

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

O.A. No.116 of 1996

Order dated 18-4-2002

Ram Nandan Prasad, son of Late Gouri Shankar Prasad, working as Enquiry-cum-Reservation Clerk under Sr. Divisional Commercial Manager, N.F.Railway, Katihar.

.. Application  
-versus-

1. Union of India through the G.M., N.F.Railway, Maligaon, Guwahati.
2. Chief Commercial Manager (P), N.F.Railway, Maligaon, Guwahati.
3. D.R.M. (P), N.F.Railway, Katihar.
4. Divisional Commercial Manager, N.F.Railway, Katihar.

... Respondents

Counsel for the applicant ... Mr. J. Prasad

Counsel for the respondents ... Mr. G. Bose

P R E S E N T: The Hon'ble Mr. L.R.K. Prasad, Member (A)

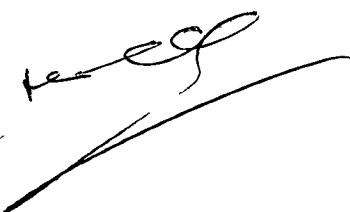
The Hon'ble Mrs. Shyama Dogra, Member (J)

O R D E R

L.R.K. Prasad, Member (A):

This application has been filed seeking following reliefs:

- (i) The office order dated 8.3.1995 (Annexure-A/1) be quashed.
- (ii) The respondents be directed to restore the pay of the applicant as Enquiry-cum-Reservation Clerk (ECRC) with effect from the date his pay has been reduced with arrears of pay and allowances along with interest.
- (iii) The respondents be directed to fix the seniority of the applicant in the cadre of ECRC with effect



from 18.9.1980 with consequential benefits of proforma promotion to higher grade with benefits of arrears, pay, allowances and interest.

2. Heard the learned counsel for the parties and perused the materials on record.

3. While working as Goods Clerk under DCM, Katihar, the applicant applied for the post of ECRC in response to notification dated 14.5.1979. He was selected for the post in question and promoted consequently on ad hoc basis vide notification dated 29.9.1980 (Annexure-A/3). Thereafter, he was posted as ECRC at Malda Town Railway Station. He continued in the said post without break for 8 years. Later on, he was posted at Katihar in the same capacity under Chief Reservation Superintendent, Katihar (Annexure-A/4). The applicant has stated that he served the Railways for 39 years, out of which he was in the open line for 32 years, which also includes his posting as ECRC for 16 years. It is alleged that all of a sudden, the applicant got the reversion order dated 4.8.1995 (Annexure-A/1) whereby he was reverted as <sup>Rs</sup> GGC in the scale of Rs.975-1540 without any show cause notice. Against the said reversion, the applicant made representation. In spite of said reversion order, he was allowed to continue as ECRC. However, his pay was reduced in terms of order, as at Annexure-A/1. The applicant again made a representation on 25.8.1995 (Annexure-A/5) against the said reversion order but without any positive result. He finally retired from service with effect from 31.12.1996. Therefore, the applicant has challenged the impugned order, as at Annexure-A/1, with the prayer as referred to in para 1 above.

*ecr*

4. While opposing the above application, the respondents have stated that this application is barred by

principle of res judicata, estoppel, waiver, acquiescence and limitation. It is stated that the applicant was promoted as ECRC purely on temporary and ad hoc basis which was stop-gap arrangement. It was made clear in the order itself that his promotion on ad hoc basis as ECRC would not confer upon him any claim for seniority. The post of ECRC is a selection post. For getting regular promotion to the said post, one has to be successful in the selection process in accordance with law. From time to time, the Railway Administration had notified the post of ECRC for selection and the applicant should have appeared in the selection test. Moreover, training in Goods and Coaching is pre-requisite for being posted as ECRC on regular basis. The applicant neither applied for regularisation of his service, as per rule, nor did he joined the Zonal Training School for obtaining requisite training. Along with others, the applicant was first to join the Zonal Training School, Alipurdwar, but he never did so, and as such, he does not fulfil one of the pre-requisite required for regularisation to the post of ECRC.

*As he failed to participate in the selection process, and did not clear requisite training, there was no option but to revert him to his parent cadre, as per the order, which is at Annexure-A/1. It is the stand of the respondents that even if a person works for a long continuous years on ad hoc basis, he does not get automatically entitled for regularisation in a selection post unless he is selected for the post in accordance with rules.*

5. From the pleadings of the parties, it appears

that the post of ECRC is a selection post. Therefore, to be promoted on regular basis in the said post, one is required to be successful in the selection process. In the instant case, we find that the applicant, along with five other persons, was promoted on temporary and ad hoc basis to officiate as ECRC in the pay scale of Rs.330-560 vide notification dated 29.8.1980 (Annexure-A/3). In the capacity of ECRC, the applicant was posted at Malda Railway Station. The said order (Annexure-A/3) makes it clear that the promotion is purely temporary, ad hoc and stop-gap arrangement and it will not confer upon them any claim for seniority, promotion, selection, etc. over those who are already senior or subsequently selected for such promotion. This arrangement is purely provisional, subject to result of a writ petition mentioned therein. Vide order dated 28.7.1989 (Annexure-A/4), the applicant was <sup>however</sup> retained at Katihar in the same capacity and on same terms and conditions.

