

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 846 OF 2000

ALLAHABAD, THIS THE 27th DAY OF JANUARY, 2005

HON'BLE MR. JUSTICE P. SHANMUGAM, VICE-CHAIRMAN
HON'BLE MR. D. R. TIWARI, MEMBER (A)

Om Prakash son of Shri Ram Pyare
Resident of Quarter No.614-B, Bawaliya Railway Colony,
Gorakhpur.

.....Applicant

(By Advocate : Shri S.K. Om)

V E R S U S

1. Union of India through the General Manager,
North Eastern Railway, Gorakhpur.
2. Chief Personnel Officer, North Eastern Railway,
Gorakhpur.
3. Senior Section Engineer Works South, North Eastern
Railway, Gorakhpur.

....Respondents

(By Advocate : Shri K.P. Singh)

O R D E R

By Hon'ble Mr. Justice P. Shanmugam, V.C.

The applicant prays for quashing of the order dated 15.05.2000 passed by the respondents and further prays for a direction to regularise the services of the applicant as Driver in the pay-scale of Rs.3050-4590/-

2. The applicant was initially engaged as casual labour under the respondents in the year 1979 and thereafter he was again engaged in February 1984 and continue in service as casual driver and has obtained temporary status on 08.06.1984. According to him on the basis of his continuous



work as driver he was called for screening test on 25.10.99 and for medical examination on 24.04.2000. He has served passed Screening Test as well as obtained Medical Fitness Certificate, while so instead of regularising his services as a driver, he was regularised as Khalasi by the order dated 15.05.2000, which is impugned in this O.A. The main submission of the applicant is that he ought to have been regularised straight away as a Driver instead of regularising him as Khalasi in Group 'D' category. In support of his submission, the applicant makes a strong reliance to paragraph 2007(3) of Indian Railway Establishment Manual Vol.2, which is Pg17 of the manual.

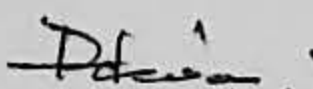
3. Learned standing counsel for the respondents vehemently opposed the application stating that there is no vacancy for the regularisation of the applicant and that it depends on the availability of the post. He has referred to paragraph 11, 12 and 14 of the counter affidavit to contend that the applicant cannot be granted regularisation as a driver specifically when he has been given the benefit of regularisation as Khalasi on permanent basis.

4. After hearing learned counsel for the applicant and learned standing counsel for the respondents, we are of the view that the provision clearly comes to the rescue of the applicant for regularisation. The applicant, ^{a casual} has been directly engaged ~~as casual labour~~ in semi-skilled work of Driver and therefore, his continuous work as casual employee enables him straight-away to be absorbed in the regular vacancy namely the post of driver. The last portion of that paragraph clearly says that these orders also applied to casual labour who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test. In this case it is

not indispute that applicant has been engaged as casual driver from the year 1979 and have been worked in the same position. It is further pointed out by the applicant in his rejoinder at paragraph 11 that many of his juniors have been regularised as Driver Grade-III in preference to the petitioner. This position has not been controverted by the department. ^{He} If that is the position so, alleged, minor penalty awarded to the applicant on 13.04.1999 namely censure would not stand in the way of his promotion, or disentitled him from his right of regularisation. Thus, we find on factual eligibility in the light of the relevant provisions, the applicant is entitled to be regularised for the post of Driver and the order of regularisation for the post of Khalasi dated 15.05.2000 is therefore, set aside.

5. The O.A. is accordingly allowed. Respondents are directed to regularise the services of the applicant for the post of Driver ^{with effect from 15.5.2000} within a period of 3 months from the date of receipt of a copy of this order.

6. There shall be no order as to costs.


Member (A)


Vice-Chairman

shukla/-