

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 3rd DAY OF July 2009)

PRESENT

HON'BLE Mr. JUSTICE A.K. Yog MEMBER (J)

HON'BLE Mrs. Manjulika Gautam MEMBER (A)

ORIGINAL APPLICATION No. 866 OF 2001.

(Under Section 19, Administrative Tribunal Act, 1985)

DINESH CHANDRA TIWARI a/a 43 years S/o Sri Janardan Prasad Tiwari
Posted as Law Assistant, In the Office of Chief Commercial Manager, NE
Railway Gorakhpur.

Rep. by Advocate ^{an} Vikas Bhudhwal ^{an} Applicant.
^{an} Sri Anoop Trivedi
^{an} S K Mishra ^{an}
Versus

1. Union of India, through its General Manager, NE Railway Gorakhpur.
2. The Chairman, Railway Board, New Delhi.
3. The General Manager (P) / C.P.O, NE Railway Gorakhpur.
4. The Chief Commercial Manager, NE Railway Gorakhpur.

Rep. by Advocate/s: ^{an} K. P. Singh ^{an} Respondents.
^{an} Sri S. C. Mishra / ^{an} S. N. Pandey.

ORDER

(Delivered By Justice A.K. Yog, Member-Judicial)

Heard learned counsel for the parties. Perused the pleadings and the documents on record. By means of the OA Applicant is challenging order dated 9 July 2001 Annexure A-1/Compilation-1.

2. Reliefs claimed in the OA are reproduced below:-

8. RELIEF SOUGHT

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In view of the facts mentioned in para 4 the applicant prays for the following relief:

- (1) to quash the order dated 9.7.2001 (Annexure-A1 to Comp 'I')
- (2) to issue a mandamus commanding the respondent not to give effect to the order dated 9.7.2001 (Annexue-A1)
- (3) to issue a mandamus commanding the respondents to consider the claim of the applicant for regularisation on the post of Law Assistant/Chief Law Asstt. From 9.4.1992, as the applicant is discharging his duties continuously without any break till date.
- (4) to issue a mandamus commanding the respondents not to interfere with the functioning of the applicant on the post of Law Assistant
- (5) to issue any other order or direction as this Hon. Tribunal may deem fit and proper
- (6) to award COSTS throughout to the applicant.

3. On 20 July 2001 a Bench of this Tribunal passed following order:-

Hon'ble Mr. S. Dayal AM
Hon'ble Mr. Rafiq Uddin, JM

Sri S.C. Budhwar, assisted by Sri Vikash Budhwar for the applicant. Sri K.P. Singh for the Respondents.

Sri K.P. Singh, learned counsel for the respondents, moves Misc. Application for deletion of name of Respondent No. 2 from the OA. Learned counsel for the applicant does not oppose the application. Deletion of Respondent Nos. 3 & 4 shall be re-numbered as Respondent Nos. 2 and 3.

Admit. Since Sri K. P. Singh has put in appearance on behalf of the Respondents. He may file Counter Reply within four weeks and the learned counsel for the applicant shall have two weeks thereafter to file Rejoinder.

There is a prayer for interim relief, seeking stay of the operation of the order dated 9-7-2001, reverting the applicant from the post of ad hoc Law Assistant in the pay-scale of Rs. 6500-10500/- to the post of Station Master in the pay-scale of Rs. 5000-8000/-.

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The applicant has stated in the OA that the order has not yet been served on the applicant. In the situation, we order that the status quo be maintained and learned counsel for Respondents may file objection, if any, to the prayer for interim relief within two weeks. The case shall be listed for consideration after two weeks on 6th August, 2001.

4. The grievance of the Applicant was that he was not furnished/communicated and or supplied copy of impugned order dated 9 July 2001 reverting him from the post of Legal Assistant (Ad hoc) to the post of Station Master.

