

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 20. 6. 2001

OA No. 294/2000

Sanjeev Mishra s/o Shri V.P.Mishra, Sr. Goods Guard, r/o 16 Model Town, Civil Lines, Kota Junction.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway Kota.
3. Sr. Divisional Operating Manager (E), Kota Division, Western Railway, Kota.
4. Shri Ajay Kumar Dixit, Goods Guard under Station Manager, Western Railway, Kota Jn.

.. Respondents

OA No. 295/2000

Praveen Kumar Saraswat s/o K.S.Saraswat, Guard under Station Manager, Western Railway, Kota Jn. r/o 24 Janakpur, Near St. Paul's School, Mala Road, Kota Jn.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway Kota.
3. Sr. Divisional Operating Manager (E), Kota Division, Western Railway, Kota.
4. Shri Ajay Kumar Dixit, Goods Guard under Station Manager, Western Railway, Kota Jn.

.. Respondents

OA No. 314/2000

Sushil Kumar Bhole s/o Shri Bhagmal Bhole, Goods Guard under Station Manager, Kota Jn. r/o Rangpur Road No.5, Deewara, Kota Jn.

.. Applicant

:-2 :-

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway Kota.
3. Sr. Divisional Operating Manager (E), Kota Division, Western Railway, Kota.
4. Shri Ajay Kumar Dixit, Goods Guard under Station Manager, Western Railway, Kota Jn.

.. Respondents

OA No.315/2000

Aftab Javed Khan s/o Shri S.F.Khan, Goods Guard under Station Manager, Kota Jn., r/o Sanjay Nagar, Gali No.2, Kota Jn.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (E), Western Railway, Kota.
3. Sr. Divisional Operating Manager (E), Western Railway, Kota.
4. Shri Ajay Kumar Dixit, Goods Guard under Station Manager, Western Railway, Kota Jn.

.. Respondents

Mr. V.P.Mishra, counsel for the applicants

Mr. T.P.Sharma, counsel for respondents Nos. 1 to 3

Mr. P.V.Calla, counsel for respondent No.4

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

Since similar question of law and facts have been raised in

these OAs, it is proposed to disposed of all the above mentioned OAs by this common order.

2. It will be in order to give briefly the background of these cases. OAs Nos. 518/87 and 522/87 filed before the Jodhpur Bench of this Tribunal were disposed of by a common order dated 4.10.91, copy of which has been annexed by the applicants with the additional affidavits filed on 9.1.2001. On going through the said order/judgment, it appears that there were four applicants including Shri K.C.Rajawat in OA No.518/87, Shri Ajay Kumar, respondent No.4 in all the present OAs before us, was the applicant in OA No.522/87 before the Jodhpur Bench. It also appears from the said judgment/order that in OA No.518/87, applicants Shri K.C.Rajawat and two others were appointed as Trains Clerk on ad-hoc basis in June, 1979 and applicant, Sita Ram/Sharma was so appointed on ad-hoc basis on 20.3.1988. Their names were included in the provisional panel for the Trains Clerk on the basis of suitability test vide order dated 23.1.1982. Shri Ajay Kumar, applicant in OA No.522/87 (respondent No.4 in OAs before us) had worked as Trains Clerk w.e.f. 1.1.1980 but no orders were issued for his ad-hoc promotion and he was appointed on regular basis as Trains Clerk w.e.f. 19.8.1984. Subsequently, notification dated 29.7.86 was issued inviting application from the employees who were substantive holders of the categories and had completed 5 years of service in these categories on 1.8.86 for promotion to the post of Guard Grade-C reserved for Trains Clerk. All the four applicants had applied for the post and names of four applicants in OA No. 518/87 were initially included in the eligibility list but subsequently a revised list for eligible candidates was circulated which did not include the names of these four applicants on the ground that officiating service rendered prior to the date of regularisation is not counted for qualifying service of 5 years. The name of Ajay

