

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Dated this the 12th day of September, 2001

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.Kuldip Singh - Member (J)

ORIGINAL APPLICATION NO.874 OF 1996

Smt.Shakuntala M.Sharma,
Junior Clerk,
O/o Chief Workshop Manager ,
Signal & Telecommunication Workshop,
Central Railway, Byculla.
R/o Annapurna Niwas, Bhatti Pada Road,
Bhandup (West) Mumbai.
(By Advocate Shri R.S.Tulaskar) - Applicant

VERSUS

1. Union of India
through the General Manager,
Central Railway,
Mumbai, C.S.T.
2. Chief Personnel Officer,
Central Railway,
Mumbai, C.S.T.
3. Chief Workshop Manager,
Signal & Telecommunication Workshop,
Central Railway,Byculla.
(By Advocate Shri S.C.Dhawan) - Respondents

ORIGINAL APPLICATION NO.875 OF 1996

P.V.Pathak,
Junior Clerk,
O/o Chief Signal & Telecommunication
Engineer (C),Central Railway,
Mumbai.
R/o 3rd Floor,
Pathak Building,
Dr.R.P.Road,Dombivili (E),
District Thane.
(By Advocate Shri R.S.Tulaskar)

VERSUS

1. Union of India
through the General Manager,
Central Railway,Mumbai CST.
2. Chief Personnel Officer,
Central Railway,
Mumbai, CST.



3. Chief Signal & Telecommunication
Engineer (C), Central Railway,
New Administrative Office Bldg,
5th Floor, Mumbai.
(By Advocate Shri S.C.Dhawan) - Respondents

COMMON ORDER (Oral)

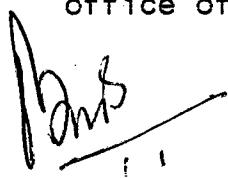
Per: Hon'ble Mr.B.N.Bahadur - Member (A) -

We are hearing together batch of two OAs namely OA 874/96 filed by Smt.S.M.Sharma and OA 875/96 filed by Shri P.V.Pathak. Since the background, facts and issues involved are similar, these are heard together on consent by learned counsel of both sides.

2. We have heard the learned counsel on both sides viz. Shri R.S.Tulaskar counsel for applicant in both OAs and Shri S.C.Dhawan representing the respondents in both OAs.

3. The facts of the case, and the grounds taken in OA, and from the arguments made by the respective counsel before us, are as follows -

The applicant challenges now the act of the respondents in not regularising him from 20.3.1993 the date on which the applicant was promoted in ad-hoc capacity as Junior Clerk in the cadre. In fact, this is what has been stressed before us today. The earlier point about challenge to the notification dated 8.7.1996 is not been pursued; since the main point in this regard was to obtain a stay at the time of filing of OA. Now coming to the grievance of the applicant as stated above, the facts are that the Applicant who was working in Group 'D' was promoted vide order dated 20.2.1993 (Page 22 of Exhibit 'C') issued by the office of C.W.M., (S & T) Workshop, Byculla. Also on 18.2.1993



Page 21), it had been declared that two employees including the applicant had been examined on 7.11.1992 and found suitable. This examination was conducted in pursuance of the notification for written test issued on 2.11.1992 by the same authority (copy at Page 22). The argument made by learned counsel on behalf of the applicant was that the selection was made in pursuance of clear provisions in the IREM to the effect that 33% of the vacancies in Group 'C' shall be filled from Group 'D' employees. These provisions are available in Para 174 and Para 189 of the Indian Establishment Manual. It is argued that a written test was held and hence all formalities required to be done for regular appointment were undertaken. It was therefore the point made that the styling of the promotion as ad-hoc was not correct, and in fact the regularisation of the applicant should have been done right from 20.2.1993 and not w.e.f. 5.4.1999 as done.

4. It was also pointed out on behalf of the applicant that even in the middle in 1995, a selection process had been undertaken, at which the applicant appeared. Our attention was drawn to the communication as Exhibits 'D', 'E', 'F' and 'G' at pages 23 to 28 in regard to these selections. The applicant had been declared successful but not appointed, presumably for lack of vacancies.

5. The learned counsel for the applicant argued that in terms of the ratio in the case of Narender Chadha & others Vs. Union of India & others, 1986 SCC (L&S) 226, the applicant is entitled to

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regularisation right from the date of his initial appointment on ad-hoc basis in view of the fact that her appointment in ad-hoc capacity was made after due process and also that continued ad-hoc officiation has been followed by regularising without break.

6. The case of the Respondents as made out in detail in the written statement and arguments made by the learned counsel was as follows:

Apart from the contentions in written statement, and facts and circumstances over which Shri Dhawan took us, his main stand lay on the basis of the contentions put forth in Para 6 of their written statement. Through this, the learned counsel for the respondents argued that the Cadre Controlling Authority of clerical staff of CWM, Byculla, CSTE & CSTE (C) is the CPO (S & T) and not the CWM, Byculla, who had conducted the initial process of selection on which basis the applicant came to be appointed on ad-hoc basis in February, 1993. The point sought to be made here was that the selection in 1993 was limited to Byculla staff only whereas the selection has to be from the combined cadre of CSTE & CSTE (C) and CWM, Byculla. This in fact was the main plank of the stand of Respondents.

