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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. No.2471/2003

This the 22nd day of April, 2004

HON'BLE SHRI V.K. MAJOTRA, VICE-CHAIRMAN (A)

HON'BLE SHRI SHANKER RAJU, MEMBER (J)

Girish Kumar Sharma S/O M.P.Sharma,
Ex Casual Labour (Typist)
in the office of Assistant Engineer.
Northern Railway, Chandausi (UP)
R/O C/O Raja Ram,
House No.119, Mohalla Bhoor,
Bharat Nagar,
Ghaziabad.

... Applicant

(By Shri G.D.Bhandari, Advocate)

-Versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.

2. Divisional Railway Manager,
Northern Railway,
Moradabad (UP).

... Respondents

(By Shri R. L. Dhawan, Advocate)

ORDER (ORAL)

Hon'ble Shri V.K. Majotra, Vice-Chairman (A)

Applicant had been appointed as casual labour on 1.9.1980 in the office of Assistant Engineer, Chandausi. His services were utilized as a Typist. He had functioned as such for a period of 212 days up to 14.4.1981. In OA No.1101/1992 decided on 3.10.1997 (Annexure A-4) he had claimed under the provisions of the Indian Railway Establishment Manual that having worked for more than 120 days continuously, he is deemed to have acquired temporary status and his services should have been regularised in due course. That OA was allowed with the following observations/directions :

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"In the circumstances, we are of the considered view that in accordance with Rule 2007(3) of the Indian Rly. Establishment Manual, Respondents are directed to consider the regularisation of the services of petitioner as Typist namely in Group 'C' in accordance with relevant scheme and as and when the next vacancy arises after passing of this order in case the petitioner is found eligible in accordance with the rules and available, the Respondents shall grant relaxation of age and consider his case for appointment as a Group 'C' Typist, giving benefits of the temporary status, which he has already acquired by working more than 120 days, in accordance with the Rules. In the circumstances of the case, we are not inclined to give any benefits such as the back wages or any other service benefits except the benefit of the Temporary Status until the petitioner is considered for appointment to the next available vacancy in accordance with the Rules.

With this, this O.A. is allowed to the extent stated above. There shall be no order as to costs."

2. RA No.2/1998 in OA No.1101/1992 filed on behalf of respondents was dismissed on 16.1.1998 with the following observations/directions to respondents :

"It was further stated by the review applicant that the petitioner is not entitled to regularisation since the initial appointment is de hors the rules. We are afraid the initial appointment was probably de hors the rules but respondents themselves were not able to give any clarification under what circumstances the appointment was made and court has no facility to find out whether the appointment was de hors the rules or not. In any event the orders given by us is only to consider the case of the petitioner as and when the vacancy becomes available."

3. Applicant then filed CP No.128/1998 alleging non compliance of Tribunal's directions dated 3.10.1997. Vide order dated 14.7.1998, this CP was disposed of requiring the respondents to re-consider the case of the

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applicant for appointment as Typist in Group 'C' when next vacancy arises for filling up the post by direct recruitment in the manner indicated by the Tribunal in its order of 3.10.1997. This order was carried by the respondents to the Hon'ble High Court of Delhi through CWP No.66/1999 which was dismissed in limine vide order dated 21.9.2000 (Annexure A-7). CP No.128/1998 and CP No.336/1998 in OA No.1101/1992 were disposed of vide order dated 26.2.2001 (Annexure A-8) directing the respondents to implement Tribunal's order as expeditiously as possible and in any case within four months. The learned counsel of the applicant contended that the respondents have caused inordinate delay in implementing the repeated directions of this Court that applicant should be considered for appointment as Typist in Group 'C' against the next available vacancy. Respondents held selection for promotion from Group 'D' to Group 'C' on 23.6.2001 in which applicant was unsuccessful. Admittedly, he was again called for selection against 33-1/3% promotee quota of Clerk-cum-Typist. He qualified the written test but according to the respondents, they did not hold the interview "due to administrative reasons". Respondents have stated that applicant shall be called for interview as and when it is held.

4. The learned counsel of applicant contended that while a large number of vacancies in Group 'C' exist, respondents are deliberately and unnecessarily delaying the selection and regularisation of the applicant on a Group 'C' post.

Wb

5. On the other hand, the learned counsel of respondents stated that no such vacancies exist and that vide memo dated 13.2.2004 issued by DRM, Moradabad, the related selection against the 33-1/3% promotee quota of Clerk-cum-Typist in the scale of Rs.3050-4590 for five posts has been cancelled and as such, respondents have not been able to complete the process of selection and regularisation of the services of applicant in terms of the Tribunal's orders.

6. The contention of respondents that there are no vacancies is unacceptable. They had gone to the extent of holding written test and declaring its result for selection for five posts against 33-1/3% promotee quota of Clerk-cum-Typist. Obviously five posts of Clerk-cum-Typist do exist for which written test had been held and the applicant had qualified. Respondents have not assigned any administrative reasons for cancellation of the selection process. It is held in these circumstances that five vacancies of Clerk-cum-Typist do exist at present for which selection process had been initiated by the respondents. Applicant had been successful in the written test and was waiting for his interview. The repeated directions of this Tribunal are unambiguous that applicant has to be considered for regularisation against the next available vacancy in Group 'C' (Typist). Respondents have dragged this matter unnecessarily hindering implementation of the judicial orders. We deprecate the stubborn attitude of the respondents and re-direct them to revive the process of selection which is stated to have been cancelled by the

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respondents on 13.2.2004. They must hold applicant's interview for the post of Clerk-cum-Typist against the 33-1/3% promotee quota for which selection had been initiated but cancelled on 13.2.2004. The above process as related to applicant's selection must be completed within a period of one month from the date of communication of these orders. In the event of applicant being found suitable in the interview so conducted, applicant shall be appointed forthwith, as it has already been held above that vacancies are available for which selection had been initiated.

7. The OA is disposed of in the above terms. No costs.


(Shanker Raju)

Member (J)

/as/


(V. K. Majotra)
Vice-Chairman (A)

22.4.04