

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Dated ; This the 6th day of ~~November~~ December, 1996

CORAM : Hon'ble Mr. T. L. Verma JM
Hon'ble Mr. D. S. Baweja AM

ORIGINAL APPLICATION NO. 721 OF 1992

Brijesh Kumar son of Bhageloo Ram
C/o Rakesh Varma, Advocate,
91/3-Industrial Labour Colony,
Naini, District Allahabad.

2. Harikesh Bahadur Singh S/O Jai Ram Singh,
C/O Rakesh Varma, Advocate,
91/3-Industrial Labour Colony,
Naini, District Allahabad.

3. Shyam Shanker Misra s/o Awadh Narain Mishra

4. Ram Awadh Pal s/o Ram Prasad Pal.

5. Kedar Nath s/o Sri Mohan.

6. Shyam Lal son of Bramhadin.

7. Surendra Pratap s/o Gaya Deen

8. Rajiv Kumar s/o Prem Behari Lal Saxena,

9. Om Prakash Srivastava s/o Sri Ram Srivastava

10. Ram Srimon s/o Deota Deen

11. Shamim Ahmad s/o Mumtaz Ali

All Residents of C/O Rakesh Verma, Advocate,

91-3-Industrial Labour Colony,

Naini, District Allahabad. Petitioners

C/A Sri Rakesh Verma.

VERSUS

1. Union of India through General Manager,
Northern Railway, Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway-Lucknow Divn.,
Lucknow.
3. Sri S.K.Verma working as Fireman Grade 'A'
Loco-shed, Northern Railway,
Varanasi through Loco Foreman, N.R. Varanasi.
4. Sri Rajesh Kumar working as Diesel Asstt.,
Loco shed, Northern Railway, Rae Bareilly
through Shed Incharge, N.Rly, Rae Bareilly

- - - - - Respondents

C/R Sri A. K. Gaur,

ORDER

By Hon'ble Mr. T.L.Verma JM

filed

In this application, under section 19 of the Administrative Tribunals Act 1985, ^{the} applicants seek a direction to the respondents to determine their seniority ~~of the applicants~~ on the basis of their date of appointment as substitutes and to place ^{them} in the seniority ~~list~~ list of Cleaners above the names of respondent nos. 3 & 4 and to post them as Fireman 'B' with effect from 19.12.89 and as Fireman 'A' with effect from 26.11.1991, the date of which respondent nos. 3 and 4 junior to the petitioners have been promoted, with all consequential benefits.

Lh

2. The facts of the case, as made out in the O. A., in brief, ^{are} ~~is~~ that the applicants were initially appointed as substitute cleaners in the Loco shed of Northern Railway, ^{at} ~~Pratapgarh~~, ^{on} different dates between 7.7.1978 and 14.7.1978. They worked as such continuously to the satisfaction of all concerned. During course of their service period, they were given ^{annual} ~~only~~ increments and were also given benefits of free pass, PTO, medical facilities, Provident fund and leave facilities on completion of their ^{the} ~~completing~~ 120 days continuous service. Their services, however, were ^{abruptly} ~~terminated~~ by order dated 22.8.1980. The applicants challenged the order terminating their services by filing Writ petition no. 2370/80 in the High court of Judicature at Lucknow. The Writ petition, however, was transferred to this ~~bench~~ ^{of} Administrative Tribunal for disposal and was registered as TA No.687/87. The said T.A. was allowed by order dated 19.1.1988 and the order terminating the services of the applicants was quashed. The respondents were directed to take action for ^{the} regularisation of their services, if otherwise ^{permissible} ~~possible~~.

3. The respondents in compliance with the direction of the Tribunal in the aforesaid case screened the petitioners on 7.8.1990 and placed them on the provisional panel by order dated 30.8.1991. Services of the applicants were regularised with effect from the date of order. Further case of the applicants is that the respondent nos. 3 and 4 were appointed as substitutes with effect from 28.8.1978 and 8.12.1979 respectively. They were thus juniors to the applicants.

