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RESERVE

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

— *November*
THE 7th TH DAY OF ~~OCTOBER~~ 1997

CORAM : HON'BLE DR. R.K.SAXENA, J.M.
Hon'ble MR. D.S.BAWEJA, A.M.

ORIGINAL APPLICATION NO. 322 OF 1997

Lakhbir Singh son of Shri Moola Singh,
aged about 35 years, R/o 973-B, Jarnashtmi
Railway Colony, G.T.Road, Kanpur.

.... Applicant

C/A Shri S.S.Sharma, Adv.

Versus

1. Union of India owning and representing
Northern Railway, notice to be served to -
The Chief Administrative Officer/Construction,
Northern Railway, Kashmere Gate, Delhi-6.
2. The Divisional Railway Manager, D.R.M.Office
Northern Railway, Allahabad.
3. The Dy. Chief Electrical Engineer/
Construction, Northern Railway,
D.R.M.Building, Allahabad.
4. The Senior Electrical Engineer/
Construction, Northern Railway,
Kanpur.

.... Respondents

C/R Shri A.K.Gaur, Adv.

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PER HON'BLE D.S.BAWEJA, A.M.-

This application has been filed seeking the
following reliefs:-

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- (a) to quash the impugned orders dated 30.11.96 and 1.1.97/16.1.97 reverting the applicant from the post of Vehicle Driver to the post of Khallasi,
- (b) to direct the respondents not to revert the applicant from the post of Vehicle Driver to the post of Khallasi under the pretext of regularisation and not to transfer the applicant to Allahabad Division,
- (c) to direct the respondents not to interfere with the working of the applicant as temporary Vehicle Driver in the scale of Rs.950-1500,
- (d) to direct the respondents to regularise the services of the applicant as Vehicle Driver in the scale of Rs.950-1500 from the date of passing the requisite Trade Test/Medical Test and continuous working from 15.3.1989, and
- (e) to direct the respondents to grant all consequential benefits to the applicant.

2. The applicant was engaged on 16.10.1984 in the Railway on daily wages under Chief Traction Foreman (Construction), Northern Railway, Aligarh under the control of Deputy Chief Electrical Engineer (Construction) Northern Railway, Kanpur. The applicant was put to work as Truck Khallasi. As per the order dated 15.3.1989 the applicant was promoted as Vehicle Driver in the grade of Rs.950-1500 on temporary basis after passing the trade test. Thereafter the applicant has been continuously working as Truck/Jeep Driver in the Construction Organisation, In the Electrical Department under ^{the} over all administrative control of Chief Administrative Officer (Construction), Northern Railway, Delhi. In 1993 screening of casual staff was conducted of the Electrical Department for regularisation of casual labour against Group 'D' posts. The applicant was also spared ^{or} ~~from~~ screening before the committee on 16.11.1993. The applicant was

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asked to give willingness for screening for absorption on regular basis in Group 'D'. The applicant did not agree with the same and made a representation in writing that he is willing for regularisation only in the skilled category as Vehicle Driver. His screening was postponed but subsequently he was again called for screening in the 3rd week November 1993. The applicant again represented on 19.11.1993 and it was given to understand to him that screening was not only for Group 'D' but for other categories also. The applicant appeared before the Screening Committee but no panel was issued. However, on 21.4.1997 the applicant came to know that Deputy Chief Electrical Engineer (Construction) Allahabad (Respondent no.3) vide order dated 30.11.1996 had directed ~~to~~ the subordinate offices to spare all the casual staff as per the list enclosed for posting in Allahabad Division in Group 'D'. The name of the applicant is at serial no.4 of the list in the case. In compliance of this direction of Deputy Chief Electrical Engineer (Construction), local orders dated 1.1.1997/16.1.1997 have been issued by the section Engineer (Electrical)/Construction Kanpur for transfer of the applicant to Allahabad Division for regularisation as Khallasi. The applicant made a representation against this transfer on 27.1.1997. Thereafter the present application has been filed on 18.3.1997 seeking the relief as detailed in para-1 above.

