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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 16.11.2000

OA No.633/94 and OA No.88/96

Niranjan Singh S/o Shri Budhsanji r/o H.No.113, Joshi Colony, Beechun Road, Phulera, Distt. Jaipur, presently working as Clerk, Western Railway, Phulera, Distt. Jaipur.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.

.. Respondents

Mr. P.P.Mathur, counsel for the applicant

Mr. Hemant Gupta, Proxy counsel to Mr. M.Rafiq, counsel for respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

Hon'ble Mr. N.P.Nawani, Administrative Member

Order

Per Hon'ble Mr. N.P.Nawani, Administrative Member

In view of the fact that the same employee is applicant in both the above OAs and his prayers are inter-connected, we propose to deal with both these OAs together and dispose these of with a common order.

2. In OA No.88/96, the applicant prays that respondents be directed to give promotion to the applicant on the post of Clerk w.e.f. at least 26.1.1981 or prior to it and further that he may be given promotion on the post of Sr. Clerk and Head Clerk w.e.f. 11.9.1989 and 17.10.1994 respectively. In OA No.633/94, the applicant prays that he be promoted on the post of Clerk at least w.e.f. 26.1.1981 or prior to it and thereafter on the posts of

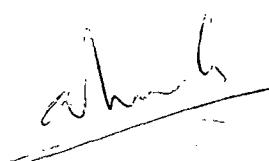
Senior Clerk and Head Clerk w.e.f. 11.9.89 and 17.10.94 respectively.

3. We have heard the learned counsel for the parties and perused all the material on record, including the rejoinder filed by the applicant.

4. It is contended by the learned counsel for the applicant, that the order dated 12/13.7.1994 allowing the applicant regular appointment on the post of Junior Clerk w.e.f. 2.12.1969 has been passed in compliance of the order by this Bench of the Tribunal on 19.1.1994 in TA No.44/92 directing the respondents to consider the case of regularisation of the applicant from the earlier date. It is further contended that the impugned orders (Ann.A1 and A2) are disobedience of the said order of the Tribunal and it was only a clever move of the respondents in first granting the relief and then withdrawing it only to frustrate the purpose of filing of OA No.633/94 giving him further promotions and challenging such promotion having been given to three of his juniors, who had occupied the post of Junior Clerk much after the applicant viz. in February, 1974.

5. The learned counsel for the applicant has sought support from the judgment rendered in the cases of Dr. Arun Sharma and ors. v. State of Himachal Pradesh reported in 1992 (2) SLJ (CAT) 153, B.S.H.Rao v. Union of India and ors in 2000(1) SLJ (CAT) 153 and Rudra Kumar Saini and ors. v. Union of India and ors., 2000(5) Supreme 667. We have given our respectful consideration to these.

6. The respondents in their reply have denied the case of the applicant. It has been stated that the applicant was only



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fficiating on the post of Jr. Clerk from 2.12.1969. The selection held in the year 1985 was cancelled due to certain illegality. The applicant could qualify in the relevant selection only in 1990. It is strongly asserted that the direction given by the Hon'ble Tribunal only required the regularisation from the earlier date and it did not mean that the applicant will have to be regularised w.e.f. 2.12.1969, even when he had not passed the required selection test. It is further contended that as per the rules, the applicant could ^{not} have been regularised on earlier than the date when he passed the prescribed promotion test. He could ~~be~~ qualify the selection held in the year 1990 only. In view of this, the respondents assert, the earlier order dated 12.7.1994 regularising the services of the applicant w.e.f. 2.12.1969 had to be cancelled and, after informing the applicant, order dated 27.2.1995 was issued, revising the date of his regularisation from 2.12.1969 to 24.9.1990. It is also stated that the selection held earlier in 1985 had to be cancelled due to irregularities and, therefore, the applicant cannot be vested with any right with regard to regularisation from 1985 and even the Tribunal in its order dated 19.1.1994 refused to enter into the controversy about cancellation of the said selection. The respondents have denied that three persons named in the OA were junior to the applicant and stated that those persons stood regularised on the basis of selection held in February, 1985, almost two decades before the applicant had filed his Civil Suit which came to be TA No.44/92 (supra) and the applicant can be permitted to higher promotional posts of Sr. Clerk and Head Clerk only on the basis of his seniority determined on the basis of his placement in the panel of Junior Clerk w.e.f. 24.9.1990. It is also stated that the applicant cannot claim seniority over these persons without impleading them as proper and necessary parties and the present OA is liable to be dismissed on this count alone. It is further asserted that the respondents were well within ~~the~~ rights to correct the mistake when it was noticed

