

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad this the 10th day of April, 2002.

Original Application No. 964 of 1996.

Hon'ble Maj. Gen. K.K. Srivastava, Member- A.
Hon'ble Mr. A.K. Bhatnagar, Member- J.

S.M. Haider S/o Sri Haider Abbas a/a 41 years.
R/o 159, Ranimandi, Allahabad.

.....Applicant

Counsel for the applicant :- Sri S.S. Sharma

V E R S U S

1. Union of India owning and representing Northern Railway notice to be served to the General Manager, Northern Railway, Headquarters Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, DRM Office, Nawab Yusuf Road, Allahabad.
3. The Divisional Superintending Engineer (Coordination), Northern Railway, DRM Office, Allahabad.
4. Vinod Kumar Srivastava S/o NN Srivastava 154, Sulemsarai, Allahabad.
5. Avadh Bihari Singh S/o Sri Sadhu Singh, 73-G, Out house, Loco Colony, Allahabad.
6. Ram Pyare S/o Sri Kali Charan Vill. Chakia, Distt. Mirzapur.
7. Shri Ram S/o Sri Ram Pal, Vill. Nimsari, Tehsil- Chail, Distt. Allahabad.
8. Ram Sunder S/o Sri Bhagwati Prasad Vill. Kadampur, Post- Patti, Distt. Pratapgarh.

9. Jokhu Lal S/o Sri Ram Nath
R/o Vill. and Post- Kathgoan.

.....Respondents

Counsel for the respondents :- Sri A.K. Gaur
Sri J.M. Sinha

O R D E R (oral)

(By Hon'ble Maj. Gen. K.K. Srivastava, AM)

In this O.A filed under section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for direction to respondents to declare the result of screening of Mali Khalasi/ Khalasi conducted on 03.01.1996 and then hold the selection for the post of Sub Overseer Mistry (SOM) (Horticulture) grade Rs. 1400-2300/- (RPS). The applicant has further prayed that respondents be directed to promote the applicant to the post of Fieldman grade Rs. 950-1500/- (RPS) since 02.05.1996 against the regular post and also to promote the applicant as SOM (Hort.) since his date of appointment on 22.08.1983 for ^{in performing the} confirming work and duties of S.O.M (Hort.).

2. The facts in brief giving rise to this O.A are that the applicant has been working on the post of Mali (CPC) grade Rs.750-940/- under the Inspector of Works (IOW), Northern Railway, Allahabad since his appointment on 22.08.1983. The educational qualification of the applicant is B. Sc (Ag) and Animal Husbandry with specialisation in Horticulture. In the year, 1983 there was requirement of qualified persons to look after the Horticulture work at Allahabad under the DRM, Northern Railway, Allahabad (respondent No.2). The name of the applicant was

duly recommended for appointment as High Skilled Mali/ Supervisor on daily wages to the General Manager, Baroda House, New Delhi vide DRM's letter dated 18.06.1983. The General Manager ^{Conveyed the} ~~has ordered for~~ approval of appointment of the casual labour/ Khalasi vide letter dated 02.08.1983 and accordingly the applicant was appointed on 22.08.1983 as casual Khalasi under the I.O.W (Line), Northern Rly. Allahabad. He was posted at Naini to supervise the horticulture work in his section from Allahabad outer to Manda Railway Station between Allahabad-Mirzapur Section. About 12 persons like Chowkidar, Khalasis and Malies were posted under the applicant who was distributing the work to them and supervising their work and also mustering these staff on pay sheet. No action was taken by Head Quarter's Office in the matter of promotion of the applicant to the post of Horticulture Supervisor. The post of Horticulture Supervisor grade Rs. 1400-2300/- was H.Qs ^{controlled} ~~control~~ post and the selection, therefore, for the ~~post~~ ⁱⁿ post of S.O.M (Horticulture) was conducted at H. Qs office against 33-1/3% promotee quota in the year, 1990. The name of the applicant was recommended but no action was taken in this regard. In the year, 1992, the Divisional Superintending Engineer (DSE) (Co-ordn.), Allahabad vide his letter dated 29.09.1992 (annexure A- 8) and 08.11.1993 (annexure A- 9) recommended the case of the applicant for promotion to the post of SOM (Horti.). The efforts of the divisional authority in the matter of promotion of the applicant did not ^{fructify} ~~fructified~~ and the applicant continuously ⁱⁿ performing ⁱⁿ duties as S.O.M (Horti.) since his appointment as Khalasi on 22.08.1983. In February, 1996, the applicant was transferred from

