

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

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Allahabad : Dated this 18th day of January, 2000

Original Application No.825 1992

DISTRICT : Etawah

CORAM :-

Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Yatindra Baboo Sharma,
S/o Shri Om Prakash Sharma,
R/o 116-C, New Railway Colony,
Etawah.

(Sri B.N. Singh, Advocate)

. . . . Applicant

Versus

1. Union of India
Through the General Manager,
Northern Railway, New Delhi.
2. Asst. Engineer,
Northern Railway,
Etawah.

(Sri O.C. Saxena, Advocate)

. . . . Respondents

O R D E R (Oral)

By Hon'ble Mr. S. Dayal, A.M.

This application filed under Section 19 of the Administrative Tribunal Act, 1985 seeks the relief of setting aside the order dated 28-5-1992 and a direction to the respondents to promote the applicant to the post of Junior Draftsman in regular pay scale w.e.f. 3-11-1991.

2. The applicant has claimed his appointment as Tracer in the Railway Department on casual basis on 6-7-1982, and continuance on the post without any break upto 2-11-1986. The applicant also claims to have been allowed CTC scale in the scale of Rs.975-1540 w.e.f. 3-11-1986. He claims to have continued as Tracer from 3-11-1986 earning regular increments in the pay scale. The applicant

3. Heard arguments of Sri BN Singh, counsel for the applicant and Sri D.C. Saxena, counsel for the respondents.

4. The applicant has not produced any order of appointment as Tracer. However, he has furnished a number of documents in which the respondents have mentioned him as a Tracer. The first of these is a form which an official files at the time of his recruitment. In this form the applicant has declared the nature of his work at the time of his appointment as casual Tracer. The date of appointment has been mentioned as 6-7-1982 and under the Column 'nature of work', it is mentioned that the applicant worked as Tracer for 50-59 days from

6-7-1982 to 2-11-1986. In the statement of Provident Fund Ledger Account, the designation of the applicant is mentioned as a Tracer. In allotment of Qr.116/C by the respondents, the designation of the applicant has been mentioned as Tracer. The respondents have stated that the applicant was engaged as casual labour on work charge basis and was assigned work in order to help Tracer/Draftsman. They have admitted that the applicant was assigned wages at the rate of Rs.975-1540 in order to avoid legal complications and with the understanding that it will be subject to availability of work and approval of the competent authority. Thus, on the basis of overall assessment of the facts before us we admit the claim of the applicant that he was performing the work of Tracer. Even in the impugned order it has been mentioned by the respondents that in view of letter dated 21-6-1990 and 22-5-1992, the utilisation of the applicant on the post of Tracer was regular and that the post of Tracer has been abolished. Therefore, the services of the applicant were no more required.

5. The applicant has challenged the contention of the respondents that the post of Tracer has been abolished. The respondents have filed letter dated dated 14-3-1990 alongwith the counter affidavit which informed the respondents that 19 work charged posts under them as given in the enclosed list should not be operated after the period of their currency was over. These posts included one post of Tracer in the scale of Rs.750-950. The contention of the applicant is that his post was in the scale of Rs.975 -1540 and the post of Tracer in this pay scale has not been abolished. The respondents have furnished a copy of Para 153 of I.R.E.M. Vol I which states that after the entire cadre of Tracers in scale

Rs. 975-1540 has been fully worked off in terms of Item (VI) of Annexure-I to the Board's letter No. FC-III/84/UPG/19 dated 25-6-1985 the vacancies in the category of Assistant Draftsmen in scale Rs.1200-2040 in all the Engineering Departments will be filled cent percent by direct recruitment through the Railway Recruitment Boards. This provision does not show that the entire cadre of Tracer was fully worked off in the scale of Rs.975-1540. The impugned order refers to the letter dated 14-3-1990 of the D.R.M. Allahabad as also the letter dated 26-7-1990. While the letter dated 14-3-1990 abolishes the cadre of Tracer in the scale of Rs.975-1540 the letter dated 26-7-1990 has not been annexed. The provision of Para 153 of the I.R.E.M. suggests that the persons included in the cadre of Tracer in the scale of Rs.975-1540 were to be first taken up for consideration for higher posts and if they ^{/had} retired or died and ceased to exist ^{/on} the cadre of Tracer in the scale Rs.975-1540, the vacancies in the category of Assistant Draftmen was to be filled ^{/up} by direct recruitment on cent per cent basis. There is no averments as to when the cadre of Tracer in the scale Rs.975-1540 has been fully worked off.

6. The respondents have challenged the appointment of the applicant on the post of Tracer by stating that his appointment was not regular because the power of appointment and engagement as casual labour was withdrawn from the Senior Subordinates after 1-8-1978. According to the averments made in the counter reply it is clear that recruitment of fresh faces as casual labour should be resorted to only after obtaining prior approval of the D.R.M./General Manager as the case may be. The respondents have mentioned that the applicant was assigned scale of pay Rs.750-940 after completion of 120 days of continuous

service and was later on assigned the scale of Rs.975-1540 in an irregular manner. It is strange that in this case the applicant who started working as casual Tracer in 1982 was continued for a decade before the respondents found out that his appointment was not with the prior approval of the D.R.M./General Manager. As against this contention, the applicant has relied upon the provisions of P.S. 9820 as circulated under the letter of Divisional Personnel Officer dated 16-9-1989 in which it has been mentioned that an employee can be regularised if he has completed three years of service. This provision of letter, however, was not applicable in this case because the applicant first has to be appointed on temporary or permanent post and only after that he could have been confirmed on the post.

7. The applicant in his rejoinder affidavit has averred that the applicant is only Tracer and is still performing the duties of Tracer under respondent no.2 although he is not being paid the scale of Tracer allowed to him earlier of Rs.975-1540. The impugned order shows that the applicant was reverted to the post of non-pannelled C.P.C. Khalasi and is presently doing the work assigned by the D.R.M. Etawah and entering the same in his diary. Annexure-RA-2 shows that the work appears to be one which can be performed by a Tracer and not by casual Khalasi.

8. The impugned order mentions that the applicant can be continued in the higher pay scale of Rs.750-940 provided his services are regularised by the General Railway Manager, New Delhi since his date of appointment on 6-7-1982. We cannot hold it against the applicant

that the General Railway Manager has failed to regularise his services although the applicant has worked on his post for a period of /a decade. Proposal for regularisation of his services should have been considered by the General Manager and it should have been decided in the initial year of his engagement itself. Reverting an official after a decade treating /in this manner his status nebulous/is something which is against the service law and can only be termed as highly arbitrary.

9. We, therefore, direct the respondent no. 1, General Manager to consider the regularisation of the services of the applicant as per rules in the scale of Rs.975-1540 after approving his engagement on 6-7-1982, the date from it was due and considering the applicant for absorption in the cadre of Asst. Draftman. This shall be done within three months from the date of service of a copy of this order on the respondents. There shall be no order as to costs.

Re-signature
Member (7)

Member (3)

Shaw

Member (A)

Dube/