O.A. 281/91   Date of decision: 23.12.92

Sh.Lalita Parshad & others
.. Applicant.

Versus

Union of India
and others   .. Respondents.

Sh.Umesh Mishra   .. Counsel for the applicant.

Sh.B.K.Aggarwal   .. Counsel for the respondents.

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J).
The Hon'ble Sh.I.K.Rasgotra, Member(A).

J U D G E M E N T(ORAL)

The applicants in this O.A. were working as ad-hoc Drivers Grade 'A' on the Northern Railway. They were given two opportunities to pass the selection test for considering them for regular appointment to the post. They have however failed to make the grade in the selection. Sh.Umesh Mishra, counsel for the applicants submitted that ten applicants out of fifteen have already retired from service. They are applicants No. 1, 3, 5, 6, 7, 9, 10, 11, 12, and 14 when they were working as Driver Grade 'A' on ad-hoc basis. The grievance of these applicants is that they have not been paid their retiral benefits in accordance with the emoluments drawn by them during the last ten months of their service in accordance with rules. The expression 'emoluments' to rule 33 of C.C.S Pension Rules, 1972 defines basic pay as defined in rule 9 (21)(a)(i) of the fundamental rules which a government servant was receiving immediately before his retirement or on the date of retirement. Rule 34 of the Pension Rules further elaborates the term 'average emoluments'. The said rule provides the average emoluments shall be determined with

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reference to the emoluments drawn by the government servant during the last ten months of his service. Thus the ten applicants who have retired from service while working as ad-hoc Drivers Grade 'A', have to be settled keeping in view the emoluments actually drawn by them during the ten months preceding the date of retirement. Ordered accordingly. The issue which survives now is the remaining five petitioners who are still in service and are continued to work as Driver Grade 'A', according to the interim order passed by the Tribunal on 1.2.91. The case of the respondents as advocated by Sh.B.K.Aggarwal, learned counsel for the respondents is that these petitioners were also provided two opportunities to appear in the selection test. They did appear but failed to make the grade. They have therefore no right to continue to work on the post of Driver Grade 'A' on ad-hoc basis moreso when there are selected personnel available for holding up Grade 'A' post. The learned counsel further submitted that Grade 'A' personnels are the incharge of running the passenger and fast passenger train and involve the safety of the travelling public. They cannot, therefore, be allowed to continue as Driver Grade 'A' when duly selected persons are available for manning the safety post.

2.   We have heard the learned counsel and considered the matter carefully. After perusing all the records we find that these persons have been working as Driver Grade 'A' on ad-hoc basis over a period of years. Further since they have failed to make the grade for the selection there is no legal right vested in them to continue to hold the post of Driver Grade 'A' on ad-hoc basis when

persons who are selected for regular appointment are available. These applicants were provided the opportunities for appearing in the selection to get themselves regularised as Driver Grade 'A' but they failed to make the grade. Having regard to all the circumstances of the case, we are of the view that if no selected candidate is available for regular appointment to the post of Driver Grade 'A' and if no person junior to them is continuing as Driver Grade 'A' on ad-hoc basis in their seniority unit, they cannot continue as Driver Grade 'A' on ad-hoc basis. They will have to make way for the duly selected persons for holding the post of Driver Grade 'A', subject to no junior to them being continued as Driver Grade 'A' on ad-hoc basis. Ordered accordingly. There is no order as to costs.

(I.K.RASGOTRA)
MEMBER(A)

(RAM PAL SINGH)
VICE CHAIRMAN(J)