Naini to Allahabad and was put to work as Horticulture Supervisor and assigned the duties to supervise the Nursery at Subedarganj, Allahabad as well as the plantation work within the section of I.O.W- III, Allahabad from Allahabad to Bamrauli. He was ^{also} ~~also~~ assigned the work of horticulture at Divisional Railway Hospital at Subedarganj and station area as well. The work of horticulture was de-centralised on 16.01.1996 and was placed under the D.R.M, Allahabad Division. The D.R.M, Allahabad took action to fill up the posts of Khalasi, Fieldman and Horticulture Supervisor. Screening of Khalasi was done during the period from 07.12.1995 to 30.10.1996, the result was not declared and the result was declared only on 15.11.1996. On 05.02.1996, notification for filling the post of Fieldman in grade of Rs. 950-1500/- was issued. Suitability test was held between 17.02.1996 to 13.04.1996. The applicant's suitability test was postponed to 04.05.1996. However, when the applicant reported for first suitability test on 04.05.1996, ^{he was informed that the result was already declared} he was informed that the result was already declared on 02.05.1996. He made representation on 26.05.1996 which has also not been decided. Another notification was issued on 22.01.1996 for filling the post of S.O.M (Horti.) and the last date for application was fixed ^{on} 23.02.1996. The applicant applied for the same but he was not called for. On 07.09.1996 written and suppl. written test ^{was held on 07.09.1996} and again suppl. test was held on 14.09.1996 for nine posts of S.O.M (Horti.) (six for general category, two for SC and one for ST). On 20.08.1996, the list of eligible candidates was issued and the name of the applicant did not figure therein. The applicant filed

this O.A on 04.09.1996 and this Tribunal passed the following order on 12.09.1996 :-

".....we direct the respondents that the applicant be allowed to appear in the test but the result shall not be declared till further directions."

The applicant appeared in the test held on 07.09.1996 and because of the direction of this Tribunal, he is not aware of the result as such.

3. Sri S.S. Sharma, the learned counsel for the applicant submitted that the applicant is entitled for the post of S.O.M (Horti) right from the date he was appointed i.e. from the date he has been functioning as Supervisor. Not only this, the applicant is highly qualified. He is B.Sc (Ag.) with specialisation in horticulture and he is the most suitable candidate for the post whereas others who have been posted on this post did not possess such higher qualification. The learned counsel for the applicant has further submitted that the only reason for that he has not been screened as averred by the respondents in para-16 of the CA is that since the applicant was working as casual labour, he was not eligible to be called to appear in the selection for the post of S.O.M(Horti.) against the promotion quota. He has also assailed the averments of the respondents in para- 5 of the Suppl. CA about the number of working days shown in respect of the applicant. As per the respondents, during the year, 1991 screening the applicant was not eligible because he had not completed 2000 days as on 30.06.1989, the applicant had

worked only for 1404 days. The applicant has given the details of working days datewise during the year 1991 (up to 30.06.1989) according to which the applicant has rendered service of 2149 days as against 1404 days stated by the respondents. The learned counsel for the applicant submitted that the applicant was eligible to be screened during 1991 itself and since he is highly qualified, there is no question ^{now} ~~not clearing the screening for regularisation~~ that he had not been regularised in that year. The learned counsel for the applicant further submitted that it was the duty of the D.R.M, Allahabad that when the Horticulture cadre was de-centralised on 16.01.1996 and it was placed under the D.R.M, Allahabad, the DRM, Allahabad should have taken immediate action to regularise the service of the applicant. He also mentioned that at the time of de-centralisation, the applicant was the only qualified person in horticulture cadre but instead of considering the case of the applicant, the persons from the other departments were called for and appointed in higher post thereby denying the lawful right of the applicant. The learned counsel for the applicant finally submitted that the result of the screening done in 1995-96 was declared on 15.11.1996 in which the name of the applicant appears at Sl. No. 38 as successfull candidate. Keeping in view that he possesses all the required qualifications and was also screened for group 'D' though belatedly, he should be allowed ~~the~~ due promotion to him.