Kumar, applicant in OA No. 532/87 was not included in any of the two eligibility lists. All these employees approached the Jodhpur Bench of this Tribunal for declaring them eligible for appearing in the suitability test for Guard Grade-C. They were allowed to appear in the test on provisional basis vide interim order of the Jodhpur Bench dated 10.11.87 and it was further directed that the result will be kept in the sealed cover vide order dated 1.9.88 in OA No.518/87. After considering the controversy at length, the Jodhpur Bench of this Tribunal accepted the contention of the respondent Department that ad-hoc appointments as Trains Clerk has been made without regard to the seniority in the feeder post without following the procedure in the rules, which required qualifying in the suitability test and since the applicants had not completed 5 years of service as Trains Clerk after their regular appointment (emphasis supplied) on the prescribed date, they were correctly held to be ineligible for appearing in the suitability test. One of the applicants in OA No.518/87, K.C.Rajawat approached the Apex Court in Civil Appeal No. 438 of 1993, arising out of SLF (C) No. 179708 of 1991 challenging the said judgment/order of the Jodhpur Bench of this Tribunal. A copy of the judgment <sup>of the Apex Court</sup> is placed at Ann.B4/l. Hon'ble the Supreme Court, relying on the judgment in *Esleshwar Dass v. State of U.P.*, 1980 (4) SCC 236 held "that the period spent by the appellant as temporary duty, prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion" and set-aside the impugned judgment and allowed the application of the appellant filed before the Tribunal.

3. We have heard at length Shri V.P.Mishra, counsel for the applicants, Shri T.P.Sharma, counsel for official respondents and Shri P.V.Calla, counsel for respondent No.4 in all the cases and have also perused the material on record.

4. After carefully considering the rival contentions, we feel that the issue to be decided upon in these OAs is essentially whether respondent No.4 can be given the benefit of the judgment dated 1.2.93 of the Hon'ble the Supreme Court (supra) and his name can be interpolated in the seniority list dated 4.5.2000 of the Goods Guard at SJ.No.42A between Shri M.K.Nigam and Sanjeev Mishra and thus making him senior to Shri Sanjeev Mishra, applicant in OA No. 294/2000 as also to the applicants in the other three OAs before us.

5. The learned counsel for the applicants has assailed the order dated 4.5.2000 (Ann.A2) interpolating the name of respondent No.4 above Shri Sanjeev Mishra and reply sent to the applicants vide order dated 5.7.2000 rejecting their objections to grant of such seniority to respondent No.4 essentially on the grounds as discussed hereinafter. First, the judgment of Hon'ble the Supreme Court dated 1.2.1993 is not a judgment *in rem* but it is *in persona* and is applicable to only Shri K.C.Rajawat, the appellant before the Apex Court. It does not become applicable in respect of other applicants in the impugned judgment of the Jodhpur Bench dated 4.10.1991, including respondent No.4, as they were not appellants before the Apex Court and as a reading of the judgment will reveal that the case of only Shri Rajawat was discussed by the Apex Court and relief was given specifically to only Shri Rajawat. In any case, under Rule 3 order 41 of the CPC, any relief in an appeal is only in favour of the party in appeal and not others. Second, in respect of respondent No.4, the judgment of the Jodhpur Bench had become final and it does not lie in the province of the official respondents to undo the law laid down by the said judgment and consider non-regular service put in by respondent No.4 for eligibility to appear in the suitability test for promotional post of Guard Grade-C. Third, the Apex Court in the said judgment dated 1.2.93 had specifically observed that "the period spent by

appellant (Shri Rajawat) as temporary duty, prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion and when so taken it is apparent that the appellant possesses the requisite experience as a Trains Clerk for his eligibility to promotion as Guard Grade-C". In the same judgment, the Hon'ble Supreme Court had also observed that "in the present case we are concerned with temporary appointment and not a stop gap arrangement" and, therefore, the judgment of the Apex Court in the Director Recruit v. State of Maharashtra, 1990 (2) JT 264 was not applicable and, on the other hand, the case was directly covered by the ratio in Balleshwar Dass case (supra). A reading of the entire judgment of the Apex Court would, therefore, reveal that the case of respondent No.1, who was not appointed even on ad-hoc or temporary basis to the post of Trains Clerk and was found to be only holding the post on non-regular stop-gap basis, cannot be covered by the said judgment of the Apex Court. Fourth, respondent No.4 was only a co-applicant before the Jodhpur Bench and cannot be considered to be similarly placed as Shri Rajawat who had filed SLP before the Apex Court. Fifth, the applicants were a necessary and affected party before the Jodhpur Bench and the applicants in those OAs having not impleaded them, the respondent No.4 cannot get any benefit which is adverse to the service interests of the applicants. Sixth, respondent No.4 was allowed to appear in the suitability tests for the promotional post of Guard Grade-C only provisionally and that too vide an interim order issued by the Jodhpur Bench but with the dismissal of the OA by the Jodhpur Bench, respondent No.4 cannot claim any advantage out of the passing of the said suitability test and, therefore, placing him senior over applicants was totally illegal.

