

(21)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI
OA 637/1999

New Delhi this the 29th day of November, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J)

1. Sumer Singh S/O Sh. Baboo Singh
posted as Blacksmith in the
office of the Dy. Chief Engineer/
Const. Northern Railway, Tilak
Bridge, New Delhi.
2. Heera Lal S/O Sh. Ishwar
posted as Blacksmith
in the office of the Deputy
Chief Engineer/Const. Northern
Railway, Tilak Bridge, New Delhi.

(By Advocate Shri A.K. Bhardwaj)

.. Applicants

Versus

1. Union of India through
the General Manager,
Northern Railway, Baroda House,
New Delhi.
2. The Chief Administrative Officer
(Const.), Northern Railway,
Head Quarters Office,
Kashmere Gate, Delhi.
3. The Deputy Chief Engineer/Const.
Northern Railway, Tilak Bridge,
New Delhi.

(By Advocate Shri R.P. Aggarwal)

.. Respondents

O R D E R (ORAL)

Hon'ble Smt. Lakshmi Swaminathan, Member (J)

The applicants have filed this application being aggrieved by the order passed by the respondents dated 2.2.1999, posting them back to the Division in which they held their lien in the substantive group 'D' post. They have prayed that the dated 2.2.1999 impugned Annexure A-1 order may be quashed and set aside and a direction may be given to the respondents not to transfer them to the lower post of Gangman and to absorb them in the promotional

13

22

the
post of Blacksmith/Hammerman in terms of para 2007(3) of/Indian
Railway Establishment Manual (IREM), Vol. II (1990 Edition).

2. The brief relevant facts of the case are that the applicants were initially appointed by the respondents as casual workers and later on they were given 'Temporary Status'. According to Shri A.K. Bhardwaj, learned counsel, applicant 1 was engaged only as Blacksmith from the very beginning, and applicant 2 was initially appointed as casual Gangman and subsequently promoted as Blacksmith. Applicant 1 was appointed as Blacksmith w.e.f. 1.6.1982 and applicant 2 on 4.11.1985, respectively. He has relied on a number of judgements, copies given at Annexure A-5 collectively. Learned counsel has submitted that the applicants have worked for as many as 18 and 15 years, respectively, on the promotional post of Blacksmith in the Construction Organisation on ad hoc basis and in terms of Para. 2007 (3) of/IREM, they are entitled for regularisation in the posts under 25% quota. He has, however, submitted that as on date the applicants have not passed the trade test in which they are willing to appear, provided the respondents hold the same. He has submitted that for example in Raj Kumar & Ors. Vs. UOI through the General Manager, Northern Railway and Ors (OA 761/1992) decided by the Tribunal on 5.5.1993 in similar circumstances, directions were given to the respondents to regularise the applicant in the higher post where he was working on ad hoc basis for a number of years against ^{the} 25% quota. He has also submitted that some of the judgements relied upon by the learned counsel for the

js

23

respondents are not applicable to the present case because the applicants were Matey/Trollyman and they do not belong to the skilled category. He has submitted that in the case of present two applicants they have been working for a long number of years as Blacksmith which is a skilled category and hence, his contention is that they should be regularised in those posts in terms of Para 2007 (3) of the IREM.

3. I have seen the reply filed by the respondents and heard Shri R.P. Aggarwal, learned counsel. The respondents have submitted that the post held by the applicants is not a skilled/semi-skilled post and, therefore, the benefit of screening them directly as Blacksmith cannot be done in pursuance of Para 2007 of IREM. According to them, this post is a promotional post and ~~hence~~ under the Rules, they cannot be filled on regular basis by regularising casual labourers but are to be filled by promotion through regular channel of promotions from the lower grades of Gangmen/Sr. Gangman/Keyman/Sr. Keyman. They have, ~~therefore~~, contended that the applicants had, therefore, first to be regularised in the lower grade of Gangman, then Sr. Gangman/Keyman/Sr Keyman and so on, after which they could be considered for further promotion on seniority cum-suitability in the promotional post of Blacksmith and not otherwise. Shri R.P. Aggarwal, learned counsel has submitted that the respondents have passed the orders dated 28.2.1997 and 23.12.1997/ ^{whereby the} two applicants have been regularised as Gangman, which orders have not been challenged by them. Apart from this, he has also submitted that due to reduction of work and non-availability of funds in the Construction