4. Sri A.K. Gaur, the learned counsel for the respondents resisting the claim of the applicant submitted that the applicant was a casual labour and was working as daily rated, he was not entitled for

promotion to the post of Fieldman or S.O.M (Horti.).

The learned counsel for the respondents has also submitted that the category of the applicant was also changed in 1997 in Mali cadre on the request of the applicant. On this point, the learned counsel for the applicant submitted that options were called for and the applicant gave the option which does not mean that his rightful promotions are barred because of this.

5. We have heard Sri S.S. Sharma, the learned counsel for the applicant at length and Sri A.K. Gaur, the learned counsel for the respondents and perused the records.

6. We have given careful consideration to the submissions made by the counsel for the parties and have perused the records. Admittedly the case of the applicant was forwarded for regularisation as Mali/ Supervisor in Horticulture cadre by the DRM, Allahabad in 1983 itself to the G.M., Northern Railway, New Delhi, because the Horticulture cadre was controlled by H. Qs only. The applicant has given details of the working days in the respondents establishment during 1991, 1994, and 1995 in para-6 of Suppl. RA. The applicant has also given the days during which he worked in the respondent's establishment. During 1991, the applicant rendered service of 2140 days, during 1994, the applicant rendered service of 1642.5 days making the total of days 3782.5 days and during 1995 in first phase up to 31.08.1995 service of 609 days making the total to 4391.5 days. On this point, the learned counsel for the respondents pleaded that this averment is not

supported by any document. However, we reject the plea on the ground that this averment has been made on affidavit dated 18.11.1998 mentioning that the dates and the days of working are as per the Railway records and, therefore, we accept the correctness of these days. Keeping this in view, the number of days required for screening during 1991 (up to 30.06.1989) were 2000 whereas the applicant has worked for 2140 days. Had the respondents taken action to screen the applicant, he would have been regularised in the year 1991 itself. Even if the respondents failed to do so, the screening of the applicant should have been done immediately after January, 1996 when the Horticulture cadre was de-centralised. Here the respondents also delayed affecting the career of the applicant adversely. We are of the opinion that because of delay on the part of the respondents, the applicant has suffered ~~badly~~ in his career progression. Justice demands that the career progression of the applicant is protected specially when he is highly qualified and is eligible to be S.O.M (Horti.).

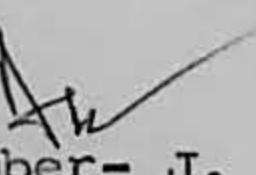
7. We would also like to observe that the action of the respondents suffers from error of law as regards the selection of the applicant as Fieldman. The notification for filling up the post of Fieldman was issued on ^{for the period from 1st} 05.09.1996. Suitability test was held during 17.02.1996 to 13.04.1996 for which the applicant was eligible as his name has been shown at Sl. No. 38 in the list of eligible candidates. We find from the annexure A- 12 that the applicant was spared on 04.05.1996 to appear in the examination by order dated 13.04.1996 and, therefore, the action of the respondents in declaring the result of Fieldman in the grade of Rs. 950-1500/- on 02.05.1996



itself is illegal. Grave injustice has been done to the applicant.

8. In the facts and circumstances of the case and aforesaid discussion, the O.A is allowed. Since the result of the screening of Mali conducted on 03.10.1996 has already been declared on 15.11.1996, this relief becomes infructuous. The applicant is entitled for appointment as Fieldman w.e.f 02.05.1996 the date on which the result of Fieldman was declared and the applicant is entitled for all consequential benefits. The applicant has appeared in the Suppl. examination held on 14.09.1996 for the selection to the post of S.O.M (Horti). The result, which was ordered not to be declared by this Tribunal order dated 12.09.1996, may be declared and in case the applicant is declared successful, he shall be entitled for all consequential benefits. The action will be completed by the respondents within three months from the date of communication of this order.

9. There shall be no order as to costs.


Member- J.


Member- A.

/Anand/