

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Original Application No. 808 of 2003

Allahabad, this the 29th day of May, 2009

Hon'ble Mr. A.K. Gaur, Member-J
Hon'ble, Mr. S.N. Shukla, Member-I

Kamlesh Kumar Srivastava
Son of B.P. Srivastava, aged about 51 years,
Resident of 206, Bahadurganj, Allahabad.

..... Applicant

By Advocate :Shri S.S. Sharma

Versus

1. Union of India, through
The General Manager,
Headquarters Office,
North Central Railway,
Allahabad.
2. The Divisional Railway Manager,
North Central Railway, D.R.M. Office,
Nawab Yusuf Road,
Allahabad.
3. The Divisional Personal Officer,
North Central Railway, D.R.M. Office,
Allahabad.

..... Respondents

By Advocate : Shri A. Tripathi

ORDER

(Delivered By Hon'ble Mr. A.K. Gaur, Member-J)

Applicant had filed O.A. No. 100 of 1991 praying for a direction to the respondents to interpolate his name in the provisional panel dated 03.02.1990 by holding screening and giving preference in regularization of the retrenched casual labourers on the strength of past working of the applicant and also for

h

quashing the panel dated 03.02.1990 being contrary to the policy and instruction of the Railway Board. The said O.A. was disposed of vide order dated 22.12.1993 by following directions:-

“ In view of the discussion aforesaid and in the circumstances of the case this petition succeeds and is hereby allowed. It is directed that the respondents shall consider the name of the petitioner for regularization and empanelment in the panel dated 03.02.1990 (Annexure “A-1 to the petition) on the strength of his past working and seniority. It is further directed that the respondents shall engage the petitioner if any person junior to him has been given employment. The directions aforesaid shall be complied by the respondents within two months of the receipt of the judgment. “

2. The facts giving rise to this petition briefly stated are as follows:-

The applicant was appointed as substitute Khalasi in Hindi Section of D.R.M.'s office, Allahabad in the grade of Rs.196-232 w.e.f. 22.09.1976 against the sanctioned post of Gateman. The applicant continued on the said post till 02.06.1977 and w.e.f. 03.06.1977 he was engaged as Hindi Stenographer in the grade of Rs.330-560. The applicant was discharged from service w.e.f. 16.04.1979 (Annexure No.3). It is alleged by the applicant that the action of the respondents was wholly arbitrary. The applicant at least should have been retained in Railway Service on the post of substitute Khalasi in which he was initially appointed on 22.09.1976 and specially in view of the fact that several juniors to the applicant were working as Office Khalasi and in other Group 'D' post in the office of D.R.M./N. Railway, Allahabad. The applicant filed Civil Suit No. 65 of 1980 in the Court of Munsif West, Allahabad. The suit filed by the applicant was dismissed by the Trial Court and the Civil Appeal filed by the applicant was also dismissed, Thereafter the applicant preferred second Appeal No. 3077 of 1984 before the Hon'ble High Court at Allahabad. During the pendency of the aforesaid appeal, according to the applicant, he was given

✓

assurance by the Divisional Personnel Officer that if he withdraws the Second Appeal, he would be absorbed in Class IV vacancy of the Railways. The applicant withdrew the second appeal on 14.09.1987 but he was not absorbed in Class IV vacancy of the Railways as promised to him.

3. Being aggrieved by the aforesaid action of the respondents, the applicant filed O.A. No. 1410 of 1988 in the Tribunal. This O.A. was dismissed on 31.01.1985. According to the applicant there was mistake in the pleading about dates of assurance given by the D.P.O./Allahabad and date withdrawal of the Second Appeal by the applicant resulting dismissal of the aforesaid O.A. As there were 548 vacancies of regular Group 'D' Staff in the Traffic and Commercial Branch of Allahabad Division, the Divisional Railway Manager, Northern Railway, Allahabad vide notification dated 29.06.1988 decided to conduct screening of Substitute Casual Labour and other Group 'D' staff, who were appointed after 01.08.1978 and have completed 4 months service on 01.05.1988. It was also observed that those, who employed prior to 01.08.1978, would be entitled to preference in screening. The screening was conducted on different dates in the month from August, 1989 to October, 1989 by the Divisional Railway Manager, Allahabad, but despite request by the applicant, he was not allowed to appear in the screening. Persons junior to the applicant were considered in the aforesaid screening and vide letter-dated 03.02.1990, the panel of screening was declared.

4. The grievance of the applicant is that about 388 persons juniors to the applicant were screened/empanelled and regularized vide panel dated

W

03.02.1990. The applicant was entitled to be considered for absorption in Class-IV vacancies as well as in Class-III on the ground of his working as substitute Khalsi from 22.09.1976 to 02.06.1977 and for his working as substitute Khalasi from 22.09.1976 to 02.06.1977 and for his working in Class-III as Hindi Stenographer from 03.07.1977 to 16.04.1979.

