

Central Administrative Tribunal, Principal Bench

Original Application No.752 of 1997

New Delhi, this the 10<sup>th</sup> day of May, 2000

Hon'ble Mr.V.K.Majotra, Member (A)  
Hon'ble Mr.Kuldip Singh, Member(J)

Jai Raj, s/o Shri Kanna Ram, Vehicle Driver,  
under AEN (C)/ N.Rly., Kotgaon Phatak,  
Ghaziabad.

Residential Address : Jai Ram, D-504/2,  
Ashok Nagar, Shahdara/Delhi

- Applicant

(By Advocate Shri G.D.Bhandari)

Versus

1. Union of India through The General  
Manager, Northern Railway Baroda House,  
New Delhi.

2. Chief Administrative Officer (C), N.Rly.  
Construction Office, Kashmere Gate,  
Delhi.

3. Divisional Rly. Manager, Northern  
Railway, Ferozepur.

- Respondents

(By Advocate Shri B.S.Jain)

O R D E R

By V.K.Majotra, Member(A) -

The applicant has impugned the respondents' action in refusing to regularise him as a Driver (Vehicle) Grade Rs.950-1500 which post he has been holding since 30.3.1971. His representation dated 20.8.1996 (Annexure-A-2) on the subject has been rejected. The applicant has challenged the respondents' aforesaid action being arbitrary and malafide.

2. The applicant was appointed as a casual labour Khalasi in Firozpur division of Northern Railway in 1968. Since he was possessing a driving licence, the respondents utilised his services as a Driver on daily wages up to 1971. The applicant was declared successful in a screening of Class-IV employees in 1971 and was

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regularised as a Gangman Grade Rs.775-1025. However, he has been performing the duties of a Vehicle Driver since his appointment as Khalasi in 1968 and regularisation as a Gangman in 1971. As per respondents' order dated 28.3.1971 (Annexure-A-3) whereby he had been appointed to officiate as a Driver in the then grade of Rs.110-180, now he is drawing salary in grade Rs.950-1500. The applicant made a representation dated 29.6.1986 requesting his regularisation as a Driver and consideration for further promotion pointing out that certain junior Drivers in the lower grade have been promoted to the next higher grade Rs.330-560 (Annexure-A-4). Vide Annexure-A-5 dated 5.6.1986 it was intimated by the respondents that the applicant cannot be promoted to the next grade Rs.330-560 in view of his adhoc status as a Driver Gr.Rs.260-400 with effect from 30.3.1971. A screening was held of the similarly situated persons in March and April, 1987 and 15% were so promoted vide respondents' letter dated 30.3.1987 (Annexure-A-6) ignoring the claim of the applicant. Despite respondent no.2's DO letter dated 11/1989 (Annexure-A-7) pointing out inadvertent omission of applicant's name from regularisation of adhoc drivers, applicant's claim was ignored vis-a-vis 8 other similarly situated persons. Vide Annexure-A-8 the applicant specifically pointed out details of 2 of his juniors, namely, S/Shri Jai Prakash and Amar Singh who had been regularised as Drivers, although they had their lien as Khalasi on open line and were junior to the

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applicant. As per Annexure-A-9 which is a relevant extract of the seniority list dated 1.12.1989 the applicant is shown at serial no.56 whereas the aforesaid juniors are placed at serial nos. 68 and 69 respectively. According to the applicant, despite several representations submitted to the respondents, they have not responded to the request of the applicant for his regularisation on the post of Vehicle Driver on which he has been working from day one of his service, despite the fact that he has passed the requisite trade test. The applicant has sought direction to the respondents to regularise him as a Driver grade Rs.975-1540 and consider him for further promotion as Driver grade Rs.1200-1800 from the date his juniors were regularised and given further promotions.

3. In their counter, the respondents have stated that the applicant cannot be regularised directly in Group 'C' post in the absence of adequate number of vacancies available in departmental promotion quota to the extent of 25% as laid down in Para 2007(3) of Indian Railway Establishment Manual (IREM), Volume II. Therefore, it was decided to regularise the applicant in Group 'D' post so that he can become holder of a civil post in Group 'D' and can seek further advancement in his respective channel of promotion including skilled categories of Group 'C'. However, the applicant did not apply for the post of Driver when applications were invited by respondent no.3 and, therefore, the respondents could not help the applicant in his regularisation as a vehicle driver i.e. Group 'C'.



4. According to the respondents the applicant was appointed as a Casual Labour on 27.10.1969. He was regularised as a Gangman on 10.1.1971 and has been working as Driver on temporary and local adhoc arrangement basis in construction organisation with effect from 30.3.1971. They contend that such an arrangement does not confer upon the applicant any right to claim seniority over his seniors. He is also not entitled for second adhoc promotion in the higher grade unless he is regularised in the lower grade. Despite this according to the respondents the applicant has been availing himself of the facility of double adhoc promotion in the grade of Rs.1200-1800 with effect from 2.3.1990. The respondents have denied having regularised any of the applicant's juniors as Vehicle Drivers in Group 'C' except one Shri Bir Singh, who had been regularised in compliance with the orders dated 11.10.1991 in OA NO.1980/88 of the Tribunal. The applicant has filed a rejoinder as well.