3. The applicant has assailed the impugned orders and prayed for the other reliefs on the following grounds:-

- (a) The applicant had given in writing that he is not willing for regularisation in Group 'D' and inspite of this the applicant has been placed on the panel for regularisation in Group 'D' and also the order for relieving him has been issued. The impugned orders change the category, grade and seniority of the

applicant and, therefore, the action of the respondents is arbitrary and without authority.

(b) The applicant had been discriminated by regularisation in Group 'D' while several other juniors to the applicant and promoted as Driver from Khallasi are still working in the Construction Organisation.

(c) The applicant had been continuously working as temporary Vehicle Driver since 15.3.1989 after passing the requisite trade test and, therefore, he is entitled to be regularised against the permanent post of Vehicle Driver, against the 60% Construction Reserve posts in terms of the Railway Board letter dated 21.6.1988 and provisions in para 2007(3) of Indian Railway Establishment Manual (I.R.E.M.).

4. The respondents have contested the claim of the applicant by filing counter reply. The respondents have submitted that the applicant was engaged initially as casual labour on daily wages and subsequently he was granted with temporary status from 1.1.1986. The applicant was promoted as a Vehicle Driver in the grade of Rs. 950-1500 purely as a local, temporary and ad hoc arrangement as would be ^{clear} declared from the order dated 15.3.1989. The respondents further submit that the post of Vehicle Driver is in skilled category in Group 'C' and these posts are filled up only by promotion and there is no element of direct recruitment. In view of this, the applicant acquires no legal right for regularisation/absorption against the post of Vehicle Driver based on the purely temporary and ad hoc promotions as a local arrangement in the Construction Organisation. The respondents have further clarified that the Construction reserve ^{concept} ~~posts~~ as envisaged by the Railway Board is to create a permanent floating cadre

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to meet with the urgent and unforeseen requirements of fresh projects undertaken by the Construction Organisation. These posts are proportionately distributed to all the Divisions and are filled through promotion of eligible staff on the strength of the Division on the basis of computing the seniority based on the number of the working days in the respective Divisions. In view of this, the regularisation of the casual staff is to be done by the concerned Division for absorption against the permanent vacancies. Further, the post of Driver is filled by promotion and there is no element of direct recruitment. In view of these facts, the respondents contend that there is no force in the grounds taken by the applicant and, therefore, the application is devoid of merits and deserves to be quashed.

5. The applicant has filed rejoinder reply wherein the averments of the respondents have been controverted and the grounds taken in the original application have been reiterated. The applicant has maintained that he is entitled to be regularised on the post of Vehicle Driver as per the extant Rules as he has already passed the requisite trade test and the medical test.

6. As per order dated 27-3-1997, it was directed not to give effect to the impugned orders dated 30-11-1996 (A1) and 1-1-1997/16.1.1997 (A1/1) till the next date. This interim stay order was extended from time to time.

7. We have heard Shri S.S. Sharma and Shri A.K. Gaur, learned counsel for the applicant and the respondents respectively. We have carefully gone through the material brought on record. The applicant has quoted the following judgements during the hearing :-

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1. (1991) ATC-193-E.Appukutty & others
v. U.O.I. & others.
2. (1994) 26 ATC-57- M.Seeni & another
v. U.O.I. and others
3. 1996(1) ATJ-194- Raghunath Dubey
v. U.O.I. and others.
4. 1996(1) ATJ-297-Sheo Kumar Sharma
v. G.M./C.Rly. & others.
5. (1995) 30-ATC-1- Ram Nath Paswan
& another v. U.O.I. and others.
6. (1994) 26-ATC-145- Aravindakshan & others
v. Regional Passport Officer, Kochi
and others.
7. (1992) 21-ATC-341- Nawab Ali and
others v. U.O.I. & others
8. Order dated 11.8.86 by Hon'ble
Supreme Court in Indra Pal Yadav's
case (Annexure-A-10, Page 45 of
the O.A.)

