

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

...

OA No.290/00254/2008

Pronounced on : 19.03.2020
(Reserved on : 04.03.2020

...

CORAM: HON'BLE SMT. HINA P. SHAH, MEMBER (J)
HON'BLE SMT. ARCHANA NIGAM, MEMBER (A)

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Mohd. Sabir son of Shri Abdul Gani, aged about 48 years, resident of Plot No.196-A, Bapu Colony, in front of New Kohinoor Cinema Hall, Jodhpur, at present employed on the post of Khallasi Helper in the office of Senior Section Engineer (O.V.H.), Jodhpur, NWR.

...APPLICANT

BY ADVOCATE : Mr. J.K. Mishra.

VERSUS

1. Union of India through General Manager, North Western Railway, Jaipur.
2. Assistant Personnel Officer, North Western Railway, Jodhpur Division, Jodhpur.

...RESPONDENTS

BY ADVOCATE: Mr. Kamal Dave, for R1 & R2

ORDER

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Per Smt. Archana Nigam, Member (A):-

1. The present Original Application (O.A.) has been filed by the applicant under Section 19 of the Administrative Tribunals Act, 1985, wherein the applicant is seeking the following reliefs:

“8(i). That the impugned order dated 15.09.2008 (Annexure A1) may be declared illegal and the same may be quashed. The respondents may be directed to grant the due benefits of 2nd financial upgradation under ACP Scheme w.e.f. 15.07.2003 as per rules and circulars issued by the Railway Boards from time to time and he may also be allowed all consequential benefits including arrears of difference of pay along with market rate of interest.

8(ii) That any other direction, or orders may be passed in favour of the applicant, which may be deemed just and proper under the facts and circumstances of this case in the interest of justice.

8(iii) That the costs of this application may be awarded.”

2. It is seen from the records that this is 2nd round of litigation, the same matter had been adjudicated vide OA No.254/2008, dated 24.02.2011 of CAT Jodhpur and this Tribunal was pleased pass an order in favour of the applicant vide order dated 24.02.2011. The present OA has been made against the order No.450E/LC/14508, dated 15.09.2008 (Annexure A1) passed by 2nd respondent on the subject of grant of benefits of 2nd financial upgradation under ACP Scheme.

3. The facts of the present case as narrated by the applicant are that the applicant was initially engaged as substitute Khallasi under Loco Foreman at Jodhpur on 21.02.1979. He got temporary status on completion of 120 days continuous service and was granted scale of pay with effect from 15.07.1979. At the time of his absorption against regular establishment, he was shown as substitute from 15.07.1979 (Annexure A2) in the service sheet. He was issued a letter of appointment on dated 20.03.1985 on the post of Khallasi but subject to passing of medical test for the same. However, he passed the medical test only in C-2 category vide letter dated 16.01.1996. He was therefore denied appointment. He had filed an OA No.383/1990 before this Tribunal, the same came to be disposed of vide order dated

21.02.1994 with a direction to file an appeal against the medical examination in which he was declared as failed and to the appeal should be disposed of within four months thereafter.

4. Thereafter, he appeared before the medical board vide letter dated 13.04.1994. The Medical appeal authority found him fit in medical category B/two. His screening was conducted on 23.03.1995 vide letter dated 23.03.1995 (Annexure A6). The applicant was absorbed against regular establishment on Group 'D' post vide letter dated 13.11.1995 (Annexure A8). He was relieved from Loco Shed Jodhpur for joining at the Elect Foreman (OVH) (re-designated as Sr. Section Engineer (Elect) (OVH) at Jodhpur vide letter dated 15.11.1995 (Annexure A9). A family card was issued to him on 12.12.1991 which indicates his designation as Substitute Khallasi (Annexure A3). The applicant got an opportunity to advance and come within zone of consideration for promotion to the post of Helper Khallasi (P) in the scale of Rs.800-1150. After passing the trade test, he was granted promotion vide order dated 13.12.1996 (Annexure A15).

