clerk is a selection post and the same is required to be filled in by way of conducting written examination and viva voce test amongst the eligible candidates and no employee has right to be regularised on this post until one qualifies in the selection. The applicant was admittedly posted on Chief Parcel Clerk purely on adhoc basis. A selection was organised vide notification dated 04.12.2001 and the same contained the eligibility list of 50 employees. The applicant's name finds place at Sl. No. 5. The result of written test was declared but the applicant did not qualify the written test.

6. The further defence of the respondents as set out in the reply, is that the promotions to the post in question are to be made on selection basis and no one can be regularised until one crosses the hurdle of selection. Passing by his juniors cannot be a cause for him. The applicant has no right to continue on the post of Chief Parcel Clerk. It is also averred that vide order dated 23.09.2003, the applicant has been reverted back (Sic. repatriated back) to his substantive post. The grounds have been generally denied and it has been prayed that the Original Application may be dismissed with costs. No rejoinder has been filed on behalf of the applicant.



7. The learned counsel for the applicant has endeavoured hard to persuade us that the applicant has worked for over 9 years on adhoc basis and the respondents did not conduct the selection and that would suffice for regularising him on the promotional post of Chief Parcel Clerk. He has reiterated the pleadings made in the Original Application. He has submitted that number of juniors to the applicant have been given regular promotion and the applicant has been discriminated. In support of his contentions, he has placed reliance on the judgements of Hon'ble High Court of Rajasthan at Jodhpur in S.B. Civil Writ Petition No. 3350/2000; **Mal Singh vs. State of Rajasthan and Ors.** decided on 23rd July, 2003, D.B. Civil Special Appeal No. 7/2002; **Girdhari Singh Rajpurohit vs. State of Rajasthan and Ors.** decided on 09.04.2002 and D.B. Civil Special Appeal No. 649/99; **Rajendra Singh Rao vs. State of Rajasthan and Ors.** decided on 13.04.2001. Hence, he submitted that the ratio laid down by the Hon'ble Rajasthan High Court in these cases squarely applied to the controversy involved in this case and the applicant's case should also be similarly dealt with.

8. Per contra, the learned counsel for the respondents has strenuously opposed the contentions of the learned counsel for the applicant and has submitted that the applicant was only appointed on adhoc basis and no right as such can be granted on working on adhoc basis. In this respect, he has also placed reliance on one of the judgement of this very Bench of the



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Tribunal in O.A. No. 96/2002; **Bhag Chand Meena vs. Union of India & Ors.** decided on 19.05.2003. The learned counsel for the respondents has further contended that until and unless the applicant passes the requisite selection, he cannot be promoted on regular basis and passing of the juniors to him in the selection cannot give any cause of action to him. Having failed in the selection, he cannot have any cause at all. As regards the delay in selection our attention was invited to para 7 of the reply that selection for the post of Chief Parcel Clerk could not be conducted earlier due to certain administrative reasons and various Court cases and when the position was cleared, the notification came to be issued for organising the same. He has also submitted that the applicant has already been reverted vide order dated 23.09.2003 (Annexure R/3) but the same has not been challenged and therefore the Original Application has also become infructuous.



9. We have considered the rival submissions made on behalf of both the parties. From the pleadings and the arguments of the learned counsel for the parties, we find that there is hardly any quarrel as far as the facts of the case are concerned. There is no dispute that the applicant was promoted on adhoc basis in the year 1994. There is no dispute that the post in question is a selection post and is required to fill in by promotion from the feeder post after conducting a positive act of selection consisting of written test and viva voce test as contemplated in para 219 (g) of the Indian Railway Establishment Manual Vol. I. The further admitted position of the case is that the applicant has not

qualified the written test and therefore has failed in the selection. As far as the rules relating to the promotion to the post of Chief Parcel Clerk are concerned, the terms contained in the Railway Establishment Manual regulate the position and the regular promotion can be given only after one passes the selection.

10. We have scanned the various judgements and authorities relied upon by the learned counsel for the applicant as well as that of respondents. From the cases cited on behalf of the applicant it is seen that those were the cases where a training was essential while regarding the person on the initial post and subsequently after working for a long period, it came to be knowledge of the authorities that the individuals needed training and resorted to termination of the parties. It was held that there was no mis-representation on the part of the individuals and can keeping in view certain judgements of the Supreme Court, the termination were set aside but in the instant case the position is different and those cases are distinguishable on the facts from that of the instant case in as much as, it is a matter of promotion and no qualification as such is involved; the only require being within the zone of consideration and should pass the selection. Since the applicant has failed in the selection, the question of regular promotion would be foreign to him. As regards the judgement of **Bhag Chand Meena** (supra), which has been relied upon on behalf of the respondents, para 11 is relevant and the same is extracted as under:-

"11. It may be that the applicant has continued on the post of Chief Goods Supervisor for the last more than eight



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years but, this promotion on the post of Chief Goods Supervisor was not regular. It is on ad hoc basis. It is a settled legal position that the ad hoc appointment for a number of years does not confer a right on an employee to continue on the post. It has been held by the Apex Court in the case of **Dr. Anuradha Bodi and others versus Municipal Corporation of Delhi and others**, reported in 1998 (5) SCC 293 that there is no right of regularisation from the date of ad hoc appointment. It may be that as per the Railway Board's Circular the adhoc appointment should not have been allowed for such a long time but the applicant who has taken advantage of such appointment, cannot challenge it. In any case, the continuance of the ad hoc appointment for a number of years, does not confer a right on the employee to continue on the post. The applicant cannot succeed in this O.A. in challenging the order Annexure A/1.



11. The perusal of the aforesaid para squarely supports the contentions of the respondents and that was also a case of the adhoc promotion, the post being a selection post. In these view of the matter, the same squarely covers the controversy involved in the instant case. We can only assert that if we were to examine the matter independent on the said authority i.e. in **Bhag Chand Meena (supra)**, we would also reached to the same conclusion.

12. In the premises, there is no force in the Original Application and the same sans merits and stand dismissed, accordingly. No costs.

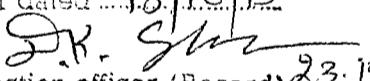

(M.K. MISRA)
Member (A)


(J.K. KAUSHIK)
Member (J)

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Patent Office
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Part II and III destroyed
in my presence on 23/10/13
under the supervision of
section officer () as per
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Section officer (Record) 23.10.2013

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