and the applicant cannot claim seniority w.e.f. 2.12.1969 on a mis-interpretation of the order dated 19.1.94 of Hon'ble Tribunal jumping over a large number of his seniors, including those who were regularly appointed almost two decades earlier than him and that too without even impleadig them as necessary parties.

7. After going through the pleadings and the arguments advanced by the learned counsel for the parties, we feel that it is important to ascertain whether regularisation w.e.f. 2.12.1969 was de-hors the rules. It is not disputed that the applicant was appointed on ad-hoc/officiating basis on the post of Junior Clerk on 2.12.1969. Regular appointment on the said post required a candidate to go through the selection process sucessfully. It is not the case of the applicant that even the ad-hoc appointment was given to him after having gone through the required procedure. In other words, he was not eligible for regular appointment on 2.12.1969. From the reply of the respondents, it is clear that the allegation of the applicant that three persons named in the OA were all junior to him stands demolished as they were successful in the selection held almost three decades earlier than him. The fact that the applicant has not impleaded these three persons as proper and necessary parties does, in itself, makes this OA liable to be dismissed on this count alone. There must be also many Junior Clerks in the entire seniority unit of Junior Clerks in the Division who were regularly appointed/promoted prior to 1990 who all will become junior to the applicant if he was allowed regularisation w.e.f. 2.12.1969 de-hors the rules. This cannot be an acceptable situation for any administration, beside being contrary to rules. The expression "to consider the case of regularisation of the applicant from the earlier date" in the order dated 19.1.1994 (Ann.A3) has therefore to be read as date earlier to when the applicant became eligible for regular appointment, meaning thereby the date when the applicant came out sucessful in

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the selection and got empanelled and there is no dispute that he came out successful in the selection process ^{only} /in 1990 and was accordingly considered for regularisation on the post w.e.f. 24.9.1990.

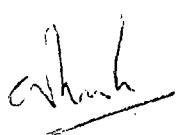
8. It is a well established principle of law that nobody promoted/appointed de-hors the rules can get benefit of seniority. In fact the practice of back door entry through ad-hoc appointments has been deprecated in various judgments, including of the Apex Court. In the case of Direct Recruits Class II Engineering Officers Association v. State of Maharashtra, (1990) 2 SCC 715, it has been held by hon'ble the Supreme Court that when the initial appointment is only ad-hoc and not according to rules the officiation in such posts cannot be taken into account for considering the seniority. Similar views have been expressed by the Apex Court in the case of Davinder Shashtri and ors. v. United Commercial Bank in Civil Appeal No. 2733/99 wherein also the Supreme Court has held that ad-hoc appointees have no right to be in the cadre unless regularised and the period spent on ad-hoc cannot count for their seniority.

9. In view of the above discussions and the law laid down by Hon'ble the Supreme Court, we are of the opinion that the case law cited by the learned counsel for the applicant cannot extend any help to the applicant. We have also carefully considered the pleadings made in OA No.633/94 but since we have arrived at the finding that the applicant cannot be given the benefit of regularisation w.e.f. 2.12.1969 (when he was appointed on ad-hoc basis) and that his regularisation w.e.f. 24.9.1990 based on his clearing the prescribed selection procedure was valid, being in consonance with rules, he obviously cannot be promoted to the post of Clerk w.e.f. 26.1.1981 as prayed in OA No.633/94 and also not entitled to further promotion based on his claimed regularisation

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w.e.f. 2.12.1969. The prayers made by the applicant in both the OAs are, therefore, not sustainable in law and are, therefore, rejected.

10. The Original Applications are dismissed accordingly with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member