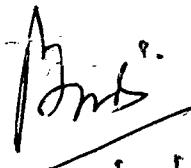
7. We have considered all the papers in the case, and also the arguments made at length by learned counsel before us. In fact the issue to be decided in this case is whether the appointment of the applicant ordered on ad-hoc basis vide order dated 20.2.1993 was genuinely so, in the facts and circumstances



of the case, and in the background of the law settled on this issue through a catena of judgments. We are, in this context, quoting to drive home this point from a judgment of this Bench in a batch of OAs, viz. OA 296/87 and others (P.K.G.Kurup & others Vs. Union of India & others) decided on 1.12.1998, the relevant portion of which is extracted below:-

"From the above decisions what follows is that it is not material whether the promotions are styled as ad-hoc or stop gap or temporary. The test is whether the initial appointments were really a stop gap in nature or not. The further test is whether the initial promotions were made after considering seniority and as per the Recruitment Rules. If the answer to the question is in the affirmative then the ad-hoc service will count for seniority. If the promotions are made ignoring the claims of senior or if the promotions are made contrary to the Recruitment Rules or not following the Recruitment Rules or in excess of the promotional vacancies then, of course, the ad-hoc promotion will not count for seniority."

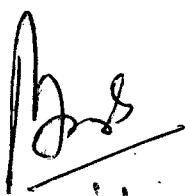
Now in this present case firstly we are convinced that the Recruitment Rules allow for promotion upto 1/3rd quota from Gr. 'D'. To this extent the applicant satisfies the requirement. Also that a written examination is held which point is also satisfied.(In this connection, we have disregarded the argument made by learned counsel Shri Dhawan that oral test was not held). The main issue however is whether this was a regular selection in terms of the arguments taken in Para 6 of the written statement, the argument being that the selection was restricted only to one office namely CWM, Byculla. Also the objection taken on behalf of the respondents is that it was made by local officer at Byculla Workshop, and it could be considered regular only for ^{purposes of}



ad-hoc appointment. It was argued that the zone of consideration of eligible persons have to come from all three viz. CSTE, CSTE (C) and CWM, Byculla. It is on this score, that the applicant's case falls and we give the reasons for arriving at this conclusion. We find from the notification issued for the appointment in 1993 that appointments are not only styled as short term officiating but also that only some eight employees all working in CWM office are only called upon to apply (Page 20). We find that the notification issued on 27.10.1995 (Page 23) has been issued by Headquarters Personnel Branch and calls for applications from Class IV personnel of CSTE, CSTE (C) and Dy.CSTE, Byculla. We then come over to page 25, which is the result of the written test and find that the applicant is listed at no.20 clearly showing the position about seniority. Shri Tulaskar accepted that people in this list at page 25 who were appointed are indeed senior to him. It is also evident from the appointment made vide order dated 9.4.1996 (Page 27) that the applicant seems to have missed the bus only on grounds of seniority.

8. We then come over to the notification of 12.10.1998 which is filed by the learned counsel for the applicant today (as allowed in Roznama order today). Here also the notification is issued by the Headquarters Office (Personnel Branch) and also calls for applications from all the three aforesaid offices. In this selection, the Applicant finds a place.

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9. Now the point of weakness in Applicant's case is that not only was the selection process in 1993 not made by the competent authority, but importantly that selection was not made from among all the eligible persons. This point goes against the case of the applicant and leads us to the conclusion that Applicant's appointment in 1999 was indeed ad-hoc. However, we went beyond to this to ascertain whether any prejudice will be caused to any seniors. It is obvious and indeed the admitted position that in the list at page 25 which is the result of the departmental examination (24.2.1996) the applicant is clearly shown below qualified to those who have been appointed. Thus in case we decide to give the applicant the benefit of regularisation right from 1993 it would clearly hit the seniors which would be unjust.

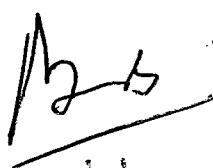
10. We take up the case law cited by the learned counsel for applicant and find that as per facts in these cases the selection process has been followed and also that ad-hoc appointments should in these cases have been made in consonance of recruitment rules and by considering seniority among other things. It is not the law settled in the cases cited that regularisation would have to be granted even when the seniority was not considered. In the present case it can be said that seniority was not followed., admittedly and the benefit of ad-hoc service cannot be provided to the applicant.

11. Thus the orders made in 1993 indicating the appointments to be ad-hoc are well and truly for short terms arrangement and are not a mere styling as 'ad-hoc.' We also find some merit in the

argument made by the learned counsel for the respondents that the case decided in T.Vijayan & others Vs.Divisional Railway Manager and others 2000 SCC (L & S 444) holds relevance in the present case. In that matter the case of Ajit Kumar Rath Vs. State of Orissa, (1999) 9 SCC 596 was also considered.

12. In view of the above discussions, we are not convinced that any case has been made out before us for interference.

13. In regard to the second OA No.875 of 1996 (Applicant Shri P.V.Pathak) the only difference is that the order of ad-hoc promotion made for applicant therein in June 1994 (Page 22 of the OA) is made by the Headquarters Office and for CPO (S & T). This was pointed out by the learned counsel for the applicant, Shri Tulaskar. However, while this is not the flaw in this OA, the other flaws are evident from the papers i.e. there is no mention of an examination having been conducted in the order of appointment. Also unlike OA 874/96, there is no copy of any circular issued calling for an examination or selection process by the authority which made the appointment order dated 24.6.1994 or evidence of a proper selection process. In fact this is the stand taken by the respondents in their written statement especially at Para 5. Here also in the result of 1995 selection announced on 24.2.1996 (Page 25), the applicant is at number 6 and is junior to the others appointed in the selection process of 1995-96.



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14. Thus in view of the discussions above, it can be concluded that the initial appointment of Shri Pathak was also well and truly ad-hoc.

15. In the circumstances, both the OAs No.874/96 and No.875/96 are hereby dismissed with no orders as to costs.

Kuldeep Singh

(Kuldeep Singh)
Member (J)

B.N.Bahadur

(B.N.Bahadur)
Member (A)

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