

(2014) 01 P&H CK 0037
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 19251-CAT of 2002

Surinder Singh and Others

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 28-01-2014

Acts Referred:

Citation : (2014) 01 P&H CK 0037

Hon'ble Judges : Sanjay Kishan Kaul, C.J.; Arun Palli, J

Bench : Division Bench

Advocate : V.K. Sharma, Advocates for the Appellant; Karminder Singh, Senior Panel Counsel, Advocates for the Respondent

Judgement

Arun Palli, J.—The petitioners have assailed the order dated 26.07.2002, Annexure P-4, passed by the Central Administrative Tribunal, Chandigarh Bench, Chandigarh (for the sake of brevity and convenience be referred to as, "the Tribunal") vide which the original application filed by the petitioners was dismissed. It is prayed that the orders, Annexures A-1/1 to A-1/3 attached with O.A., vide which respondents No. 4 to 9 have been made senior to the petitioners by following the wrong policy which was not applicable for regularizing the respondents No. 4 to 9 w.e.f. 10.08.1988, be quashed. And official respondents be directed to treat the petitioners senior to respondents No. 4 to 9 with all consequential benefits.

2. We may at the outset notice a decision, which has a crucial bearing on the subject in issue. As per para 189 of IREM, Vol. I relating to promotion of Group C and D posts, a decision was taken by the General Manager, Northern Railway in a meeting held on 7th and 8th of May, 1987, contained in item No. 58 of 1986 of the PNM, which reads as thus:-

"2. Item No. 53/86-Cancellation of Selection for the post of Material Checking Clerk on Delhi Division.

After discussing it was decided by the G.M. That all those staff who are working

continuously as Material Checking Clerks on ad hoc basis for the period of three years or more may be regularized on the basis of their service record and Viva-voce duly observing the extent instructions on the subject as a special case not be quoted as a precedent in future.

If there are still more vacancies after regularizing the said staff, as per para 1 above, to fill up these normal selection may be held and completed very early."

3. The petitioners herein were appointed as Clerks on different dates. The necessary details, being extremely significant in context of the issue involved herein, vis-?-vis their initial entry into service, subsequent promotion as ad hoc Clerks and their regularization as Clerks, are depicted hitherto below: -

"Surinder Singh: Applicant No. 4: joined as Khalasi on 01.01.1981, promoted on ad hoc basis as Clerk on 22.08.1995 and regularized against rankers" quota on 08.10.1990 and joined as such on 02.01.1991;

Suman Lata: Applicant No. 2: Appointed as a clerk by direct recruitment on 22.10.1989;

Charanjit Singh: Applicant No. 3: Joined as Khalasi on 15.12.1979, promoted as Clerk on ad hoc basis on 03.04.1989, regularized against 33-1/3% rankers" quota on 08.10.1990;

Roshan Lal: Applicant No. 5: joined as Khalasi on 15.02.1982, promoted on regular basis against ranker"s quota on 29.11.1990;

Yogesh Kumar: Applicant No. 6: joined service on 20.12.1982 and regularized against ranker"s quota on 08.10.1990;

Ashok Kumar: Applicant No. 7: joined as Khalasi on 01.04.1981, promoted as Clerk on ad hoc basis on 22.11.1985 and regularized against ranker"s quota on 08.10.1990;

Ashwani Kumar: Applicant No. 8: joined as Clerk on compassionate grounds on 16.08.1988."

4. Briefly the case set out by the petitioners, before the Tribunal, has been that the seniority list of Clerks was issued by the official respondents, wherein, the names of the petitioners were shown but names of the private respondents were not depicted since they had not been regularized. In fact, respondents No. 4 to 9 were promoted as Clerks on ad hoc basis (MCCs) on different dates in the years 1985, 1986 and 1987 but were not made regular as they had not completed three years" service in view of the aforesaid decision dated 7th and 8th of May, 1987. Clerks, who had completed three years" service were required to go through a viva voce test besides examination of their service record for being made regular. Respondents No. 4 to 9 happened to be working in Delhi Division before creation of Ambala Division and, thus, their promotions to the post of MCCs were made on ad hoc basis by the Delhi Division.

They were later transferred to Ambala Division as ad hoc. The Administration, subsequently, issued another order dated 30.11.1995 (Annexure A-7 on record), which contained a scheme for regularization of Material Checking Clerks in the Ambala Division through viva voce. In a nutshell, the said decision clarified the previous decision dated 7th and 8th of May, 1987 and it was, accordingly, made clear that if any senior has been ignored while regularizing the services of the junior, he may also be considered for regularization. On the basis of the test conducted, vide order dated 24.10.1997 (Annexure A-8 on record), respondents No. 4 to 9 were declared successful in the viva voce tests and were, accordingly, brought on provisional panel. As a result of this, respondents No. 4 to 9 were made regular Clerks vide order dated 05.11.1997 (Annexure A-9 on record) with immediate effect, although, it was not mentioned in those orders that the said respondents would be given seniority above the petitioners. However, vide seniority list (Annexure A-1 on record), they had actually been placed above all the petitioners.

