

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD.

This the day.....24/4/1997 of 1997.

ORIGINAL APPLICATION NO. 1462 OF 1994.

CORAM : Hon'ble Mr. T.L. Verma, Member-A

Hon'ble Mr. D.S. Baweja, Member-J

Vidya Sagar, S/o Shri Bansh Bahadur,
Working as Chaser Under XEN (Con),
N.E. Railway, Gorakhpur.

..... Applicant.

(By Advocate Shri R.P. Srivastava)

Versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Chief Engineer (Construction),
N.E. Railway, Gorakhpur.
3. Chief Administrative Officer (Construction),
N.E. Railway, Gorakhpur.
4. Deputy Chief Engineer, (Construction),
N.E. Railway, Gorakhpur.

..... Respondents.

(By Advocate Shri V.K. Goel)

O R D E R

By Hon'ble Mr. D.S. Baweja, Member-A

i. Through this application filed Under Section 19 of the Central Administrative Tribunal Act, 1985, the applicant has prayed for payment of salary for the post of Chaser from 1.7.1990 onwards with grant of the annual increment as due from 1.7.1990 onwards and the payment of other allowances as due from time to time.

2. The applicant was engaged as Casual Labour on 20.2.1977 under Executive Engineer, North Eastern Railway, Gorakhpur. He attained temporary status and was granted C.P.C scale from 1.1.1992. While working on the project of conversion from Metergauge to Broadgauge of Bhatni-Varanasi Section, he was promoted from the post of Khalasi grade of Rs 750-940/- to the post of Chaser in the grade Rs 950-1500/- as per the order dt. 1.7.1990 issued by Deputy Chief Engineer (Construction) North Eastern Railway Varanasi. Subsequent to this, he was transferred from Varanasi to Gorakhpur in the same scale under Deputy Chief Engineer (Construction) North Eastern Railway, Gorakhpur, on 30.8.1990. Though the applicant was promoted as a Chaser in Group 'C' and continued to perform duties of this post, he was not paid the salary for the post of Chaser. The applicant made a representations against the same. Deputy Chief Engineer (Construction) Gorakhpur also directed to Permanent Way Inspector (Construction), West, Gorakhpur, for necessary action vide letter dated ^{29.6}29.4.1992. Further clarification asked by Permanent Way Inspector (Construction) West Gorakhpur were also given by letter dated ^{9.6}29.4.1992 but still he was not paid for the post of Chaser. He kept representing against the same. In the meantime, he was transferred in the same grade vide letter dated 17.6.1994 under Executive Engineer (Construction) Gorakhpur. Thus, the applicant has been contineously working on the post of Chaser from 1.7.1990 onwards but he is being paid in the grade of Khalasi. Being aggrieved, the present application has been filed on 22.4.1994.

3. The respondents have contested the application through counter reply. The respondents have at the outset contended that the application is barred by limitation in view of the provisions of Section 21 Central Administrative Tribunal Act, 1985. It is admitted that the applicant was engaged as Casual Labour and was allowed temporary status from 1.1.1981 on 16.10.1986. The applicant was working as a Project Casual Labour and he has been allotted seniority in the Unskilled category in the Project Casual Labour seniority list of Lucknow Construction Division. The applicant was posted as a Casual Gangman w.e.f. 16.4.1987 under Permanent Way Inspector (Construction) West North Eastern Railway, Gorakhpur. For execution of the project of conversion of Metergauge to Broadgauge for Bhatni-Varanasi Section, additional casual labour was required and 165 casual labour including the applicant were transferred under Deputy Chief Engineer (Construction) Varanasi. After completion of the project, the casual labour deputed from the different seniority units were sent back. The applicant was sent back on 30.8.1990. It is further submitted that the applicant was promoted as a Chaser vide order dated 1.7.1990 effective only for the Conversion Project and he was transferred back to his parent seniority unit in the grade Rs 775-1025/-. The applicant has been continued to be charged as Casual Gangman from 16.4.1987 and was never allowed to work in the skilled grade as Casual Chaser by the Competent Authority. From the mustersheet

brought on the record, it would be clear that the applicant was being charged as a Casual Gangman. ^{dt. 28.5.1991} It is further contended that a letter/issued by Executive Engineer Gorakhpur for chasing material does not confirm any right to enjoy the benefit of promotion in the higher grade. It is further submitted that the Deputy Chief Engineer (Construction) Gorakhpur letter has no relevance as the letter issued on 9.6.1992 was without the approval of the Competent Authority. Respondents also assert that all the seniors to the applicant in the seniority unit are working as Casual Gangman and the question of giving him promotion in the higher grade over looking them did not arise. In view of these facts, the respondents contend that the applicant has no claim for promotion in the higher grade and the application deserves to be dismissed.