24

Organisation, the applicants and others who have been declared surplus were transferred in their substantive posts in their parent Division where they were already holding lien. In the circumstances, he has submitted that the actions taken by the respondents are legal and valid and the same ^{is} in accordance with the relevant Rules, instructions and ~~the~~ Para 2007 of the IREM. He has submitted copies of judgements of the Tribunal on which he has relied upon, namely, Sh. Kajod and Ors Vs. Genl. Manager and Ors (OA 865/1999 with connected cases) decided on 26.11.1999, Shiv Kumar Singh & Ors Vs. General Manager, Northern Railway and Ors (OA 713/1999) decided on 29.8.2000, Ram Bahal Vs. General Manager, Northern Railway and Ors (OA 873/199) decided on 30.8.2000, Shri Punnu Swami and Ors Vs. General Manager, Northern Railway and Ors (OA 497/99) decided on 17.9.1999 and Bahadur Singh Vs. General Manager, Northern Railway and Ors. (OA 1106/1999) decided on 21.9.2000 (Copies placed on record). Shri Aggarwal, learned counsel has submitted that the applicants can be considered for regularisation in the post of Blacksmith which they are claiming, subject to fulfilment of the conditions laid down for promotion to that post which includes, seniority and passing of Trade Test. He has submitted that the applicants do not have the seniority. Shri A.K. Bhardwaj, learned counsel has submitted that the judgements of the Tribunal's relied upon by the respondents are not applicable to this case because the applicants are working on the skilled posts in the Construction Organisation as Blacksmith, although on ad hoc basis, for a long number of years, whereas in the other cases the applicants who

25

are only Mates and Rigger^{who is} do not belong to^{the} skilled category.

4. I have carefully considered the pleadings and submissions made by the learned counsel~~for~~ for the parties.

5. From the facts mentioned above and the orders passed by the respondents dated 28.2.1997 and 23.12.1997, it is noticed that the applicants held the substantive posts of Gangman with lien in the Delhi Division. Admittedly on these posts, they have been working on ad hoc basis in the Construction Organisation as Blacksmith from 1.6.1982 and 4.11.1985, respectively.

Para 2007(3) of IREM which has been referred to by both the parties, reads as follows:-

" Casual labour engaged in work charged establishment of certain department, who get promoted to semi-skilled, skilled and highly skilled categories due to non availability of regular departmental candidates and continue to work as casual employees for a long period can straightaway be absorbed in regular vacancies in skilled grades 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 order also apply to the casual labours who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test."

The above ~~para~~ refers to casual labourers who get promoted to semi-skilled, skilled and highly skilled categories due to non availability of regular departmental candidates

8/

26

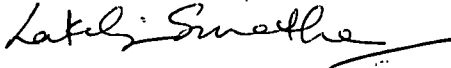
and continue to work as casual employee for a long period who can straightaway be absorbed in regular vacancies in skilled grades, provided they have passed the requisite trade test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. The applicants have nowhere claimed that they come within the provisions laid down in this para, namely, 25% quota or they have passed the trade test till date. Having regard to the facts that the applicants have been transferred to the Delhi Division in their substantive post as Gangman from 1997, further orders passed by the respondents to transfer them to that Division cannot be faulted. Learned counsel for the applicants has relied on the Minutes of the JCM meeting held on 28.4.1997 (Annexure A-3). In the minutes, it has been observed that keeping in view the hardships, the Group 'C' staff has to suffer on going in Group 'D' on the Divisions, it was decided that "all group 'C' casual labour working on Construction Organisation may not be spared forcibly, who are not willing to be regularised in group 'D' staff who have been spared forcibly against their willingness".. However, it is noticed that the respondents have passed the orders regarding regularisation of the applicants as Group 'D' staff in the Delhi Division as far back as 23.12.1997 and 28.2.1997, which orders have not been challenged. Therefore, at this stage the applicants cannot challenge the subsequent action taken by the respondents in the impugned order dated 2.2.1999. It is further relevant to note that the respondents have stated

18.

27

that due to reduction of work in the Construction Organisation and non availability of funds, the applicants and others who have been declared surplus were transferred ~~to~~ their substantive posts in their parent Divisions, which has resulted in the transfer of the surplus Group 'D' staff by the impugned order dated 2.2.1999. Further, having regard to the provisions in Para 2007 (3) of the IREM, which has also been considered in the aforesaid judgements of the Tribunal relied upon by the learned counsel for the respondents, I find that the claim of the applicants for regularisation and absorption as Blacksmiths cannot be granted. However, if and when the applicants pass the trade test and subject to the other conditions of suitability and eligibility as prescribed in Para 2007(3) of IREM, they are entitled for such promotion, they shall be so considered by the respondents in accordance with the relevant law and instructions.

6. In the result, for the reasons given above, the OA is disposed of in terms of para 5 above. No order as to costs.


(Smt. Lakshmi Swaminathan)
Member(J)