

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

(16)

HON. SMT. LAKSHMI SWAMINATHAN, MEMBER 'J'
HON. SHRI R.K. AHOOJA, MEMBER 'A'

O.A. NO. 431/92

NEW DELHI, THIS 29TH DAY OF APRIL, 1997

SHRI LEKH RAJ
S/o Sh. Masib Chand
Store Issuer 'MCC' under
Dy. Chief Engg. Construction
Northern Railway
Tilak Bridge
NEW DELHI

..APPLICANT

'By Advocate - Shri B.S. Mainee'

VERSUS

1. Union of India, through
Through the General Manager
Northern Railway
Baroda House
NEW DELHI
2. The Chief Admn. Officer 'Const.'
Northern Railway
Kashmere Gate
DELHI
3. The Dy. Chief Engg. 'Const.'
Northern Railway
Tilak Bridge
NEW DELHI

..RESPONDENTS

'By Advocate - Shri B.K. Aggarwal'

ORDER 'ORAL'

SHRI R.K. AHOOJA, MEMBER 'A'

The applicant was engaged as casual Store Issuer w.e.f. 21.9.1971. He was granted the regular pay scale of that post w.e.f. 1.6.1974. His grievance is that though he has served for more than 24 years, he is still being described as a casual labour with temporary status in class III and his numerous representations to the respondents to regularise his services from the date of his initial appointment have not met with any favourable response. He further

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submits that in a Permanent Negotiating Machinery 'PNM' meeting held on 6th and 7th June 1988, the General Manager, Northern Railway, had also ordered that cases of MCCs in Allahabad and other divisions, who are working on ad hoc basis for more than three years, shall be decided on the same pattern as done in Delhi and Lucknow Division. The applicant has now approached this Tribunal seeking a direction to respondents to regularise his services from the date from which he is continuously working, with all consequential benefits of seniority etc.

2. The respondents in reply have substantially admitted the claim of the applicant as regards the length of his service as casual appointee in Group C. They however submit that casual employees working in higher grade will be first regularised in Group D category subject to availability of posts. They state that the applicant was directed a number of times to appear in the screening test in Group D but he failed to do so. According to them, unless he passes a screening test for Group D and is so regularised, he cannot be considered for promotion to Group C since only 25% of class III posts are to be filled up from class IV regular staff.

3. We have heard the 1d. counsel on either side. The respondents have also raised a preliminary objection that the application is time barred. Shri B.K. Aggarwal, 1d. counsel for the respondents, argues that the application has been filed in February 1992 while the applicant ~~is~~ makes a claim from 1971. We are of the view that the applicant has a recurring cause of action in as much as he has a right to be considered for regularisation every time there is a vacancy in the relevant quota. However, the relief to be afforded to the applicant has to be considered in the context of the time frame in which he has approached the Tribunal.

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4. Shri Mainee, 1d. counsel for the applicant, relies on NARENDER CHADHA ATR 1986 '1' 49 to buttress his arguments that the long casual service of more than 25 years entitles the applicant to be considered as regularly appointed by deemed relaxation of the rules. Even if the initial appointment of the applicant was ~~d'horse~~ the rules, ~~then~~ the mere fact that the applicant has been allowed to continue by the respondents uninterrupted for more than 15 years, ~~then~~ ^{leads to the} ~~it should be presumption~~ that the rules have been relaxed, with all consequential benefits. However, if a view is taken that he is to be regularised in terms of para 2007 'iii', then he should be considered against the vacancies arising in the 25% of the promotion quota in terms of the judgement of Supreme Court in RAM KUMAR & ORS. VS. UOI SLJ 1996 '1' 116.

5. ~~We have carefully considered the arguments advanced~~
Shri B.K. Aggarwal, 1d. counsel for the respondents, on the other hand submits that even if relief were to be afforded to the applicant, it has to be confined to the date of filing of the O.A.

6. We have carefully considered the arguments advanced by the 1d. counsel on both sides and also gone through the pleadings on record. The applicant has been working admittedly since 1971 and has been given the regular pay scale of the post from 1974 in Group C post. Therefore, even if he were to be regularised with retrospective effect, there will be no monetary implications as regards his working in the Group C post. We also do not appreciate the argument of respondents that the applicant has first to be regularised in Group D post and thereafter considered for promotion to Group C post since from the very beginning he was appointed to Group C post. In the facts and circumstances of the case

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and having regard to the Supreme Court orders in Ram Kumar ('Supra'), we are of the view that the applicant ~~is not~~ ^{has} to be considered for regularisation in class III post against the 25% of the promotion quota, subject to Railway Board's instructions and his fulfilling the requirements laid down in those instructions. Accordingly, we dispose of this O.A. with the following directions.

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Ans. Since the applicant has been working continuously in a class III post, the respondents will consider him for regularisation in that post against the 25% of the promotion quota provided for in para 2007 'iii' of IREM Vol.II ~~subject to the above instructions~~ ^{as} after holding a screening test. This will be done within a period of three months from the date of receipt of a copy of this order. It is made clear that the applicant will be regularised from the date on which the first vacancy arose/ arises from the date of filing of this O.A. The O.A. is disposed of. No costs.

R.K. Ahuja -
'R.K. AHUJA'
MEMBER '(A)'

Lakshmi Swaminathan
'MRS. LAKSHMI SWAMINATHAN'
MEMBER '(J)'

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