

20

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No. 2399/2001

New Delhi, this the 7th day of November, 2002

Hon'ble Shri M.P. Singh, Member (A)
Hon'ble Shri Shanker Raju, Member (J)

Pal Chand
SS Khallasi/IRCOT
Shivaji Bridge, New Delhi

...Applicant

(Shri G.D. Bhandari, Advocate)

Versus

Union of India, through

1. General Manager
Northern Railway,
Baroda House, New Delhi.
2. Chief Project Administrator
Indian Railways Central Organisation,
for Telecom, Shivaji Bridge,
New Delhi.
3. General Manager,
Railway Electrification
Northern Railway, Allahabad.

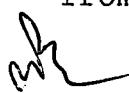
...Respondents

(Shri V.S.R. Krishna, Advocate)

ORDER

Shri M.P. Singh, Member (A)

Applicant claims that he was appointed as Casual labour from 6.3.81 and thereafter as SS Khallasi (a Group D post) in the pre-revised scale of pay of Rs.210-270. He has been discharging the duties of Clerk-cum-Typist from the date of his initial appointment. Though the applicant has made several representations to the respondents to grant him the pay scale of Clerk-cum-Typist there is no response for the same. He further claims that the benefit of judgement dated 2.7.2001 in OA 1158/2000 should be extended to him as he is similarly placed. By the present OA, he seeks directions to the respondents to make payment to him in the pay scale of the post of Clerk-cum-Typist with effect from 6.3.81 and to deem the applicant having been



appointed/regularized as Clerk-cum-Typist from that date with all consequential benefits of seniority and promotion.

2. Respondents have contested the OA and have stated in their reply that applicant was initially engaged as daily rated casual Gangman on 6.3.81 by PWI/SBL, Meerut and was transferred to AEN/Const. Northern Railway Ghaziabad on 13.7.81. He was granted temporary status in Khalasi grade Rs.196-232 as per extant rules. Later on, he was promoted there as semi-skilled Khalasi in the grade of Rs.210-270 (Rs.800-1150) vide notice dated 3/1986 and continued to work in the construction organisation itself. Subsequently, he was transferred to IRCOT and joined there on 2.11.1993 as semi-skilled Khalasi in the grade of Rs.800-1150. He was screened for regular appointment in Group D category on open line in Delhi Division/Northern Railway. He stood regularised as Office Khalasi (Group D) vide letter dated 12.9.97.

3. Placing reliance on the decision of the Apex Court in Suneeta Aggarwal Vs. State of Haryana & Ors. JT 2000(2) SC 168, respondents have stated that doctrine of acquiescence applies to the case of applicant since by not having challenged against the accord of temporary status nor against the seniority list issued, applicant is deemed to have accepted his regularization, his Group D status and his seniority in parent cadre and the applicant cannot challenge the same now. Applicant can be promoted as Clerk-cum-Typist subject to his fulfilling the minimum prescribed condition and following the due

W.M.

22

process of selection as prescribed by the Railway Board. Relevant paras of IREM Vol.1 stipulate that all promotions from Group D to Group C are to be made through selection. The applicant was never promoted to Group C post. All his seniors continue to work ⁱⁿ Group D and if applicant's case is considered, it would be detrimental to the interest of his seniors in his regular grade.

4. Respondents have further submitted that Full Bench of this Tribunal in the case of Ram Lubhaya & Ors. Vs. UOI & Ors. ATJ 2000(1) 40 have held as under:-

"Applicants who hold lien in Group D post as Khalasi/Gangman on the respective Divisions of the Railways and are deputed to work in construction Division of the Railways where they were promoted to Group C posts on ad hoc basis and continued as such for a long time say 15 years are not entitled for regularisation in Group C post of construction Division who has no cadre of its own nor they can claim regularisation in such Group C post in their parent Division/Office because such regularisation is to be made in their turn and strictly in accordance with statutory rules and instructions on the subject."

In view of this position, the OA is devoid of merit and be dismissed.

5. We have heard the learned counsel for the parties and perused the records.

6. During the course of the arguments, the learned counsel for respondents has drawn our attention to the judgement dated 13th August, 2002 in CWP No.5057/2001 of the Delhi High Court by which ~~of~~ the order of the Tribunal dated 15.2.2001 in OA 1941/1999 involving a similar issue was set aside by the High Court. In the



said OA 1941/1991 applicants working as Gangman/Khalasi were claiming promotion to Group C posts and the Tribunal allowed that OA directing respondents to regularise the applicants therein in Class III posts. The learned counsel also has drawn our attention to yet another judgement of the Delhi High Court dated 12th August, 2002 in CWP No.2916/2002 and other connected cases. These petitions were filed by the applicants similarly placed like the applicant herein and involving the same issue as is raised in the present OA, whose OAs were dismissed by the Tribunal. The Delhi High Court also dismissed their petitions being devoid of merit.

7. Having regard to the aforesaid judgements of the Delhi High Court and also the judgement of this Tribunal in Ram Lubhaya's case (supra), which are binding on us, we are unable to grant the reliefs prayed for by the applicant. In view of this position, the present OA is devoid of merit and is accordingly dismissed. No costs.

S. Raju
(Shanker Raju)
Member (J)

M.P. Singh
(M.P. Singh)
Member (A)

/GTV/