

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P. (C.) No.1612/2008**

% **Date of Decision: 26.11.2009**

C.K. Dubey & Another Petitioners
Through Mr.Lalta Prasad, Advocate

Versus

Union of India & Others Respondents
Through Nemo.

CORAM:

HON'BLE MR. JUSTICE ANIL KUMAR

HON'BLE MR. JUSTICE VIPIN SANGHI

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | YES |
| 2. | To be referred to the reporter or not? | NO |
| 3. | Whether the judgment should be reported in the Digest? | NO |

ANIL KUMAR, J. (Oral)

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The petitioners have impugned the order dated 21st February, 2008 in OA No.332 of 2007, C.K. Dubey and another v. Union of India and others dismissing their petition seeking regularization to the post of Loco Inspectors or Driver Instructors without any break.

The petitioners were appointed as Loco Cleaners at Mechanical Department, Northern Railway, Moradabad Division and were promoted as Passenger Drivers and thereafter as Senior Passenger Drivers.

The respondents had invited the applications for filling up the posts of Loco Inspectors/Driver Instructors. On account of acute shortage of loco running staff, only after a written test without regular selection process, the petitioners were promoted on loco inspector as an *ad hoc* arrangement for a period of three months. While appointing them on *ad hoc* arrangement, it was categorically stipulated that they could be repatriated to the cadre of Driver without any notice. The three months' appointment on *ad hoc* basis was, however, extended in case of petitioners from time to time.

In order to select Loco Inspectors for regular posts, a selection was ordered on 27th April, 2005. For the regular selection of 82 vacancies were notified. Though a panel was prepared but the petitioners were not placed on the panel, as they did not qualify for the selection process and having failed in the regular process of selection.

After participating in the regular process of selection for the post of Loco Inspectors and failing to qualify for the same, the petitioners claimed appointment on regular basis on the ground that they worked as Loco Inspectors on *ad hoc* basis for 18 months and since they had shouldered the responsibilities of Loco Inspectors/ Driver Instructors therefore they cannot be repatriated to the cadre of driver and they should be appointed to the regular post of loco Inspectors.

The petition filed by the petitioners seeking promotion on regular basis to the post of Loco Inspectors was, however, dismissed by the Tribunal by order dated 21st February, 2008 in OA No.332 of 2008 in the matter of C.K. Dubey and others v. Union of India and others. However, the petitioners were permitted to apply for the remaining vacancies of Loco Inspectors on the ground that they have already worked on *ad hoc* basis, therefore, the respondents were directed to consider them and the request of the petitioners to be promoted on regular basis was declined.

The petitioners have impugned the order contending *inter alia* that since they have already worked on *ad hoc* basis on the post of Loco Inspectors, they cannot be repatriated. Relying on Ashwani Kumar v. State of Bihar, (1996) 7 SCC 577, it was contended that since the petitioners were given *ad hoc* promotion on clear available vacancies and they had continued for long period, therefore, their promotion shall be deemed to be regular promotion and they should be promoted on regular basis. The petitioners have contended that there are still 52 vacancies on which the petitioners can be absorbed on regular basis.

We have heard the learned counsel for the parties. The learned counsel for the petitioners has not disputed that no selection procedure as required under the rules had been followed before directing the petitioners to work on *ad hoc* basis. Instead of making the petitioners

to undergo the regular selection process, only a written examination was taken to ascertain their literacy level on account of acute shortage and, thereafter the petitioners were asked to work as Loco Inspectors for a short duration of three months in the first instance with a specific stipulation that they would be repatriated to their original cadre. The petitioners have also not denied that when the regular process of selection was initiated, they had failed. This has not been disputed and cannot be disputed that before failing in the regular process of selection, the petitioners did not seek their regular appointment as Loco Inspectors on account of having worked as Loco Inspectors for some period on ad-hoc basis.

After participating in the selection process for promotion to the post of Loco Inspectors and failing in the same, the petitioners cannot be allowed to be promoted as Loco Inspectors on account of having worked on *ad hoc* basis on the said post for some time. This also cannot be denied that *ad hoc* officiation does not given any tangible right to the petitioners to be promoted without qualifying in the selection process. The Supreme Court in Chandra Prakash Tiwari & Others v. Sakuntala Shukla, (2002) 6 SCC 127, had held that an officiation without following due process of law on *ad hoc* basis does not confer any right of regularization. It was also held that when a candidate appears at the examination without protest and is subsequently found to be not successful in the examination, question of

entertaining a petition challenging the said examination would not arise. Though the petitioner has not challenged the process of selection, however, after failing in the process of selection they cannot be permitted to contend that they should be appointed on regular post of loco inspector though they have failed in the regular process of selection.

Since the petitioners were not selected in the regular selection process for the post of Loco Inspectors, therefore, they are not entitled to promotion on regular basis to the said post. The Tribunal has also declined the plea of the petitioners for promotion on regular basis on the same grounds and the learned counsel for the petitioners has been unable to show any illegality or irregularity in the decision of the Tribunal declining the promotion to the petitioners on the regular basis to the post of Loco Inspectors. In the circumstances, the decision of the Tribunal dated 21st February, 2008 declining the request of the petitioner for promotion on regular basis does not suffer from any error or such illegality which would require interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The Tribunal has already allowed petitioners to participate in the process of selection as at the time the order dated 21st February, 2008 was passed there were many vacancies. Learned counsel for the parties are unable to state as to how many vacancies still exist.

In the facts and circumstances, the writ petition is without any merit and it is, therefore, dismissed. The parties are, however, left to bear their own costs.

ANIL KUMAR, J.

November 26, 2009
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VIPIN SANGHI, J.