

**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

OA 1085/2009

Reserved on: 8.08.2016
Pronounced on: 19.08.2016

Hon'ble Mr. P.K. Basu, Member (A)
Hon'ble Dr. Brahm Avtar Agrawal, Member (J)

Shri Mohan Lal Pandey
S/o Late Shri Nareshwar Pandey
Health & Malaria Inspector
Northern Railway
New Delhi Station

.... Applicant

(By Advocate : Ms. Meenu Mainee)

Versus

Union of India : through

1. General Manager,
Northern Railway,
Headquarters Office
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi

.... Respondents

(By Advocate : Shri A.K. Srivastava)

ORDER

Mr. P.K. Basu, Member (A)

The applicant joined the respondents as Hospital Attendant on ad hoc basis in 1980. The respondents initiated the process for promotion to the post of Health Inspector in 1993. Written examination was held and the applicant along with one Shri

Vinod Kumar was declared qualified. However, the selection was not finalized due to some vigilance cases. Therefore, fresh selection was again announced in 1998 and the written test was held on 4.07.1998. In the meantime, the pay scales were revised from 1.01.1996 in different categories of medical department of the Railway Board and the pay scale of Rs.5500-9000 was allotted to the existing scale of Health Inspector (Rs.1200-2040/ 1400/2300). Railway Board advised that instructions for promotion to this new grade will be intimated separately. The Board also decided that even for promotion quota, the minimum educational qualification will be the same as prescribed for direct recruitment quota i.e. B.Sc. with Chemistry plus Diploma of Health Inspector. However, as a one time exception, it was decided that posts falling in the share of promotion quota of Health and Malaria Inspector, Grade III Rs.5500-9000 may be filled up by selection from amongst staff possessing the pre-revised qualification of matriculation plus Sanitary Inspector Certificate/ Diploma as a special case. Applications were invited from Group 'D' staff of Medical Department of Delhi Division possessing pre-revised qualification. Out of two applications received, one was of the applicant and he was placed on the provisional panel vide order dated 18.09.2002 and regularized vide order dated 11.10.2002 and assigned seniority accordingly.

2. Learned counsel for the applicant relies on order dated 9.07.2003 in OA 1649/1997, which was a case filed by LDCs/ MCCs working in railways, praying for reckoning their officiation

with all consequential benefits. The Tribunal relied on the judgment of the Hon'ble Apex Court in **T. Vijayan and others Vs. Divisional Railway Manager and others**, JT 2000 (4) SC 196 and Constitution Bench judgment in **Rudra Kumar Sain Vs. Union of India**, 2000 (9) SCC 299, contending that ad hoc officiation once continued for long and the person possesses requisite qualification for being appointed to the post and once the appointment is with the approval and consultation of the appropriate authority, this continuance cannot be held to be stop gap or fortuitous. The Tribunal also examined the judgments of the Hon'ble Supreme Court in **State of West Bengal Vs. Aghore Nath Dey**, 1993 (3) SCC 371 and **Direct Recruitment Class-II Engineering Officers Association Vs. State of Maharashtra**, JT 1990 (2) SCC 715 and ultimately the OA was disposed of with a direction to the respondents to re-determine the applicants for Class-III post of MCC/LDC reckoning their ad hoc officiation in the said post. Further, the applicants were held entitled to all the consequential benefits as per law.

3. The learned counsel for the applicant contends that the applicant's case is squarely covered by the order of the Tribunal in OA 1649/1997 (supra) and judgments of the Hon'ble Supreme Court in Aghore Nath Dey (supra) and Direct Recruitment Class-II Engineering Officers Association (supra) cited therein. It is, therefore, prayed that the respondents may be directed to assign seniority to the applicant from 18.04.1993 i.e. from the date he has been continuously and interruptedly working as Health Inspector on ad hoc basis in a satisfactory manner.

4. The respondents state that the applicant was given ad hoc promotion for a period of three months. In fact, on expiry of his ad hoc promotion tenure, the applicant was reverted to his substantive post vide order dated 13.04.1993. It was also made clear in the initial appointment order that his ad hoc promotion was purely temporary and it would not give him any right to seek regular promotion and that he will stand reverted on expiry of three months period.

5. Learned counsel for the respondents cited the judgment of the Hon'ble Supreme Court in **Anuradha Mukherjee (Smt.) and others Vs. Union of India and others**, (1996) 9 SCC 59.

In this case, the Hon'ble Supreme Court held as under:

"Those appointed dehors the rules can get seniority not from the date of their initial appointment but from the date on which they are actually selected and appointed in accordance with the rules and their appointment and seniority would take effect from the date of selection after due completion of the process and they would be junior to in-service as well as direct recruit candidates."

6. We have heard the learned counsel for the parties and gone through the pleadings available on record and perused judgments cited by either side.

7. The issue that seniority cannot be granted with retrospective effect, has been settled by the Hon'ble Supreme Court in number of cases. We quote below the following judgments:

- (i) **Nani Sha and others Vs. State of Arunachal Pradesh and others**, 2007 (7) SCALE (521)

- (ii) **Ajit Kumar Versus State of Orissa** 1999 IX Apex
Decision (Supreme Court) 595
- (iii) **State of Uttaranchal & another Versus Dinesh
Kumar Sharma**
- (iv) **Vinodanand Yadav & Others Versus State of
Bihar** 1994 Supp (2) SCC 44
- (v) **R.K. Bohra & others Versus Union of India,**
2003(3) A T J 618

8. Moreover, in the case of Aghore Nath Dey (supra), cited in para 28 of the order in OA 1649/1997 (supra), it has been made clear that in case ad hoc appointment is not as per rules, officiation in such posts cannot be counted towards seniority. Secondly, the appointee must continue in the post uninterruptedly till regularization in service whereas the applicant in the present case had been reverted back vide order dated 13.04.1993. Thus, in the light of the judgments of the Hon'ble Apex Court cited above, the prayer of the applicant cannot be granted. The OA fails and is dismissed. No costs.

(Dr. Brahm Avtar Agrawal)
Member (J)

(P.K. Basu)
Member (A)

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