
(2009) 09 DEL CK 0372

In the Delhi High Court

Case No : Writ Petition (C) No. 15286 of 2004

Union of India (UOI)

APPELLANT

Vs

Shri Ravinder Kumar

RESPONDENT

Date of Decision : 15-09-2009

Acts Referred:

Citation : (2009) 09 DEL CK 0372

Hon'ble Judges : Madan B. Lokur, J;A.K. Pathak, J

Bench : Division Bench

Advocate : Jitender Kr. Singh, for the Appellant; Kishore Kr. Patel, for the Respondent

Judgement

Madan B. Lokur, J.—The Petitioners are aggrieved by an order dated 3rd June, 2004 passed by the Central Administrative Tribunal, Principal Bench in OA No. 2384/2002 (Ravinder Kumar) and OA No. 2405/2002 (Ashok Kumar).

2. Broadly, both the Respondents? Ravinder Kumar and Ashok Kumar joined the Railways in a Group "D" post as casual labour in the mid 1970s as Khalasi in the Construction organization. After sometime, they were given temporary status in the Construction organization and were made regular in a Group "D" post in 1997. Ravinder Kumar was regularized on 18th November, 1997 and Ashok Kumar was regularized on 20th October, 1997.

3. During most of this period, if not the entire period, the Respondents worked in a Group "C" post as Material Checking Clerk (MCC).

4. Sometime in 1999, Ravinder Kumar participated in a departmental examination for selection to a Group "C" post. It appears that he qualified in the examination but before he could be regularized as a Group "C" employee, it came to the notice of the Petitioner that he was in fact not eligible to participate in the selection process since he did not have three years regular service in a Group "D" post. Accordingly, by a letter dated 16th August, 2002 Ravinder Kumar was asked to explain why he should not be reverted to the regular Group

"D" post that he was holding.

5. In so far as Ashok Kumar is concerned, he did not even sit for the departmental examination.

6. Feeling aggrieved at not being regularized in the Group "C" post and facing reversion to a Group "D" post, both Ravinder Kumar and Ashok Kumar preferred original applications before the Tribunal which came to be allowed by the impugned order. The Petitioner (Railways) has challenged the order and it is contended that both Ravinder Kumar and Ashok Kumar are not entitled to regularization in a Group "C" post.

7. Before us, learned Counsel for the parties have placed some Circulars which have also been referred to by the Tribunal in the impugned order.

8. The first such Circular is dated 11th February, 1991 and learned Counsel for the Respondents placed heavy reliance on it. In this Circular, it is stated as follows:

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 const. organisation will be regularised 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.

9. In our opinion, this Circular is not at all relevant because the Respondents were casual labour/temporary status employees in the Construction organization. They did not hold any lien in any post in the Railways. Also, they did not have a parent department from which they were drafted to the Construction organization. Therefore, reliance placed by learned Counsel for the Respondents on this Circular is completely misplaced.

10. The next Circular on which learned Counsel for the Respondents relied upon is dated 13th February, 1997. In terms of this Circular it is mentioned that a decision has been taken that Group "D" staff working as MCCs on an ad hoc basis in the Division as well as in the Construction Department for more than 3 years upto 7/8th May, 1987 be regularized as Material Clerk on the basis of the scrutiny of service records and viva-voce test to be conducted by the respective Division or where the employee holds his lien.

11. It appears from a reading of this Circular that it applies to Group "D" staff who are working on a regular basis (although this is not specifically mentioned). In any event, it is applicable only to those Group "D" staff who have been working as ad hoc MCCs for more than 3 years upto 7/8th May, 1987. This Circular is inapplicable in so far as the Respondents are concerned for the reasons that in May, 1997 the Respondents were not regularized in a Group "D" post and while they may have put in 3 years ad hoc service as MCC upto 7/8th May, 1987 they did not belong to any Division or hold any lien against any post.

12. The Circular dated 13th February, 1997 further refers to the fact that after the above crucial date of 7/8th May, 1987 MCCs working for more than 3 years on an ad hoc basis should be regularized against the promotee quota vacancies of Office Clerk along with other eligible staff of Group "D" by the normal selection process.

13. We have been told that the normal selection process includes a written examination which Ravinder Kumar prematurely took in 1999.

