

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH**

OA/100/2101/2012  
MA/100/1730/2012

Reserved on: 28.08.2018  
Pronounced on: 30.08.2018

**Hon'ble Mr. K.N. Shrivastava Member (A)  
Hon'ble Mr. Ashish Kalia, Member (J)**

1. Shri Chand Kumar  
S/o Late Shri Nand Kishore
  2. Shri Hari Chand  
S/o Late Shri Keshva Nand  
Depot Material Supdt. Gr.II under  
Northern Railway Store Depot  
Shakur Basti
- ... Applicants

(Through Mrs. Meenu Mainee, Advocate)

Versus

Union of India : Through

1. The General Manager,  
Northern Railway,  
Baroda House,  
New Delhi
  2. Chief Material Manager  
Northern Railway,  
Store Depot, Shakur Basti  
New Delhi
- ... Respondents

(Through Shri Shailendra Tiwari, Advocate)

ORDER

Mr. Ashish Kalia, Member (J)

The present OA seeks quashing of the impugned Show Cause Notices (SCNs) dated 30.05.2012 and 1.06.2012 and

consequential reliefs thereof. As per the impugned order at Annexure A-1, the respondents have proposed to withdraw the benefits extended to the applicants in compliance of CAT/NDLS order dated 1.10.2008 passed in OA No.1720/2007 as these orders are not sustainable as per judgment dated 23.12.2011 of Full Bench of CAT, Delhi passed in OA No.1978/2010. Relevant portion of the judgment is quoted below:

"11. To conclude, for the detailed reasons elaborated in Para 10 above, the judgment rendered by the learned DB vide its order dated 9.7.2003 in the OA 1649/1997 (Mohinder Singh & Ors. Vs. UOI & Ors.) has not been found to be a valid proposition of law.

However, since, as per their own compromise, the present applicants of the OA 1978/2010 (Shri Balwinder Singh & Ors. Vs. UOI & Ors.), as parties in the OA 658/2004 (Shri J.K. Chadha & Ors.) had agreed to implement the seniority of Shri Mohinder Singh and others as per the terms of the compromise, the benefits of the judgment in the OA 1649/1997 cannot be overturned against the applicants therein.

11.1 As per the stand of the present applicants, their basic grievances are against the ramifications of the follow-up decision rendered in the OA 1900/2007 (Hemant Kumar Swamy & Ors. Vs. UOI & Ors.) vide the Tribunals order dated 12.12.2008. The direction in this case had been issued for consideration of the claims of the applicants by extending the benefits of the decision in Mohinder Singh's case, purely treating the decision in Mohinder Singh's case as final and hence a binding precedent. As has already been discussed above, since the Writ Petition filed against the OA 1649/1997 had not been dismissed on merit, but only allowed to be withdrawn in the background of out-of-court compromise, this view has not been found to be tenable. Besides, it has also been clarified above that the compromise in question would be binding only to the concerned parties and as per the terms contained therein.

Under the circumstances, the decision in Hemant Kumar Swamy's case is of no meaning and consequence.

12. Resultantly, on a careful consideration of the DB's reference dated 28.7.2011, the following are the conclusive findings of the Full Bench:-

- (i) The OA 1978/2010 is found to be maintainable.
- (ii) The interpretation of law vide the Tribunal's order dated 9.7.2003 in the OA 1649/1997 is not found to be sustainable. Though, as per the out of court compromise between the parties, the benefits rendered to the applicants of this OA are not to be negated; the decision in this judgment is not to be treated as a precedent.
- (iii) The decision in the OA 1900/2007 is not sustainable."

2. Brief facts of the case are that the applicants were appointed as Khalasi in the year 1980/1982. In 1986, they were promoted as MCC/Clerk on ad hoc basis. They filed OA No.1469/1997 before this Tribunal to assign them seniority with effect from the date of ad hoc promotion. The OA was allowed and relief was granted to the applicants. The matter went before the Hon'ble High Court of Delhi, where a compromise had been entered between the parties and the judgment passed by this Tribunal has neither been confirmed nor overruled.

3. The applicants are aggrieved by the impugned order in terms of which the respondent no.2 has issued a show cause notice, asking the applicants to explain as to why benefit of orders passed in OA 1720/2007 and other OAs vide orders dated 29.05.2009 and 11.07.2009 may not be withdrawn. They state that the impugned SCN is illegal because:

- a) The applicants were amongst those who had filed OA No.1469/1997 (Mahinder Singh and anr. Vs. UOI & Ors.)

- b) They were parties in the compromise and, therefore, they were protected as per Full Bench judgment.
- c) The applicants were not impleaded by the respondents in the case of Balvinder Singh & anr.
- d) The respondents have erroneously equated the applicants with Shri Hemant Kumar Swamy & ors. ignoring the main difference that the applicants were party in Mohinder Singh case (OA 1469/1997) as also party in the compromise while Shri Hemant Kumar & ors. were not parties in OA 1469/1997 nor they were parties in the compromise. Accordingly, protection given by the Full Bench is applicable to applicants and not Hemant Kumar & ors.

