

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

22

OA No.2030/2000

Date of decision: 21.12.2001

Momin Ali

Applicant

(By Advocates: Shri K.K. Patel)

versus

UOI & Others


Respondents

(By Advocate: Shri B.S. Jain)

CORAM:

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?


(M.P. Singh)
Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2030/2000

New Delhi, this 21st day of December, 2001

Hon'ble Shri M.P. Singh, Member(A)

Momin Ali
o/o Chief Admn. Officer(Construction)
Northern Railway, Kashmere Gate, Delhi .. Applicant

(By Shri K.K. Patel, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Admn. Officer (Construction)
Northern Railway, Delhi
3. Divisional Railway Manager
Northern Railway, Moradabad
4. Senior Civil Engineer Constructon
Northern Railway, Moradabad .. Respondents

(By Shri B.S. Jain, Advocate)

ORDER

Heard the learned counsel for the parties. By the present OA, applicant seeks a direction to the respondents to regularise his services as Hammerman along with all consequential benefits.

2. At the outset, the learned counsel for the respondents, relying upon a large number of judgements of this Tribunal, including that of Full Bench, has strongly contended that the OA in its present form is not maintainable and is liable to be dismissed, in view of the preliminary objections mentioned below:

(i) The applicant is working in Moradabadd, impugned order dated 17.1.95 was issued by DRM, Moradabad and there is neither application u/s 25 of CAT(Procedue) Rues, 1987 nor is there any condonation of delay for approaching this Tribunal for filing the OA in September, 2000;



(ii) The applicant willingly came forward for screening and was regularised and also promoted as Sr. Gangman;

(iii) The applicant is praying for regularisation against persons who are senior to him and are eligible for promotion; and

(iv) The applicant has not exhausted the departmental remedies available to him.

3. On the other hand, the learned counsel for the applicant has contended that the applicant is challenging the order dated 9/2000 passed by the Northern Railway Hqrs. Office, Kashmere Gate, Delhi repatriating him to Moradabad Division. Therefore, the preliminary objections taken by the learned counsel for the respondents are not tenable and therefore they are rejected.

4. In the instant case, admittedly the applicant was initially engaged as casual labourer on 8.12.83 in Moradabad Division. He was granted temporary status w.e.f. 1.1.84 in the wake of the judgement of the Hon'ble Supreme Court in the case of Inder Pal Yadav Vs. UOI. He qualified in the screening test and was regularised as Gangman vide order dated 17.1.95 and his lien is in the office of AEN(HQ), Moradabad. He is being utilised as Hammerman w.e.f. 31.12.87 purely on temporary/local arrangement basis against a work-charged post in Construction Organisation which is a temporary organisation and have no regular posts. He has since been promoted as Sr. Gangman w.e.f. 15.4.99.

25

5. It is an established principle of law that a person cannot have lien at two places and has to go to the place where the same is maintained. Having worked on an ad-hoc basis for a number of years without being subjected to the usual procedure would not confer upon him a right of being regularised against a Group 'C' post which would certainly have an effect of rendering the applicant senior in his parent organisation. This would be prejudicial to the interest of employees working in the parent organisation. In Full Bench decision of Ram Lubhaya's case (OA No.103/97 and other connected OAs decided on 4.12.2000), this Tribunal having regard to the lien of the applicants in Group 'D' post in their parent organisation and having regard to the fact that the Construction Organisation has no cadre of its own, held the view that the posts against which the applicants have been promoted and continued on ad-hoc basis are work-charged posts. These posts do not form part of any cadre and are created for a specific job for a short duration, the expenditure on which is booked to a particular work estimate and the applicants have no enforceable right to compel the respondents to regularise them in the Construction Organisation merely because they are holding work-charged posts in that Organisation for a considerable length of time.

6. In this connection it is worthwhile to refer to the decision of the Division Bench of this Tribunal which,

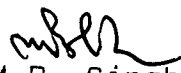
26

while considering a similar issue in OA No.1289/2001 (Kanhaiya Prasad Vs. UOI) and other connected OAs, vide its order dated 1.10.2001, after taking into account the averments made by both parties and also discussing at length the various judgements of this Tribunal as also that of the Hon'ble Supreme Court, has held the following view:

"18. Merely the applicants have continued on ad hoc basis would not confer them any right of regularisation the pre-requisite under para 216 o IREM that the person should have been subjected to the requisite selection procedure and the same should have been made in accordance with the Rules. As the applicants have been appointed on ad hoc basis in the Construction Organisation with stipulation that the same should not confer them any right of promotion or regularisation in Group C post and as the lien of the applicants have been maintained in the parent organisation for seeking regularisation in Group D and for further promotional prospectus without effecting the right of seniors and juniors their reversion to the parent organisation cannot be termed as arbitrary or against the rules. The regularisation cannot be accorded in Group C post unless the person is regularised in Group D post. The ratio cited in Durbeen Singh (supra) would have application in view of the decision in Full Bench of this Tribunal.

19. In this view of the matter, having failed to establish the case on merits, the applicants are not entitled for the relief claimed as such these OAs are accordingly dismissed. No costs."

5. In the result, having regard to what has been stated above, I find no merit in the present OA and the same is accordingly dismissed, leaving the parties to bear their own costs.


(M.P. Singh)
Member(A)

/gtv/