

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 313/96

199

T.A.No.

DATE OF DECISION 2-2-2000

Sh.Chhajjoo

..... Applicant

Sh.B.S.Mainee

..... Advocate for the
Applicant(s)

VERSUS

UOI through GM(NR) and ors

..... Respondent(s)

Sh.R.L.Dhawan

..... Advocate for the
Respondents.

CORAM

The Hon'ble Smt.Lakshmi Swaminathan, Member(J)
The Hon'ble Shri M.P.Singh, Member(A)

1. To be referred to the Reporter or not? Yes
2. Whether it needs to be circulated to other Benches of the Tribunal? No.

Lakshmi Swaminathan
(Smt.Lakshmi Swaminathan)
Member(J)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

O.A.NO.313/96

New Delhi, this the 2nd day of February, 2000.

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J)
HON'BLE MR. M.P.SINGH, MEMBER (A)

Sh. Chhajjoo, S/O Sh. Maula Baksh,
Fitter, under Inspector of Works,
Northern Railway, Gajraula.

(By Advocate: Shri B.S.Mainee)

.....Applicant

VERSUS

Union of India : Through

1. The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Moradabad.
3. The Inspector of Works, Northern Railway, Gajraula.

(By Advocate: Shri R.L.Dhawan)

....Respondents

O R D E R (ORAL)

By Hon'ble Mrs. Lakshmi Swaminathan, M (J):-

The applicant is aggrieved by the decision of the respondents, communicated to him by order dated 30.11.95 regularising him in a Group 'D' post of Khallas. His claim is that he should have been regularised in Group 'C' post as skilled Fitter.

2. The brief facts of the case are that the applicant was engaged as temporary Fitter under Inspector of Works, Gajraula w.e.f. 5.9.74 and according to him, he had been continuously working as a Fitter with the respondents. These averments have been made in paragraph 4.1 of the OA and in the reply filed by the respondents. It is noted that they have admitted these facts. The

12/

applicant has stated that he was sent for medical examination in 1983 and he was found fit and according to him he was appointed and continued to work as Fitter for more than 20 years. He has submitted that the respondents had failed to hold any screening in his case until 1991 when he was called and thereafter the impugned order dated 30.11.95 was issued regularising him in the post of Khallasi-Group 'D' and not in Group 'C'. Shri B.S.Maine, learned counsel has referred to a number of Railway Board's Circulars, starting from the Circular dated 19.7.65. He has submitted that this Circular has since been incorporated in the Indian Railway Establishment Manual (Vol.II) as para 2007 (3) on which he relies upon. His submission is that the applicant having been appointed as a skilled Artisan, which fact has not been denied by the respondents, as far back as 1974, he could have been regularised by the respondents against the 25% promotee quota. His grievance is that this has not been done in spite of the fact that the applicant had worked with the respondents for such a long period. The applicant has since retired from service in 1997 after filing of this OA.

3. Shri B.S.Maine, learned counsel has submitted that the provision of para 2007 (3) of I.R.E.M. (Vol II) had been ignored by the Railway Administration which resulted in a number of further Circulars being issued. One such Circular relied upon by him, is the Circular issued by General Manager (P), dated 14.8.96, copy placed on record. Another Circular has also been issued on the same subject of 'Regularisation of casual labour working in Group 'C' scales' by the Railway Board on 9.4.97 which has

18/

12

(3)

been handed over by the learned counsel for the respondents, copy placed on record.

4. Learned counsel for the applicant also relies on certain judgements of the Tribunal in Hari Gopal & Ors. Vs. Union of India & Ors. (OA-2390/96, decided on 1.11.98). RA-13/99 in OA-2390/96 was also dismissed. An appeal filed by the U.O.I. against this judgement, was also dismissed by the Hon'ble Delhi High Court by the order dated 23.12.99, copies of the orders placed on record. Another judgement relied upon is Satya Prakash Vs. General Manager, Northern Railway & Ors. (OA-1090/97, decided on 29.1.1999), copy of the order placed on record.

5. We have seen the reply filed by the respondents and heard Sh. R.L.Dhawan, learned counsel. He has contended that the applicant was working only as Casual Fitter on E.S.A. basis. The respondents have denied that they have failed to hold any screening test for Fitter as according to them, there is no provision in the rule to conduct screening tests. Learned counsel for the respondents has submitted that as the applicant had been screened correctly in Group 'D' post and regularised in that post, he should have no grievance further in the matter as he himself subjected for such screening. As mentioned above, learned counsel also relies on the provisions of para 2007 (3) of I.R.E.M. (Vol.II) and Railway Board's Circular dated 9.4.97. He has submitted that the applicant could apply for regularisation/absorption against the 25% promotee quota vacancies if he had completed the requisite trade test etc. As this has

9/
Y/

not been done, learned counsel has submitted that the application is without any merit. He also relies on the judgement of the Tribunal in Ram Naresh Vs. Union of India & Ors. (OA-19/94, Allahabad Bench), decided on 3.6.97. A copy of the order placed on record. Learned counsel for the applicant has, however, submitted that this case is not applicable to the facts of the present case as the relevant rules, namely, paragraph 2007 (3) of I.R.E.M. (Vol. I) and the Railway Board's Circular dated 9.4.97 which is relied upon by the respondents themselves in this case, were not placed before that Bench. Besides, he has also submitted that this judgement has been considered by the Principal Bench in OA 1090/97.