5. It is further stated that the Railway Board have been pleased to issue an Assured Career Progression Scheme for Railway Servants (in short ACP) vide RBE No.233/1999. As per Para 5.1 of the Scheme, one would be given at least two promotions during his service career and in case he is not given such promotions, he would be eligible for grant of two financial upgradations on completion of 12 and 24 years of service. The scheme came into effect w.e.f. 01.10.1999. The applicant has completed a total of 24 years of service on 15.07.2003 i.e. Temporary status substitute i.e. from 15.07.1979 to 12.12.1995 plus regular service from 13.11.1995 till 15.07.2003. During this period, he got only

one promotion as Helper Khallasi Elect (P). Thus he is eligible for grant of benefits 2nd financial upgradation under ACP Scheme, with effect from 15.07.2001.

6. The applicant had an impression that the respondents would consider his case and grant due benefits in normal course counting the temporary service as a substitute following by regularization was issued on 17.08.2004 itself. But finding no response from them, he submitted a detailed representation on 24.11.2004 (Annexure A17). The applicant had to option except to invoke the door of the Tribunal by filing an OA No.145/2008. The same came to be disposed of vide order dated 26.08.2008 with a direction to dispose of his pending representation by taking note of RBE No.172/2004 and order dated 17.08.2004 passed by Jaipur Bench of this Tribunal in OA No.172/2004 (Lalu Ram Vs. UOI & Ors.) within a period of three months.

7. It is also stated that 2nd respondents has been pleased to reject the claim of the applicant vide order dated 15.09.2008. It has been said that the applicant was not a substitute and he worked as casual labour and thus not entitled to the benefit of 2nd financial upgradation. The word 'substitute' has been deleted from his service book without any specific order to that effect. Hence the OA.

8. In the written statement filed on behalf of the respondents it has been stated that the applicant was engaged as Casual Labour under Loco Foreman at Jodhpur w.e.f. 21.02.1979 and not as a substitute. On completion of 120 days as Casual Labour, he was given temporary status w.e.f. 15.07.1979 and after screening, he was appointed as Electrical Khalasi in Electrical Department w.e.f. 13.11.1995. As per RBE No.69/2004 (PS No.PC-V/404), 50% of temporary service is to be

counted while calculating 12/24 years of service under ACP Scheme. The applicant worked as temporary status obtained casual labour from 15.07.1979 to 12.11.1995 and was appointed on regular basis against the post of Electric Khalasi w.e.f. 13.11.1995.

9. It is further stated that total temporary status obtained casual labour service of the applicant from 15.07.1979 to 12.11.1995 is 16 years 04 months, 50% of this comes to 08 years 02 months, his 24 years regular service from 13.11.1995 completes on 13.11.2019. After giving benefit of 50% temporary status obtained casual labour service he becomes eligible for 2nd financial upgradation on 13.09.2011. The applicant cannot claim ACP as a matter of right and he can only claim ACP in accordance with law as per the scheme. By an order dated 15.09.2008 that the appointment of the applicant cannot be treated as regular appointment and he cannot be treated as substitute with effect from the date of his initial appointment. He was not appointed as substitute and it was wrongly mentioned as substitute in the service book. He was a casual labour at the time of his initial appointment and therefore, he cannot be treated as substitute from the date of his initial appointment. In pursuant to the order of the Tribunal, the answering respondent passed an order wherein it has been clarified that he was promoted on 17.12.1996 in the pay scale of Rs.800-1150 and he shall be entitled for 2nd financial upgradation w.e.f. 13.09.2011. in that view of the matter the applicant is not tenable and sustainable in the eyes of law.

10. The applicant filed OA No.145/2008 which was disposed of with a direction that the representation of applicant may be disposed, considering RBE No.18/2004 within three months from the date of order

dated 26.08.2008. Thereafter, 2nd respondent passed an order dated 15.09.2008, it was specifically mentioned that it was wrongly entered as substitute in the service book of the applicant whereas he was engaged as Casual Labour. The OA No.172/2004 passed by Jaipur Bench of this Tribunal vide order dated 03.03.2008 pertaining to substitutes as such in the present case for counting of service, the OA No.172/2004 is not applicable in the present facts and circumstances of the case.

11. The applicant was initially engaged as Casual Labour w.e.f. 21.02.1979 and he was given temporary status w.e.f. 15.07.1979. The applicant worked as temporary status obtained casual labour for appointment on regular basis w.e.f. 13.11.1995. Accordingly, he is entitled for 2nd financial upgradation under ACP Scheme w.e.f. 13.09.2011. The respondents further stated that he has never been appointed by a regular process of selection, but was only appointed as casual labour and was conferred temporary status w.e.f. 15.07.1979. In that view of the matter, the applicant cannot be conferred the 2nd financial upgradation treating his services as rendered w.e.f. 15.07.1979 and the OA filed by him is liable to be dismissed.

