

# SUPREME COURT OF INDIA

Pritpal Singh

Vs.

Union of India

C.A.No.3155 of 2005

(Ashok Bhan and D.M.Dharmadhikari JJ.)

06.05.2005

## JUDGMENT

### **D.M. Dharmadhikari, J.**

1. Leave to appeal is granted.

2. Learned counsel appearing for the petitioners and learned standing counsel for the Union of India representing the Railways are heard at length. The petitioner joined the services in the Railways as casual labour in 1978. He was given a temporary status in the year 1983 and he continued to work on one of the group 'D' posts in 'open line' of the Railways. In the year 1991, he was sent to the construction project to discharge duties on higher post of Material Checking Clerk. The material checking clerk is group 'C' post with higher pay on which he continued for a long period of six years. He approached the Central Administrative Tribunal Principal Bench, New Delhi seeking relief to regularize his services on the post of material checking clerk on which he was working.

3. The Central Administrative Tribunal by order dated 21.3.2002 rejected his claim for regularization on the post of material checking clerk. The only relief granted was that on his repatriation to his parent organization in 'open line', he would be entitled to pay protection 'in accordance with rules, instructions and judicial pronouncement on the subject'. The operative part of the order of the Tribunal reads thus:-

"6. In view of the fact that the impugned order dated 27.2.2001 relating to applicant's repatriation to his parent division in substantive cadre has been considered in the case of Surinder Kumar (supra), in all aspects of the matter, we also hold that applicant has no enforceable legal right to compel respondents to regularize him as MCC in the construction organization. Respondents are not precluded from seeking repatriation of applicant to his parent organization in his substantive cadre. However, we also hold that applicant shall be entitled to pay protection in accordance with rules, instructions and judicial pronouncements on the subject."

4. Not satisfied with a partial relief only of pay protection, the petitioner approached the High Court of Delhi by way of petition under Article 227 of the Constitution of India. The High Court by common judgment passed in the case of present petitioner and other railway employees similarly appointed to group 'D' post in 'open line' and working on group 'C' post on construction side, rejected the claim of the petitioner and upheld the order of the Tribunal.

5. In this Special Leave Petition, after service of notices, Union of India and the Railways represented by their authorities have filed counter affidavits. In rejoinder affidavit filed in response to the counter, the petitioner states that while he was working on the post of material checking clerk in group 'C', he competed in the year 1996 with others for regular selection to the post of clerk. He appeared in the written examination for regular appointment to the post of clerk in 'open line'. He successfully cleared the written examination but was not selected for appointment because less marks were given to him in interview. Learned counsel has placed reliance on Railway Board's circular dated 8.12.1975, which was considered and applied in favour of similarly placed employees by this Court in the case of R.C. Srivastava vs. Union of India and others in Civil Appeal No. 9998 of 1995 (arising out of SLP(C) No. 9899 of 1993) decided on 3rd November, 1995. The relevant part of the Railway Board circular which was relied by this Court in the case R.C. Srivastava (supra) reads thus:-

"2.2 Panel should be formed for selection posts in time to avoid ad-hoc promotions. Care should be taken to see while forming panels that employees who have working in the posts on ad-hoc basis quite satisfactorily are not declared unsuitable in the interview. In particular, any employee reaching the field of consideration should be saved from harassment."

6. Applying the above said Railway Board circular in the case of R.C. Srivastava (supra), this Court came to the conclusion that the appellant was wrongly denied selection on the basis of marks given to him in the viva-voce test. Consequently, this Court directed that R.C. Srivastava should be considered to have been selected for the post of Law Assistant in the selection for the said post as per the panel prepared on 29th November, 1992.

7. The learned counsel appearing for the Railways made some efforts to justify the action of the railways in repatriating the present appellant from group 'C' post on construction organization to group 'D' post in 'open line'. It is contended that the substantive appointment of petitioner was on group 'D' post in the 'open line'.

8. The learned counsel for the Railways could not dispute the fact that in regular selection for the post of clerk held in the year 1996, the petitioner appeared and passed in the writing examination but declared fail due to less marks awarded in interview. The petitioner admittedly served for a long of six years as material checking clerk. His work and performance was within the knowledge of the railway authorities. He successfully cleared the written examination. In such circumstances, only on less marks given to him in interview, he could not have been found unfit in breach of the Railway Board's circular (supra). The

circular directs that employees working for a long period on promotion post satisfactorily are not to be declared unsuitable only on the basis of interview.

9. Based on the decision of this Court in the case of R.C. Srivastava (supra), in our considered opinion, the claim of the petitioner for appointment to the post of clerk in 'open line', with due regard to his work and performance on group 'C' post in the Project and successfully passing the written examination, deserves to be considered.

10. Without, therefore, going into the correctness of the orders of the Central Administrative Tribunal and High Court rejecting the claim of the petitioner for regularization of his service on group 'C' post, we allow this appeal on a different ground.

11. On the basis of his position in the selection panel for the post of clerk in group 'C' prepared on the basis of the written examination of the year 1996, the respondents are directed to consider the petitioner for selection to the post of clerk in the 'open line' and on his selection and appointment grant him due seniority on that post.

12. The appeal is allowed with the above directions. In the circumstances, we make no order as to costs.