

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 29th day of Nov. 2001.

QUORUM : HON. MR. RAFIQUDDIN, J.M.
HON. MR. C. S. CHADHA, A.M.

O.A. NO.1178 of 1999.

1. Sri Imlak Ahmad s/o Sri Saeed Ahmad a/a 51 yrs. r/o 343, Rani Mandi, Allahabad... Applicant.

Counsel for applicant : Sri S S Sharma.

Versus

1. The Union of India owning and representing 'Northern Railway' Notice to be served to : The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Administrative Officer (Construction), Northern Railway, Kashmere Gate, Headquarter Office, Delhi-6.
3. The Divisional Railway Manager, Northern Railway, D.R.M. Office, Nawab Yusuf Road, Allahabad.
4. The Deputy Chief Engineer (Construction), Northern Railway, D.R.M. Office Complex, Nawab Yusuf Road, Allahabad.... Respondents.

Counsel for respondents : Sri A.V. Srivastava.

ORDER (ORAL)

BY HON. MR. RAFIQUDDIN, J.M.

The applicant, who is working as Senior Store Khalasi in the pay scale of Rs.2610-3540 under Dy. Chief Engineer/Construction, Northern Railway, Allahabad, has approached this Tribunal for quashing the impugned order dated 25.5.99 (Annexure A-I to this O.A.) and for issuing directions to the respondents to absorb him in a regular employee as a Class IV employee from the date of his juniors have been regularised and absorbed and also to fix the seniority on the post of Khalasi Store w.e.f. 17.4.67, the date from which the applicant was regularised temporary. The applicant has further seeks directions to the respondents not to reduce his pay as already fixed vide letter dated 23.9.92 (Annexure A-II to this O.A.) and thereafter in grade

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Rs.775-1025 w.e.f. 11.2.93 and in grade Rs.2610-3540 w.e.f. 1.1.96 and to promote him in higher grade at par with his juniors on the basis of seniority as Khalasi w.e.f. 17.4.67.

The applicant has also ~~seeks~~ ^{sought} direction to the respondents to pay his arrear of salary on the basis of fixation of his pay with 18% interest.

2. The case, as disclosed in the C.A., is that the applicant was initially appointed as Casual Store Khalasi on 17.10.66 under Inspector of Works/Special, Northern Railway, Allahabad. The applicant was treated as temporary in terms of para 2501 Sub-para (b)(1) of the Indian Railway Establishment Manual on 18.2.67 after the expiry of four months of continuous service. The service of the applicant were, however, terminated on 5.10.72 despite his working as a temporary employee. Therefore, the applicant filed T.A. No.980 of 1986(T) before the Tribunal and challenged his termination order dated 5.10.72. This Tribunal vide order dated 31.8.87 directed the respondents to provide the applicant one opportunity for his regularisation on Class-IV post under Respondent No.4 along with the persons junior to him who have already been absorbed in a regular vacancy as Class-IV employees whenever such recruitment was made by Respondent No.4. It is further said that in compliance of the aforesaid order, the screening of the applicant was considered and the applicant was declared fit for the post of Khalasi Store on 6.9.91 and thereafter he joined his duty on 17.1.92 after having been declared in C-II category.

The applicant was absorbed ~~as~~ ^{as} Class-IV employee to work as Khalasi in grade of 750-940 vide letter dated 30.1.92. The applicant was also granted the pay from 17.4.72 in the grade of Rs.70-1-85 vide order dated 23.9.92 and subsequently his pay was also re-fixed in the revised scale w.e.f. 1.3.73. In due course, applicant was also promoted as Senior Khalasi vide order dated 11.2.93. It is also stated by the applicant that though the pay of applicant was fixed w.e.f. 17.4.67 but no action was taken for fixation of his seniority and

and the applicant had made several representations including representation dated 5.8.92, 25.3.99 and requested for fixing his seniority above his juniors but the respondents inspite of taking any corrective measures in fixing the seniority w.e.f. 17.4.67, Respondent No.4 vide impugned order dated 25.9.99 (Annexure A-I) has revised the seniority of the applicant as Khalasi and assinged the same from 31.1.92 instead of 6.10.72 which was fixed in implementation of the order of this Tribunal dated 31.8.87.

3. The applicant has filed the present O.A. challenging the validity and legality of the action of respondents mainly on the grounds that the applicant has acquired the right to be considered along with his juniors for absorption in a regular vacancy as a Class IV employee whenever such recruitment was made and in compliance of the order of this Tribunal, his services were regularised and his pay was fixed and the impugned order has been passed in an arbitrary manner without following the principles of natural justice. As a result, the impugned order, the applicant had made to suffer with financial loss and loss of seniority without any reason.

4. We have heard the Counsels for the parties.

5. It is an admitted position that no show-cause notice was issued to the applicant before passing of the impugned order. It is contended by the Counsel for the respondents that no-show-cause notice was necessary because the respondents have merely rectified the order ~~of~~ fixing the seniority w.e.f. 6.10.72 as per extent rules. We are, however, not inclined to accept this reasoning of the respondents Counsel because the order of deduction of pay and seniority having been passed without giving an opportunity of hearing to the applicant is arbitrary being violative of principle of natural justice. The impugned order is, therefore, liable to be quashed.

6. The O.A. is allowed and order dated 25.5.99 (Annexure A-I) is quashed. The applicant is entitled for all consequential benefits.

7. The respondents are, however, at liberty to take any action on the matter as per rules and the observations made in the order.

There shall be no order as to costs.

B.Gupta

A.M.

Dwight

J.M.

Asthana/