6\* It appears from notification dated 14.5.1979 (Annexure-R-1) that applications were invited from different categories of staff for selection to the post of ECRC in the pay scale of Rs.380-560. From Annexure-A/2, it is clear that in response to the said notification, the applicant applied for the post in question on 10.6.1979. However, it is not clear from notification dated 29.8.1980 (Annexure-A/3) whether the applicant was promoted on the basis of selection test or was just given promotion on ad hoc basis without undergoing any selection test. However, in para 4.3 of the O.A. the applicant has stated that he was selected to the post and promoted on ad hoc basis, but he has not clarified whether he was selected

*fixed*

to the post after passing selection test or on seniority basis for ad hoc appointment. On the other hand, the respondents have stated that as the applicant did not go through selection process and had not cleared training in Goods and Coaching, he was not entitled for regularisation to the post of ECRC. Nevertheless, the fact remains that the applicant was in the post of ECRC from 1980 to 1995 and his reversion order was issued on 8.3.1995 (Annexure-A/1) which states as follows:-

"NO.F.RAILWAY

Office Order

Office of the  
DRM(P)/KIR.

Shri Ramnandan Prasad, Rlg. GC in scale of Rs.975-1540/- now working ad ad-hoc ECRC is now reverted to Rlg. GC on pay Rs.1540 + 60/-P.P. and posted under CCMI/KIR with immediate effect.

This is as per order of competent authority.

Sd/-

For Divl.Bly. Manager (P)  
N.F.Railway, Katihar  
Dated 8.3.95.

In spite of this order, the applicant is stated to have continued for some time in the post of ECRC. Against the reversion order, the applicant made a representation on 25.7.1995 with the prayer to absorb him in the scale of Rs.1200-2040. The O.A. was filed sometime in February 1996 and the applicant retired from service on 31.12.1996. The W.S. was filed in February 1997. In para 16 of W.S. filed in February 1997 (which is on record), it has been indicated by the respondents that the reduced pay of the applicant was restored to its original position vide office order issued on behalf of respondent no.3 on 12.4.1996 (Annexure-R-3), the contents of which are

reproduced below:-

"Office Order

Office of the  
DRM (P)/KIR

In order to maintain status-quo as per order of Honourable CAT/Patna in case No. OA.116/96 the order of reversion as RGC in scale Rs.975-1540/- issued under this office order No. ES/5150(T) dated 9.3.95 in favour of Shri Ram Nandan Prasad ECRC is kept in abeyance till further advice. He will continue to work as ECRC in scale Rs.1200-2040/- on pay Rs.1850/- P.M. till final decision is received from Honorable CAT/Patna.

This has the approval of the competent authority.

For D.R.M. (P) K.R.

No. ES/8150(T)

Dated

12.4.96.

7. This fact has not been denied by either side. However, we find that the applicant had filed M.A.274/96 containing a letter dated 28.10.1996 (Annexure-A/10) which is reproduced below:-

"N.F. Railway

OFFICE ORDER

Office of the  
D-R.M. (P)/KIR

In continuation of this office order of even No. dtd.12.4.96, Shri Ram Nandan Prasad now working as ad hoc ECRC in scale of Rs.1200-2040/- is now reverted to Rlg.GC in scale Rs.975-1540/- on pay Rs.1540/- 60 p.p. and posted under CGMI/KIR with immediate effect.

This is as per order of the competent authority.

For Divl.Railway Manager (P)  
N.F.Railway, Katihar

No. ~~ES~~/5150 (T)

Dt.28.10.1996."

8. The applicant retired from service on 31.12.1996. In other words, he continued to receive salary in the scale of Rs.1200-2040 which was finally reduced to the scale of Rs.975-1540 about two months before his retirement.

9. It is admitted fact that the post of ECRC is a selection post and one is required to pass the

selection test on competitive basis before getting a regular appointment to the post in question. In the instant case we do not find any evidence to suggest that the applicant had been successful in a selection test for the post of ECRC. Therefore, his claim for absorption in a selection post without going through the selection process is not tenable. Nevertheless, the fact remains that the applicant continued to officiate in the post of ECRC on ad hoc basis from 1980 to October 1996 when the letter at Annexure-A/10) was issued whereby the applicant was reverted to Rlg. GC in the scale of Rs.975-1540 on pay of Rs.1540 plus 60 P.P. He retired from service two months thereafter, i.e. on 31.12.1996. Therefore, he continued to get the scale of Rs.1200-2040 up to October 1996.

10. It is well settled principle of law that seniority is counted from the date of regularisation and not from the date of ad hoc appointment. Ad hoc service without being selected cannot be counted for seniority. In the instant case as the applicant was not selected through selection process, he cannot claim seniority in the post from the date of his ad hoc appointment in 1980. Therefore, the applicant's claim for fixing his seniority in the cadre of ECRC from 1980 is also not tenable.

11. Keeping in view the fact that the applicant continued as ECRC from 1980 to October 1996 and he retired from service with effect from 31.12.1996, a liberal view is required to be taken with regard to

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fixation of pensionary benefits of the applicant without treating the same as a precedent. In view of the aforesaid position, we dispose of this O.A. by directing the respondents to consider the case of the applicant for the purpose of determination of his pensionary benefits keeping in view the scale of pay he was getting prior to issue of letter dated 28.10.1996 (Annexure-A/10) and thereafter pass appropriate reasoned order in accordance with law within three months from the date of communication of this order. No order as to the costs.



(Shyama Dogra)  
Member (J)



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(L.R.K. Prasad)  
Member (A)

Mahto