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CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A.733/91 & T.A.211/92

Tuesday this the 15 day of February, 2009

CORAM

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN
HON'BLE MR. J.L. NEGI ADMINISTRATIVE MEMBER

O.A.733/91

1. RamKrishna Tewari
R/o Fateh Ali, Railway Colony, Lucknow.
 2. Shri Shiva Gopal Nigam
R/o Azad Nagar, Alambagh, Lucknow.
 3. Sri Krishna Nand Srivastava.
 4. Sri Naresh Chandra Saxena
R/o Newazganj, Lucknow. ... Applicants
- (By Advocate Mr. P.K.Srivastava)

V.

1. Union of India through Secretary
Ministry of Railways, Baroda House
New Delhi.
2. Divisional Railway Manager,
Hazratganj, Lucknow. .. Respondents

(By Advocate Mr. A.K.Chaturvedi)

TA.211/92

1. Naresh Chandra Saxena
resident of Nawaj Ganj, Lucknow.
2. K.N.Srivastava resident of
B-30A Kunanwarbagh, Lucknow.
3. S.G. Nigam resident of Ayad Nagar
Alambagh, Lucknow. .. Applicants

(By Advocate Mr. P.K.Srivastava)

V.

1. Union of India through General Manager,
Headquarter Office, Northern Railway
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway, DRM Office,
Hazratganj, Lucknow.
3. Senior Divisional Personnel Officer
Northern Railway, DRM Office,
Hazratganj, Lucknow.
4. Sri Bhanda Malshama C/o Assistant
Engineer Office, Headquarter Office
Northern Railway, Lucknow.

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5. Sri SNR Rizvi C/o Assistant Engineer Office (HQ) Northern Railway, Lucknow.
 6. Sri Adalati Yadava C/o Assistant Engineer Office Northern Railway, Jaunpur. ... Respondents
- (By Advocate Mr. A.K.Chaturvedi)

The applications having been heard on the Tribunal on 15.2.2000 delivered the followings

O R D E R

HON'BLE MR. A.V. HARIDASAN, VICE CHAIRMAN

Since the parties, cause of action as also the question of law involved in both these cases are almost the same, these two cases are being heard and disposed of by this common order. Excepting the first applicant in O.A.733/91 the remaining applicants in that case filed T.A.211/92. The applicants 1 to 4 in O.A.633/91 while working as Sub Overseer Mistry were promoted on adhoc basis without undergoing any selection to the post of Inspector of Works Gr.III (IOWGr.III for short) with effect from 31.5.81, 13.7.86, 16.7.83 and 3.1.83 respectively and were continued as such. Though there were fifteen posts of IOWs for regular appointment from the year 1977 onwards, the applicants according to them were not called for any written test or viva-voce excepting the 4th applicant who appeared for a written test and viva-voce on 16.5.84. The result has not yet been made known to him so far. Coming to know that a written test was proposed to be held on 3.6.91 for making regular promotion to the post of IOW Gr.III in the scale Rs.1400-2300 which was postponed to 29.6.91 and again postponed the applicants represented that they should be regularised without any selection process as IOW Gr.III relying on a Railway Board Circular of the year 1966. The applicants did not get any response from the respondents. According to the applicants a person working on the post of IOW for a period of eighteen months continuously is entitled to

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to be regularised on the post according to the Railway Board Circular as also the judgments of various High Courts and Benches of the Tribunal and the Hon'ble Supreme Court. With these allegations, the applicants seek a direction to be issued to the respondents to regularise the applicants in the post of IOW Gr. III without holding any test and the applicant No. 4 be given benefit from 1977.

2. To this original application, the respondents have filed a counter affidavit. They contend that the applicants 1 to 3 did not appear for the selection and that the 4th applicant though qualified in the written test and appeared in the viva-voce which was held on 15.7.85 did not qualify in the viva-voce. The respondents contend that as the post of IOW Gr. III is a selection post, the applicants are not entitled to be regularised without being successful in the selection.

3. While O.A. 733/91 was pending as the applicants were reverted from the post of IOW Gr. III which they had been holding on adhoc basis to the post of SOM Gr. I by the third respondent vide his order dated 31.1.92 excepting Shri Tiwari the first applicant in O.A. 733/91 filed O.A. 165/92 before the Allahabad Bench of the Tribunal which was transferred to this Bench and re-numbered as TA. 211/92. The applicants assailed the reversion on the ground that they are entitled to be regularised on the post of IOW Gr. III which they had been holding on adhoc basis continuously for a very long time on the basis of the Railway Board Circular of the year 1966 as also the decisions of the Tribunal in O.A. 154/97 of the Lucknow Bench and other rulings. By an interim order dated 5.2.92 the reversion of the applicants ⁱⁿ this case was stayed.