5. In short, the grievance of the petitioners has been that only those persons could be made regular or the service of only those could be regularized, as a consequence of the decision dated 7th and 8th of May, 1987 (*supra*), who had completed three years' service upto 29.04.1988 and not of those, who had completed the same thereafter. Since official respondents were contemplating to make promotions to the post of Senior Clerks, respondents No. 4 to 9 were, accordingly, being considered in the wake of their positions in the aforesaid seniority list (Annexure A-1 on record). This led the petitioners to approach the Tribunal. Since the seniority list, which the petitioners had assailed before the Tribunal, was only tentative and the respondents had not yet finalized the same, their OA was disposed of with a direction to the official respondents to consider the representations of the petitioners before taking a final decision on the seniority list. Pursuant to the said order of the Tribunal (Annexure A-12 on record), the official respondents issued a letter dated 09.03.2000 holding that respondents No. 4 to 9 were to be made senior. The individual representations made by the petitioners were also rejected treating the seniority list, Annexure A-1, dated 20.01.1999, as final.

6. The above being the position, the petitioners again moved the Tribunal vide OA No. 923-HR of 2000 and prayed for quashing of the orders (Annexures A-1/1 to A-1/3 on record) denying seniority to the petitioners over private respondents and further sought a direction to the respondents to modify the seniority list, Annexure A-1, by placing the petitioners above respondents No. 4 to 9.

Official respondents No. 1 to 3 and respondents No. 4 to 9, before the Tribunal, filed their separate written statements. They also placed on record the relevant documents along with copies of the judgments passed by the principal Bench of the CAT.

7. We have heard learned counsel for the parties and perused the records.

8. Evidently, the Tribunal referred to the decision dated 7th and 8th of May, 1987 arrived at by the General Manager, Northern Railway to the effect that all those staff, who were working continuously as MCCs on ad hoc basis for a period of three years or more, were to be considered for regularization on the basis of their service record and viva voce. Although, the private respondents had been working as MCCs since 1985, 1986 and 1987, they were ignored for regularization as they had been working in Delhi Division. On separation and creation of Ambala Division separately, they were transferred to Ambala Division. Subsequently, another decision was taken by the Northern Railway, Headquarters level, Baroda House, which was circulated through letter dated 30.11.1995 (Annexure R-3/6 on record), which has a decisive bearing on the lis between the parties, is, accordingly, reproduced hitherto below:-

"As per decision taken in the PNM meeting held on 7/8-5-87 at GM's level and conveyed under Headquarter's letter No. 961E/101/K187 /URMU/E.Union dt. 6/8-7 all these staff who were working continuously as Material Checker on ad hoc basis for the period of three years or more may be regularized on the basis of their service record and viva voce duly observing the extent instructions on the subject. Further it may be clarified that if the junior person regularized on the basis of three years service and some senior who had not completed three years service were ignored may also be regularized with reference to their juniors vide Hd. Office letter No. 961E/05/10/88/URMU/C.Union dt. 11-4-88.

The cadre of MCCs of DLI division and UMB Division was common upto 30-6-89 because the cadre of UMB Division was not formed. Union raised the point that some senior MCCs working on UMB Divn's jurisdiction were ignored by the Delhi Division while regularizing such persons.

Hence it is decided that the persons working as Ad hoc MCCs on UMB Division and ignored by DLI Division may also be considered for regularization through viva voce test with reference to their juniors regularized on the basis of combined seniority maintained by Delhi Division."

(Emphasis added)

9. Annexure A-13 is another decision taken, at the end of the official respondents, pursuant to the directions issued by the Tribunal for finalization of seniority list, in the earlier O.A. filed by the petitioners titled as Ram Kumar v. Union of India. Para 2 thereof being equally significant is reproduced hitherto below:-

"2. GM/P/NDLS vide his letter No. 522- E/369/43/CHD/Pt.1 dated 30-11-95 has clarified that if the junior person regularized on the basis of three years service; and some seniors who had not completed three years service were ignored may also be regularized with reference to their juniors. Accordingly, all the 7 MCC who were initially senior to the ad hoc MCC, who have been regularized as per GM (P) directions on 4-11-97, have been regularized as MCC on the basis of viva voce test. Since all the juniors have been regularized on 10-8-88 and given seniority

as Clerk (MCC) w.e.f. 10-8-88, as such senior have also been given benefit of seniority at par with reference to their juniors."

