

Reserved.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

....

Original Application No. 73 of 1999
this the 12th day of November '2003.

HON'BLE MRS. MEERA CHHIBBER, MEMBER (J)
HON'BLE MR. D.R. TIWARI, MEMBER (A)

Suresh Banerjee, Staff Car Driver, under CAO (Cons.), North
Eastern Railway, Gorakhpur.

Applicant.

By Advocate : Sri A. Srivastava.

Versus.

1. Union of India through the General Manager, N.E.R.,
Gorakhpur.
2. General Manager (P)/Chief Personnel Officer, N.E.R.,
Gorakhpur.
3. Chief Administrative Officer (Cons.), N.E.R.,
Gorakhpur.

Respondents.

By Advocate : Sri K.P. Singh.

ORDER

BY MRS. MEERA CHHIBBER, MEMBER (J)

By this O.A., applicant has sought quashing of the
order dated 31.12.1997 and a direction be issued to the
respondents to regularise the services of the applicant in
Group 'C' on completion of five years service as per direction
of the Hon'ble Supreme Court in the case of Ram Kumar and
others.

2. It is submitted by the applicant that he was
appointed as casual labour Staff Car Driver under Chief
Administrative Officer (Cons.) N.E.R., Gorakhpur on 21.1.1981,
where he was allowed temporary status on 21.1.1986 after

completion of five years service. It is submitted by the applicant that as per judgment of Indra Pal Yadav, he became a temporary railway employee on completion of five years service and should have been regularised in class III Post, but the respondents illegally treated him as a temporary status casual labour. The Railway Board took a policy decision to regularise the casual labourers working on class III posts in Group 'C' and issued instructions dated 9.4.1997 (Annexure A-1) under which particulars of casual labourers T.S. who were working on class III posts for more than three years ^{were called} on 31.8.1996 for regularisation of their services in Group 'C' (Annexure A-4). The applicant was screened alongwith other persons between 12.12.1997 to 28.12.97 for regularisation in Group 'C', which was very much ^{in B} confirmity with the Hon'ble Supreme Court's directions in the case of Ram Kumar & Others. However, ultimately, the applicant was regularised in Group 'D' category without waiting for the result of screening done in Group 'C' even though the process of screening of Staff TS in Group 'C' including the applicant ^{was} initiated by the respondent nos. 2 & 3 on 27.11.1997 has not yet been finalised. Therefore, the applicant has submitted that atleast now the same should be completed. In short, applicant's case is that he was appointed in Group 'C' post, ^{as such B} he is entitled to be regularised in Group 'C' post.

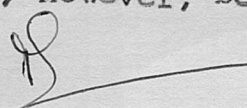
3. The respondents have, on the other hand, submitted that vide order dated 31.12.1997 services of the applicant were regularised in Group 'D' post. However, his pay had already been protected in Group 'C' what ^{he} was ~~was~~ getting and he had even ^{been B} asked to work on the same post where he was working earlier, therefore, no prejudice has been caused to the applicant. With regard to the letter dated 9.4.1997, they have submitted that there is no 25% quota in construction organisation for promotion/absorption, but

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there is other quota of 60% construction reserved posts in construction organisation against which different categories of artisan/~~xxx~~^{were are} regularised on the basis of the seniority through trade test as and when vacancy in respective trades are available. As far as the applicant is concerned, the trade test is likely to be held in the month of April '99 in case he appears and ^{is} declared successful, he would be regularised.

4. They have further submitted that after the judgment of Indra Pal Yadav, applicant was given temporary status, but it is not correct to say that he became temporary employee and regularisation can only be done after screening or after passing the trade test. Since the applicant was junior to the other drivers depending upon the number of working days, he could not be considered for regularisation in Group 'C' as Driver, but now the vacancies against 60% ^{have} become available, therefore, he has come within the zone of consideration as per seniority position and he would be given a chance to appear in the trade test for the post of Driver for regularisation, if he passes the said trade test. With regard to the Railway Board's letter dated 9.4.1997, they have relied ^{on} ~~the~~ para 3(ii) which talks about appearance in the trade test. The respondents have, thus, submitted that since the applicant would be considered in the trade test and is already working on the same post and his pay has already been protected, he cannot have any grievance as this case ^{is} ~~was~~ fully covered by the judgment in the case of Moti Lal followed by Full Bench judgement given in the case of Aslam Khan & Others Vs. Union of India & Ors., wherein it was held as under :

"A person directly engaged on Group C Post (Promotional post) on casual basis and has been subsequently granted temporary status would not be entitled to be regularised on Group C post directly but would be liable to be regularised in the feeder cadre in Group D post only. His pay which he drew in the Group C post will, however, be liable to



be protected."

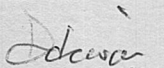
5. Keeping in view the judgment given by Full Bench in the case of Aslam Khan (supra), the respondents have submitted that by regularising the applicant and other casual labourers in Group 'D' the interest of all the casual labourers have been protected as earlier, they were neither entitled for pensionary benefits, nor insurance cover, but after regularisation, they have become entitled to these two main benefits as well as other benefits. They have also submitted that the applicant has since been allowed on ad hoc basis in the same pay-scale, as such no financial loss has been caused to the applicant. They have, thus, submitted that there is no merit in the O.A., the same may accordingly be dismissed.


6. We have heard both the counsel and perused the pleadings as well.

7. It is seen that the applicant had already been regularised as Group 'D' employee, but neither he has been asked to work as Group 'D', nor his pay has been reduced. On the contrary, the respondents have specifically stated that his pay has been protected and he was asked to work on the same post of Driver on ad hoc basis. They have also submitted that the applicant would be considered for the trade test in Group 'C' and in case he successfully qualifies in the same, he shall be regularised in Group 'C' as well. The trade test was to be conducted in April '99. However, both the parties were not aware of the latest position. In case the applicant had been declared successful in the trade test, by now he ^{with B} ~~has~~ ^{have B} already been regularised in Group 'C' post and ⁱⁿ ~~for~~ that event this O.A. would be ^{been B} infructuous. In case he has not declared successful, then

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the applicant cannot have any grievance because as per the judgment given by Full Bench, his rights have been protected by the respondents. Since this O.A. is fully covered by Full Bench judgment and no prejudice has been caused to the applicant, it calls for no interference. The O.A. is accordingly dismissed with no order as to costs.


MEMBER(A)


MEMBER (J)

GIRISH/-