

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

(14)

O.A. No. 1482 of 1994

Decided on : 14.12.98.

Jamil and othersApplicant

(By Shri B.S. Mainee.....Advocate)

Versus

Union of India and OthersRespondent(s)

(By Shri P.S. Mahendru.....Advocate)

CORAM:

THE HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)

THE HON'BLE MR. J.S. DHALIWAL, MEMBER (J)

1. Whether to be referred to the Reporter or not?

2. Whether to be circulated to the other Benches of the Tribunal?

(K. MUTHUKUMAR)
MEMBER (A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No. 1482 of 1994

New Delhi this the 2nd day of December, 1998.

HON'BLE MR. K. MUTHUKUMAR, MEMBER (A)
HON'BLE MR. J.S. DHALIWAL, MEMBER (J)

(15)

1. Shri Jamil
S/o Shri Ali Jan
Temporary Mason
under I.O.W.
Northern Railway,
Hapur.

2. Shri Hari Ram
S/o Shri Tej Ram
Temporary Mason
under I.O.W.
Northern Railway,
Hapur.Applicants

By Advocate Shri B.S. Mainee.

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 Assistant Engineer,
Northern Railway,Respondents
Hapur.

By Advocate Shri P.S. Mehendru.

ORDER

Hon'ble Mr. K. Muthukumar, Member (A)

Two applicants here have prayed for a direction to the respondents to regularise their services from the date they were continuously working as Masons Grade-II Rs.260-400 and Rs.950-1500 (pre-revised). They have also prayed that the respondents should also be directed not to disturb the temporary status which has been granted to them from 12.9.79 and 17.8.79 respectively.

The respondents have filed their reply.

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3. The admitted facts in this case are that both the applicants consequent on their completing 1500 days of service as casual labourer (Mason) as on 31.1.1982, were allowed the scales rate with effect from 1.1.1982. There is no dispute about the temporary status also. The applicants' claim is that they are entitled to be regularised in the skilled grades in Group 'C' posts whereas the respondents are always regularising them first in the Group 'D' post.

4. The learned counsel for the applicant argued fervently that in terms of the provisions of Para 2007(3) of the Indian Railway Establishment Manual Vol.II casual labourers who are in the skilled categories and continue to work as casual employees for long periods can straightway be absorbed in the skilled grades provided they have passed the requisite trade test to the extent of 25% of vacancies from the unskilled and semi-skilled categories. He also relies on the judgment in Ram Kumar Vs. U.O.I., 1996 (Vol.II) SLJ page 116 and also State of Haryana and Others Vs. Piara Singh and Others, 1992(3) ALSLJ (SC) page 34. He also relies on Raghu Nath Dubey Vs. U.O.I. & Others, 1996(1) SC 193 and also Shiv Kumar Sharma Vs. U.O.I. 1996 Vol.I page 296. He argued that the applicants had also passed the trade test and if they had worked for long periods as in this case, the presumption should be that work exists and they can be absorbed in regular vacancies. The learned counsel for the respondents

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referred to para 4.15 of the O.A. and stated that the applicants had made a representation to the respondents requesting that they should be regularised as Masons in Artisan Grade and not as a Khallasi. Apart from this fact of representation, the respondents have not alleged any discrimination. It is not the applicants' case that persons who are junior to them and working as casual labourer (Masons) in regular scale had been absorbed in Artisan Grade and they have been left out. It is stated that the selection against 25% vacancies are reserved for departmental promotion from the unskilled and semi-skilled category and the regularisation can be considered only against the sanctioned posts. Therefore, the learned counsel argued that the present applicants have no cause of action.

5. We have heard the learned counsel for the parties and have perused the record and pleadings. We have also seen the decisions relied upon by the learned counsel for the applicant.

6. Para 2007(3) of the IREM Vo.II 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 straightway 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.

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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".

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7. It is an admitted position that the applicants had been working as casual labourers and granted temporary status and were also given regular scale with effect from 1.11.1982. The only grievance is that despite the fact that they have been working as casual labourers for so long, they are not being regularised or considered for absorption against the regular vacancies in the skilled grades in the 25% quota reserved for departmental promotion from the unskilled and semi-skilled categories. While, as stated by the learned counsel for the respondents, the applicants have not alleged any discrimination, their grievance is against the non-consideration of their case for absorption against regular vacancies. The learned counsel for the respondents, however, submitted that the applicants can also be considered against these 25% of vacancies provided they are eligible and have passed the required trade test. It is not clear from the application whether the applicants had passed the requisite trade test. However, it is stated that they have been granted temporary status from 12.9.79 and 17.8.78 respectively and this position has been admitted by the respondents. In the circumstances of the case and in the light of the facts brought out in the pleadings and the admitted position in respect of the applicants, we consider it appropriate to dispose of this application with the following directions:-

(i) Respondents are directed to consider the applicants for absorption in their turn in regular existing

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vacancies, if any, in the skilled grades, if they are eligible and have passed the requisite trade test. It is also directed that the above consideration of the applicants' cases may be done within a period of 3 months from the date of receipt of a copy of this order.

(ii) Respondents are also directed to pass a reasoned and speaking order regarding the result of such consideration for absorption of the applicants against regular vacancies in the skilled grades.

No order as to costs.

J.S. D
(J.S. DHALIWAL)
MEMBER (J)

(K. MUTHUKUMAR)
MEMBER (A)

Rakesh