12. In the rejoinder filed on behalf of the applicant, it has been stated that the applicant was a substitute Temporary Status and not a casual labour. The RBE No.181/2004 applies to the case of the applicant and as per Annexure A16, full period of service rendered as a substitute after attaining temporary status is to be counted for the purpose of grant of benefits under ACP Scheme. The factum of the applicant's employment as substitute has not been disputed, it has been stated with supporting material, the applicant was a substitute TS prior to this

absorption against regular establishment on Group 'D' post. The respondents cannot be allowed to make any statement which is contrary to their own records. Hence, he is entitled for the reliefs claimed in this OA.

13. Arguments advanced by the learned counsel for both the parties were heard and the documents placed by them on the record perused carefully. Both the counsels have merely reiterated the contents of the OA, Written Statement, rejoinder as well as Additional reply and rejoinder to additional reply filed by them.

14. From the records, it appears that the decision of this Tribunal in OA No.254/2008, decided on 24.02.2011 was challenged before the Hon'ble High Court of judicature at Rajasthan. The Hon'ble High Court of Judicature at Rajasthan in DBCW No. 10013 of 2011, which has been allowed vide order dated 20.04.2016 with a direction that the matter shall stand remitted to the Tribunal for decision afresh. While doing so Hon'ble High Court has opined that:

"Obviously, the Tribunal while taking into consideration the material on record, was required to first determine the question as to whether the respondent was initially appointed as a casual labour or as a substitute Khalasi. In the considered opinion of this Court, the conclusion arrived at by the Tribunal solely relying upon the entries in the service book, without examining the specific stand of the Railways regarding the status of the respondent employee, is ex-facie erroneous."

15. Accordingly, the matter was heard afresh and we have carefully perused the records and particularly the documents focused upon by the learned counsels during the deliberations at final hearing.

16. We are inclined to agree with the earlier judgment of this Tribunal vide order dated 24.02.2011 in OA No.254/2008.

17. In view of the controversy regarding the status of the applicant as Substitute Khalasi, the respondents were directed to produce the following documents: i) Service Book ii) Appointment Orders iii) Relevant orders in the matter. The OA preferred earlier was allowed by the Tribunal to observe that the service book of the respondents clearly mentions that he was a Substitute Khalasi. These were perused during arguments and admittedly respondent submits that there are corrections made in these records. However, it is the case of the respondents that while the orders are erroneously recorded by the respondent department, they do not create a right in the applicant to the status of Substitute Khalasi. This argument does not convince us as to the claim of the applicant being inadmissible. We are therefore in agreement with the earlier judgment dated 24.02.2011 in OA No.254/2008, which is as detailed below:

"2. We have heard the learned counsel for both the sides in detail and perused the pleadings, as well as available records. Since the case of the applicant is covered by the said letter dated 17.08.2004 issued by the Railway Board, we declare that the applicant is entitled to the 2nd financial upgradation under ACP Scheme w.e.f. 15.07.2003, and further consequential benefits should also be followed, but we decline to grant any interest thereon. The Original Applicant is, thus, allowed. No order as to costs."

18. As stated above, this Tribunal has directed the production of original documents which were perused. The corrections that have been made in the service book do not inspire confidence and the fact of the respondent department not controverting the overwriting and corrections made therein lead us to believe that the claim of the applicant as to his having worked as Substitute Khalasi has merit.

19. Accordingly, we are of the opinion that there is merit in the case of the applicant and as such the relief sought in the present OA is

granted. The impugned order dated 15.09.2008 (Annexure A1) is quashed and set aside, with a direction to the respondents to grant the due benefits of 2nd financial upgradation under ACP Scheme w.e.f. 15.07.2003 as per rules. He may also be allowed all consequential benefits including arrears of difference of pay which is restricted to one year prior to the filing of the OA. We are not inclined to grant payment on interest thereon.

20. The OA is allowed accordingly. No order as to costs.

(ARCHANA NIGAM)
MEMBER (A)

(HINA P. SHAH)
MEMBER (J)

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