

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A. 338/87.

DATE OF DECISION: 25.8.1992.

Krishan Pal Singh.

... Petitioner.

Versus

The General Manager,
Northern Railway and
Ors.

... Respondents.

CORAM: THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.

... Shri Anil Suhra-
wardy, Counsel.

For the Respondents.

... Shri K.N.R. Pillai,
Counsel.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,
Chairman)

The petitioner Shri Krishan Pal Singh has in this petition prayed for a declaration that he is a confirmed employee in the grade of Rs.330-480 on the basis of the earlier examination conducted by the respondents in the grade of Rs.200-250 and the petitioner qualifying in the B-1 Medical Examination, and accordingly protecting his pay in the grade of Rs.260-400 since the time junior persons have been promoted to the higher posts. He further prays for a direction to promote him in the grade of Rs.330-480 retrospectively.

2. The petitioner was appointed as a casual labourer in February, 1983. He was in due course given temporary status. He complains that he has been given only the pay scale of Rs.200-250 and not the higher pay scale of Rs.260-400 and further higher pay scale of Rs.330-480.

The petitioner complains that whereas his junior Respondents 5 to 7 have been promoted, his case has been ignored. He also submits that as he is a person who holds the certificate from the Industrial Training Institute in the trade of Welding, he should have been recognised as duly qualified for regular promotion and accorded higher pay scales adverted to earlier.

3. The respondents have opposed the application. It is their case that the petitioner being a casual labourer was given an opportunity to appear for the trade test in Welding so that he could be regularly appointed. But he failed to avail of the opportunity afforded to him thereby denying himself the opportunity to get regular appointment in the higher pay scale. It is their further case that the respondents 5 to 8 belong to the different trades like drivers etc. and do not belong to the trade of Welding, and that, therefore, the petitioner cannot make any

grievance about their getting the promotion or regular appointment. It is also their case that under the relevant rules the petitioner had no right to be appointed on regular basis in the higher pay scale of Rs.260-400 unless he passed the prescribed trade test. He not having passed the required trade test even after an opportunity was made available to him, cannot make any grievance about it.

There is no substance in the contention that there is infraction of Article 14 of the Constitution for the simple reason that none of the respondents 5 to 8 whom the petitioner alleges are his juniors belong to the same trade

of Welding. That another junior of the petitioner was able to secure regular appointment as a Driver does not mean that he a Welder by trade can aspire for being promoted as a Driver. As the trades are different and as the petitioner has failed to establish that any junior of the petitioner belonging to the same trade of Welder has secured any benefit, the petitioner cannot complain of infraction of Article 14 of the Constitution.

4. The acquisition of temporary status by the petitioner did not convert him from a casual labourer status to that of a regularly appointed employee. That is clear from clause (b) of Rule 2005 of the Indian Railway Establishment (Vol.II). It is provided therein that,

"Such casual labour who acquire temporary status, will not, however, be brought on to the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for Group 'D' Posts in the manner laid down from time to time. Subject to such orders as the Railway Board may issue from time to time, and subject to such exceptions and conditions like appointment on compassionate ground, quotas for handicapped and ex-servicemen etc. as may be specified in these orders they will have a prior claim over others to recruitment on a regular basis and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual labour before attaining the age of 28 years should be allowed relaxation of the maximum age limit prescribed for Group 'D' Posts to the extent of their total service which may be either continuous or in broken periods".

5. The taking of the medical test did not qualify the petitioner to acquiring the status of a regular employee. It is, therefore, clear that the petitioner continued to be a casual labourer even after he acquired the temporary status and not did become eligible to pay in the higher scale of Rs.260-400.

Sub-rule(1) of Rule 2007 which is relevant reads:

"Normally Casual Labour should not be appointed in skilled categories without a trade test. A panel should be maintained by the open line to cater to the needs of the casual labour in semi-skilled and skilled categories. Where no panel of suitable candidates is available, engagement in semi-skilled or skilled categories may be done without trade test but it should be ensured that their suitability for semi skilled or skilled grade is adjudged well in time before they attain temporary status".

This statutory provision makes it clear that the casual labourer has to pass the prescribed test in order to qualify himself for regular post. The petitioner was, in fact, afforded such an opportunity as is clear from Annexure R-1. The petitioner's name is at Serial No. 1 and the trade mentioned against his name is Welder. He was asked to appear for the test on 28.1.1987, but he did not appear for the said test. It is only on 30.1.1987 after the date for that trade test had expired that he made a representation as per Annexure P-3 wherein he pressed for according of the higher scale of pay pointing out that one of his Assistant, a Khalasi, who was junior to him, has been promoted as a Driver in the grade of Rs.260-400. Be that as it may, as the statutory provision requires the casual labourer to pass the prescribed trade test and the petitioner not having passed the trade test in spite of the opportunity having been afforded to him, he cannot

claim right to be regularly appointed in the pay scale of Rs.260-400. The petitioner's counsel, however, submitted that the petitioner was not required to appear for the trade test as he has already acquired the requisite expertise as is clear from the certificate (Annexure P-2) issued by the Industrial Training Institute in his favour. That is the certificate in regard to the trade of Welder. We are not very much concerned with the question as to whether the petitioner had acquired the requisite expertise in the trade of Welder. We are concerned with the application of the statutory rules which prescribes the passing in the trade test held by the department as a principal requirement for regular appointment of a casual labourer.

6. Rule 2007 of the Indian Railway Establishment Manual does not exempt persons holding such certificates from appearing for such a trade test. Hence, the mere possession of such a certificate by itself is no answer to the requirement of the statutory provision which requires the passing of the trade test. It is not possible to accede to the contention of the learned counsel for the petitioner that the petitioner having obtained a trade certificate in Welding adverted to earlier he was not required to take the trade test. As the petitioner has denied himself the opportunity which was afforded to him for passing the trade test, he cannot make any grievance about his losing of the regular appointment in the pay scale of Rs.260-400.

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7. That petitioner having failed to establish his case for regular appointment in the pay scale of Rs.260-400, the question of securing still higher pay scale does not arise.

8. For the reasons stated above, this petition fails and is dismissed. No costs.

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(I.K. RASGOTRA)
MEMBER(A)


(V.S. MALIMATH)
CHAIRMAN