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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No. 2232 of 1994

New Delhi, this the 16th day of March, 1999

HON'BLE MR. JUSTICE S. VENKATRAMAN, VICE CHAIRMAN (J)
HON'BLE MR. K.MUTHUKUMAR, MEMBER (A),

Gul Mohd. S/O Sh. Noor Mohd., Khalasi,
Inspector of Works, Northern Railway,
Hapur.

Residential Address:-

Gul Mohd. Railway Colony, Northern
Railway, Hapur.

--APPLICANT.

(By Advocate Sh. G.D.Bhandari)

Versus

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

2. The Divisional Railway Manager,
Northern Railway, Moradabad, U.P.

--RESPONDENTS.

(By Advocate -Sh. B.S.Jain)

O R D E R (ORAL)

By Hon'ble Mr. Justice S. Venkatraman, Vice Chairman (J)

The applicant was appointed as a Casual Labour Khalasi w.e.f. 15.2.1977. The applicant is B.Sc. graduate and a diploma holder in Rail Transport and Management. The applicant's case is that although he was holding class-IV post as casual labourer he has been doing the duties of Morter Supervisor and Work Mistry and from the begining he should be absorbed in that post and his service should be regularised. The applicant had earlier filed OA No.679/90 challenging the respondents' action in ignoring his claim. This Tribunal vide order dated 24.4.1990 directed the applicant to exhaust the alternative remedy of giving a representation to the department. After that order, the applicant submitted a representation on 17.8.92 as per Annexure A-8. As no

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action was taken on that representation, the applicant submitted another representation on 1.1.94. Subsequently, he has filed this application on 7.11.1994 seeking a direction to the respondents to absorb him in the post of Work Mistry-Morter Supervisor and to pay wages of the post from 1.9.79 onwards. In the application, he has alleged that some of his juniors have been regularised in the higher cadre though they have not qualified and that, however, his claim has been over-looked.

2. The respondents, in their reply, have pleaded that there was no post of Morter Supervisor, Works Mistry and Mason Mistry at all in the Railway Department, that the applicant was appointed as casual labourer. It is further submitted that there is no rule to promote directly in the higher grade without qualifying the trade test from the post of helper Khalasi to Artisan post and that though the applicant was called for trade test for the post of Painter, he failed to qualify in the same and that his claim for absorption is untenable.

3. During the arguments, learned counsel for the respondents contended that the applicant's claim is barred by time. It is seen that in OA No.679/1990 vide order 24.4.1990 applicant was directed to exhaust the alternate remedy of giving a representation to the department. After that order, the applicant gave a representation (Annexure A-10) dated 31.12.90. When the Railways did not consider the representation of the applicant, he should have approached this Tribunal within one year after the expiry of six months from the date of

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that representation. But instead of doing that he has given another representation dated 17.8.92. Even when the representation was not considered, the applicant did not come to this Tribunal but has again given representation dated 1.1.94. Repeated representations do not extend the period of limitation. That apart, it is seen that in this case, the applicant was regularised in the post of Khalasi by order dated 16.2.93 (Annexure A-1-B). If the applicant felt that he was entitled for the absorption in higher post, he ought to have approached this Tribunal within one year after Annexure A-1-B, dated 16.2.93 was passed. This application is filed beyond one year from the date of Annexure A-1. In view of these facts, this application cannot, therefore, be treated to be one filed in time.

4. Even on merits, we do not find that the applicant has got any good case. Though, the applicant has stated that he has been doing the work of Mistry and Mason Mistry from the begining, his own representations reveal that he has worked in the Supervisor category only during the period from 1.9.79 to 14.10.79. The respondents do not admit even that. As such, there is no basis for the assertion that the applicant has been continuously working in the higher post from the begining.

5. Learned counsel for the applicant strenuously contended that some of the juniors of the applicant especially Sh. Jamil and Sh. Hari Ram have been promoted to the higher grade and have been absorbed there and that there was no justification for not giving the same benefit to the applicant. He also pointed out that

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in OA No.1482/94, the Tribunal has given a direction to the respondents to consider the above two persons for absorption in their turn in regular existing vacancies in the skilled grades provided that they are eligible and have passed the requisite trade test. In that case, the two applicants were working as Mason for more than 1500 days as on 31.1.82 and they had been allowed the higher scale w.e.f. 31.1.82. The Tribunal relying upon the para 2007 of I.R.A.M. directed the respondents to consider the applicants' absorption in their turn in regular existing vacancies in the skilled grades if they are eligible and have passed the requisite trade test. In the instant case, the applicant has not been working in the higher post of Work Mistry continuously upto the date of absorption. Merely because he is stated to have worked in the higher post for some days during 1979-80 it does not confer any right on him to seek absorption in the higher post which is a group 'C' post. In Union of India Vs. Moti Lal - 1996 (33) ATC 304, the Apex Court after taking into consideration the relevant rules and administrative instructions, has held that direct appointment made in Class-III is impermissible and that under the scheme the casual labourer will have to be absorbed only in Group 'D' post. It is true that in that case after taking into consideration the fact that the applicants therein had continued in the higher post for more than 22 to 25 years, on equitable consideration, the Hon'ble Supreme Court did not interfere with the order of the Tribunal but the Hon'ble Supreme Court has clearly stated that that should not be treated as a precedent. In the present case, the applicant who

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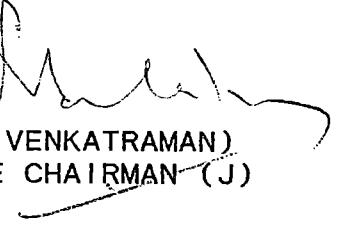
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entered the service as a casual labour, has been absorbed as a Khalasi and his claim that he should be absorbed in the higher post of Work Mistry, is not warranted by the relevant rules. In the circumstances, we are unable to consider the prayer made by the applicant.

6. The application fails and the same is dismissed.

No costs.


(K. MUTHUKUMAR)
MEMBER (A)


(S. VENKATRAMAN)
VICE CHAIRMAN (J)

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