8. The respondents have cited, in support of their ^{contention} /
the judgment, dated 21.1.1996 in O.A.No.2215
of Principal Bench in the case of L.P.Misra v. Union
of India and others, and the judgement dated 14-11-1996
of the principal Bench in OA No.2225/1992 in the case
of Amarjit pal and others alongwith other connected
OAs.

9. The basic facts as emerged from the rival averments
are not in dispute. The applicant was engaged on daily
wages on 16-10-1984 in the Construction Organisation
of the Electrical Department and was granted temporary
status from 1-1-1986. The applicant was promoted as a

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Vehicle Driver in the skilled grade in Group 'C' in the scale of Rs.950-1500 as per the order dated 15-3-1989 on a purely temporary and ad hoc arrangement (Annexure-A-2) and the applicant thereafter has been continued in this grade since then. The main thrust and the ground taken by the applicant is that the applicant has been promoted as Vehicle Driver in the skilled grade ~~and~~ after undergoing the prescribed trade test and is continuing in the skilled grade for several years and is, therefore, entitled for regularisation as Vehicle Driver against 60% Construction reserve post meant for the project Casual Labours and also in the Open Line in terms of the provisions of para 2007(3) of Indian Railway Manual. The respondents on the other hand have contested the claim of the applicants by submitting that the applicant is not entitled for regularisation as a driver in the skilled grade directly in the Open Line. In view of these rival contentions, the controversy which needs to be resolved is whether the applicant is entitled for regularisation in the skilled category as Vehicle Driver directly and he cannot be forced to be regularised in Group 'D' as per the impugned orders.

10. We will first take up the claim made by the applicant for regularisation against 60% Construction reserve posts. The applicant has stated that as per the Railway Board's order dated 21-6-1988 at Annexure-A-12 ~~that~~ 60% of temporary non-gazetted posts in each grade in the Construction Department are to be sanctioned permanently as Construction reserve. The applicant also submits that since he had been continuing in the skilled grade for several years, he is entitled for regularisation against construction reserve posts. The

respondents have, however, submitted that the contention of the applicant is misconceived and the purpose of Construction reserve posts is to create a permanent floating cadre to meet with the urgent and unforeseen requirements of the fresh projects undertaken by the Construction Organisation. It is also contended that the Construction reserve posts are distributed proportionately to all the divisions and the staff has to be promoted against these posts based on the seniority on the respective divisions. The applicant in the rejoinder reply has contested the submission of the respondents reiterating that only the project Casual/Temporary Staff are to be regularised against the Construction reserve posts. Neither the respondents nor the applicant has brought on record the relevant instructions available as to how the Construction reserve posts should be filled up. Keeping in view the material brought on record by the either side, we are not inclined to agree with the interpretation made by the applicant with regard to fill^{ing} up the Construction reserve posts only from the project Casual Labours. While going through the Railway Board letter dated 21-6-1988 at A-12, it is noted that the Construction reserve posts are to be created chargeable to general charges provided in the Estimates of the project. This would mean that the number of posts in the Construction reserve will be year to year depending upon the number of posts which can be created chargeable to the general charges provisioned in the Estimates of the very project in progress. This concept

