

CENTRAL ADMINISTRATIVE TRIBUNAL
JABALPUR BENCH

CIRCUIT SITTING AT BILASPUR

OA No. 558/03

Jabalpur this the 17th day of May, 2005.

C O R A M

Hon'ble Mr.M.P.Singh, Vice Chairman
Hon'ble Mr.A.K.Bhatnagar, Judicial Member

1. S.Ch.Sharma
S/o Shri S.N.Murthy
Clerk, Mechanical Deptt.
South Eastern Railway
Bilaspur.
2. Chandra Bhushan Das
S/o Late L.N.Das
Clerk, Mechanical Deptt.
South Eastern Railway
Bilaspur.
3. Micheal Das
S/o Late M.S.Das
Clerk, Mechanical Deptt.
South Eastern Railway
Bilaspur.

Applicants.

(By advocate Shri S.Paul)

Versus

1. Union of India through
General Manager
South Eastern Railway
Kolkata.
2. General Manager
South Eastern Central Railway
Bilaspur.
3. Divisional Railway Manager
South Eastern Central Railway
Bilaspur.
4. Sr.Divisional Personnel Officer
South Eastern Central Railway
Bilaspur.
5. Sr.Divisional Mechanical Engineer
South Eastern Central Railway
Bilaspur.

Respondents.

(By advocate Shri S.P.Shrivastava)



O R D E R

By A.K.Bhatnagar, Judicial Member

By filing this OA, the applicant has claimed the following reliefs:

- (i) To set aside the order dated 18.6.2003 (Annexure A1) to the extent it stipulates regularisation of the applicants from prospective date and to direct the respondents to give seniority to applicants for adhoc period.
- (ii) To direct the respondents to regularise the applicants w.e.f. 26/27-10-1983.
- (iii) Direct the respondents to provide all consequential benefits including seniority, promotion, pay fixation etc.
- (iv) Direct the respondents to consider the applicants for next promotion treating their date of regularisation w.e.f.26/27-10-1983 the date their juniors have been promoted.

2. The brief facts of the case are that the applicants who were appointed after a due process of selection^{and} were initially promoted as Store/Coal/Fuel Issuers with effect from 26/27-10-1983 (Annexure A2). According to the applicants, the said post was already upgraded as Material Clerk/Office Clerk in the pay scale of Rs.950-1500 w.e.f. 1.1.1973 as per the Railway Board's letter dated 26.10.1972. The grievance of the applicants is that they were promoted as Material Clerk purely on adhoc basis against the then existing vacancy w.e.f.2.1.1984 vide order dated 2.1.1984 (Annexure A3). It is alleged in the application that by using the word 'adhoc', the respondents are denying them the seniority and other benefits. They are also deprived of next promotion as Senior Clerk due to non-regularisation of their services as Material Clerk. The applicants submitted representations (Annexure A4). Thereafter, the applicants were regularised by order dated 18.6.02 (Annexure A1) as clerk cum typist in the pay scale of Rs.3050-4590. However, it was mentioned in the order that the regularization of the applicants as Clerk-cum-Typist in the scale of Rs. 3050-4590 will be effective from prospective effect. There was no justification in regularizing the applicants from

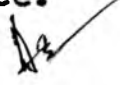
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prospective dates. The applicants are entitled to be regularised from retrospective date i.e. from 27.10.1983. The applicants submitted representation dated 19.9.02 (Annexure A6) followed by a reminder dated 11.11.02 which elicited no response. Hence this OA is filed.

3. Raising various grounds in the OA, learned counsel for the applicants submitted that the applicants were promoted in accordance with the rules by a duly constituted selection committee. Therefore, the insertion of the word 'adhoc' in the promotion order is unreasonable and illegal. Since the applicants have worked continuously on clerical post from the date of their initial appointment, they cannot be treated as adhoc/stop gap arrangement. Moreover, the Railway Board vide its letter dated 26.10.1972 had upgraded the post of Material/Coal/Fuel Issuer as Material Clerk and the applicant were promoted after the issuance of the order. Learned counsel for the applicants has also relied upon the judgement in the case of Santosh Kumar vs. State of Andhra Pradesh & others - 2003 (3) ATJ 551, para (B) of the judgement is reproduced below:

"Promotees continued in service for a period of 12-13 years-Regularised in service by relaxing the relevant recruitment rules-seniority of direct recruit affected-Whether any notice be given to direct recruits before regularising the service of promotees under the quota meant for promotees-No-Whether service rendered by the promotees on officiating basis would be counted for seniority - Yes."

