

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of Order: 22.11.2000

1. OA 245/97

Pravakar son of Shri Khetrabasi aged around 41 years, resident of Quarter No. 761-C, Railway Loco Colony, Kota. Presently working as Typist in the office of Assistant Engineer (Central), Western Railway, Kota.

2. OA 246/97

Ramesh Chand Sharma son of Shri Laxmi Narain aged around 40 years, resident of Railway Quarter No. 164 H, Old Railway Colony, Kota. Presently posted as Typist in the Office of DRM, Kota.

3. OA 252/97

Ram Shiromani Pandey son of Shri Brahmadatt Pandey aged around 42 years, resident of 30 D, Workshop Colony, Kota Jun. Presently posted as Typist in the office of Chief Medical Superintendent, Railway Hospital, Western Railway, Kota.



.... Applicants

Versus

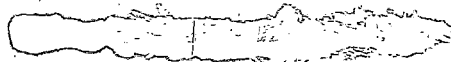
1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota.

.... Respondents

Mr. P.P. Mathur, Proxy counsel for
Mr. R.N. Mathur, Counsel for the applicants.
Mr. T.P. Sharma, Counsel for the respondents.

CORAM:

Hon'ble Mr. S.K. Agarwal, Member (Judicial).
Hon'ble Mr. Gopal Singh, Member (Administrative)



ORDER

(PER HON'BLE MR. GOPAL SINGH, MEMBER (ADMINISTRATIVE))

Signature of Gopal Singh

The grievance as also the relief sought in all these applications is same and, therefore, all the three applications are being disposed of by this single order.

2. Facts giving rise to the grievances of the applicants is that the applicants were initially appointed as Khallasi on 21.9.1977, 21.10.1978 and 7.9.1982 respectively. They were put to work as Typist w.e.f. 17.12.1987, 20.4.1990 and 18.7.1989 respectively. Apprehending their reversion to their substantive post of Khallasi, applicants have approached this Tribunal praying for their regularisation as Typist since they had worked as Typist for sufficiently long time. In terms of our interim direction on 27.6.1997, respondents were directed not to revert the applicants from the post of Typist.

3. Notices were issued to the respondents and they have filed their reply. In their reply the respondents have contended that the applicants have not qualified the selection test for being posted as regular typist, though they had appeared in the selection test, persons who had passed the selection test were appointed on regular basis but the applicants were appointed on ad-hoc basis as typist in the exigency of work, they were also given another opportunity to pass the selection for the post of typist but the applicants failed to make the grade. It is also stated by the respondents that the post of Typist are being merged into clerical cadre as per decision of the Railway Board conveyed vide their Circular dated 17.7.1992. Besides as per the Railway Board's Circular dated 17.4.1994, Rankers have to pass the proficiency test of Typing for the absorption in the cadre of Clerk-cum-Typist, within two years of promotion order. It has also been averred by the respondents that feeder category to the post of Clerk was changed vide Circular dated 28.1.1997, according to

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which only those Rankers for whom no promotional avenues are available are eligible for promotion as Clerks. It is stated by the respondents that the applicants were promoted as Typists purely on ad-hoc basis with the expressed understanding that no right ~~would~~ accrue to them. Moreover the applicants have not passed the proficiency test, they could not be regularised as Typist. Now ^{since} the channel of promotion to the post of Clerk has been changed, the applicants are not entitled for consideration for absorption as Typist. It has, therefore, been submitted by the respondents that the applicants' applications are devoid of any merit and deserve dismissal.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. Applicants have sought regularisation as Typist in terms of respondents letter dated 29.6.1985 (Annexure A-10). The learned counsel for the applicants has also cited the case of Shri Kamal Kumar vs. Union of India & Others 1992 (2) (CAT) 185 decided by the Principal Bench of the CAT on 11.11.1988.

6. We consider it appropriate to reproduce the relevant portion of Circular dated 20.4.1985, referred to above.

"The Ministry of Railways have therefore, found it necessary to clarify once again as under: the scope and purport of the instructions in their letters cited in paragraphs 1 and 2 supra:-

(1) In terms of the explanation below Rule (6) of the S(D&A) Rules, 1968 reversion of a railway servant officiating in a higher grade or post to a lower grade or post on the ground of general unsuitability or on any administrative ground unconnected with his conduct, does not amount to a penalty within the meaning of the said rules.