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is quite clear from the letter dated 17-2-1986 at A-11 as per which the Construction reserve post^{re} were sanctioned. The main purpose as apparent from these documents for creating Construction reserve posts⁵ to cater for the staff appointment of the projects. It is nowhere mentioned that these posts are to be filled up only by the casual labours of the project. Referring to para 2007(3) of the IREM, it is noted that posts in the Construction Deptt. of skilled category are to be filled up by regular departmental candidates and in case, the regular departmental employees are not available to fill up the posts, casual labours may be promoted to semi-skilled, skilled and highly skilled category. The applicant in his averments has placed reliance on the judgement of the Hon'ble Supreme Court in the case of Indra Pal Yadav Vs. UOI. Referring to A-10, it would be seen that the Hon'ble Supreme Court has envisaged regularisation of the project casual labours on the respective seniority units division-wise in the various categories. This judgement nowhere mentions that the casual labour of the project will be first regularised against Construction reserve posts. In fact, the applicant himself has contradicted his conception about the Construction reserve posts and filling up of the same by making an averment in the rejoinder reply in para 9 stating that after promotion in the Construction Deptt. against Construction reserve post, a paper lien is to be maintained on the concerned division. The lien of such staff promoted in the Construction unit against Construction reserve posts^{if} is to be maintained by the Division, then promotion against such posts is required

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to be done by considering all the eligible staff as per seniority including Open Line. The lien means seniority and allocation of seniority in the concerned Division ~~xxxxxx~~ cannot be ^{allowed} ~~done~~ in isolation because promotions ^{are to be} ~~done~~ based on seniority. In the light of these observations, we are not able to agree with the pleadings of the applicant that he may be considered for regularisation against Construction reserve posts. We subscribe to the submission made by the respondents that the Construction reserve posts are distributed Division-wise and are to be filled up by the normal rules of promotion considering all the eligible staff.

11. It is admitted fact that the applicant has been promoted in the skilled category as a Vehicle Driver. This would mean that the regular departmental candidate was not available for promotion to fill up the vacancy and, therefore, the casual labour has been promoted against the vacancy. The applicant can continue on ad hoc basis promotion against the vacancy only till such time regular departmental candidate is available. The applicant has taken a ground that he has been discriminated by regularisation against Group 'D' when other casual labours junior to him who had been promoted as Vehicle Drivers are still continuing. The respondents have not denied this and have only stated that such Khalasis ^{are} ~~who~~ junior and working as Vehicle Drivers will be screened for regularisation in Group 'D' as per their seniority in their turn. In such a situation, the applicant has a case to continue in the skilled category on casual basis as Vehicle Driver in case his juniors are continuing, and he expresses his unwillingness for screening for Group 'D'. In such an event, the applicant can be allowed to continue as a vehicle

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Driver in the Construction unit and but he will have to forego his regularisation in Group 'D' as per his seniority alongwith other casual labour. This would also be subject to the risk that in case the shrinkage of cadre taking place due to reduction in the activities of the Construction works, then he could be reverted to the unskilled casual labour or even the services being terminated. In the present case, the applicant has already stated that he has given his unwillingness for screening for regularisation in Group 'D'. Therefore, in view of what is stated above, the applicant deserves to be continued as Vehicle Driver in the Construction unit as long as his juniors are continuing. In this connection, we refer to the judgement in the case of E Appukutty and Ors Vs. UOI detailed in para 7 above and cited by the applicant where similar views has been taken and we are in respectful agreement with the same.

12. The applicant has also claimed that he is entitled for regularisation on the Open Line in term of the provisions of para 2007(3) of IREM. Before we examine the merits of this plea, we will make a brief review of the various judgements cited by the applicant in support of his contention.

13. On going through the judgements in the case of M. Seeni Vs. UOI, Ram Nath Paswan Vs. UOI, Arvindakshan and Others Vs. UOI, ^{and} Nawab Ali and Others Vs. UOI, we find that on facts and the issues involved, these cases are distinguishable from the case in hand. Therefore, the ratio of what is held in these judgements does not apply to the case of the applicant.

14. In the case of Shiv Kumar Sharma and Others Vs.



General Manager, Central Railway, Bombay, the applicants were directly appointed in the skilled category in Group 'C' on daily wages as casual labour and were subsequently granted temporary status. The respondents sought to regularise them in Group 'D'. The Tribunal held that the rules provide for regularisation of the casual labour against the prescribed promotion quota vacancies and, therefore, the applicants should be considered directly for regularisation in the skilled category in their own turn in accordance with the rules and pending this they should be allowed to continue in the skilled category with temporary status.

