

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1053 OF 1999
ALLAHABAD THIS THE 12th DAY OF March 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

Bindu Basni,
son of Shri Devi Prasad,
Khalasi under Assistant Engineer (West),
North Eastern Railway,
Gorakhpur.Applicant

(By Advocate Shri A.S. Lal)

Versus

1. Union of India,
through General Manager,
North Eastern Railway,
Gorakhpur.
2. Divisional Rail Manager,
North Eastern Railway,
Lucknow.
3. Senior Divisional Engineer-I,
North Eastern Railway,
Lucknow.Respondents

(By Advocate Shri J.N. Singh)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

In this O.A. filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed that the office order dated 05.02.1998, by which the screening of the applicant



has been done for the post of Khalasi, be declared as illegal and the service of the applicant ^{can} be regularised as ~~Jeep~~ Driver and the difference of the wages from 01.03.1998 as Jeep Driver be paid. The applicant has also prayed for a direction to the respondents restraining them to evict the applicant from Quarter no.738 F Type-II, Baulia Railway Colony, Gorakhpur.

2. The facts, as per the applicant, in short, are that the applicant was appointed as Casual Motor/Jeep/Truck driver initially on 16.10.1979. During 1979 the applicant worked for 61 days, during 1980 he worked for 170 days and during 1986 he worked for 107 days. The applicant was given the time scale pay of Jeep Driver i.e. Rs.350-1500/- w.e.f. 30.09.1986 and he worked continuously as Jeep driver by the department from 30.09.1986 to 30.09.1997. The applicant was further ordered to work as driver for one year from 01.10.1997 to 30.09.1998 vide order dated 25.09.1997. The test of casual labour was held and the applicant was screened for the post of Khalasi. The grievance of the applicant is that though he is still working as a driver but from 30.09.1998 he is being paid his wages as Khalasi and not as driver on which post he is working. The applicant is entitled for scale of Rs.3050-4590/- The applicant made representations before the respondents for payment of his wages as driver but nothing has been done by the respondents. Hence this O.A. which has been contested by the respondents.

3. Shri B. Tewari, learned counsel for the applicant submitted that in accordance with the Railway Board circular dated 09.04.1997 (Annexure A-19) the applicant is entitled for absorption as Skilled Artisan against 25% quota. There



are six posts of drivers still vacant and the applicant should be screened and absorbed as driver in scale Rs.3050-4590/-.

The applicant is a senior most casual driver and is working for about 13 years, therefore, he is legally entitled to be absorbed as driver.

4. The learned counsel for the applicant also submitted that the respondents be restrained to evict the applicant from the quarter he is occupying. The learned counsel for the applicant has placed reliance on the order of this Tribunal dated 06.09.2000 passed in O.A. No.676/94. Shri J.N. Singh, learned counsel for the respondents submitted that the respondents have committed no illegality in screening the applicant for the post of Khalasi and once he has been regularised on the post of Khalasi, therefore he is not entitled for the scale applicable for Jeep driver.

5. Heard the counsel for the parties, considered their submissions and perused records.

6. The respondents have filed their CA and the reply given to the various paras^{of O.A.} are vague. The respondents have avoided — giving any specific averment regarding working of the applicant as driver for more than a decade and also that the applicant is still working as a driver. In this O.A. the applicant has prayed for three reliefs. Firstly the payment of wages as driver w.e.f. 01.03.1998 onwards, secondly the regularisation of the applicant as Jeep Driver and lastly regarding the eviction of the applicant from the official quarter he is occupying. As regards the prayer of the applicant regarding eviction from the quarter, we would like to observe that the matter is left for the respondents to act in accordance with law. Now comes the question of payment of



wages as Jeep driver to the applicant. Since the respondents have not specifically denied that the applicant is not working as a driver, in our opinion this is established beyond doubt that the applicant has been working as Jeep driver continuously without any interruption from 30.09.1986 till the filing of the D.A. The applicant was allowed the scale of Rs 950-1500/- w.e.f. 30.09.1986. Since the applicant is working as Jeep driver, he is entitled for the scale of Rs 3050-4590/-.

7. The next question which comes before us is regarding the regularisation of the applicant in group 'C' category as jeep driver. It would be relevant to quote ^{the relevant para} 3 of the Railway Board circular dated 09.04.1997 (Annexure A-19).

"3. The question of regularisation of the casual labour working in Group 'C' scales has been under considerations of the Board. After careful consideration of the matter, Board have decided that the regularisation of casual labour working in Group 'C' scales may be done on the following lines:-

- (i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar.
- (ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered, for absorption as such.
- (iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective units."

It appears that the respondents have regularised the applicant under the provisions of para 3.3 (Supra). However, even if the respondents had regularised the applicant as Khalasi, they



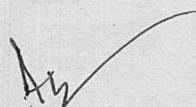
should have taken action to protect the pay of the applicant by granting him personal pay. The respondents have not done so and instead the respondents started paying the applicant as Khalasi though they have been extracting the work of Jeep driver from the applicant. Therefore, the applicant is entitled for pay of Jeep Driver and the action of the respondents in paying the scale of Khalasi is incorrect.

8. As regards regularisation of the applicant as Jeep Driver, we would like to observe that respondents should have considered the case of the applicant for absorption of the applicant ~~against~~ ⁱⁿ 25% of promotion quota in Group 'C' as per the provisions of para 3(ii) of Railway Board circular dated 09.04.1997 (Supra).

9. In the facts and circumstances and our aforesaid discussions, the O.A. is disposed of with following directions.

- (i) The respondents shall pay the arrears of wages to the applicant w.e.f. 01.03.1998 protecting the pay the applicant was drawing just before 01.03.1998 as Jeep Driver.
- (ii) The respondents shall consider regularising the applicant as Jeep Driver against 25% of the promotion quota in terms of para 3.2 of the Railway Board circular dated 09.04.1997 ^{quoted} above.
- (iii) The compliance of this order shall be carried out within a period of three months from the date of communication of this order.

10. There shall be no order as to costs.


Member-J


Member-A

/Neelam/