

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Allahabad this the 14th day of November 2000.

Original Application no. 1455 of 1992.

Hon'ble Mr. Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Mr. S. Dayal, Administrative Member

Sudarshan Lal Bishnoi, Jeep Driver,
S/o Narain Das,
Working with Chief Tele. Commn Inspector (WL),
N. Rly.,

MORADABAD.

... Applicant

C/A Shri M.K. Updhayaya

Versus

1. The Union of India, through the Chairman,
Railway Board, New Delhi.
2. The General Manager,
Northern Railway,
Baroda House, New Delhi.
3. The Divisional Railway Manager,
N. Rly., Moradabad.

... Respondents

C/Re Shri A. Sthalekar

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O R D E R (Oral)

Hon'ble Mr. S. Dayal, Member-A.

This OA has been filed for setting aside direction contained in letter dated 17.07.92 issued by the office of the respondent no. 3 and issue direction to the respondents to consider the applicant in special screening test in Motor Driver/Mechanic Cadre which is skilled Trade and be regularised on the post on which he is working for the last 15 years. The applicant has also prayed for further direction to the respondents to give him seniority over his juniors and grant him benefit from 1986 when his juniors were so considered.

2. The case of the applicant is that he was engaged as motor driver on 18.03.77 on casual basis and is continuing on that post till today without any break. He is thus working on a Group 'C' post in the pay scale of Rs. 950-1500. He has already acquired temporary status. The Ministry of Railways had issued ~~had issued~~ an instruction on 20.06.74 and followed it up by instruction by letter dated 27.02.78, in which it was said that cadre review should be made in the establishment of the Inspectors in the Civil Engineering, Signal and Bridges Maintenance so that regular posts are created where casual labour sanction have existed for three years or more. In take of fresh casual labour in open line by the Inspectors should be banned

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except in emergencies . It further directed that seniority was to be maintained Inspector wise. The applicant claimed that he was applicant no. 14 in OA 725/88, decided on 14.01.92 in which directions were given to the respondents to the effect that since 6 of the applicants have been regularised, there appears to be no reasons why the case of other applicants for regularisation should not be considered. The precise direction were as follows :-

"Accordingly the respondents are directed to consider the case of the remaining applicants for regularisation in accordance with the rules and see that they are regularised when their turn comes without any delay."

3. The applicant was called for screening against group 'D' vacancies by letter dated 17.07.92 by Chief Telecom Inspector, N. Rly., Moradabad. The applicant did not present himself for this screening, but has been continued as driver by the respondents as stated by the learned counsel for the applicant at bar during his arguments.

4. We have heard Shri M.K. Upadhyaya for the applicant and Shri A. Stalekar for the respondents and perused the record.

5. The respondents have contested the claim of the applicant on the ground that his turn for regularisation on the post of driver ^A had not come due to non availability of vacancies on that post. He has also stated that six persons who were regularised against 25% of the 50% promotees



quota on the post of driver^{for} which vacancies occurred in Engineering department. Thus these regularised drivers had their seniority position different from that of the applicant who was in a different unit. It is also contended that even^{if} the applicant were to be regularised as Khalasi, he should be eligible for regularisation ~~for~~ on the post of driver when ever vacancies occurred in Signal and Telecommunication department against 25% of 50% quota of promotees. Under the rules only regularisation^{of} class IV employees were eligible for consideration for appointment to the post of driver against 25% of 50% promotees quota. The respondents contended that, since the applicant has the status of casual labour, he can be considered for regularisation when his turn comes on the basis of his seniority position.

6. We find that the applicant has been working on the post of driver continuously since 18.3.77 in Signal and Telecommunication department of the N.Rly., Moradabad. The pre-requisite for working on such post ^{as is} existence of motor vehicle on which the applicant^{could} perform his services as driver. The post of driver is created when a new vehicle is purchased/replaced. If the applicant has been working for the last 13 years or so on the post of driver, it can be presumed that the vacancies existed for this period. Hence, the contention of learned counsel for the respondents about there being no vacancy is not valid and cannot be accepted.

[Signature]

7. As far as the issue ^{of} ~~for~~ treating the applicant as casual labour is concerned, we find that the respondents had conceded in OA 725/88 that 6 of the applicants had been r-regularised. The order of regularisation annexed as annexure A-4 shows that by letter dated 10.10.90, the services of 6 drivers and one mechanic had been regularised and entry has been made in their service record. These drivers were regularised on the basis of trade test done on 14.1.86 & 16.1.86 for the post of driver in which these 7 persons were found successful. It appears from annexure A-6 that these 6 drivers and one mechanic were so regularised as drivers after permanent post had been sanctioned by the General Manager. The applicant who claims to have been working from the date earlier from the date of continuous engagement of 5 of the 6 drivers who were regularised cannot be subjected to different procedure of going through for screening as Group 'D' first and, thereafter, for promotion to the post of driver. There is no averment made by the respondents that the 6 drivers and one mechanic who were named as official regularised in CA filed by the respondents in OA 725/88 had been first regularised as khalasi in Group 'D' post and later on regularised as driver. From the annexures annexed by the learned counsel for the applicant in his OA, it appears that they were directly regularised on the post of motor driver. If ^{he} such been the case, the applicant also required to be considered for regularisation against a permanent post which should be ^a created by the respondent no. 2 retrospectively from the date when the 6 applicants in OA 725/88 were regularised. ⁱⁿ In case the 6 applicants in OA 725/88 were first regularised as Khalasi

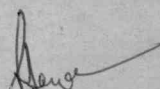
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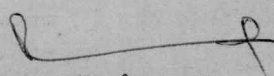
and, thereafter, as drivers. The applicant should also be considered for the same from the date from those 6 applicants were conferred the regularisation on the post of driver.

8. The responsibility of General Manager who appears to have created the posts as a special measure sometimes between the filing of OA 725 of 1988 and filing of counter reply in that OA on 14.1.92 in Engineering Department was also towards the applicant's working in signal and Telecommunication Department and to ensure that the drivers working on casual basis were regularise on the basis of their seniority in the division.

9. In the facts and circumstances of the case., we direct the respondents to regularise the applicant from the date of regularisation of six drivers on the same basis and adopting the same procedure as was adopted for regularisation of the 6 applicants in OA 725/88 as motor drivers within ~~in~~ a period of 3 months from the date of receipt of copy of this order.

10. There shall be no order as to costs.


Member-A


Vice-Chairman

/pc/

OA. 1455/92

29-03-2001

OA 1455/92

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

OP

Misc. 1398/2001
is submitted for order

Recd
28/3/2001

Sri M.K. Upadhyay for the applicant.
Sri Amit Sthalekar for the respondents,
whose name has been printed in the cause-
list, is not present. Km. Renu Singh is present
for Sri A.K. Gaur. The learned counsel for
the respondents has filed Misc. Application
No. 1398/2001.

In Misc. Application No. 1398/2001,
the learned counsel for the Respondents
in O.A. No. 1455/92 decided on 14.11.2000
has prayed for grant of two months' time
to obtain interim order/suitable order from
the Hon'ble High Court.

The purpose of this application is
not understood. No leave of this Tribunal
is required for filing a writ against an
order of this Tribunal before the Bench
competent and jurisdiction of Hon'ble
High Court. Therefore, this application
is dismissed as lacking ⁱⁿ any merits.

J.M.

A.M.

Nath/2cs.