
(2002) 08 DEL CK 0222
In the Delhi High Court
Case No : C.W.P. No. 5057 of 2001

Union of India (UOI)

APPELLANT

Vs

Badri Prasad and Others

RESPONDENT

Date of Decision : 13-08-2002

Acts Referred:

Administrative Tribunals Act, 1985 — Section 25

Citation : (2002) 08 DEL CK 0222

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Lata Goswamy, for H.K. Gangwani, for the Appellant; K.K. Patel, for The Private Respondents, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, C.J.—Union of India has filed the present writ petition questioning order dated 15.02.2001 and 03.07.2001 whereby and whereunder the original application filed by the respondents herein was allowed and the review application filed by the petitioner herein was dismissed by the Central Administrative Tribunal, Principal Bench, New Delhi(in short, "the Tribunal").

2. The aforesaid Original Application filed by the respondents herein bearing O.A. No. 1941 of 1999 was allowed with the following directions:-

"Direct the respondents to regularize the applicants in Class III posts as Clerks after ascertaining the minimum eligibility criteria for the said posts and also subjecting them to qualifying test, etc. The applicants, if found fit, would be also entitled for the consequential benefits from the date their services have been utilized as Clerks. No costs."

3. The original applicants were initially appointed as Khalasi/ Gangman on daily-rated basis. They had been granted temporary status as Khalasi / Gangman w.e.f. 01.01.1984. According to the respondents, they had been promoted to the post of Material Checking Clerk (in short, "M.C.C.")/ Clerk and had been working

for a long time.

4. The learned counsel appearing on behalf of the petitioner would contend that the learned Tribunal committed a manifest error insofar as it failed to take into consideration that the Store men do not come in the category of ministerial cadre, the same being entirely a promotional Group "D" post and the same cannot be filled up by direct recruitment in terms of the extant Rules laid down in Para 2006 in IREM Vol.II.

According to the learned counsel, only service of a Group "D" employee can be regularized within the geographical boundaries of a division subject to his divisional seniority and vacancy in Group "D" post.

It is urged that only Artisans working in a skill trade can be considered to be appointed for direct recruitment to the extent of 25% of the vacancies reserved for departmental promotion quota meant for regular Group "D" employees in terms of Rule 2007 (3) of IREM Vol.1, which is an exception to the general rule.

5. It is not in dispute that the respondents herein had been directly inducted in Group "D" category. They had not been called for any selection in Group "C" category. There exists also a factual dispute as to whether they had been working as M.C.C.s/Office Clerks.

In this connection, reference had also been made to one of the representations filed by respondent No.1 dated 03.01.1998 and 04.02.1998 wherein he himself admitted that he had not been working as M.C.C. /Office Clerk.

According to the petitioner, the said respondents had also not been working within the territorial jurisdiction of the learned Tribunal, as they had been working at Kanpur and/or at Moradabad, where for it was necessary for the original applicants to file an application in terms of Section 25 of the Administrative Tribunals Act and Rule 6 of the Procedural Rules, which they did not file.

6. Before the learned Tribunal, a decision dated 04.12.2000 of the Full Bench of the Tribunal passed in Ram Lubhaya and Ors. v. Union of India and Ors. being O.A. No. 103 of 1997 and connected matters reported in J.S. Kalra's Administrative Tribunal Full Bench Judgments 1997-2001 at 152 had also been relied upon by the respondents wherein it was held:-

"(a) Railway servants hold line in their parent cadre under a division of the Railways and on being deputed to construction organization and there having been promoted on a higher post on an ad hoc basis and continue to function on that post on ad hoc basis for a very long time would not be entitled to regularization on that post in their parent division /office. They are entitled to regularization in their turn, in the parent division/office strictly in accordance with the rules and instructions on the subject.":

It appears that the decision of the Full Bench of the Tribunal in Ram Lubhaya's

case (Supra) was followed by the Tribunal in several judgments.

7. Moreover, the learned Tribunal failed to notice the ratio laid down in the aforementioned case, i.e., Ram Lubhaya's case (Supra) and thereby, in our opinion, committed an error.

8. Whether the circular letter dated 19.03.1976 of the Railway Board would be binding upon the construction division or not would depend upon the answer to the question as to whether the construction division is a part of the Railway Administration and/or whether it is permanent or a temporary division. The question as to whether it is a permanent set up or not is pending consideration before the Apex Court of India.

9. We, however, may note that Rule 189 of Indian Railway Establishment Manual (in short, "IREM") Vol. I pertaining to promotions in the higher grade in Group "C" is in the following terms:-

"189. Promotion to higher grades in Group C-

(a) Railway servants in Gp D categories for whom no regular avenue of promotion exists 33-1/3% of the vacancies in the lowest grade of Commercial Clerks, Ticket Collectors, Trains Clerks, Number Takers, Time Keepers, Fuel Checkers, officer Clerks, Typists and Store Clerks etc. should be earmarked for promotion. The quota for promotion of Gp D staff in the Accountants Departments to Gp C post of A Accounts Clerks will be 25% Promotion to Gp C will be subject to the following conditions:

(i) All promotion should be made on the basis of selection. There should be written tests to assess the educational attainments of candidates followed by interviews where considered necessary. Gp C categories referred to above should be suitably linked with specified of work to in the lower grades on broad affinity of work to form groups for promotion but it should be ensured that the prospects are made regularly equal in the different groups. The test should be correlated to the standards of proficiency that can reasonably be expected from railway servant who are generally non-matriculantes. The aim of the examinations should be to assess the general suitability of the Class IV railway servants offering themselves for promotion to Class III posts from the point of view of their knowledge of English and their general standard of intelligence.