5. Learned counsel for the Respondents prays for dismissing OA as infructuous since there is no surviving cause of action in view of the fact that he is now in possession of impugned order (copy of which is annexed with OA) and particularly in view of order passed by this Tribunal (quoted above). Learned counsel for the Applicant submits that the Tribunal need not enter into merit of other issues raised in the OA in view of decision in the case of Kamal kant Gautam 1996 Allahabad Law Journal 1928. He submits that this OA can be disposed of by directing the Respondents not to disturb the Applicant from working on his present post for time being and meanwhile Department he directed to consider his case for regularization as per Judgment in the case of Kamal Kant Gautam (Supra). It is submitted that continuance of the Applicant (on his present post) shall be subject to the order passed by Concerned Authority on his claim of regularisation on accordance with law.

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7. For convenience, relevant extract of the order in the case of Kamal kant Gautam (Supra), is reproduced:-

4. We have heard the learned counsel for the parties, Sri Murlidhar, learned counsel for the petitioners, has submitted that no reason was assigned for dispensing the services of the petitioner after due selection.

5. The services of the petitioners were dispensed within May 1985 whereupon this writ petition was filed and the stay order was granted on 8-8-1985. The petitioners are continuing in service under the Courts' orders for about eleven years. The petitioners have no control over the early disposal of the case on account of heavy dockets in the Court and nobody can be punished for a state of thing over which he has no control. The petitioners with the passage of time, must have become over age and they may not be able to get service in other place. They have heavy responsibility of children and members of family. It would be unreasonable and arbitrary if they are kicked off from the job. It would also be unfair to deprive them of the right of livelihood provided under Article 21 of the constitution of India. In fact, nothing has been brought on record to show that they were part of the so called irregularities in the selection. No cogent evidence has been brought on record to convince us that there were irregularities in the selection.

6. Considering the facts and circumstances of the case, we are of the opinion that even if the petitioners were appointed on daily wages and since they put in more than eleven years service, it would be not fair to terminate them and their services may be regularized in accordance with law and the ratio of the ruling of the Supreme Court in *Shyamnand V. State of Bihar* reported in 1995 (Supplementary) (3) SCC 365 where their Lordship have ruled out that an ad hoc appointee, having put in a long period of service, in that case the candidates selected by the Public Service Commission being available at this stage in view of the length of service and availability of the number of unfilled posts, the ad hoc appointee could be allowed in the discretion of the department to continue in one of such posts, of course, subject to selection etc. Even age relaxation, if necessary be also directed to be given for the purpose.

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7. The ratio laid down by the Supreme Court in a recent decision in the case of *Khagesh Kumar V. Inspector General of Registration* reported in (1995) 7 JT SC 345 : (1995 AIR SCW 4269), is quoted with the advantage as under : (Para 24 of AIR).

- "(1) The petitioners or other similarly placed persons who were employed as Registration clerks on daily wage basis prior to October 1, 1986 shall be considered for regularization under the provisions of rule 4 (1) (ii) and they have completed three years continuous service. The said period of three years service shall be computed by taking into account the actual period during which the employee had worked as Registration clerk on daily wage basis. The period during which such an employee has performed the duties of Registration Clerk under paragraph 101 of the Manual shall be counted as part of service for the purpose of such regularisation.
- (2) In the event of appointment on regular basis on the post of Registration Clerks, the petitioners or other similarly placed persons who had worked as Registration Clerks on daily wage basis may be given one opportunity of being considered for such appointment and they be given relaxation in the matter of age requirement prescribed for such appointment under the Rules.
- (3) The subordinate Service Selection Commission while making selection for regular appointment to the posts of Registration clerks shall give weightage for their experience to the Registration Clerks who have worked on daily wage basis and shall frame suitable guidelines for that purpose."
8. In the result, the petition succeeds and is allowed. The respondents are directed to regularise the services of the petitioners in accordance with rules as well as in view of the ratio laid down by the Supreme Court, as quoted above, in the case of *Khagesh Kumar V. Inspector General of Registration* (1995 AIR SCW 4269) (*supra*).


8. Consequently we dispose of this OA accordingly with direction to the Respondent to consider claim of this Applicant for


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regularization in accordance with law within 3 months of receipt of certified copy of this order.

9. OA stand disposed of subject to above observations/directions.

No costs.


MEMBER (A)


MEMBER (J)

/S.Verma/-