

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO.2188/1996

New Delhi, this the 30th day of March, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

Sukhi Ram S/O Pran Singh,
R/O Vill. Bhatpura Maphi,
P.O.Rajabpur,
Distt. Moradabad (UP).

... Applicant

(None present)

-Versus-

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Moradabad (UP).
3. Asstt. Engineer,
Northern Railway, Hapur,
Ghaziabad (UP).
4. Inspector of Works,
Gazroula, Moradabad (UP).
5. Shri Bholu S/O Alijahu,
Mason, under I.O.W.,
Hapur (Ghaziabad).
6. Ram Kishan S/O Tola,
Mason, working under I.O.W.,
Gazroula, Moradabad (UP).
7. Bhure,
Mason, working under I.O.W.,
Gazroula, Moradabad (UP).

... Respondents

(None present)

O R D E R (ORAL)

Shri V.K.Majotra, AM:

This application has been made against the action of the respondents in ignoring the applicant's name for regularisation to existing vacancy vis-a-vis his juniors S/Shri Bhole, Ram Kishan and Bhure, respondents 5, 6 and 7, herein who have been regularised.

2. The applicant was engaged as a casual labour in 1974 by the respondents. He worked as a Mason on casual basis and acquired temporary status. He qualified in the trade test held in 1989 (Annexure A-3). The respondents reverted the applicant along with others vide order dated 2.5.1991. The applicant along with others affected filed an O.A. No.1130/91 : Yasin & Ors. v. Union of India, which was disposed of by the Tribunal on 14.8.1992. The operative part of the judgment is as follows :

"We therefore order and direct as follows :

(I) The impugned order dated 2.05.91 reverting the applicants to their original DCC posts is hereby set aside and quashed.

(II) The respondents shall carry out a review of the vacancies available for departmental promotees. The departmental candidates selected through the tests so far, shall be deemed to have been included in an approved panel and no promotion to those posts shall be made till all those whose names are indicated in the panel are adjusted.

(III) The interim order passed on 10.5.91 is hereby made absolute."

3. According to the applicant, the regular vacancy for the post of Mason existed in 1996 due to the death of a regular employee Shri Om Prakash. Shri Bholu, respondent No.5, was regularised in the post of Mason against that vacancy despite the fact that the applicant was senior to Shri Bholu. The applicant has averred that Shri Bholu was engaged as a casual labour w.e.f. 15.2.1985. However, Shri Bholu also passed the same trade test as the applicant and was given temporary status. Shri Ram Kishan, respondent No.6, has also been regularised w.e.f. 1.10.1992. The applicant made a representation which was rejected without application of mind, according to the applicant.

4. The applicant has sought declaration of the regularisation of respondents 5, 6 and 7 as discriminatory

and illegal. He has also sought directions to the respondents to regularise his services after quashing and setting aside the impugned regularisation of respondent No.5.

5. The respondents have contended in their counter that the applicant and Shri Bholu, respondent No.5, were posted under the Inspector of Works (I.O.W.), Hapur and ^{O.W. h} ~~I.W.O.~~, Gajraula respectively vide letter dated 19.1.1990, and that while Shri Bholu resumed duties on 3.2.1990, the applicant declined to work at Hapur and requested for a posting under I.O.W., Gajraula vide his application dated 25.1.1990 (Annexure R-2). The request of the applicant was considered and allowed and the applicant was posted under I.O.W., Gajraula vide letter dated 2.2.1990 where he joined duty on 7.2.1990. The applicant and five others who were promoted as a result of the trade test held on 11.2.1989 were reverted on 2.5.1991. This reversion was set aside vide this Tribunal's order dated 14.8.1992 in O.A. No.1130/91 with the directions, "The respondents shall carry out a review of the vacancies available for departmental promotion. The departmental candidates selected through the test so far, shall be deemed to have been included in an approved panel and no promotion to these posts shall be made till all those whose names are indicated in the panel are adjusted." A fresh trade test had been held on 28.4.1992 for filling up the existing vacancies of Mason. Shri Ram Kishan and Shri Bhure, respondents 6 and 7, were promoted as Mason. However, after the order dated 14.8.1992 of the Tribunal no trade test has been held. The respondents have admitted that the applicant was engaged as casual labour Mason on 6.8.1974 and was given regular pay scale as per rules from

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15.11.1980. They have contended that Shri Bholu who joined on promotion on 3.2.1990 became senior to the applicant who lost seniority by not joining under I.O.W. Hapur and joined under I.O.W. Gajraula at his request only on 7.2.1990 (Annexure R-3). Thus, the respondents had kept the fact of de-casualisation from 3.2.1990 and 7.2.1990 respectively as the basis for their seniority and dates of regularisation.

6. We have perused the material on record. We find that whereas the applicant had joined as casual labour in the year 1974, Shri Bholu, respondent No.5, had joined as a casual labour w.e.f. 15.2.1985. Both cleared the trade test on 11.12.1989 and were promoted as de-casualised Masons in 1990. Whereas respondent Bholu joined the post on 3.2.1990, the applicant could join only on 7.2.1990 as his place of posting was changed on his request which took a few days' time. The delay in joining ^{by the Applicant} as de-casualised Mason in 1990 by a few days is the reason why respondent Bholu has been assigned higher seniority than the applicant. Similarly, Shri Ram Kishan and Shri Bhure, respondents 6 and 7, who were much junior to the applicant and were promoted as Mason on the basis of a later trade test held on 28.4.1992, were also regularised before the applicant, which has not been explained satisfactorily by the respondents.

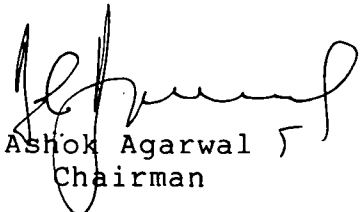
7. Admittedly, the applicant has been senior to respondents 5, 6 and 7 as a casual labourer by more than a decade. The reason of delay in joining as a de-casualised Mason by a few days in 1990 as the reason for assigning higher seniority to respondent Bholu vis-a-vis the applicant cannot be considered as a good reason looking to the seniority of the applicant in the

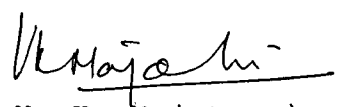
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service as a casual labourer which had been continuous since 1974 and respondent Bholu had joined the service only in 1985. Respondents 6 and 7 had joined service even later.

8. Having regard to the above reasons and discussion, the respondents are directed to regularise the services of the applicant with effect from a date prior to the date when respondents 5, 6 and 7 were regularised as de-casualised Masons.

9. The O.A. is accordingly allowed in the aforestated terms. There shall, however, be no order as to costs.


(Ashok Agarwal)
Chairman


(V. K. Majotra)
Member (A)

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