6. Shri T.P.Sharma appearing for the official respondents and Shri P.V.Calla appearing for respondent No.4 argued that the action

taken by the respondent Department in interpolating the name of respondent No.4 at Sl.No. 42A above the applicant Shri Sanjeev Mishra was perfectly legal and justification for such action has been given in detail in Ann.A1 itself. It was further argued that respondent No.4 had worked on the post of Trains Clerk for more than 5 years and following the judgment of the Apex Court in the case of K.C.Rajawat (supra) <sup>on the strength of the Inderpal Yadav, I.R.</sup> he was considered eligible and thereafter since he had appeared and passed the suitability test he was correctly assigned the seniority as given in order dated 4.5.2000 (Ann.A2). It was also argued that the Apex Court vide its judgment dated 1.2.93 had set-aside the judgment/order dated 4.10.1991 of the Jodhpur Bench of the Tribunal and, therefore, it cannot be said that respondent No.4 was ineligible for appearing in the suitability test. Further, in terms of the judgment of Hon'ble the Supreme Court in the case of Inderpal Yadav, simply because respondent No.4 did not approach the Apex Court, he cannot be denied the benefit that was extended to Shri Rajawat being similarly placed. Shri Calla also drew our attention to the words "temporary duty" used by Hon'ble the Supreme Court in para 5 of their judgment and contended that by virtue of this, respondent No.4 should be considered eligible as work of Trains Clerk was taken from him and he was also paid salary for the post of Trains Clerk.

7. We have carefully considered the rival contentions. At the request of the learned counsel for the applicants, we were also given by the learned counsel for the respondents a copy of the reply filed by the official respondents in OA No.522/87 before the Jodhpur Bench which was one of the two OAs in which the combined judgment/order was rendered on 4.10.1991. On perusal of the said reply, we find in Para 6.2 therein that the Department has stated that "respondent No.4 Shri A.K.Dixit was appointed as Trains Clerk

on regular basis only w.e.f. 19.8.84. Prior to this he was never promoted as Trains Clerk, scale Rs. 260-400 (R) on ad-hoc basis. He was a Platform Porter (for short PP) in initially (sic initial) stage and was appointed on 6.11.89 on compassionate grounds. He worked as TMC scale Rs. 260-400 (R) w.e.f. 1.1.80 for short gap arrangement in leave and sick vacancy as per station seniority. No orders were issued by the Department for ad-hoc appointment." In the reply before us also, the official respondents have stated that respondent No.4 was "initially appointed in Group-D service as a PP on 6th November, 79 but he was allowed to work as Trains Clerk and he had been given the officiating allowances to the post of Trains Clerk from the period from 1.10.80 to 31.5.84 vide order dated ET/61/5 dated 10.9.84 and subsequently he was regularised on the same post of Trains Clerk pay scale Rs. 260-400 w.e.f. 1.6.84". It is, therefore, absolutely clear that respondent No.4 was appointed on regular basis on the post of Trains Clerk only w.e.f. 1.6.84. It is also clear that he was never promoted as Trains Clerk even on ad-hoc basis. Prior to that, whether work was being taken from him for stop gap arrangement in leave and sick vacancy or he was allowed to work as Trains Clerk and given officiating allowance (as per extracts above) cannot be considered as an appointment, whether on temporary or ad-hoc basis on the post of Trains Clerk. When there was no appointment at all, the question whether it was de-hors the rules or on ad-hoc basis as per the rules, does not arise. If he had been appointed on ad-hoc basis de-hors the rules, even then he could not have been given the benefit of such ad-hoc service prior to 1.6.84. In this case, as per respondent Department itself, he was never appointed as Trains Clerk, not even on ad-hoc basis. This being the case, by no stretch of imagination, respondent No.4 can be at the same pedestal as Shri K.C.Rajawat, on whose case the respondents are depending to justify interpolation of the name of respondent No.4 at Sl.No.42A above the applicants. As is clearly

borne out from the judgment of Hon'ble the Supreme Court, Shri Rajawat was at a different pedestal as compared to respondent No.4 who, as we have discussed earlier, was allowed to work in a capacity which can be best described at stop gap arrangement. In this connection, it will be worthwhile to extract some portions of the judgment of Hon'ble the Supreme Court in the case of K.C.Rajawat (supra):-

"2. The appellant is a Trains Clerk and a candidate for promotion as Goods Guard Grade C. One of the conditions for eligibility for promotion is five years service as Trains Clerk. The applicant was appointed as Trains Clerk on temporary basis in June, 1979 and was regularised in January, 1982.....