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(ii) The safeguard in regard to reversion available to a railway servant who has officiated in a higher grade/post or 18 months or more has been conferred by this Ministry's letter of 9.6.85 referred to above. The scope and extent of application of the provisions of this letter have been made clear in the subsequent letters dated 15.1.66 and 22.11.66. As clarified therein these instructions are applicable only to such of the staff as have been promoted to a higher grade or post after due empanelment (in the case of selection posts) after passing the trade/suitability test (in the case of non-selection post). The said safeguard does not apply to those officiating on promotion on adhoc basis and also to those case where an employee regular promoted on the basis of his empanelment or after having been found suitable in a trade/suitability test, has to be reverted after a lapse of 18 months because of amendment/modification/cancellation of the panel/select list as the may be. In particular it does not apply to a case where a person ~~is~~ officiating adhoc in a higher post is reverted because he does not qualify in the selection or suitability test and a duly selected/duly promoted person is available to replace him.

(iii) This Ministry's letter dt. 27.6.83 referred to above does not have nor was it intended to have the effect or superseding their letter of 15.1.66. It only reiterates the earlier instructions of this Ministry urging upon Rlys. not to continue adhoc promotions for long period."

7. It is clear from the above provision that the safeguard in regard to reversion is available to Railway servants who is officiated in a higher grade/post for 18 months or more, on regular promotion to higher grade/post after due empanelment (in the case of selection post) and after passing the trade/suitability test (in the case of non-selection post). The said safeguard does not apply to a case where a person officiating on ad-hoc basis in a higher post is reverted because he does not qualify in the selection or suitability test. It is, thus, clear that the case of the applicants is not covered by letter dated 20.4.1985 circulated vide respondents letter dated 29.6.1985 (Annexure A-10).

8. In the case cited by the learned counsel for the applicants, the applicant therein was appointed as substantive Class IV employee and he was sent to construction Organisation where he was promoted as Material Checker Clerk on ad-hoc basis

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after qualifying the written test. The facts of the case in hand are, ~~xxx~~ however, distinguishable in as much as the applicants in these applications were appointed as Typists on ad-hoc basis in the exigency of work and not after passing the required test. In fact applicants could not qualify in the written test for appointment to the post of Typist and they were continued as such by the Administration in exigency of work. In the light of above discussion, judgement quoted by the learned counsel for the applicants does not help the applicants.

9. The established law on the subject is that if a person has been appointed on ad-hoc basis, de-horse the rules and continues as such for pretty long time, such a person does not acquire any right for regularisation on that post. In a recent case, Sanjay Kumar vs. Haryana Urban Development Authority, 2000(4) SLR 718, Hon'ble High Court of Punjab and Haryana has held as under:-

"Where an employee is given duties as Class III, while appointed as Class IV, the Court cannot issue any direction to regularise his services on Class III. It is illegal to post a Class IV employee against a Class III post and Court cannot perpetuate the illegality."

10. The learned counsel for the applicant has also cited the case of Jethanana wherein three opportunities were given to the applicants for passing the qualifying examination. In 1999(2)(CAT)SLJ 185, Shri Kamal Kumar vs. Union of India & Others, it has been clarified in Para 5 of the judgement that provision of law laid in Jethanana case will apply in those cases where there are no candidates regularly selected by the Railway Recruitment Board, waiting on the wings. It has also been pointed out that the cadre of post of ^{Typist is a} ~~of~~ cadre of the respondents organisation and the applicants do not remain even in the feeder category for promotion as Clerk-cum-Typist against quota fixed

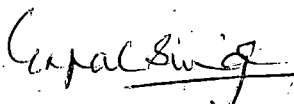
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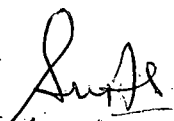
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for Rankers. In the circumstances ~~xxx~~ we are of the view that to the Jathanana's case rule applied would also not help the applicants.

11. In the case in hand, applicants were initially appointed as Khallasi and they continued on ad-hoc basis as Typist for pretty long time. However, they did not qualify in the written test for appointment to the post of Typist. In the light of the legal position, explained above, we are of the view that the applications are devoid of any merit and deserve dismissal.

12. All the three applications are accordingly dismissed with no order as to costs. Interim direction already given stands vacated.


(GOPAL SINGH)
MEMBER (A)


(S.K. AGARWAL)
MEMBER (J)