

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW

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Original Application No. 517 of 1992

D.K. Banerjee

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Applicant

Versus

Union of India & others

.....

Respondents

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. Justice K. Obayya, A.M.

(By Hon. Mr. K. Obayya, A.M.)

This application has been filed seeking regularisation on the post of Typist by extending the benefit of judgement of the Labour Tribunal Kanpur and also other decisions of the Supreme Court and other courts.

2. The applicant who entered service in a class IV post was later on promoted as Typist on adhoc basis and is continuing on the post for the last 16 years. According to him his performance of duty was satisfactory all these years. It is contended ~~00000~~ by the applicant that in the year 1975 he appeared in Type test along with other candidates and he was successful, and that is how the appointment was given to him. His service ~~showever~~ were not regularised, though he made representations from time to time. He has been called to appear for selection test to be held on 16.10.92. The grievance of the applicant is that a similarly placed employee namely one Raghunath prasad, was regularised as Typist without any selection test and it is discriminatory and arbitrary that ~~0000~~ he is subjected to selection. The regularisation of the said person was as per directions of the Industrial Tribunal, Kanpur.

3. The respondents have contested the case. It is pointed out that the applicant has approached the Tribunal earlier for similar relief in (T.A. No. 1900/87). But the application was dismissed on merits considering all aspects. He again filed O.A. No. 202/91 for the same relief in which, direction

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was given to the respondents to give two more chance to the applicant to appear at the selection and if unsuccessful to regularise his service. The applicant was called ~~to~~ appear at the selection test precisely because of the direction of the Tribunal. But instead of grabbing the chance and prove his capacity the applicant has come to the Tribunal challenging the selection test and for extending ~~the~~ the benefit of the decision of the Industrial Tribunal, Kanpur.

4. The learned counsel for the applicant pointed out that the Kanpur Tribunal decision is judgement in 'Rem' and it should automatically be applied to the case of the applicant. The learned counsel for the respondents countered this by saying that the case is distinguishable and ~~in~~ no circumstances, it can be called as judgement in 'Rem' ^{as} and it laid down no law on any point and it was only a judgement confined to the facts of that case.

5. We have considered the rival contentions, obviously it is the third innings for the applicant, who does not seem to be weary of approaching the courts even after his case has been decided more than once. The applicant who was a class IV employee to start with, stood promoted to a class III post. To be regularised on that post, he had either to be inducted as a direct recruit or by promotion. He appeared at the selection but failed to qualify and in this background he was ^{not} entitled for regularisation. To facilitate his regularisation, the respondents were directed to provide two more chances and we fail to understand why he should not avail of the opportunity to solve his problem by coming out successful. If he had been working as a Typist for over a decade, that is all the more reason, why he should not perform well, for he ought to have attained the degree of proficiency expected in selection. The case of the applicant was considered twice by the Tribunal and the principle of

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Resjudicata will apply, if he comes every now and then ;
There cannot be endless litigation on a decided point. In the
matter of treating his case on Par with one of Reghunath Prasad
it is for the administration to consider as it may involve
relaxation of rules. We make no observation in this regard. No
ground is made-out for interference in the result the appli-
cation is dismissed as without any merit. The Parties to
bear their own costs.

Member (A)

Lucknow

dated : 3/5/93

(g.s.)

Vice-Chairman