15. Raghunath Dubey Vs. UOI covers the case of an applicant, who was engaged as casual labour and was subsequently promoted as Fitter Grade III and also promoted further as Grade II. When the respondents sought to regularise the applicant in Group 'D', he challenged the same and the Tribunal held that the applicant should be considered for regularisation against 12½% of quota for the promotees in the skilled grade.

16. On a review of the judgements detailed above in para 14 and 15, we note that the facts and the issues under challenge in the cases are similar to the present case in hand. The applicant while working as casual labour has been promoted to the skilled category in the Construction Organisation and has been working in this grade for several years. On going through the contents of para 2007(3) of IREM, it is noted that the absorption of the casual labour working in the Construction units, who get promoted to semi-skilled, skilled and highly skilled category due to non-availability of the regular departmental candidates and continue to work on casual

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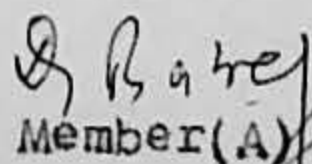
basis for a long period can be straightway done in the regular vacancies to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semiskilled categories. The respondents, however, have submitted that there is no element of direct recruitment in the cadre of the drivers and all the posts are required to be filled up only by departmental promotion. Keeping in view the provisions in para 2007(3) as mentioned, we are unable to agree to the contention of the respondents. Para 2007(3) clearly stipulates absorption against 25% vacancy ~~is~~ reserved for the departmental promotion. If there is no element of direct recruitment and all the vacancies are to be filled up by departmental promotion, then as per the provisions in para 2007(3), 25% posts can be filled up for regularisation of the casual labour ~~who are~~ working in the skilled grade for a long period. In the present case, the applicant was promoted in the skilled category in 1989 and has been continuing since then at the time of filing the original application and subsequently till date as per the interim order dated 27-3-1997. Keeping in view the provisions of para 2007(3) as well as the ratio of what is held in the judgements referred to above, we hold that the applicant is entitled for regularisation directly in Group 'D' as Vehicle D driver on the Open Line against 25% vacancies reserved for departmental promotion in his own turn as per the extant rules.

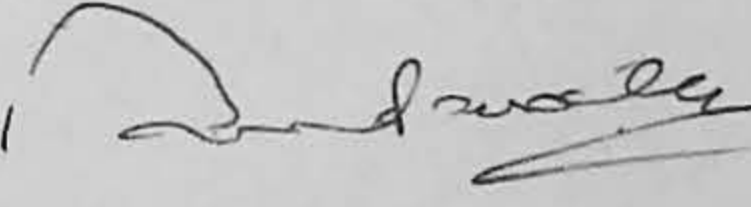
17. We have considered the judgements cited upon by the respondents and mentioned in para 8 above. In the case of L.P. Misra Vs. UOI, the issue under challenge

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was the claim for regularisation in the skilled category from the date of promotion when working as casual labour while in the present case the applicant prays for considering for regularisation in the skilled category as per the extant rules against the quota laid down for absorption of skilled casual labour. In Amarjit Pal & Others Vs. UOI, the applicants raised the issue of regularisation against the regular posts, on the plea that they had been working as casual labour for 12-15 years and they were not being kept at one station. Keeping these observations in view, we do not find these citations helpful to the stand of the respondents.

18. In the light of the discussion as above, we allow the application quashing the impugned orders dated 30-11-1996, 1-1-1997/16-1-1997 with the direction that the applicant shall be allowed to ~~be~~ continue as Vehicle Driver in the Construction Division with the stipulation as brought out in para 11 above. The applicant shall be also considered for regularisation as Vehicle Driver against 25% vacancies reserved for the departmental promotion as indicated above in para 16 above. No order as to costs.


Member (A)


Member (J)

Dube/