10. The Tribunal on a due consideration and a thorough analysis of the aforesaid three decisions i.e. 08.05.1987, 13.11.1995 and 14.03.2000 (supra), crystalized the position to say that since all the private respondents were senior to all the petitioners, particularly applicant No. 1 who like the other private respondents had been working as MCC on ad hoc basis and had been given the benefit of regularization under the 1987 decision. Since all the petitioners had been regularized on 10.08.1988 or thereafter, and given seniority with effect from this date, the private respondents who were senior to them, had to be given the benefit of seniority at par with reference to these juniors. It was further noticed that the crucial decision was taken on 30.11.1995, however, the case of the private respondents for regularization and placement in seniority was taken thereafter w.e.f. 04.11.1997. A note was, accordingly, taken that all substantively senior who were working on ad hoc basis as on May, 1987 were regularized as MCCs/Clerks on 05.11.1997. Once it was acknowledged that Albel Singh was the senior-most amongst the petitioners and respondents No. 4 to 9 being senior to him in his category, this factor would affect the placement of the private respondents above petitioners No. 1 to 7. In a nutshell, benefit of the decision through Annexures A-7 and R-3/6 would place them above all the petitioners.

11. Another aspect, which we may also notice here, is that the Tribunal duly observed that the petitioners could still be heard on the issue of their recruitment as MCCs or from the date of regularization for challenging the seniority assigned to respondents No. 4 to 9 with retrospective effect as had they challenged the basic policy decision taken by the Railways. The first decision in point in time was of May, 1987, vide which regularization for ad hoc MCCs was envisaged and the benefit whereof was availed even by the petitioners. Secondly, the policy decision dated 30.11.1995 (Annexures R-3/6 and A-7), which provided for regularization of ad hoc MCCs who had not completed three years' service in May, 1987 but were senior to those who had completed three years' service then. It was emphatically recorded that these were the schemes floated by the official respondents for regularization of MCCs and, thus, had never been challenged by the petitioners. It was observed that the challenge, in fact, in the OA was only to the seniority list Annexure A-1. Whereas, the seniority list was only a necessary consequence of a policy decision, Annexure A-7, read with the connected decisions as referred to above. So much so, the Tribunal also took cognizance of the fact that the policy decision dated 30.11.1995 was a culmination of the grievances of such senior MCCs before various Benches of the CAT. Out of those decisions, three formed part of the record as Annexures R-3/1 to R-3/3. Hence, the policy decision dated 30.11.1995 was a consequence of the view expressed by the Court on the claims raised by the seniors.

12. A bare reading of the decision dated 30.11.1995 (Annexure A-7) suggests in

no uncertain terms that if the junior person was regularized on the basis of three years of service and some seniors, who had not completed three years" service by that time, and were accordingly ignored, were to be regularized with reference to their juniors. Resultantly, all the private respondents (7 MCCs), who were initially senior to the ad hoc MCCs in the substantive rank, who have been regularized as per GM (P) directions on 04.11.1997 as MCCs on the basis of viva voce test. And since all the juniors had been regularized w.e.f. 10.08.1988 and given seniority as Clerks (MCCs) w.e.f. 10.08.1988, as a necessary consequence and corollary, their seniors have also been given the benefit of seniority at par with reference to their juniors. In fact, a reference at this stage would be extremely material to the decision dated 14.03.2000 (Annexure A-13 on record), wherein, the official respondents have explained and justified their decisions vis-?-vis the placement of the private respondents above the petitioners in the seniority list in the wake of their respective dates of initial induction into service and the relevant portion whereof reads as thus:-

"i) The date of initial appointment of Shri Pooran Singh is 25-10-71, whereas the date of initial appointment of Shri Radhey Sham is 3-4-73. Hence he has been placed senior to Shri Radhey Sham.

ii) The date of appointment of Shri Bikram Bahadur is 16-6-73, whereas date of initial appointment of Shri Madan Mohan/KC is 30-6-73, hence he has been placed senior to Shri Madan Mohan.

iii) The date of initial appointment of Shri Man Singh is 26-7-78, whereas date of initial appointment of Sh. Roshan Lal is 24-2-79 hence he has been placed senior to Shri Roshan Lal.

iv) The date of initial appointment of Shri Swami Singh is 29-1-78, whereas the date of initial appointment of Shri Roshan Lal is 24-2-79, hence he has been placed senior to Shri Roshan Lal.

v) Shri Madan Lal was initially appointed on 15-3-76, whereas the date of initial appointment of Shri Ram Kumar is 25-7-76, hence he has been placed senior to Shri Ram Kumar.

vi) The date of initial appointment of Shri Baljinder Singh is 6-5-76, whereas the date of initial appointment of Shri Ram Kumar is 25-7-76, hence he has been placed senior to Shri Ram Kumar.

Vii) The date of initial appointment of Shri Ashwani Kumar is 15-9-79, whereas the date of initial appointment of Shri Albel Singh is 15-11-79, hence he has been placed senior to Shri Albel Singh."

13. In view of the above, we find no reason, least plausible in law, to interfere with the decision rendered by the Tribunal.

14. The petition is accordingly dismissed leaving the parties to bear their own costs.