4. Notices were issued and respondents have filed counter. It has been stated that 15 days time was given to file reply to the SCN, in compliance of Full Bench judgment of this Tribunal in OA 1978/2010 filed by Shri Balwinder Singh and others for rectification in seniority/ promotion. It is further submitted that the Full Bench observed in its judgment that interpretation of law vide the Tribunal's order dated 9.07.2003 in OA No.1649/1997 was not sustainable. Though as per out of court compromise between the parties, the benefit rendered to the applicants is not to be negated, the judgment in that case is not to be treated as a precedent.

5. The respondents have filed counter. They have submitted that the applicants were promoted on ad hoc basis to the post of

Clerk grade Rs.3050-4590 (RPS) from time to time after conducting written suitability test against the vacancies of promotee and direct recruitment quota. In the year 1984 a regular selection was conducted comprising written test and viva against 33-1/3% promotee quota vacancies. The senior most candidates who qualified the written test and viva voce were empanelled against the promotee quota whereas the remaining staff, who were working on ad hoc basis as Clerk, could not find place in the panel because of either their lower seniority position or they could not qualify the written test or could not secure 60% marks in aggregate which is mandatory to find place in the panel. However, such staff were allowed to continue against the vacancies of direct recruitment quota with the conditions already incorporated in their ad hoc promotion order that as and when empanelled staff report for duty, they would be reverted to their substantive posts.

6. The respondents have further submitted that during the pendency of OA No.807/1987 filed by Mohinder Singh & ors., the respondents, taking a lenient view, decided to regularize the ad hoc services of promotee Clerks/ MCCs in three different categories and implemented the decision.

7. Heard the learned counsel for the parties and perused the pleadings available on record.

8. The issue raised in this OA is whether benefit of ad hoc officiation given by the respondents can be withdrawn pursuant to the order passed by the Full Bench of this Tribunal, as

interpreted by the respondents. The Full Bench of the Tribunal in OA 1978/2010 (supra), observed as follows:

"11. To conclude, for the detailed reasons elaborated in Para 10 above, the judgment rendered by the learned DB vide its order dated 9.7.2003 in the OA 1649/1997 (Mohinder Singh & Ors. Vs. UOI & Ors.) has not been found to be a valid proposition of law.

However, since, as per their own compromise, the present applicants of the OA 1978/2010 (Shri Balwinder Singh & Ors. Vs. UOI & Ors.), as parties in the OA 658/2004 (Shri J.K. Chadha & Ors.) had agreed to implement the seniority of Shri Mohinder Singh and others as per the terms of the compromise, the benefits of the judgment in the OA 1649/1997 cannot be overturned against the applicants therein.

11.1 As per the stand of the present applicants, their basic grievances are against the ramifications of the follow-up decision rendered in the OA 1900/2007 (Hemant Kumar Swamy & Ors. Vs. UOI & Ors.) vide the Tribunal's order dated 12.12.2008. The direction in this case had been issued for consideration of the claims of the applicants by extending the benefits of the decision in Mohinder Singh's case, purely treating the decision in Mohinder Singh's case as final and hence a binding precedent. As has already been discussed above, since the Writ Petition filed against the OA 1649/1997 had not been dismissed on merit, but only allowed to be withdrawn in the background of out-of-court compromise, this view has not been found to be tenable. Besides, it has also been clarified above that the compromise in question would be binding only to the concerned parties and as per the terms contained therein.

Under the circumstances, the decision in Hemant Kumar Swamy's case is of no meaning and consequence."

Thus, the Full Bench emphasized that pursuant to judgment in OA 1649/1997 (supra), as per terms of compromise, the benefits of the judgment in the said OA cannot be overturned against the applicants therein.

9. In a nutshell, the Full Bench was of the view that benefits provided of ad hoc officiation to the applicants of OA 1978/2010

(Balwinder Singh & others), OA 658/2004 (J.K. Chadha & others) and OA 1649/1997 (Mahinder Singh & others) shall continue and not be withdrawn. Incidentally, the present applicants were applicants in OA 1649/1997. However, the respondents have interpreted in a different manner by taking the clue from para 11, where it states that the judgment rendered by the DB vide its order dated 9.07.2003 in OA 1649/1997 (Mohinder Singh & ors. Vs. UOI & ors.) has not been found to be a valid proposition of law. But the crux of the judgment passed by the Full Bench in the next para is that the applicants who have got the benefit of long ad hoc officiation, shall not be taken away, for the reason that it is settled principle of law that settled position of seniority will not be unsettled after so many years.

10. In this view of the matter, this Tribunal is of the view that judgment passed by the Full Bench should be interpreted in the aforesaid manner. Thus, the SCNs dated 30.05.2012 and 1.06.2012 issued by the respondents are hereby set aside and the present OA is allowed with all consequential benefits.

(Ashish Kalia)  
Member (J)

(K.N. Shrivastava)  
Member (A)

/dkm/