

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

Original Application No. 41 of 1996

DATE OF ORDER : May 28th, 2002.

Binod Prasad Singh, son of late Gurucharan Singh,
resident of Railway Quarter No. 305/A, Jharana Colony,
Police Station, Sahebganj, District - Sahebganj.

..... APPLICANT.

By Advocate : Shri R.N. Mukhopadhaya with Shri V. Ram.

Versus

1. The Union of India, through the General Manager,
Eastern Railway, Fairlie Place, Calcutta.
2. The Chief Personnel Officer, Eastern Railway, Fairlie
Place, Calcutta.
3. The Divisional Railway Manager, Eastern Railway, Malda.
4. The Divisional Personnel Officer, Eastern Railway,
Malda.

..... RESPONDENTS.

By Advocate : Shri Gautam Bose.

C O R A M

Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Smt. Shyama Dogra, Member (J)

O R D E R

By Shyama Dogra, M(J):- This original application has
been filed by the applicant seeking following reliefs:-

(a) quashing of the order dated 11.12.1995
(Annexure A/1).

(b) quashing of the order dated 2.1.2001
(Annexure A/22) ;

with the prayer to consider the case of the applicant

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for appointment to the post of Welfare Inspector Grade III on regular basis from the date the applicant has been working on such post on ad hoc basis i.e. 27.3.1990. By virtue of Annexure A/1, the candidature of the applicant has been cancelled, and he has been debarred to be appointed on regular basis to the post of Welfare Inspector Grade III (WI Gr. III in short). With the passing of Annexure A/22, the applicant has been reverted to the post of Head Clerk against which post the applicant has neither joined nor functioned since the date of his initial appointment.

2. The brief facts of the case are that the applicant was appointed as Clerk Gr. II on 8.4.1984, and was promoted as Clerk Gr. I/Senior Clerk on 2.4.1986. He was appointed as regular & Clerk Gr. I on 8.3.1988. Thereafter on 15.3.1990, the applicant was promoted as WI Gr. III (Rs. 1400-2300/-) on officiating /ad hoc basis after going through the due process of screening for the said post. A copy of the said promotion order has been annexed with the original application as Annexure A/3. Thereafter, the applicant joined this post of WI Gr. III on 27.3.1990.

3. The respondents vide Annexure A/5 dated 26.12.1991 called for options from the eligible candidates for preparation of the panel for promotion to the post of WI Gr. III (Regular). In pursuance of this, the applicant

submitted his option for WI Gr. III and also appeared in the written test on 22.1.1992. However, viva voce for the said selection, scheduled to be held on 7.4.1992 was later on cancelled vide Annexure A/8 dated 3.4.1992. No further date of viva voce was intimated to the candidates.

4. In the mean time, the applicant appeared in the selection test for the post of Head Clerk (Rs. 1400-2300/-) and was declared successful. Originally also, the applicant's parental cadre is of ministerial clerk. After declaring him successful in the said test for the post of Head Clerk, the applicant was promoted as Head Clerk (officiating/ad hoc) vide Annexure A/9 dated 29.10.1992. However, the applicant did not join the said post of Head Clerk as the applicant had already been working as WI Gr. III with the same pay scale i.e. Rs. 1400-2300/-. The applicant also requested the respondents to allow him to function as WI Gr. III vide Annexure A/10 dated 22.10.1992, and the same was allowed, and he continued to function as WI Gr. III.

5. It is further submitted by the learned counsel for the applicant that in the year 1993, a panel for regular promotion to the post of WI Gr. III was prepared, but the name of the applicant was not incorporated in the said panel, though he was still working on the officiating basis on the said post of WI Gr. III. In view of this factual position, the DPO, Malda recommended and

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confirmed that the applicant had been working as WI Gr. III on officiating basis since March, 1990 vide Annexure A/15 dated 27.9.1995, and requested the Dy. Chief Personnel Officer, Eastern Railway, Calcutta to consider the case of the applicant along with one Shri Shyamal Chakravorty for appearing in the selection test of WI Gr. III by obtaining one time relaxation as special case from the CPO/CCC.