The respondents have, however, place them above the applicants in the seniority list. Not only that, they have been given promotion to the post of Fireman 'C' by order dated 19.12.1989 and thereafter as Fireman 'A' with effect from 26.11.1991. Joint representation filed by the applicants for restoring their seniority and promoting them as Fireman grade 'C' and Fireman 'A' was rejected by order dated 5.3.1992. Hence this application for the reliefs mentioned above.

4. The respondents have contested the claim of the applicants. In the counter affidavit filed on their behalf, it has been stated that the seniority of substitutes on their being regularised, is determined on the basis of the date of regularisation in service. It has further been stated that the respondent no.3 was placed in the Panel at serial no. 197 on 30.9.1979 and the respondent no. 4 has been placed at serial no. 6 of the Panel on 23.10.1979. They having been regularised in service much before the applicants, as per extant rules, are senior and as such prayer of the applicants to place them above respondent nos. 3 and 4 in the seniority list and thereafter promote them as Fireman Grade 'C' and Fireman grade 'A' respectively is not tenable.

5. We have heard the learned counsel for both the parties and perused the pleadings on record.

6. The respondents have not disputed the fact that the applicants 1 to 10 joined their services as substitutes Cleaners with effect from 1.7.1978 and applicant no. 11 joined in the same capacity on 14.7.78. They have also not disputed that respondents no. 3 and 4 joined as substitutes on 28.8.1978 and 8.12.1979 respectively. The applicants having joined as substitutes Cleaners prior to the

prior to respondents no. 3 and 4 is, thus, established.

7. The services of the applicants were terminated admittedly on the ground that fresh appointment after 1.8.1978 had been banned. The bench of this Tribunal, which quashed the order terminating the services of the applicants in TA No.687/87, has held that the applicants had been appointed in July 1978 before the ban on fresh appointment was imposed with effect from 1.8.1978. The Tribunal, therefore, has ruled that the termination of the services of the applicants on that ground was not tenable and accordingly quashed the same. While admitting the Writ, High court had passed an interim order to maintain status-quo and the applicants have continued to work on their respective post held by them on the strength of the Stay order. The order terminating the services of the applicants was quashed by a bench of this Tribunal in the aforesaid T.A. by order dated 19.1.1990. The consequence of quashing of the order terminating the service of the applicants would be that they will be deemed to have continued in service, which infact they did pursuant to the interim stay granted by the High Court.

8. From the averments made in the C.A., it appears that the respondent nos. 3 and 4 were screened in 1979, while writ petition by the applicants against the termination of their services was pending in the High Court. Had the applicants been in service ~~at~~ at the time respondent nos. 3 and 4 were screened by the Screening Committee, applicants, in normal course, also would have been given the same benefit by virtue of their seniority over the respondent nos. 3 and 4. Even otherwise the respondents ought to have ~~been~~ provisionally screened

as they were continuing in service in pursuance of the interim stay granted by the High court in the writ petition filed by them. Be that as it maybe, by virtue of the legal fiction, applications will be deemed to have been in continued service as substitute Cleaners throughout. They had acquired temporary status after completing 120 days continuous services as substitute Cleaners. They were, therefore, entitled to be screened along with others similarly placed. Simply because the applicants were screened in 1991 after the case filed by them challenging the order terminating their services was allowed, they cannot be denied of the right, of being screened and regularised alongwith their juniors, *legally* acquired by them. The applicants on being screened have been found to be suitable for being regularised and retained in service. Since the termination of their services was illegal and ~~have~~ ^{they have} to be deemed in service continuously, they are entitled to their regularisation alongwith the respondents nos. 3 and 4, who are their juniors and their seniority ~~should~~ ^{be} determined accordingly.

9. In the facts and circumstances of the case discussed above, we allow this application and direct the respondents to place the applicants above respondent nos. 3 and 4 in the seniority list and consider their cases for notional promotion as Fireman grade 'C' and thereafter as Fireman 'A' from the date their juniors namely respondent nos. 3 and 4 have been promoted. These direction shall be complied with within three months from the date of communication of the order. There will be no order as to costs.

AM
AM

JM
JM