

In the Central Administrative Tribunal
Calcutta Bench

OA 1282/97

Present : Hon'ble Mr.S. Biswas, Member(A)
Hon'ble Mr.N. Prusty, Member(J)

- 1) Gautam Bhattacharjee, S/o A.K. Bhattacharjee, working for gain as Typist in the Office of the Sr.DEE/TRS/E. Rly/Sealdah, now residing at P.4 Ananda Pally, Pasupati Bhattacharjee Road, Behala, Calcutta-41
- 2) Subrata Sarkar, S/o M.N. Sarkar, Working for gain as Typist in the office of Sr.DSTE/E.Rly/SDAH now residing at 5B, Nilkantha Chatterjee Lane, Belghoria, Calcutta-56

...Applicants

.-Vs-

- 1) Union of India, Service through GM, Eastern Rly, F.P., Calcutta-1
- 2) GM, E. Rly, Fairlie Place, Calcutta-1
- 3) Divl Rly Manager, E. Rly, Sealdah
- 4) Sr.Dvl Personnel Officer, E. Rly, Sealdah

...Respondents

For the applicants : Mr.B.C. Sinha, Counsel

For the respondents : Mr.M.K.Bondyopadhyay, Counsel

Date of Order :

15/12/03

ORDER

Mr.S.Biswas, Member(A)

The applicants (1 & 2) while working as a Gateman/CPWI/SDAH and Sr.Khalasi/SDAH(S) since 28-7-84 and 15-11-83 respectively were promoted vide order dated 23-11-90 as Typist Gr.II in the scale of Rs950-1500/-(RP) for 6 days initially - but were extended from time to time with breaks upto 29-7-91 and thereafter they had been working continuously till date in that post. They applied for the posts as per notice dated 2-1-95 and the applicants statedly sat for necessary written test on 13-5-95 and speed test on 8-7-95 followed by viva. They were eventually selected in the published panel as Typists Gr.II with effect from 18-8-95 (scale Rs950-1500/-). They accordingly and formally joined as Typist Gr.II in response to orders dated 21-8-95. In

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other words, except for some initial breaks they are since 23-11-90 working as Typists Gr.II in the same scale of pay. The applicant have accordingly projected their case in this OA for continuous seniority and other benefits w.e.f. 23-11-90 when they were initially posted as Typists on adhoc basis subject to extension. When they prayed for continuous seniority w.e.f. 23-11-90 to the respondents, they were informed vide letter dated 28-2-97 (Annexure A8 to OA) that the said request for continuous seniority from the date of adhoc assignment to that post is not acceptable as per rules which is why they have impugned the same in this OA.

2. Heard rival counsel and went through the factual particulars and other written submissions filed so far.

3. The respondent authorities have statedly opposed the application stating that for adhoc appointees/promotion, as per Rule 302 IREM (Vol.I Revised 1989) seniority in respect of such regular promotion cases should be determined when the promotion to the post is regularised on completion of the formalities like test, vivas etc. The applicants were admittedly placed to work as Typist intermittently as stop gap arrangement, from Gr.D posts, but the same was entirely on adhoc basis. It was specifically provided in the order dated 23-11-90 that "since the above promotion is being made purely on adhoc basis they will have no claim for their continuity in future or for their regularisation in future." The applicant joined to work as Typist for 60 days initially knowing fully well that it would ^{not} impart any special right to demand or get regularisation from that date in future. In other words, regularisation or continuous seniority was fully and legally available only in terms of Rule 302 (ibid) and not otherwise.

4. The applicants were accordingly regularised as Typist Gr.II only when they took the necessary test and viva etc. and cleared these tests as per the rule w.e.f. 21-8-95. Hence, they are not eligible to get seniority for the period prior to that when they served as adhoc typists on stop gap and periodical

terms. Their seniority is contended to be countable only from the date when they were regularised after they fulfilled all the conditions for regularisation, such as qualifying in the written test, typing test and viva voce. There are as per rules parts of the process of regularisation.

5. The learned counsel for the applicant Mr.B.C.Sinha vehemently contended that the applicants ^{who} were placed as typists in substantive post cannot be treated as casual engagement to warrant the argument that seniority for their pre-adhoc service is not admissible on regularisation from a later date. The applicant got lift ~~there~~ on adhoc basis ^{though} but their basic eligibility vests on quota (33 1/3%) for specific feeder Gr.D posts.

6. We find that both sides have placed reliance on the leading case T. Vijayan and others V. Divisional Railway Manager and Others (2000) 4 SCC 20, which was decided discussing the provision of Rules 302 and 216 which are relevant to the agitated issue. Seniority in this case was professedly admissible in the observed contingency of "while making direct recruitment against posts which were advertised in 1985, it was given out to the applicants that their absorption and seniority was subject, inter alia, to the finalisation of the selection to the post of First Fireman which was in progress."

7. In the present case we find a distinguishable situation. The applicants had no scope to understand from the order dated 23-11-90 that they were about to be regularised and the process to that effect had been launched by the adhoc upliftment. Far to the contrary as noted by us an altogether different caution was given to the applicants before their acceptance of the adhoc promotion that it was not liable to extend any special right by way of continuous future regularisation from that date. The ad-hoc promotion was accepted only after reading this self-contained order. Hence, it held out

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no such abiding hope before them that it would mean a future regularisation in any way. It was on the contrary stipulated away.

8. However, further down in the said order Hon'ble Supreme Court further observed (para 23) thus : "If the ad hoc promotion had been made in accordance with the Service Rules, the promotees would be entitled to reckon the period of ad hoc service towards their seniority". Verily therefore a hard work at the relevant Rule 216 is imperative to be taken. It runs thus (as quoted in the said order itself)

"216. A. Ad hoc promotion against selection and non-selection posts -

(i) Ad hoc promotions should be avoided as far as possible both in selection and non-selection posts, and where they are found inescapable and have to be made in the exigency of service, they should be resorted to only sparingly and only for a short duration of 3 to 4 months. The Ad hoc promotion should be ordered only from amongst seniormost suitable staff. As a rule a junior should not be promoted ignoring his senior.


(b) While there is no objection to ad hoc promotions being made in leave vacancy and short duration vacancy, ad hoc promotion against regular promotion should be made only after obtaining Chief Personnel Officer's approval. Proposal sent to Chief Personnel Officer for ad hoc promotion against regular vacancy should indicate detailed justification as to why regular selection could not be held.

(c) Notification for ad hoc promotions against selection posts should specifically include a remark to the effect that the person concerned has not been selected for promotion and that his temporary promotion gives him no right for regular promotion and that his promotion is to be treated as provisional.

9. Far to the contrary the reading of the above provisions clearly stipulates that the notification for ad hoc promotion preceding the exercise of regularisation should be made self explicit that such adhocism is under process of regularisation. In the instant case of the applicants their ad hoc promotion was held in black and white not to hold out any such right of regularisation. On the other hand it was provided that "they will have no claim for their continuity in future or for their regularisation in future." We can clearly see that they gave no indication that irrespective of the provisions of Rules 302 and other process of regularisation they would derive any extra statutory benefit from this ad hoc service. Hence Rule 302

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was applicable independently for regularisation subject to fulfilling the terms and conditions thereof. It is not the case of the applicant either that they were promoted in anticipation of regularisation with seniority for the ad hoc service as per rules 216 and 302. The applicant cleared the requisite process of regularisation and related tests/viva only in 1995 - following which only they could be regularised. Hence, their case is clearly distinguishable and they are not eligible for seniority for the ad hoc service. The OA is devoid of merits, thus dismissed. No costs.


Member(J)
Member(A)