14. In our opinion, the facts of the case indicate that both the Circulars dated 11th February, 1991 and 13th February, 1997 are inapplicable to both Ravinder Kumar as well as Ashok Kumar since they were not regularized against a Group "D" post for the requisite period of 3 years entitling them to participate in the regular selection process.

15. Rule 189 of the Indian Railway Establishment Manual (IREM) Volume-I Rules, 2005 of the IREM, Volume-II are relevant in this context because they lay down the requirement that for being promoted from a Group "D" post to a Group "C" post, the employee must have three years regular service. Rule 189 of the IREM, Volume-I, in so far as it is relevant for our consideration, reads as follows:

(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, Office Clerks, Typists and Store Clerks etc. should be earmarked for promotion. The quota for promotion of Gp D staff in the Accounts Departments to Gp C post of Accounts Clerks will be 25%. Promotion to Gp C will be subject to the following conditions:

(i) & (ii) x x x x x x x x

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

16. Rule 2005 of the IREM, Volume-II reads as follows:

2005. Entitlements and Privileges admissible to Casual Labour who are treated as temporary (i.e. given temporary status) after the completion of 120 days or 360 days of continuous employment (as the case may be).

(a) x x x x x x x x

(b) Such casual labour who acquire temporary status will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group D Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-servicemen etc. as may be specified in

these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group D posts to the extent of their total service which may be either continuous or in broken periods.

17. A conjoint reading of these Rules makes it clear that a person can be treated as a railway servant for promotion purposes only if he is a regular employee of the Railways and not otherwise and that for promotion to Group "C" from Group "D" the railway servant should have put in a minimum of 3 years of continuous service. As noted above, the Respondents were regularized in a Group "D" post only in late 1997 and, therefore, when the normal selection process took place in 1999 Ravinder Kumar had not put in 3 years of continuous service as a regular railway servant. It is for this reason that he was found ineligible for participation in the selection process. As noted above, Ashok Kumar did not even participate in the selection process.

18. We may mention for the record that learned Counsel for the parties have referred to several judgments which have been delivered by different Benches of the Tribunal as well as some High Courts but we are not adverting to any of those judgments for the simple reason that the facts of this case appear to be somewhat unique in the sense that in this case, unlike other cases, the question of eligibility has arisen, which question did not arise in any of the cited cases.

19. We may note that the Tribunal has proceeded on the basis that even a casual labour or a temporary status employee is entitled to be considered for promotion. For the reasons given by us, it is not possible to agree with the Tribunal. Only a regular Group "D" railway servant having three years continuous service in the grade is eligible to be considered for promotion to a Group "C" post. At the relevant time, the Respondents did not meet this eligibility criteria.

20. A Division Bench of this Court has, in *Shri Ram Prashad v. Union of India and Anr.* Writ Petition (Civil) No. 10507/2004 decided on 24th July, 2008, taken the view that if an employee is required to be reverted to the Group "D" post, his pay will be protected. In that decision, it has also been mentioned that the period of service rendered by a Group "D" employee as MCC will be given due weightage and counted towards length of service, if any, prescribed for a Group "C" post. Furthermore, it has been held that if there is any bar of age it would be relaxed in the case of that railway servant. These directions were taken from the decision of the Supreme Court in *Badri Prasad and Others Vs. Union of India (UOI) and Others*,

21. Our attention has been drawn by learned Counsel for the Petitioner to a more recent decision of the Supreme Court in *General Manager, Northern Railway and Ors. v. Jageshwar and Ors.* Civil Appeal No. 6413/2002 decided on 1st April, 2009. The submission of learned Counsel for the Petitioner, based on this

decision, is that pay protection should not be granted to the Respondents. We are not in agreement with the submission of learned Counsel for the Petitioner in as much as we find that the railway servant in Jageshwar was screened and offered absorption in the Group "D" post with his consent. In so far as the present case is concerned, there is nothing to show that such an offer was made to the Respondents or that their absorption in the Group "D" post was with their consent. It appears that because of the long service rendered by the Respondents since 1978, and on an ad hoc basis as MCC from 1985, they were regularized in a Group "D" post in late 1997 after having put in about 19 years of service. This was as per the practice and procedure followed by the Railways. That being the position, in our opinion, the direction regarding protection of pay as given by the Supreme Court in Badri Prasad would be applicable to the facts of this case.