(1) Written test should consist of one paper of 3 hours duration divided into two parts-Part A to the test the working knowledge of the railway servant of the English language and Part b his general standard of intelligence and proficiency through questions in Arithmetic, General knowledge mainly pertaining to Railway matters and matters immediately pertaining to the work he has been acquainted with during his Railway service. In drawing up the question it must be ensured that they are not set as such a standard as to made it impracticable for a Gp D railway servant of average intelligence and normal standards of efficiency to qualify in the test.

(2) Oral test should adjudge other factors of suitability if so considered necessary by the General manager.

(3) Selections may not be restricted to three times the number of vacancies but kept open to all eligible candidates who would like to be considered for such selection.

(4) All those who qualify in written and oral test, the qualifying percentage of marks being prescribed by the General Manager, should be arranged in the order of their seniority for promotion against the yearly vacancies available for them in Gp C categories.

(iii) Gp D railway servants to be eligible for promotion to Gp D posts should have put in a minimum 3 years of continuous service. This does not apply to Scheduled Castes and Scheduled Tribes candidates....."

10. The respondents heavily relied upon minutes of the meeting held on 7th & 8th May, 1987, the relevant extract of the same is in the following terms:-

"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 General Manager 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 extant instructions on the subject as a special case not to be quoted as a precedent in future.

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

Allegedly, the General Manager clarified that the aforementioned circular could also be applicable to the construction organization vide letter dated 11.02.1991, which is in the following terms:-

"The above issue has been examined in detail and it is advised that the MCCs who are working on ad hoc basis for more than 3 years in construction organization will be regularized as such by their respective parent deptt. where they hold their lien, i.e., from where they have been drafted to const. organization further action in this regard may, Therefore, please be taken accordingly."

11. The contention of the learned counsel appearing for the respondents appears to be that in a large number of cases, persons working as MCC for a period of three years had been directed to be regularized by the Tribunal and in some of the matters the Supreme Court has also refused to interfere.

So far as judgments of the learned Tribunal are concerned, the same are not binding on this Court. We may notice that in most of its judgments, the learned Tribunal had not considered the core issue nor had referred to the fact that

regularisation cannot be a mode of recruitment. The Tribunal failed to notice a large number of decisions of the Apex Court wherein it has clearly been held that an order of regularisation must be based upon the relevant provision of the statute or statutory rules, which may be framed therefore.

12. We may notice that the Apex Court in Civil Appeal No. 12947 of 1993 vide Order dated 25.10.1996, having regard to the decision of the Allahabad Bench of the Tribunal dated 31.08.1992 passed in O.A. No. 555 of 1989 titled Vijay Prakash and Ors. v. Union of India and Ors., issued the following directions:-

"Delay condoned.

In the facts and circumstances of the case including the fact that the concerned employees have all worked in that capacity for over a decade, the direction given by the Tribunal for regularisation of those suitable found fit after screening a just and does not call for any interference under Article 136 of the Constitution. The question of law raised in the SLP is not required to be considered on those facts and is Therefore left open for decision in appropriate case.

The SLP is dismissed."

By reason of the said directions, Therefore, no law has been laid down and the Supreme Court only refused to exercise its discretionary jurisdiction in view of the facts involved therein. The Supreme Court admittedly did not consider the question of law raised in the special leave petition. Thus, the said decision does not have any precedential value.

13. Keeping in view the fact that the post of M.C.C./Office Clerk is a promotional post, we are of the opinion that such a promotional post could not have been filled up through regularization. The statutory recruitment rules, laid down for filling up the promotional post, must be dealt with strictly in terms thereof. The learned Tribunal unfortunately failed to consider the provisions of IREM as referred to hereinabove whereupon reliance had been placed by the petitioner herein and it merely proceeded on the basis that as the respondents had been working for a long time, their services are regularized.

14. This aspect of the matter had been considered by us in C.W.P. No. 2916 of 2002 titled Pritpal Singh v. Union of India and Ors. and connected matters.

15. We may further notice that in Union of India and Ors. v. Kishan Gopal Vyas, (1996) 7 SCC 134 it has been held:-

"7. Appointment to the post of a Storekeeper/Store Issuer /Clerk is regulated by certain rules governing recruitment to the post in the Department. The respondent if eligible, is entitled to be considered for the same along with all others who may be candidates for the appointment. That is the only correct way of filling these posts which would ensure equal opportunity in the matter of employment as required by Articles 14 and 16 of the Constitution of India to all eligible persons who are candidates for these posts. A direction like the one given

by the Tribunal in favor of the respondent or anyone like him has the effect of denying equal opportunity to the other eligible candidates by appointing a person not in accordance with the rules. Any order for absorption and regularisation of a person not appointed in accordance with the rules, given in the manner contained in the impugned order of the Tribunal would result in denial of equal opportunity in the manner of employment to the other eligible candidates for the public offices. Such a course must be obviously be eschewed. The Tribunal's order is, Therefore, set aside."

16. The Apex Court recently in *S. Renuka and Others Vs. State of Andhra Pradesh and Another*, categorically held that any appointment made in contravention to the recruitment rules would be nullity.

17. For the reasons aforementioned, the impugned judgment cannot be upheld, which is set aside accordingly.

However, keeping in view the peculiar fact and circumstances of this case, the cases of the respondents may be considered for regular appointment along with other eligible candidates in terms of the recruitment rules after giving them the benefit of relaxation of age keeping in view the fact that they had worked for such a long time.

This writ petition is allowed without any order as to costs.