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Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 292 of 2005

day this the 16th day of November 2006

Hon'ble Mr. K. Elango, Member (J)

Shankar Prasad Sen, S/o Shashank Vimal Sen, Resident of B-7/189,
Kedar Ghat, Varanasi.

Applicant

By Advocate Shri A.K. Srivastava

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Varanasi Division, Varanasi.
3. Senior Divisional Personnel Officer, North Eastern Railway, Varanasi Division, Varanasi.

Respondents

By Advocate Shri P.N. Rai

ORDER

The applicant through this O.A., has sought for following main reliefs: -

- (i) To direct the respondents to regularize the services of the applicant as Class IV Group 'D' employee in the Railways as such he is in the seniority list after getting temporary status for last longer period and number of years.
 - (ii) and to direct in the nature of certiorari hereby quashing the impugned order dated 03.02.2005, passed by the respondent no.3.
2. In his application, the applicant has brought many facts to the notice of this Tribunal, but in a nutshell, his case is after getting temporary status for number of years as such he is in the Seniority List, he is denied the regularization of his service as Class IV Group 'D' employee.

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3. The applicant claims that he was eligible for consideration and regularization of his services on completion of 1735 days from his initial appointment on 08.09.1975. The applicant's name is figured as no.7 in the seniority list and number 6 after getting temporary status, annexed as annexure A-2 and A-3 and there was no reason as to why he could not have been considered. The applicant has also claimed that he should have been regularized. In this regard he filed representation and it was decided in compliance of order of this Tribunal in O.A. No.20 of 2005 dated 13.01.2005. The order of the respondent no.3 is annexed as A-1, with this O.A. whereby the applicant is denied regularization of his service. Hence, this O.A.

4. In their reply, the respondents have stated that the competent authority has decided the representation of the applicant after considering of the relevant documents and rules. The applicant was called for appearing in screening test in the year 1991 and further stated that at present there is no record available with the respondents. After acquiring temporary status a casual labour becomes entitled for complementary passes automatically as such the petition also was granted the same and on the basis of grant of temporary status a casual labour cannot be deemed to be eligible for screening test until he fulfils all the conditions and qualifications for the same under the Rule. Due to non-fulfillment of the eligibility criteria as per rule and due to over age, the name of the applicant has been deleted from the Casual Labour Register.

(5) Heard, the arguments advanced by the learned counsel of both the parties and perused the documents placed on record.

(6) It is an admitted fact that the name of the applicant was in the Live Casual Labour Register. From the records, it is seen that the name of the applicant is figured as no.7 and as no.6 after getting the temporary status in the seniority list as A-2 and A-3 in the annexure.

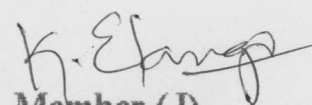
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(7) In view of the facts that the applicant's case was wrongfully decided by the Respondent no.3, the applicant is entitled for regularization of his service, as he is in the seniority list after getting temporary status. His over age may be relaxed sympathetically as per paragraph no.17.9 of Board's letter no.E(NG)II/79/CL/5 dated 16.05.1979, E (NG) II/83/CL/NR/39 dated 29.09.1980, 10.10.1980 and 19.05.1983, which reads as under: -

"17.9 At the time of screening of casual labour relaxation in age should be automatic if it is established that the individual was within the prescribed age limit and had been more or less regularly working. In old cases, where the age limit was not observed, relaxation of age should be considered sympathetically. The CPOs, DRMs and the Chief Engineer (Construction) and competent to grant the relaxation in age."

(8) In the result, the O.A. is allowed. Order dated 03.02.2005 is hereby quashed and set aside. It is declared that the applicant is entitled to be reinstated and regularized. On regularization, the applicant shall be fixed his pay on notional basis and increment in pay be added to the applicant and his pay on the date of his joining and regularization shall be fixed accordingly. No arrears are payable to the applicant. Other benefit of seniority and further promotion, if any, would however accrue.

(9) This exercise shall be completed within a period of 3 months from the date of receipt of this order. No order as to costs.


Member (J)

/M.M./