

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.475/99

New Delhi this the 23rd day of January, 2001.

HON'BLE MR. V.K. MAJOTRA, MEMBER (ADMNV)
HON'BLE MR. SHANKAR RAJU, MEMBER (JUDICIAL)

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Radha Raman Mukherjee,
S/o Shri Basant Kumar,
R/o RB II Temp. AC quarters,
No.A, Railway Colony West,
Faridabad (Haryana).

...Applicant

(By Advocate Shri K.N.R. Pillai)

-Versus-

1. Union of India
through the Secretary,
Ministry of Railways,
Railway Board,
New Delhi.
2. The General Manager,
Central Railway,
Mumbai, VT.
3. The Divisional Railway Manager,
Central Railway,
Jhansi.

...Respondents

(By Advocate Shri R.K. Shukla proxy for Mrs. B. Sunita Rao)

O R D E R (Oral)

By Sh. V.K. Majotra, Member (Admnv):

The applicant was recruited as a Vehicle Driver in the skilled grade on 19.6.69 in Construction Projects attached to the Jhansi Division, Central Railway. He was transferred to Assistant Engineer (C), Faridabad from 19.6.79 where he has been working as Jeep Driver ever since. He claims to have been screened and found fit for absorption in Group 'D' on open line on 18.6.90 (Annexure A-III). The service book shows him as relieved on transfer to Construction Organisation and posted as Trolleyman grade Rs.200-250 under Assistant Engineer (C), Faridabad from 31.1.81. He appeared and passed the trade test of Vehicle Driver vide entry dated 8.3.93. He was promoted as a Jeep

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Driver w.e.f. 18.3.83 (Annexure A-IV-A). On 10.6.88 he was trade tested for grade Rs.1200-1800 (Annexure A-VI). He has been continuing as Driver Incharge since then. The applicant has claimed that vide paragraph 2007 (3) of IREM Volume II for bringing him on the seniority list of Driver Open Line; either he has to be absorbed against 25% quota of the vacancies or included in the screening for the remaining 75% of the vacancies. Since he was not called for screening against the 75% vacancies in Motor Driver Grade III, on enquiries he learnt that a large number of persons both casuals as well as regular Group 'D' staff of the Open Line had been screened and 32 of them appointed in 1993 as Motor Driver Grade III. He received this information in 1997 where upon he made representation dated 16.9.97 (Annexure A-I). This representation did not receive any response from the respondents. In the meanwhile, OA-825/97 filed by applicant's colleague was decided by the Tribunal on 30.7.98 (Annexure A-VII). The applicant therein was accorded the relief that he should be considered for promotion in the category of Motor Vehicle Driver in grade Rs.950-1500 in terms of the provisions laid down in Rule 2007 (3) of IREM Volume II. The applicant has sought direction to the respondents similarly to consider him for regular appointment as Motor Driver Grade III by regularising him in the skilled grade in terms of Rule 2007 (3) of IREM from the earliest date when a vacancy in this quota was available. He has also sought direction to the respondents that after determining his position as Driver Grade III he should be considered for promotion to Grade II on the basis of his seniority.

2. In their counter the respondents have stated that as the applicant was not engaged against any regular

vacancy of Driver and not appointed to that post with the condition to be regularised as Driver, his claim for regularisation as Vehicle Driver cannot be entertained. They have further maintained that a casual labourer cannot be regularised/absorbed against any regular vacancy until he joins the Screening Committee. Having been screened the applicant was posted as Group 'D' post. The respondents have pointed out that two selections/trade tests were conducted by the Open Line, i.e., on 14.6.93 and 21.3.97 and the applicant did not appear in these trade tests for the post of Vehicle Driver. According to the respondents the provisions of paragraph 2007 (3) of IREM are not applicable in the case of the applicant because he was working as Vehicle Driver in the Construction Organisation which is a purely temporary organisation.

3. We have heard the learned counsel of both sides and perused the material before us. Sh. K.N.R. Pillai, learned counsel of the applicant drew our attention to Annexure A-VII order dated 30.7.98 in OA-825/97 wherein, in a similar case one Sh. Ram Dayal Meena was accorded the following reliefs:

- "(i) Applicant shall be considered for promotion in the category of Motor Driver in Rs.950-1500 in terms of the provision laid down in Rule 2007 (3) of IREM (Vol.II) aforequoted;
- (ii) He shall also be eligible for appointment against roster vacancy meant for ST candidate for selection in future subject to his fulfilling the eligibility conditions in terms of the Rules;"

The said Rule 2007 (3) stipulates the following:

"Casual labour engaged in work charged establishment of certain departments who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of regular departmental

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candidates and continue to work as casual employees for a long period, can straightway be absorbed in regular vacancies in skilled grade provided they have passed the requisite trade test, to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test".

1 4. The learned counsel further brought to our notice paragraph 226 of IREM Volume I relating to exemption in suitability/trade test in the Open Line on the basis of Trade/Suitability Tests passed while in Railway Electrification Project or Construction Projects, which reads as follows:

"Staff who have already qualified in the Suitability/Trade Test for non-selection post while in Construction/Railway Electrification Projects need not be subjected to such tests on the open line and they may be promoted on the basis of their seniority as and when due in turn. This concession is applicable in comparable grades only in which the lien of the individual is kept on the open line and is applicable to only one grade higher than the one in which the lien is kept."

5. It is clear from Annexure A-IV dated 9.3.83 that the applicant was declared suitable in the trade test for the post of Motor Driver as per ACMR (W/S) JHS's letter dated 9.3.83 and was promoted to officiate as Motor Driver ^{Gr. Rs. 260-400 (RS). 6} Grade. Further vide DRM trade test certificate dated 10.6.98 (Annexure A-VI) the applicant was promoted as Driver Incharge grade Rs.1200-1800 (RPS) on ad hoc basis with immediate effect having been declared fit in trade test. Entries regarding applicant's having passed the trade test, as above have been made in his service record.

6. As the applicant had already qualified in the

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trade test for non-selection post of Driver Grade III while in construction Division as per paragraph 226 quoted above, he need not be subjected to such test on the Open Line for promotion on the basis of his seniority as and when due in turn. In the light of the decision in the case of Sh. Ram Dayal Meena (supra) the applicant has also to be considered for promotion in the category of Motor Driver Grade III in Rs.950-1500 in terms of the provisions laid down in Rule 2007 (3) of IREM Vol. II to the extent of 25% of the vacancies reserved for departmental promotion from unskilled and semi skilled categories. The respondents are directed to consider the applicant for promotion in the category of Motor Driver Grade III in the grade Rs.950-1500 (pre-revised) to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi skilled categories as per terms of Rule 2007 (3) of IREM Volume II from the earliest date when a vacancy was available after accommodation of all the candidates who appeared and were selected in the trade test conducted by the Open Line on 14.6.93. However, he shall not be entitled to any back wages. The respondents are further directed that after determining his position as Driver Grade III the applicant should be considered for promotion to Grade II on the basis of his seniority. The respondents are directed to implement the above directions within a period of six months of the communication of this order.

S. Raju
(Shankar Raju)
Member (J)

'San.'

V.K. Majora
(V.K. Majora)
Member (A)

23.1.2001