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4. The learned counsel for the respondents has defended the present appeal on the ground that the period of temporary service of the appellant cannot be allowed to be taken in account for calculating the five years' eligibility period. Reliance has been placed on the observations in paragraph 47(A) in Direct Recruit v. State of Maharashtra: 1990 (2) JT 264.

5. We have examined the above cited judgment with the assistance of the learned counsel and are of the opinion that the observations referred to above do not help him. In that case, the observations relied upon were with reference to stop-gap arrangement of an employee for a short period and in the present case we are concerned with temporary appointment and not a stop-gap arrangement. We are further of the view that the case before us is directly covered by the ratio in Baleshwar Dass v. State of U.P.: 1980 (4) SCC 226. Thus, the reason for dismissal of the appellant's application by the Tribunal is not sustainable. The period spent by the

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appellant, as temporary duty, prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion and when so taken, it is apparent that the appellant possessed the requisite experience as a Trains Clerk for is eligibility to promotion as Goods Guard 'C'."

A complete reading of the judgment of the Apex Court in K.C.Rajawat case (supra) will clearly bring out that Shri Rajawat, the appellant therein, was appointed as Trains Clerk on temporary basis (emphasis supplied) in June, 79 and was regularised in January, 82. The Apex Court also specifically mentioned in the judgment that they are concerned with temporary appointment and not a stop gap arrangement and thereafter held that period spent by the appellant as temporary duty (on the basis of a temporary appointment) prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion (emphasis added). Respondent No.4 in the present case was allowed to work as Trains Clerk under stop gap arrangement in leave and sick vacancies and given officiating allowance to the post of Trains Clerk and was thus never appointed even on ad-hoc basis, what to talk of on temporary basis. In our considered view, respondent No.4 is therefore, not a similarly placed persons as Shri K.C.Rajawat and can get neither the benefit of the judgment of Hon'ble the Supreme Court in Inderpal Yadav or in the case of K.C.Rajawat.

8. It is well settled law that the period spent on ad-hoc appointment made after following the prescribed procedure and satisfying the eligibility conditions can count for qualifying service, if it is followed by regular appointment. Conversely, any appointment de-hors the rules is not regular appointment and the

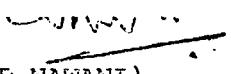
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period spent on such appointment de-hors the rules cannot count for inclusion in the qualifying service. In view of the settled position of law in this regard, we have no hesitation in holding that order dated 4.5.2000 (Ann.A2), interpolating the name of respondent No.4 at Sl.No.42A above the applicant in OA No.294/2000, Sanjeev Mishra and other applicants, is not sustainable in law. As discussed in detail, the reasons given in the reply dated 5.7.2000 (Ann.A1) to the applicants are also not sustainable in law.

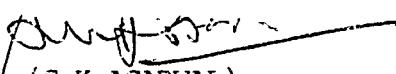
9. In view of above discussions and the findings as recorded in the preceding paragraph, we do not find any necessity to discuss in detail various grounds raised by the learned counsel for the applicant and the case law cited by him, as we have already found Ann.A1 and Ann.A2 as not sustainable in law.

10. The OAs are, therefore, allowed and order dated 4.5.2000 (Ann.A2) interpolating the name of respondent No.4 at Sl.No.42A above Shri Sanjeev Mishra applicant in OA No.294/2000 and applicants in the other three OAs here is quashed and set-aside. Consequently, letter dated 5.7.2000 (Ann.A1) is also quashed and set-aside.

There will be no order as to costs.

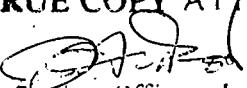
  
(N.P.NAWANI)

Adm. Member

  
(S.K.AGARWAL)

Judl. Member

**TRUE COPY ATTESTED**

  
Section Officer (Judicial)  
Central Administrative Tribunal  
Jaipur Bench, JAIPUR

12.5.2001