

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH

O.A.NO.1224/99

Hon'ble Shri Justice V.Rajagopala Reddy, VC(J)

New Delhi, this the 16th day of March, 2000

Kishan Lal  
s/o Sh. Shiv Dhan  
posted as Mason in  
the office of Dy. C.E.  
Northern Railway (Tilak Bridge)  
New Delhi. ... Applicant

(By Shri Anil Singhal, proxy of Shri A.K.Bhardwaj, Advocate)

Vs.

1. Union of India through  
the General Manager  
Northern Railway  
Baroda House  
New Delhi.
2. The Chief Administrative Officer (Const.)  
Northern Railway  
Kashmere Gate  
Delhi.
3. The Dy. Chief Engineer (C)  
Northern Railway  
Tilak Bridge  
New Delhi.
4. The Dy. C.P.O. (Const.)  
Northern Railway  
Kashmere Gate  
Delhi. .... Respondents

(By Shri D.S.Jagotra, proxy of Shri B.S.Jain, Advocate)

O R D E R (Oral)

By Reddy- J.

None appears for the parties either in person or through their counsel except the aforesaid proxy counsel to inform that the Advocates are abstaining from Court. Since this is an admitted case and the pleadings are complete, I dispose of the case on the basis of the available pleadings on record even in the absence of the parties under Rule 15 of the Central Administrative Tribunal (Procedure) Rules, 1987.

CAB

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2. The applicant was appointed as Casual Labour (Khalasi) on 15.4.1984 in the Northern Railway and he was granted temporary status on 10.4.1985. His services however were utilised as Mason in the construction organisation of the Railways w.e.f. 15.5.1984. The applicant was however transferred by the impugned order dated 2.2.1999 to the substantive post of Khalasi. The grievance of the applicant is that he was entitled to be regularised in the post of Mason (Group 'C') as he has been working since 1984 in that capacity. It is also pleaded that all the Group 'C' casual labour employees working in the Construction Organisation could not be spared forcibly against their willingness to regularise <sup>in</sup> ~~as~~ Group 'D'.

3. In the counter it has been admitted that though the applicant has been appointed as Khalasi ~~and~~ his services ~~have~~ been utilised as Mason w.e.f. 15.5.1984. It is however stated that the Construction Organisation being a temporary organisation <sup>it</sup> ~~and~~ does not have any permanent posts and consequently this organisation is manned by the staff on ad hoc basis from open line offices. As the applicant ~~had~~ got lien at Bikaner Division in Group 'D' post, he cannot be continued as Mason (Group 'C' post). His promotion from Group 'D' to 'C' will be done as per his seniority in the Division and in accordance with the rules on the subject.

4. I have given careful consideration to the facts and to the pleadings and also to the points raised in the OA. It is not disputed that the



applicant was originally appointed as Khalasi in the year 1984 in the Construction Organisation and he was entrusted with the duties of Mason which is a Group 'C' post. Though the applicant is seeking regularisation in the said post, it is however seen from the pleadings that the applicant has not been promoted to the post of Mason (Group 'C') from Khalasi (Group 'D') and he continued to be in Group 'D' post. The only question that is to be decided is whether the continuation in Group 'C' post would ~~acquire~~<sup>give</sup> any right to the applicant to be regularised ~~him~~<sup>him</sup> against the said post. This question is squarely covered by Union of India Vs. Motilal, (1996) 33 ATC 304 wherein it has been held that a casual worker against a particular post will not get any right for regularisation against the said post. In the Railways, the promotion to the post of Group 'C' is regulated by a statutory provision and unless the selection is made by the selection committee the said employee cannot be said to have any right to the promoted post. It is true that the applicant having been continued ~~in~~<sup>over</sup> the post of Mason ~~for~~ a long number of years the applicant would have justifiable grievance for his promotion/regularisation in the said post. But law is well settled that unless a person is qualified in the selection test, he cannot be considered as having been regularly promoted. This point is also squarely covered by the Full Bench Judgment in Shri Jetha Nand & Others, Vs. Union of India & Others, FB Judgments (CAT) Vol. I P-353 (T. No. 844/86 decided on 5.5.1989, Principal Bench), wherein it was held that an ad hoc employee can be reverted if he has not qualified in the selection

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test. It was only laid down that a person who has not qualified <sup>in</sup> the selection test and is holding <sup>an</sup> ad hoc <sup>basis</sup> ~~post~~, ~~in~~ the promotional post, he should be given several chances to qualify the selection test and that ~~the Coordinate Bench held that~~ he must qualify <sup>in</sup> the selection test to become suitable for the post. In the circumstances, the various decisions of the Tribunal cited by the applicant cannot have any overriding effect <sup>over</sup> ~~on~~ the judgment of the Full Bench.

5. In view of the above, we do not see any reason to interfere with the impugned order of transfer to the post of Khalasi. The OA is, therefore, dismissed. No costs.

  
(V. RAJAGOPALA REDDY)  
VICE-CHAIRMAN(J)

/rao/