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4. The respondents have filed a detailed reply wherein they have raised the same contentions as was raised in O.A.733/91. They have further contended that as the applicants were repeatedly called upon to appear in the test which they did not do, their claim for regularisation without being subjected to the selection as required under the Rules is unsustainable.

5. When the application came up for hearing, learned counsel of the parties stated that Shri Tewari accepted his reversion and got retired from service later, that Shri S.G.Nigam, the second applicant in O.A.733/91 retired while he was continuing as IOW Gr.III on the basis of the interim order and that Shri N.C.Saxena, the applicant No.1 in T.A.211/92 has been empanelled and promoted as IOW Gr.III.

6. We have gone through the pleadings and documents and also have heard the learned counsel appearing for the parties at considerable length. The only question that calls for consideration in these cases is whether the applicants who have been working on the post of IOW Gr.III are entitled to be regularised after they have been completed continuous officiation for a period of eighteen months as claimed by them. The learned counsel of the applicants invited our attention to the Office Circular dated 29.7.85 of the General Manager, Northern Railway regarding regularisation of those STEs in Grade Rs.425-640 working on adhoc basis during 1979 to 1984 in the absence of finalisation of selection process. The last paragraph of this letter reads thus:

"The matter has again been examined and it has been decided that the Staff of all the above mentioned three categories viz.Hd.TCRs, STEs, and Conductors grade Rs.425-640/Rs. who work on adhoc basis against regular vacancies during the period 1979 to 31.12.83 pending finalisation of the selection/suitability test through viva-voce may be regularised from the date of their completion of eighteen months adhoc service against regular posts for the purpose of their seniority for promotion to the next higher grade."

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as also the judgment of the Cuttack Bench of the Central Administrative Tribunal reported in (1987) 3 ATC 617 (Kunaram Marmdy and others Vs. Union of India and others) and the Judgment in T.A.No.1105/1987 of the C.A.T. Allahabad Bench Circuit at Lucknow (Dinesh Chandra Misra Vs. Union of India and others) basing on the A.5 circular. We find that these judgments and the circular do not have any application to the issue in question. The question whether a Railway employee working on a Class III post on adhoc promotion is entitled for regularisation on the post without undergoing any selection if he has completed eighteen months of continuous service was considered by a Full Bench of the Tribunal sitting at the Principal Bench, New Delhi in T. 844/86 (Shri Jatha Nand and others V. Union of India and others) reported in Full Bench Judgments 1986-89 at page 353. The Full Bench concluded as follows:-

- (i) The right to hold the selection/promotional post accrues only to those employees who have undergone a Selection Test and empanelled for the promotion/selection post and continue as such for 18 months or more. An adhoc employee will also get the right if he has passed the Selection Test.
- (ii)
- (iii)
- (iv) If the employee has appeared in the selection test and has failed, his services cannot be regularised to the promotional post. But he will be entitled to be given further opportunity to appear in the selection test.
- (v) A Railway employee holding a promotional post in adhoc capacity can be reverted to his original post at any time before the expiry of 18 months. Secondly, if he has not qualified in the selection test, he is liable to be reverted even after 18 months.

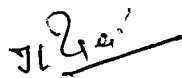
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The question was again considered by another Full Bench in S.C.Gautam and others Vs. Union of India and others (OA No.1676/90, T.106/86 (S.No.418/83)). The issue before the Full Bench was whether a Railway Servant promoted to a Class III Selection post on adhoc basis and has continued for some time can be regularised without subjecting to selection process. Agreeing with the ruling of the Full Bench in Jatha Nand's case after exhaustive consideration of the rules and instructions and the Railway Board Circular of the year 1966, it was held that Railway Servants promoted to Class III posts which is a selection post can be regularised only after qualifying in the selection process. The issue in these cases is thus covered by the ruling of the Full Bench in Jatha Nand's case followed by S.C.Gautam's case.

7. In the light of what is stated above, the claim of the applicants for regularisation without being subjected to selection on the post of IOW Gr.III which is a selection post has only to be rejected.

8. In the result the applications fail and they are dismissed leaving the parties to bear their own costs.

Dated the 15th day of February, 2000



J.L. NEGI
ADMINISTRATIVE MEMBER



A.V. HARIDASAN
VICE CHAIRMAN

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