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CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: O.A. No.931/89

Transfer Application No:

DATE OF DECISION: 22.3.1994

Shri Prafulla V.Pathak Petitioner

Shri B.Ranganathan. Advocate for the Petitioners

Versus

Union of India & Ors. Respondent

Shri J.G.Sawant.

Advocate for the Respondent(s)

CORAM :

The Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,

The Hon'ble Shri R.Rangarajan, Member(A).

1. To be referred to the Reporter or not? M
2. Whether it needs to be circulated to other Benches of the Tribunal? M


(M.S. DESHPANDE)
VICE-CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH.

Original Application No.931/89.

Prafulla V.Pathak.

.... Applicant.

V/s.

Union of India & Ors.

.... Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman,
Hon'ble Shri R.Rangarajan, Member(A).

Appearances:-

Applicant by Shri B.Ranganathan,
Respondents by Shri J.G.Sawant.

Oral Judgment:-

¶Per Shri M.S.Deshpande, Vice-Chairman Dt.22.3.1994

Heard counsel for the parties. Three prayers have been made by this Original Application. The first is that the Rules regarding temporary Railway servants (Annexure 'A-16' to the application) should be quashed because they provide that a particular number of years of service in a temporary capacity could not be taken into consideration for pensionary purposes after a person is granted the status as a regular railway servant. The second is that the action on the part of the Respondents in not allowing the applicant to appear for the viva voce test for promotion to the post of Junior Clerk should be struck down, as the applicant was eligible to appear for the viva voce and had in fact appeared at the written test, but was not allowed to appear for the viva voce test. The third prayer is for a direction to screen the applicant for regularisation from the date when he was granted temporary status and thereby allow him to appear at the viva voce test for promotion to the post of Junior Clerk.

.....2.

2. The applicant was appointed on 3.7.1979 and was given a temporary status on 1.1.1983. He had appeared at the written test on 4.2.1987 for the post of Junior Clerk, but he was not allowed to appear at the viva voce test because according to the Respondents he had been permitted to appear at the written test through an error. The applicant came to be regularised in the year 1991 that is during the pendency of the present application. The Respondents contested the first prayer regarding the Rules which do not allow the entire temporary services to be taken into consideration. Though a considerable argument was advanced on this point, at the close of the hearing the counsel for the applicant stated that he does not press prayer 'A'. We therefore, would not decide the challenge to the Rules regarding not counting a particular part of the service and leave the question ~~to be~~ open for being considered at a later stage if and when that position is canvassed.

3. With regard to the second point the learned counsel for the Respondents pointed out that a scheme was evolved by the letter dt. 11.9.1986 pursuant to the directions of the Supreme Court in Writ Petition Nos.147, 320-69, 454, 4335-4434/88 Inder Pal Yadav & Ors. v/s. Union of India & Ors. and that the scheme was approved by the Supreme Court subject to certain modifications indicated in the Judgment dt. 18.4.1985. Clause 5.1 (ii) provides that Casual Labour on projects, who though not in service on 1.1.1981, had been in service on Railways earlier and had already

completed the prescfibed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981 would be given certain benefits such as ^{confirmation} ~~confirmation~~ of temporary status. The learned counsel for the applicant urged that the confirmation of temporary status and regularisation are synonymous, but it is not possible to accept this submission because the two are entirely two different things and temporary status cannot be equated with regularisation which can be brought about only after screening the employee and posted against a regular vacancy. ^{From} The mere fact that the temporary status was ^{fixed} ~~confirmed~~, the applicant would not therefore become a regular Class IV employee of the Respondents. Rule 109 of the IREM says that ~~though~~ Lower grades in Class III like Junior Clerks, Brakesmen, Material Checkers, Store Clerks/Issuers, Switchmen, Cabinmen, Shunting Jamadars, etc. in scales such as 105-135, 100-130, should be wholly filled by promotion from class IV railway servants who have put in 5 years ~~of~~ service. In the case of posts which are in the normal avenue of promotion to class IV railway servants, promotion should be made from amongst the railway servants of the Department concerned in each promotion unit on the basis of seniority-cum-suitability after holding such written and/or practical tests as may be considered necessary. It is apparent that the applicant would not be entitled to take advantage of this Rule because he was not a regular Class IV employee and Rule 109 would apply only to the latter category. The

learned counsel for the Respondents urged that it was because of an error that the applicant was allowed to appear in the written test conducted on 4.2.1987. is It appears that the applicant was regularised in the year 1991 and would not have been eligible to appear for the examination in terms of Rule 109 referred to above. The action of the Respondents in not permitting the applicant for viva voce test cannot therefore be faulted.

4. The learned counsel for the Respondents further stated that the applicant has since acquired eligibility to appear in the written examination and that he will be allowed to appear at the written examination as and when the next examination would be held. Though we are clear that prayer 'B' as made in the application ~~were~~ ^{cannot be} granted, we find that the applicant on the basis of the Rule position as well as the statement made by the counsel ~~for~~ for the Respondents would be entitled to appear for the next examination for promotion to Class III post in terms of Rule 109.

5. The learned counsel for the applicant wanted to raise a question that ~~the~~ juniors to the applicant have been regularised and that the applicant could not have been dealt with differently. This was not a point raised in the OA and the learned counsel for the applicant could not point out to us how such a stand can be taken at the time of hearing. He only referred us to M.P. No. 624/93 in which a reference was made to this aspect ^{but} that was an application for a direction to the Respondents to furnish detailed information regarding the dates, occurrence of vacancies and details of action taken

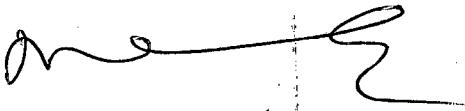
promptly to screen and absorb the eligible candidates in such vacancies and also to furnish information regarding the juniors to the applicant who were absorbed and were granted regularisation. That was not an application for amendment for raising the plea that the applicant had been discriminated against and that his juniors have been preferred for regularisation. The stand taken by the applicant has been refuted by the Respondents in their reply to the application by stating that the screening for absorption against a regular vacancy was required to be done on the basis of seniority, Division/Department-wise and the applicant belonged to Signal & Telecommunication Department and ~~the~~ seven persons listed in the Annexure 'B' to the MP were initially engaged in the Signal & Telecommunication Department. It was open to the applicant to raise a plea that the provisions of Article 14 of the Constitution had been violated and that a discriminatory treatment had been meted out to him. In the absence of pleadings it would not be open to us to go into the aspect of the case.

6. With regard to the last prayer (prayer 'C') we find that in view of the rules it is not possible for us to direct that regular status should have been granted to the applicant on the basis of the facts stated in the application. However, now that a regular status has been granted to the applicant, prayer 'c' would become infructuous.

7. While disposing of this application, the only direction that we would make ~~would be~~ be that the

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applicant should be allowed to appear at the next examination that will be held for promotion to the post of Junior Clerk in Class III. No order as to costs.



(R. RANGARAJAN)
MEMBER (A)



(M. S. DESHPANDE)
VICE-CHAIRMAN

B.