

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH  
ALLAHABAD**

This is the 27<sup>th</sup> day of August 2021

**ORIGINAL APPLICATION NO. 330/01064 of 2017**

**HON'BLE MR. TARUN SHRIDHAR, MEMBER (A)**

Anil Kumar Rai aged about 48 years, S/o Sri Rama Shankar Rai, presently posted as Mechanic-cum-Driver, under Dy. CE (Const.), N.C Railway, Kanpur, R/o 976-B,, Jamunia Bagh Railway Colony, Kanpur 208004.

.....Applicant.

Advocates for the Applicant : Mr. S.K. Om

**VERSUS**

1. Union of India through General Manager, N.C. Railway, Subedarganj, Allahabad.
2. Chief Administrative Officer (CAO)/Const., N.C Railway, Subedarganj, Allahabad.
3. Deputy Chief Personnel Officer (Const.), N.C Railway, Allahabad.
4. Deputy Chief Engineer (Const), N.C. Railway, Kanpur.

.....Respondents

Advocate for the Respondents : Shri L.M Singh

**ORDER**

The applicant is aggrieved by an order passed by Deputy Chief Engineer (Construction) whereby he has been given the benefit of regularization prospectively contrary to his claim for regularization w.e.f. 30.8.1991. The applicant by virtue of this OA seeks the following reliefs:-

- “(i) *To issue a writ order or direction in the nature of certiorari quashing the order dated 8.5.2012 passed by respondent No. 4 provisionally regularizing the applicant w.e.f. 8.5.2012.*

- (ii) *To issue a writ order or direction in the nature of mandamus commanding the respondents to regularize the services of the applicant as Driver cum Mechanic w.e.f. 5.9.1991 and grant him all the consequential benefits of pay and promotion qua other similarly placed persons, viz Sri Brijesh Pal Singh etc.*
- (iii) *To issue a further writ order or direction in the nature of mandamus commanding the respondents to grant the pay scale of Rs.1320-2040 to the applicant w.e.f. 2.3.1989 and further grant the benefit of promotion, MACP etc. qua other similarly placed employees.*
- (iv) *To grant any other relief which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*
- (v) *Cost of the application may also be awarded".*

2. Brief facts of the case are that the applicant was appointed as Mechanic cum Driver in the category known as Artisan (Skilled) on 2.3.1989. The applicant claims that he was entitled for regularization after acquiring the status of temporary employee in the year 1991. However, a charge-sheet got to be issued against him in disciplinary proceedings, which alleged that applicant had obtained appointment by way of fraud and this chargesheet stood in the way of regularization of the applicant. It took as much as 17 years for the enquiry to culminate and it resulted in his exoneration. However, despite the clean-chit in the enquiry, the disciplinary authority chose to disagree with the findings forcing the applicant to resort to legal recourse by way of filing an OA No. 1249 of 2009 in this Tribunal. In the final order in the said OA, the charge-sheet was quashed and a categorical direction was given that the applicant is entitled to consequential benefits and appropriate action for his regularization at par with his juniors should be taken along with the consequential promotion if the same were denied to him due to pendency of the disciplinary proceedings. Subsequently, the applicant had to file an application alleging contempt of

court on account of non-compliance of this order which resulted in respondents passing the present impugned order regularizing the services of the applicant prospectively.

3. Learned counsel for the applicant argues that the action of the respondents regularizing the applicant on 8.5.2012 is out-rightly arbitrary, as absolutely no justification has been given as to why the applicant is being regularized from this particular date.

4. Learned counsel for the respondents, on the other hand, clarifies that the date of regularization coincides with the date of passing the order and the applicant cannot claim retrospective regularization, and also that there was no one junior to him who had got promoted earlier. He further clarifies that it also on account of the fact that the applicant was the only employee in his category at the relevant time.

5. Learned counsel for the respondents would also point out that the applicant had filed an execution application for execution of the order of this Tribunal in OA No. 1249/2009, and the same were dismissed.

6. Learned counsel for the applicant counters these arguments mentioning that the order passed by the Tribunal in OA No. 1249 of 2009 on 4.2.2012 leaves no room for ambiguity and the respondents were obliged to provide consequential benefits to the applicant by way of his regularization when it was due in the year 1991.

7. Learned counsel for the applicant also relies upon the documentary evidence on record to indicate that the applicant has a regular lien which

connotes a right of government servant to hold the post substantially. Learned counsel also points out to the cases related to similarly placed employees who were regularized and given regular promotion despite having being initially appointed on casual basis. Learned counsel for the applicant further argues that the sequence of events in the instant matter is indicative of harassment and vindictive attitude of the respondents.

8. Learned counsel for the respondents, while acknowledging that there was undue delay in finalizing the disciplinary proceedings against the applicant, argues that this cannot confer the right upon the applicant for his regularization. The respondents, he argues have implemented the order of the Tribunal in OA No. 1249 of 2009 in its letter and spirit by regularizing the applicant and he cannot claim retrospective regularization as he does not meet the requirements and conditions set forth in the order of the Tribunal.

9. Learned counsel for the respondents also objects to fresh record being relied upon as evidence in this case, pointing out that cognizance of such record, unless duly served upon the respondents, cannot be taken at this stage.

10. I have heard the arguments of the learned counsel for both the parties at length and also perused the case file. The facts in the case are hardly disputed and since the applicant was appointed in the year 1989 and has been in the continuous employment/engagement since then, one cannot overlook his claim for being considered for regularization. It further emerges that the disciplinary proceedings against the applicant lingered on for 17 years and that no amount of administrative exigency or pressure of work or any other reason for that matter can be held as a plausible excuse for such

an inordinate delay. Further no one can deny that an employee, who has been subjected to disciplinary proceedings for a continuous period of 17 years, would not have undergone extreme mental duress. Although I would not like to out-rightly agree with the learned counsel for the applicant that the respondents were deliberately vindictive towards the applicant, the circumstances are definitely a pointer towards some prejudice. Despite having been exonerated by the enquiry officer after a 17 year long enquiry, the applicant was not discharged from the disciplinary proceedings and was pushed into litigation.

11. Against the background of such a chequered history of the case, it was incumbent upon the respondents to determine claim of the applicant for regularization with reference to date of his initial appointment in service which is 2.3.1989. I would tend to agree with the learned counsel for the applicant that regularizing him with effect from the date when the order is being issued i.e. 8.5.2012 is arbitrary as there is no material on record justifying this date. Moreover, it also indicates that there has been no proper examination of the case after due application of mind. At least such an examination is not apparent from the record.

12. Accordingly, the present OA is allowed and the impugned order is set aside. The respondents are directed to determine the date with effect from which the applicant should be regularized strictly in accordance with the rules, instructions and the practice of the department with reference to the date of his initial appointment which is 2.3.1989. Subsequent to regularization, a separate order will be passed by the respondents determining the dates on which the applicant was due for promotion to various levels and pass the orders giving him the benefit of such promotion

accordingly. The respondents shall also bear in mind that the order dated 4.2.2011 passed by this Tribunal in OA No. 1249 of 2009 clearly mentions all consequential benefits. It is clarified that besides providing him regularization and subsequent promotions from the date which is to be determined in accordance, all other consequential benefits, including financial benefits that accrued to the applicant, shall be awarded and released in his favour forthwith. These directions shall be complied with, in toto, within a period of 12 weeks from the date of a certified copy of this order. No order as to costs.

**(TARUN SHRIDHAR)**  
**Member (A)**

Manish/-