

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD

Original Application No.1539 of 2002

Tuesday, this the 2nd day of September, 2003

Hon'ble Maj. Gen. K.K.Srivastava, A.M.  
Hon'ble Mr. A.K.Bhatnagar, J.M.

Tilakdhari,  
S/o Kalu,  
Resident of 22T.,  
Railway Colony, Mirzapur.

.....Applicant.

(By Advocate : Shri A.K.Srivastava)

Versus

1. Union of India,  
through Secretary,  
Ministry of Railway,  
New Delhi.
2. Divisional Railway Manager,  
Northern Railway, Allahabad.
3. Assistant Engineer,  
Northern Railway, Mirzapur. ....Respondents.

(By Advocate : Shri G.P.Agarwal)

ORDER (ORAL)

By Hon'ble Maj. Gen. K.K.Srivastava, A.M. :

In this OA, filed under Section 19 of A.T. Act, 1985, the applicant has prayed for a direction to the respondents to absorb/appoint the applicant on the post of Mason.

2. The facts of the case are that the applicant is posted as 'Khalasi', a Group 'D' post in the respondents'

Contd....2.

establishment. He appeared in the Departmental Examination of Mason on 18.6.1998 and he was declared successful and since the post of Mason was not vacant, he was not given the post of Mason. The applicant moved an application on 2.8.2001 (Annexure-I) before respondent No.3 requesting that the applicant may be posted as Mason on retirement of one Shri Shiv Babu. The respondents vide letter dated 7.8.2001 <sup>asked</sup> / the applicant to produce any such documents showing that the applicant was declared successful. The applicant has stated vide his letter dated 10.8.2001 (Annexure-3) that all the record of the said examination is available with respondent No.3. The applicant further moved an application on 16.2.2002 before respondent No.3 that he should be appointed as Mason on retirement of Shri Shiv Babu. The grievance of the applicant is that the respondents have not appointed the applicant as Mason, even after the retirement of Shri Shiv Babu. The applicant filed QA No.1059/02, which was finally disposed of vide order dated 20.9.2002 with direction to the applicant to file a representation and also direction to the respondents to decide the same within three months from the receipt of the representation.

<sup>In</sup> Pursuance to the order of this Tribunal, the applicant filed a representation on 4.10.2002, which has been decided by the respondents by order dated 29.10.2002, calling for the proof from the applicant about his claim that he passed the trade test of Mason. Aggrieved by the action of the respondents, the applicant has filed this QA, which has been contested by the respondents.

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3. Shri A.K.Srivastava, learned counsel for the applicant submitted that the action of the respondents calling for the proof from the applicant about his passing the trade test of Mason is not understood as the entire result is available with the respondents. The learned counsel also submitted that the work is there as would appear from the perusal of Annexure-I and yet the respondents are not absorbing the applicant as Mason. The learned counsel for the applicant finally submitted that the respondents have not even considered to give the absorption to the applicant as Mason, even on retirement of Shri Shiv Babu.

4. Resisting the claim of the applicant, Shri G.P.Agrawal learned counsel for the respondents submitted that there is only one post of Mason in the respondents' establishment and senior most Shri Ram Jabbar is working on that post. It has also been argued by respondents' counsel that the post of Mason is filled by a positive action and no one can be promoted <sup>in selection</sup> ~~in dehors~~ the rules ignoring the procedure. He also submitted that the applicant is not discharging the duties of Mason.

5. We have heard counsel for the parties and perused the records.

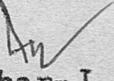
6. It is admitted fact that the post of Mason is a selection post and there is substance in the submission of the respondents' counsel that the applicant can not be promoted against the rules ignoring the procedure laid down. The respondents

in Para 4 & 5 of the counter have stated that the service records of the applicant were checked and there is no such entry that he has passed the trade test of appointment of Mason. The respondents have filed a photocopy of the service record of the applicant and on perusal we do not find any such remarks. In the rejoinder, the applicant in his reply to para 4 & 5 to the counter has given a vague reply and has stated that the applicant is still discharging the duties of Mason, which is evident from the perusal of letter dated 31.7.2003 filed as Annexure-RA-I.

7. We have perused the same and we find that there is a remark of such Sub Record Officer, R.M.S. A Division <sup>in</sup> <sub>who is not a Railway Authority</sub> Mirzapur, that the leakage in the room has been repaired by Tilak Dhami, <sup>in Mason</sup> <sub>Mason</sub> on 9.8.2003. A remark of such nature does not in any way prove that the applicant is discharging the duties of Mason.

8. From the perusal of the service record, there is no doubt in our mind that the applicant in any way can be treated as Mason and, therefore, we do not find any good ground for interference.

9. For the aforesaid reasons, the OA is devoid of merit and is accordingly dismissed with no order as to costs.

  
Member-J

  
Member-A

RKM/