6. We have carefully considered the pleadings and the submissions made by the learned counsel for the parties.

7. In view of what has been stated above, it is necessary to reproduce below the relevant portions of the provisions of para 2007 (3) of the I.R.E.M. (Vol. II) and the Railway Board's Circular dated 9.4.97 relied upon by both the parties.

8. Para 2007 (3) of I.R.E.M. (Vol. II) reads as under:-

"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 orders also apply to the casual labours who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test."

9. Para 3 of the Railway Board Circular dated 9.4.97 under the heading of "Regularisation of casual labour working in Class 'C' scales, reads as under:-

"3. The question of regularisation of the casual labour working in Group 'C' scales has been under considerations of the Board. After careful consideration of the matter, Board have decided that the regularisation of casual labour working in Group 'C' scales may be done on the following lines:-

- i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examination conducted by RRB or the Railways for post as per their suitability and qualification without any age bar.
- ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.
- iii) Notwithstanding (i) and (ii) above all casual labour may continue to be considered for absorption in Group 'C' on the basis of the number of days put in as casual labour in respective Units."

10. It is seen from the provisions of para 2007 (3) and the aforesaid Railway Board's Circular, that the Railway Administration have considered the question of regularisation of casual labourers working in Group 'C' scales in terms of the rules. It is also clear from para 3 of the Railway Board's Circular dated 9.4.97 that the

regularisation of casual labour in Group 'C' is permissible as per extant rules/ orders. Further, the Railway Board seems to have been apprised of the problems of the employees who have been appointed in a Group 'C' categories, like the applicant. It is an admitted fact that the applicant has been appointed as skilled Artisan in Group 'C' post when he was appointed as Fitter although on casual basis way back on 5.9.74. It is also not disputed that he has been continuously discharging his duties in Group 'C' category as Fitter till the date of his retirement in 1997.

11. Shri R.L.Dhawan, learned counsel for the respondents has submitted that the applicant has voluntarily agreed to be considered for Group 'D' in 1995 and had been regularised in that post only. Therefore, he has contended that he cannot now claim for being regularised in a Group 'C' post. We are unable to agree with this contention having regard to the provisions contained in para 3 of the Railway Board's Circular dated 9.4.97 reproduced above. Having absorbed the applicant in Group 'D', the respondents cannot also refuse to apply clause (ii) of this para.

As the applicant has retired from service, in the facts and circumstances of the case, clause (i) of para 3 would not apply i.e. giving him a chance to appear in the examination conducted by RRB or Railways with age relaxation. However, clause (ii) of the same para provides that notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for

152

absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such. It is not the case of the respondents in the reply that this exercise has been done by them with regard to the applicant. Their contention on the other hand, is that he could only be considered for absorption in Group 'D' which has been done in the year 1995. It is, however, relevant to note that clause (iii) of para 3 of the Circular clearly states that, notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' but this will not, according to us, result in the respondents not following their own rules and instructions contained in para 2007 (3) of I.R.E.M. (Vol.II) and provisions of para 3 (ii) of the Railway Board Circular dated 9.4.97. In the facts and circumstances of the case, we are in respectful agreement with the judgements of this Tribunal in the cases of Satya Prakash and Hari Gopal (Supra) which have also been upheld by the Hon'ble Delhi High Court.

12. In view of what has been stated above, OA is allowed with the following directions:-

i) The impugned order dated 30.11.95 regarding absorption of applicant in Group 'D' post is set aside.

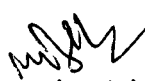
ii) The respondents are directed to consider absorption of the applicant against any vacancy that might have arisen prior to his retirement within the 25% promotee quota in Group 'C', against the grade in which he has been initially appointed as Fitter.

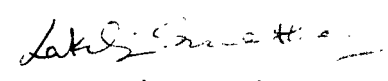
153

(8)

iii) The above action shall be taken within three months from the date of receipt of a copy of this order, with intimation to the applicant.

No order as to costs.


(M.P. Singh)
Member (A)


(Smt. Lakshmi Swaminathan)
Member (J)

/sunil/