On 27.9.1995 when the department asked for fresh options, the applicant also desires to appear in the said selection for the post of WI Gr. III, and also to forego his promotion in his parent cadre to the post of Head Clerk. In view of this, the applicant was allowed to appear in the written examination for regular promotion for WI Gr. III, 10.12.1995. However, to his surprise, he received the impugned order of cancellation of his candidature vide Annexure A/1 dated 11.12.1995. The result of the said selection test held on 10.12.1995 was also not published, and no viva voce was taken by the respondents.

6. In the mean time, the applicant has also ^{in the test} appeared for the post of Office Superintendent Gr. II (OS Gr. II in short) in the ministerial cadre on 19.9.1995, but he was declared unsuccessful. After receiving the impugned order dated 11.12.1995, the applicant preferred

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this original application. On 22.1.1996, an interim order was passed by this Tribunal, directing the authority to allow the applicant to appear in the viva voce to be held on 24.1.1996, but the applicant was not allowed to appear in the viva voce nor the post was kept reserved as per direction of this Tribunal. In 1997-98, a panel for regular promotion to the post of WI Gr. III was prepared, but the name of the applicant was not incorporated in that panel.

7. On 7.4.1999, the applicant was informed by the Senior Divisional Personnel Officer, Eastern Railway, Malda that in view of the fact that the applicant has been working as WI Gr. III on officiating basis since 15.3.1990, he reserves the right to volunteer for the post of WI Gr. III and in view of the fact that the applicant had already given an undertaking vide his application dated 7.1.1999 to forego the promotion to the post of Head Clerk. However, this letter was withdrawn vide Annexure A/19 dated 28.9.1999 on the ground that the applicant did not fulfil the terms and conditions as laid down by the Railway Board to become eligible for the post of WI Gr. III. Therefore, the question to appear in the selection for the said post does not arise.

8. In view of this letter, the applicant was released from the post of WI Gr. III on 2.1.2001 vide Annexure A/22, and the operation of the said order was

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stayed by this Tribunal on 15.1.2001, and the applicant was allowed to continue to function as WI Gr. III on ad hoc basis till date.

9. In nut-shell, the case of the applicant is that the impugned order as at Annexure A/1 has been passed on wrong reasons and Annexure A/22 is also not tenable in the eyes of law for the simple reason that the applicant has never worked on the post of Head Clerk against which he has been reverted by passing of the said order (Annexure A/22). The applicant has also raised the plea of discrimination, and has taken us through Annexure A/20 dated 29.11.1999, by virtue of which one Shri Ambika Paswan who was working on ad hoc basis from 17.11.1987 to 31.12.1997 (Rs. 1400-2300/-)(RP) and (Rs. 5000-8000/-)(RSPP) was regularised with retrospective effect. So far as eligibility of the applicant for the post of WI Gr. III is concerned, it is submitted that he fulfils the conditions for the said post in all respects as he is graduate and prior to holding the office of Welfare Inspector, he was in the grade next below to the grade of WI with service of more than five years. The main grounds of rejection of his selection for regular post of WI Gr. III is based on wrong information of the respondents that since the applicant had already been promoted to the post of Head Clerk, therefore, he cannot be considered for promotion to the post of WI Gr. III as the

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applicant has never worked on the post of Head Clerk till date.

10. The respondents have filed their written statement and raised various objections. The main objection for consideration of the applicant for the post of WI Gr. III is that he does not fulfil the requisite qualification for the said post on which the applicant has been working purely on temporary and ad hoc basis as the applicant is simply matriculate. Moreover, the lien of the applicant is still in his parent clerical cadre. Since the applicant has been working on ad hoc basis, therefore, it would not entitle him to be considered for regular promotion to the said post without undergoing the selection process. Only those persons have been empanelled for selection for the said post of WI Gr. III who have requisite qualifications as per circular issued by the Chief Personnel Officer on 25.10.1994 vide Annexure R/1. It is submitted by the learned counsel for the respondents that instruction no. 1 and 6 as incorporated in the said letter are to be read together, and the applicant does not fulfil the requisite qualification even though he has been working in the scale of Rs. 1400-2300/- , because he does not possess the diploma in labour welfare and social welfare etc.

