

Supreme Court of India

Kailash Chandra Rajawat vs Union Of India on 1 February, 1993

Equivalent citations: 1993 AIR 2462, 1994 SCC Supl. (1) 71

Author: L Sharma

Bench: Sharma, L.M. (Cj)

PETITIONER:

KAILASH CHANDRA RAJAWAT

Vs.

RESPONDENT:

UNION OF INDIA

DATE OF JUDGMENT 01/02/1993

BENCH:

SHARMA, L.M. (CJ)

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SHARMA, L.M. (CJ)

ANAND, A.S. (J)

CITATION:

1993 AIR 2462

1994 SCC Supl. (1) 71

JT 1993 Supl. 470

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Heard the learned counsel for the parties. Special leave is granted.

2. The appellant is a Trains Clerk and a candidate for promotion as Goods Guard, Grade 'C'. One of the conditions for eligibility for promotion is five years' service as Trains Clerk. The appellant was appointed as Trains Clerk on temporary basis in June 1979 and was regularised in January 1982. The period of five years has to be calculated with reference to 1986 when the matter of promotion was taken up. The appellant has been held by the authorities in the department to be ineligible for promotion on the ground that he did not have requisite experience of five years as a Trains Clerk, as he was regularised only in January 1982. The appellant, was, therefore, not permitted to sit for the + Arising out of SLP (C) No. 17978 of 1991 promotional examination held on November 27, 1987. On the other hand, the appellant contends that his earlier experience as Trains Clerk from June 1979

onwards when he held a temporary appointment should be taken into account.

3. Aggrieved by the decision of the 'authorities, the appellant filed an application before the Central Administrative Tribunal. The Tribunal, by an interim order pending decision of the case, permitted the appellant to appear at the relevant examination being held for promotion but directed that the result would be kept in a sealed cover. The appellant accordingly appeared at the examination and his result was kept in a sealed cover. However, on final hearing, the Tribunal has dismissed the appellant's application by the impugned judgment. One of the reasons for dismissal of the appellant's application as indicated in the judgment is that if the appellant's claim was allowed, it would result in the supersession of several other Trains Clerks, who are senior to him. The appellant disputed the correctness of that position. The special leave petition was adjourned on the prayer of the respondent for filing a counter-affidavit to indicate the number of such Trains Clerks who may be superseded. Now, it is admitted on behalf of the respondent that the statement of the appellant is correct and that if he succeeds he would not be superseding anyone of his seniors.

4. The learned counsel for the respondents has defended the present appeal on the ground that the period of temporary service of the appellant cannot be allowed to be taken in account for calculating the five years' eligibility period. Reliance has been placed on the observations in paragraph 47(A) in *Direct Recruit Class II Engineering Officers Assn. v. State of Maharashtra*'.

5. We have examined the above-noted judgment with the assistance of the learned counsel and are of the opinion that the observations referred to above do not help him. In that case, the observations relied upon were made with reference to stopgap arrangement of an employee for a short period and in the present case we are concerned with temporary appointment and not a stopgap appointment. We are further of the view that the case before us is directly covered by the ratio in *Baleshwar Dass v. State of Up.*² Thus, the reason for dismissal of the appellant's application by the Tribunal is not sustainable. The period spent by the appellant, as temporary duty, prior to his regularisation was required to be taken into consideration for considering his eligibility for promotion and when so taken, it is apparent that the appellant possessed the requisite experience as a Trains Clerk for his eligibility to promotion as Goods Guard 'C'. Accordingly, we set aside the impugned judgment and allow the application of the appellant filed before the Tribunal. The examination result of the appellant, which is kept in sealed cover, shall now be declared and appropriate orders will be passed by the authorities concerned in accordance with the result expeditiously.

6. The appeal is disposed of in the above terms. There will be no order as to costs.

1 (1990) 2 SCC 715 :1990 SCC (L&S) 339: (1990) 13 ATC 348 : JT (1990) 2 SC 264 2 (1980) 4 SCC 226: 1980 SCC (L&S) 531