4. The applicant has filed the rejoinder affidavit controverting the submissions of the respondents and maintaining the grounds advanced in the application.

5. We have heard Shri R.P. Srivastava counsel for the applicant and Shri Amar Nath Ambrust proxy counsel of Shri V.K. Goel counsel for the respondents. We have also gone through the matter brought on the record.

6. From the rival contentions, the admitted facts are that the applicant was engaged as Casual labour in 1977 and he was granted temporary status

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from 1.1.1981 vide order dated 16.10.1986. The applicant while working as a Casual Gangman w.e.f. 16.4.1987 under P.W.I. (Construction) West, North Eastern Railway Gorakhpur was transferred to work under Deputy Chief Engineer (Construction) Varanasi alongwith 165 Casual Labour to cater for the additional requirement of the casual labour for the Project of M.G to B.G conversion of Bhatni-Varanasi Section. After completion of the project, these Casual Labour from the different seniority units were sent back vide letters dated 7.10.1988 and 10.10.1988 to their respective units. The applicant also sent back and to his unit i.e, Permanent Way Inspector (Construction) West North Eastern Railway, Gorakhpur and found back on 30.8.1990.

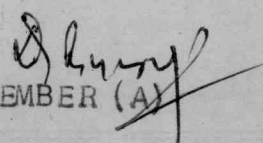
7. The applicant has based his claim of promotion as Chaser and the payment of the salary of this post on the strength of the promotion order dated 1.7.1990. The respondents while admitting the issue of this letter have submitted that the issue of such a promotion order was not as per rules and in any case it could be effective for the period applicant worked at Varanasi for the conversion Project. The ~~xxxxxx~~ respondents have ^{also} asserted that he was transferred back to his seniority unit on 30.8.1990 after completion of the Project in Group 'D'. To support this assertion, the respondents have brought on record Annexure-R-2, giving the transfer particulars and pay of the applicant and mustersheets for the period from 15.7.1990 to 15.9.1990, showing the applicant in group 'D' and Annexure-R-4 ^{giving} sanction of posts under extra labour

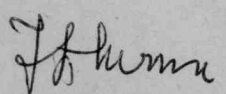
requisition (ELR) showing that there was no sanction of the post of Chaser under P.W.I (Construction) West, Gorakhpur. We have carefully perused these documents and observe that these documents support the submission of the respondents that the applicant was working as Casual Gangman in Group 'D' and was not shown promoted as Chaser in the higher grade of Rs 950-1500/- at any time. On the other hand, the applicant has brought on record documents at RA-1, RA-2 and RA-3 according to which he was given award for good work done and his designation is shown as Chaser. The applicant has also brought on record A2 vide which he was asked to supervise the loading of the Rails and A-5 vide such he was transferred as Chaser in the office of Chief Administrative Officer. On scrutinizing of these documents, we are unable to accept them as proof of promotion as Chaser until and unless it is supported by a promotion order ^{issued} ~~framed~~ by his Controlling Authority after he was transferred back to his parent seniority unit on 30.8.1990. He might have been utilised for chasing work but it does not imply that he was regularly promoted for the higher post. Further respondents have submitted that the seniors to the applicant in the same unit are working in the lower grade. The promotion to Group 'C' post of Chaser in the grade Rs 950-1500 ^{involve} would certainly selection and applicant could not have been promoted by pick and choose. There is no averment by the applicant that he had undergone selection before he was promoted as Chaser as claimed by him. Considering the facts that there is no specific promotion order, no selection having

been done, seniors working ⁱⁿ the lower grade and no sanction of the post of Chaser in the seniority ^{unit} list, we are unable to find substant in the claim of the applicant that he was promoted as Chaser and, therefore, entitled for payment of the salary in that grade.

8. The respondents have also opposed the application as being barred by limitation. The applicant claims that he was promoted as Chaser on 1.7.1990 but has not been paid the salary of this post from there onwards. The present Original Application has been filed on 22.9.1994. From the documents brought on record, it is noted that he represented for non payment of salary in 1992 and then thereafter on 10.4.1993 (Annexure-4) and 28.7.1994 (Annexure-6) though he has been representing from time to time but he did not get the reply. If the applicant was aggrieved by non payment of the salary in promotion as Chaser from 1.7.1990, the applicant did not agitate the matter for more than 4 years. Repeated representations which did not secure any reply does not imply the stretching of the limitation period. After refusal in 1992, the applicant could have agitated the matter. In consideration of these facts, we are inclined to hold that application is barred by limitation.

9. In consideration of the above deliberations, the applicant is not only barred by limitation but ^{also} ~~who~~ is devoid of merits. The application is accordingly dismissed. No order as to costs.


MEMBER (A)


MEMBER (J)