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11. The second reason for rejection of the candidature of the applicant for selection to the post of WI Gr. III is that since he has been working on the post of Head Clerk

with the same pay scale as of WI Gr. III, therefore, his candidature was rejected and he was not incorporated in the panel prepared for the said post.

In reply to discrimination to the applicant by not regularising the services as WI Gr. III as has been done in the case of Shri Ambika Singh, it is submitted that his case is entirely different from that of the applicant. Therefore, no discrimination has been caused to the applicant as ad hoc employees have no vested right to be considered for the regularisation of their services on the post without going through the process of selection.

12. In rebuttal to the contentions of the respondents, the learned counsel for the applicant submits that the applicant's case falls under clause 2 and 3 of the circular / instructions for the eligibility of candidates for the post of WI Gr. III vide Annexure R/1, as the applicant had been working below the grade of Welfare Inspector Gr. III prior to joining as WI Gr. III in 1990, and he is also graduate. In support of this, he also annexed copy of B.Sc. certificate dated 8.9.1983 (Annexure A/16).

13. In reply to various letters issued by the DPO, Malda from time to time, for example, Annexure A/4 to A/9, it is submitted by the learned counsel for the

respondents that these are the local orders issued by the concerned officer on local basis, and the post of Welfare Inspector cadre since controlled by the Head Quarter, Eastern Railway, Calcutta, therefore, the order issued by the Head Quarter will prevail upon the order issued by the local authority. It is further submitted that the applicant has never intimated the authorities to forego his promotion as Head Clerk, and his letter dated 20.10.92 was simply the request to allow him to continue as Welfare Inspector. The learned counsel for the respondents has supported his contention by referring to various cases like 2000 (1) SLJ 315 (SC), titled Nagpur Improvement Trust vs. Yadao Rao Jaganath, AIR 2001 SC 2353, titled Swapan Kumar Pal & Ors vs. Samitabhar Chakravorty and ors, AIR 1998 SC 2098, titled Devendra Bathia and ors vs. Union of India, AIR 1999 SC 897, titled A.K. Sharma vs. U.O.I.

14. The learned counsel for the applicant has also relied on the decision of the Hon'ble Supreme Court in AIR 1989 SC 1431, titled Mrs. Sumati P. Shere vs. U.O.I. and ors.

15. The learned counsel for the parties have also submitted written synopsis.

16. We have heard the learned counsel for the parties and gone through the record. So far as factual

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position of the case is concerned, it is not denied that the applicant has been working as WI Gr. III on officiating/ ad hoc basis with effect from 27.3.1990 after due screening. The applicant had also appeared in the written selection test held on 22.1.1992, and was also called to appear in the viva-vocife on 27.3.1992, which was later on cancelled on 3.4.1992. This factual position clearly shows that the applicant was eligible for regular promotion to the post of WI Gr. III on that relevant time, but he was not promoted as the said written test and viva-vocife was cancelled for the reasons best known to the respondents. Subsequently also, the applicant has shown his willingness to appear in the test from time to time, but his name was not empanelled for regular promotion to the said post.

