

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of Dec.2001.

QUORUM : HON. MR. S. DAYAL, A.M.

HON. MR. RAFIQUDDIN, J.M.

O.A. No.716 of 1998.

1. Ghanshyam Dass Prajapati a/a 41 years s/o Sri Chotey Lal r/o 208/7, Dariyapura, Kemasani Toriya, Jhansi.

..... Applicant.

Counsel for applicant.: Sri R.K. Nigam.

Versus

1. Union of India through General Manager, Central Railway, Mumbai CST.
2. Chief Workshop Manager, Central Railway Workshop, Jhansi.

..... Respondents.

Counsel for respondents : Sri G.P. Agrawal.

O R D E R (ORAL)

BY HON. MR. RAFIQUDDIN, J.M.

The applicant has filed this O.A. seeking direction to the respondents for ²not giving the pay scale in the grade of Rs.1200-2040 (RPS) against the substantive vacancy and to give him the same pay scale from the date of his posting i.e. 15.1.93 and to give him all the consequential benefits. The case of the applicant in this O.A. is that he was originally appointed as Khalasi w.e.f. 4.8.86. There was a substantive vacancy of Assistant Draftsman in the scale of Rs.1200-2040 under Chief Workshop Manager (CWM), Central Railway Workshop, Jhansi. The circular dated 9.5.99 was issued to all concerned for selection for the aforesaid post from amongst the Shop floor candidates. In response to the aforesaid notification, the applicants submitted the application for his selection. It is claimed that Board of selection was constituted and the applicant was also considered after conducting fair test and was also put to trial to work in the Drawing Office as Assistant Draftsman vide letter dated 8.6.91. The applicant also joined as

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Assistant Draftsman on 23.12.91. The applicant claims that the formal office order was issued on 15.1.93 for his ad-hoc posting as Assistant Draftsman against the substantive vacancy. A copy of the appointment letter has been annexed as Annexure A-VII to this O.A. However, the applicant was shown to have been working on the post in question in the pay scale of Rs.950-1500 instead of Rs.1200-2040. According to the applicant, there is no grade of Rs.950-1500 available in the Drawing Office of Respondent No.2. Although initially the arrangement was made for three months only but he has been still working without any break on the post in question on the date of filing of the O.A.

2. The applicant claims that he fulfills all the conditions and qualifications as required for the post of Assistant Draftsman. The respondents also vide circular dated 9.5.91 promised the pay scale of Rs.1200-2040. But no office order has been issued and the applicant has been still working as Assistant Draftsman on the scale of Rs. 950-1500. The applicant has also been granted regular increments in this scale but he has not been granted the scale of Rs.1200-2040. It has also been stated that several notices have been put up by the Controlling Officer of the applicant recommending the higher authorities to grant him the pay scale of Rs.1200-2040 and to regularise his service as Assistant Draftsman. The CMM (Respondent No.2) vide his letter dated 30.10.97 (Annexure A-XIV) has also ~~been~~^R recommended to the Zonal Hqrs. that the applicant ~~has~~^{R has} been working and occupying on the post from 15.1.93 and has also recommended for his regularisation in the pay scale of Rs.1200-2040. However, the respondent No.2 has threatened the applicant to repatriate him to Shop Floor cadre and he has filed the O.A. for the relief mentioned above.

3. The respondents have denied the claim of applicant. The case of the respondents is that the applicant had not been appointed on substantive post and he was merely engaged

Ad hoc
on ~~ad hoc~~ basis by down grading the post of Draftsman in grade of Rs.1200-2040 to Rs.950-1500. The applicant had also admitted the terms of his appointment. Therefore, his appointment cannot be ~~allowed~~ ^{regularised} under the rules of appointment. It is further pointed out that as per Railway Board letter dated 25.6.85, the existing regular incumbents ^{of} the post of Tracers were to be promoted to the post of Assistant Draftsman who possess the diploma in Draftsmanship, and who do not possess the diploma but completed five years of service as on 1.1.84, were to be upgraded as Junior Draftsman. When the entire cadre of Tracers have been fully accommodated, the future vacancies of Junior Draftsman were to be filled cent percent by direct recruitment of diploma holders in Draftsmanship. The existing cadre of Tracers was to be frozen. It is contended that CMM, Jhansi has no jurisdiction to appoint any candidate as Draftsman in the grade of Rs.1200-2040 in view of this instruction.

4. We have heard Sri R.K. Nigam, for applicant and Sri G.P. Agrawal for respondents.

5. It has been contended by the counsel for the applicant that since the applicant has been working continuously for such a long time on the post as casual Assistant Draftsman and his appointment was made after due selection, the applicant is entitled for the pay scale of the Assistant Draftsman i.e. Rs.1200-2040 and is also entitled for the regularisation on the post in question in the same pay scale. It is further pointed out that there is no scale of Rs.950-1500 in the cadre of Draftsman. In support of his contention reliance has been placed by the Counsel for applicant of ~~the~~ ^{the order passed by} ~~the true bench of~~ this Tribunal reported as Hem Raj & Others Vs. Union of India & Others A.T. Full Bench judgments 1996 Page 232. The relevant part of the decision is as under :-

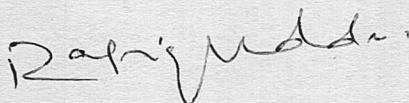
"The ruling of the Hon'ble Supreme Court in Piara Singh's case as also in Surendra Kumar Gyani's case makes it abundantly clear that where appointments are made to Class-III clerical posts or Class-IV posts on ad-hoc basis, and if appointees continued for a long period, in appropriate cases, it is

open for the Government to regularise their services by making appropriate provisions consistent with the reservation policy of the State and that if the Government themselves do not do so, it is for the Courts to give proper directions in that regard in equity."

6. Counsel for the respondents on the other hand has referred to the decision of the Union of India & others Vs. Kishan Gopal (1996) 32 ATC 793.

7. We find that the appointment of the applicant was no doubt made on ad-hoc basis after down grading the post of Assistant Draftsman in the pay scale of Rs.950-1500, the applicant has, however, been working continuously on the post from 1991 without any break. We find that the CMM vide his letter dated 13.10.97 Annexure A-XIV addressed to Hqms. Office of the Central Railway has ^{R also} ~~normally~~ recommended the case of the applicant for his regularisation considering the facts and circumstances of the facts.

8. We dispose of this O.A. by directing respondent No.1 to consider the case of the applicant for regularisation in the light of the letter of the CMM referred to above. The necessary exercises may be completed within four months from the communication of this order.



J.M.



A.M.

Asthana/