Hence the action of the respondents in not granting the benefit of regularisation from retrospective date is bad in law. The applicants are entitled to get the benefit from retrospective date.



4. Resisting the claim of the applicants, the respondents have filed reply statement. The respondents contend that the applicants were promoted to officiate as Material Clerks purely on adhoc basis vide office order dated 2.1.84 subject to the condition that it would not confer them any claim for regular promotion. The channel of promotion was from clerk-cum-typist against the departmental quota of 33 1/3rd of Ministerial category. All adhoc material clerks listed at A3 were promoted as office clerk against the departmental quota except the applicants. The applicants did not qualify in the selection despite affording them several opportunities. Learned counsel for respondents submitted that the Railway Administration had decided to regularise the services of the applicants as a special case. Accordingly, their case was put up before the competent authority for nomination of screening committee for regularisation of their services. Ultimately, on the basis of the recommendation of the screening committee the applicants were regularised as clerk cum typist against the Ministerial category in Mechanical Department vide A1. There is no such rule that adhoc promotions should be treated as regular promotions without holding any selection by the competent authority. Learned counsel further submitted that the application is not within the limitation period as the cause of action is stated to have arisen in 1984 and the present application has been filed after more than 19 years. Therefore, the applicant is liable to be dismissed on account of delay and laches.

5. We have given careful consideration to the rival contentions, and perused the records. We have gone through A1 letter dated 18.6.2002 and we find that the regularisation of the applicants has been made after due screening and after preparing the

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select list. We have also perused A3 memo dated 2.1.84.

The last three lines of this memo read as under:

"The above promotions are having made purely on adhoc measure and not confer any title or claim on the officiating incumbents for regular promotion or continue as such."

We also find that this OA has been filed on 4.8.03, whereas, the cause of action has arisen in 1984, after about 19 years. It is also found that no application for condonation of delay has been filed by the applicants in filing this OA. In view of the judgement of the Apex Court in the case of Ramesh Chandra Sharma vs. Udhham Singh Kamal - 2000 (2) AISCJ P.89 wherein the Apex Court has held that (i) Central Administrative Tribunal cannot entertain applications barred by limitation and (ii) limitation bar cannot be waived unless it has been applied for, the present application cannot be entertained. Therefore, this OA is liable to be dismissed on this limitation ground alone. The statement given in para 3 of the counter shows clearly that the OA is grossly time barred. The applicants in reply to this para, in their rejoinder, have simply denied it without giving any specific reason, which fortifies the stand of the respondents. The respondents have clearly stated in their counter 'In Brief History', as well as in para 4.8 that the applicants were given several chances to appear in the selection against the departmental quota

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of 33 1/3% but they did not qualify for the same. Hence they were not promoted. Adhoc promotions do not entitle them to any promotion unless their services are regularised by holding selection/suitability test as per rules. In the rejoinder, in reply to para 4.8 of the counter, they are silent on this issue, whether they appeared several times and failed and instead of claiming seniority from 1984, they are showing their entitlement for regularisation from 1992. ^{in alternative} This clearly shows that the applicants are not sticking to one stand as to whether they are claiming the seniority from 1984 or 1992. Anyhow, we find that the applicants were given several opportunities for appearing in the selection for regularisation but they did not qualify. So they are not entitled for any claim as prayed in this OA. The case law cited by the applicants' counsel in support of the applicants' claim i.e. Santhosh Kumar vs. State of AP (Supra) is also distinguishable and is not helpful in the present case.

6. In the facts and circumstances of the case and in view of the above discussion, the OA is dismissed bereft of any merit as well as on the ground of limitation. No costs.

(A.K. Bhatnagar)
Judicial Member

(M.P. Singh)
vice Chairman

aa.

प्रमाणित सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि अन्ये जिल:-

- (1) सचिव, जल प्रसादन एवं एग्रीकल्चर, जबलपुर
- (2) अधीक्षक डी, डी/डी/.....की कार्यसल
- (3) प्रवर्तक डी, डी/डी/.....की कार्यसल
- (4) बंशधर, राजा, जबलपुर न्यायाधीश
सचन एवं आनन्दका कार्यकारी हेतु

S. Prad BN DBY
S. P. Shrivastava
D. S. M. S.

उप सचिव

Issued
On 20.5.05
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