17. Surprisingly, the applicant was again allowed to appear in the written examination for the said post on 10.12.1995, but his candidature was cancelled on the next date i.e. 11.12.1995 by issuing Annexure A/1. The reason given in that letter for cancellation of his candidature was that he was provisionally allowed to appear in the written examination and after thorough examination of the case, it has been decided by the competent authority that the candidature of Sri Singh as WI Gr. III cannot be considered, because he has already been promoted as Head Clerk in the scale of Rs. 1400-2300/- in his original cadre. His reversion based

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on application cannot be accepted since he was in the grade for more than two years. It is an admitted fact that the applicant was promoted to the post of Head Clerk (Rs. 1400-2300/-) on 28.7.1992 after going through the selection process. However, bare perusal of Annexure A/17 dated 4.8.1998 clearly shows that the candidates who were invited to appear in the selection test for the post of WI Gr. III were to give a declaration which is as under;

" I am willing to take up assignment of Welfare Inspector anywhere in the Eastern Railway, and I will not ask for repatriation to my parent cadre i.e..... I understand that my connection with the parent cadre will be severed for all."

A bare reading of this clause clearly shows that the moment the staff volunteers for the post of Welfare Inspector, his severance from his parent cadre is implied in nature by giving this declaration.

18. It is well settled principle of law that the ad hoc employee does not have right to be in regular cadre unless and until he is regularised after going through the selection process, and the same view has been taken by the Hon'ble Supreme Court in AIR 1998 SC 2098 (Supra).

In the present case in hand, the applicant has appeared in the selection test for the post of WI Gr. III twice , but no appointments were made due to one or the other

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reason by cancelling the viva voce etc. , for which no plausible reason has been given by the respondents.

Even the reason given in Annexure A/1 for rejection of promotion of the applicant is not cogent as the said letter is silent on this aspect , and the reason given is that his reversion based on his application cannot be accepted. What the word "reversion" intends to tell has not been indicated in the said letter. Therefore, the said letter is quite vague and not explanatory in nature. Annexure A/2 dated 28.3.1989 speaks about the eligibility criteria for ad hoc appointment to the post of WI Gr. III, and since the applicant fulfils that eligibility criteria as mentioned in Annexure A/2, he was appointed to the post of WI Gr. III on ad hoc basis in the year 1990 after due screening. Therefore, there is force in the contentions of the applicant that he still fulfils the eligibility criteria even after issuance of Annexure R/1 whose clause 2 and clause 2 of Annexure A/1 are almost similar except cut-off year mentioned in these letters.

19. Moreover, even after issuance of circular (R/1) dated 25.10.1994, the applicant had appeared in the written selection test on 10.12.1995, which was, however, cancelled on the next date i.e. 11.12.95 vide Annexure A/1, in which no plausible reason was given for cancellation of his candidature , as observed hereinabove.

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20. it is an admitted fact that since 1990 till date the applicant has been working as WI Gr. III without break though some^{times} by virtue of interim order passed by this Tribunal, which clearly shows that he has never worked on the post of Head Clerk for the said period, and he has also given an undertaking that he would forego his ministerial cadre and would continue in WI Gr. III.


21. Therefore, in the light of the observations made hereinabove, we are of the considered opinion that the impugned orders (Annexure A/1 dated 11.12.1995 and Annexure A/22 dated 2.1.2001) have been passed without assigning cogent reasons and are not sustainable. Therefore, the same are hereby quashed, as it is apparent from the record that the applicant is eligible to appear in the selection test for the post of WI Gr. III. In view of this, the respondents are directed to consider the case of the applicant afresh for the post of WI Gr. III after allowing him to appear in the coming selection test for regular post of WI Gr. III since the applicant has already given option to forego his claim for promotion to the post of Head Clerk.

22. The respondents are further directed to consider the case of the applicant for regularisation on the said post on the ground of discrimination, as alleged by the applicant while relying on Annexure A/20, by virtue of which one Shri Ambika Paswan who was working


on ad hoc/officiating basis as Ex-Machinist/MCM (ad hoc FIC 'B') has been regularised with retrospective effect after completion of 10 years of ad hoc service, provided it is found after proper verification that the applicant's case is similar to the case of Shri Ambika Paswan.

23. With these observations as made hereinabove, the original application is allowed to the extent as indicated above and disposed of accordingly , with no order as to costs.

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(SHYAM PRASAD)
MEMBER (J)

28.5.2002.


(L.R.K. PRASAD)
MEMBER (A)