5. The learned counsel of the parties were heard and the material on file examined by us.

6. The learned counsel of the applicant submitted that the post of Vehicle Driver is a skilled category and para 2007(3) of the IREM Vol.II 1990 clearly lays down that the "[C]asual labour engaged in work charged establishment of certain Departments who got promoted to semi-skilled, skilled and highly skilled categories due to non-availability of regular departmental candidates

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and continue to work as casual employees for a long period, can straight away 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". He referred to order dated 18.10.1991 in OA No., 1930/88 (Aparbal Yadav and 2 others Vs. Union of India and another) (Annexure-A-14) contending that on similar facts it was held by the Tribunal that regularisation in Class-IV posts does not disentitle the applicants from being considered for regular appointment as Drivers Class-III post. The respondents were directed to consider the applicants therein for regular appointment as Drivers and that in the matter of seniority they should be deemed to be senior to all those Drivers who were appointed as Drivers either on an adhoc or on a casual basis after the applicants were appointed as Drivers on an adhoc basis. It was further directed that in case the applicants pass the screening test, they should be regularised from the date any casual or adhoc Driver junior to the applicant was regularised and they would also be entitled to all consequential benefits of seniority and consideration for further promotion.

7. The learned counsel of the respondents pointed out that though the applicant had challenged Annexure-A-1, no relief becomes available to the applicant. Annexure A-1 dated 14.8.1996 is only an instruction of the Northern Railway headquarters regarding implementation of the provisions of Para

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2007(3) of IREM Volume-II, 1990. Vide Annexure-A-III dated 28.3.1971 it has been clarified that the applicant's appointment to officiate as Driver against an additional work charged post purely as a temporary local arrangement will not confer upon him any right to claim seniority over his seniors and such promotion in future. According to the learned counsel of the respondents Annexure-A-3 had denied the applicant right to claim seniority and promotion on the basis of officiation as Driver against a workcharged post as a temporary local arrangement. He further contended that under the rules the applicant though promoted on adhoc basis to a Group-C post, cannot be regularised against the same over the head of his senior colleagues. In the present case only one of his juniors has been regularised as Vehicle Driver but that was done in compliance of the Court orders as stated above. In support of his argument the counsel for the respondents referred to the decision of Union of India and another Vs. Motilal and others, (1996) 33 ATC 304. wherein the Hon'ble Supreme Court has held that persons appointed directly as casual mates (Class-III), although continued as such for a considerable period and thereby acquired temporary status are not ip-so-facto entitled to regularisation. However, in view of very long (22-25 years) service of the respondents as directly recruited casual Mates, their regularisation in a lower post was held to be wholly inequitable. Hence, the Tribunal's direction to regularise them as Mates was left undisturbed but this was not to be treated as precedent. According to the counsel for respondents in the case of

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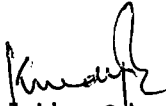
Motilal (supra) the regularisation of the applicants was allowed to continue only on the ground of equity and the applicants in the present case cannot be given any benefit from that judgment.


8. We find that though the applicant has mentioned in his OA a few names of his juniors having been regularised in the post of Vehicle Drivers, no sound proof has been furnished by him in that regard. The only exception of one of the applicant's junior as admitted by the respondents is that of one Shri Bir Singh who had been regularised as Vehicle Driver in compliance of a Court order. The benefit of the decision in the case of Motilal (supra) can also not be extended to the applicant as the relevant decision cannot be followed as a precedent. The applicant was appointed as a casual labour on 27.10.1969. He was regularised as a Gangman Group -D, with effect from 10.1.1971. He started functioning as a Vehicle Driver on a temporary and local adhoc arrangement in construction organisation with effect from 30.3.1971. As regards the averment of the respondents that the applicant did not apply for the post of Driver in Firozpur Division in response to a specific circular inviting applications, the respondents did not show us any such Notice in support of their contention. Direct regularisation in Group-C post in the absence of adequate number of vacancies available in departmental promotion quota to the extent of 25% as laid down in para 2007(3) of IREM Vol.II cannot be claimed. The applicant has cleared his screening test before his

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adhoc appointment as a Driver. He can be considered for regularisation in Group-C in the post of Vehicle Driver-Group-C only in his turn on the basis of his seniority and as and when the relevant vacancy occurs.

9. In the facts and circumstances of the case, it is only fit and proper to direct the respondents to consider applicant's regularisation against the post of Vehicle Driver in Group -C in his turn on the basis of his seniority and as and when the relevant vacancy occurs. The OA is disposed of in the afore-stated terms. No costs.

  
(Kuldeep Singh)  
Member (J)

  
(V.K. Majotra)  
Member (A)

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