5. In order to implement the direction contained in judgment and order dated 22.12.1993, the DPO/N. Rly., vide letter dated 16.08.1994, asked the applicant to submit some documents related to Railway Service of the applicant. On 23.12.1994, the date was fixed for screening in D.R.M. Office, Allahabad for interpolating the name of the applicant in the panel of Traffic & Commercial Department dated 03.02.1990. Vide letter dated 15.03.1995 respondents issued provisional panel for screening/selection to be conducted on 19.01.1995, 20.01.1995, 20.02.1995, 21.02.1995 and 22.02.1995 of Group 'D' category and name of the applicant was also placed at Sl. No.29 of the panel. The applicant was advised vide letter dated 30.06.1995 that his name has been interpolated as Sl. No. 6-A of panel dated 03.02.1990. A copy of the letter dated 30.08.1995 has been filed as annexure A-8 to the O.A.. After completing all the formalities, the respondents vide letter dated 5/7.12.1995 appointed the applicant on the post of Seal Man in pay scale Rs750-940/- and posted him under the Station Superintendent, Northern Railway, Tundla/Annexure A-9 in Compilation No.2. According to the panel position of the applicant, whose name is at Serial No.6-A, about 388 persons are junior to the applicant in panel dated 03.02.1990.

✓

6. The applicant is aggrieved by the action of the respondents that all the 394 persons in panel dated 03.02.1990, were allowed pay and seniority w.e.f. 03.02.1990, and as such the applicant after interpolation of his name in the panel dated 03.02.1990 is also entitled for pay and seniority w.e.f. 03.02.1990. The applicant has already preferred a series of representations, a copy of the applicant's representations dated 13.12.1996, 03.02.1997, 13.02.1998 and 24.08.1998 have been annexed as Annexure Nos. A-12, 13, 14, 15 and 16 of this application.

7. The main grievance of the applicant is that the decision of Divisional Personnel Officer, North Central Railway, D.R.M. Office Allahabad dated 29.05.2003 for counting regular service of the applicant w.e.f. 08.12.1995 and not counting past service in reference to junior persons, is in violation of the direction contended in the judgment & order dated 22.12.1993 of the Tribunal in O.A. No. 100 of 1991.

8. In the counter reply filed by the respondents, it is, submitted that the screening was conducted on the basis of past working, and only with a view to implement the judgment and order of Tribunal in O.A. No. 100 of 1991 dated 22.12.1993, the name of the applicant has been interpolated in the panel declared on 03.02.1990, at Serial No.6-A. The applicant has already been given the benefit of past service as casual employee for fixation of pay and his salary is being charged after counting the casual working as per extent rule (PS No.6661). It is also relevant to mention here that after getting regular employment in Traffic and Commercial Department on 08.12.1995, the

✓

applicant applied for his change of category and his request has been accepted and his category has been changed from Seal man to Office Khalasi in the same grade at his own request on accepting the bottom seniority and the applicant has been posted as Office Khalasi w.e.f. 01.04.1996.

9. In the Rejoinder filed by the applicant, it is stated that he should have been given seniority w.e.f. 03.02.1990 that is from the date of panel or from the date juniors to him in the panel were appointed and the action of the respondents is arbitrary and against the rules.

10. We have heard Shri S. S. Sharma learned counsel for the applicant and Shri A. Tripathi, learned counsel for the respondents. It is seen from the record that the applicant has requested for his change of category in the post of Office Khalasi on same grade 2550-3200 and desired posting at Allahabad. Since the category of the applicant was changed at his own request after accepting the bottom seniority in same pay and grade, we hardly find any justification in the request of the applicant to place him in same pay and grade in reference to his junior, who have already been empanelled in Traffic and Commercial Department. Any benefit before regular appointment of the applicant is not permissible under Rules, ~~we have~~^{are} also fully convinced that with a view to ensure compliance of the order and direction of the Tribunal, rendered in O.A. 100 of 1991, the applicant's name has been interpolated in the panel of Traffic and Commercial Department at Serial No. 6-A. The applicant is entitled for his pay and seniority only from the date when he is allowed to perform duty as Seal Man after fulfilling all the formalities.

h

11. The argument advanced by the Learned counsel for the applicant that applicant should have been allowed pay and seniority w.e.f. 03.02.1990 or from the date his juniors in panel dated 03.02.1990 were granted the said benefit.. We do not find much force in this argument. It is seen from the record that seniority of Traffic and Commercial Department and General Administration is quite different. Any benefit before regularization of appointment cannot be granted to the applicant under the Rules. We have also carefully gone through Paragraph-316 of the Indian Railway Recruitment Manual Vol.I. As the applicant has been given appointment as Seal Man with effect from 08.12.1995 question of giving any benefits to him in reference to the juniors who were allowed duty prior to 08.12.1995, does not arise at all.

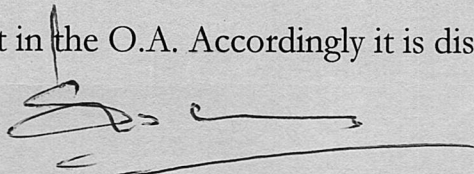
12. After change of category of the applicant to the post of Office Khalasi, he resumed duty on 01.04.1996, and no person junior to the applicant is working as Office Khalasi, whose date of appointment is after 08.12.1995. Since the applicant has been appointed on 08.12.1995 on regular basis he must have been considered for his financial upgradation after completion of 12 years of service in the year 2007.

13. We have carefully considered that the direction given by this Tribunal in O.A. No. 100 of 1991 was to consider the name of applicant for regularization and empanelment in panel dated 03.02.1990 on the strength of his past working and seniority. In pursuance of the said direction the applicant has been regularized and empanelled in panel dated 03.02.1990. There is no direction to give him seniority and similar pay scale as granted in reference to

✓

the juniors of the applicant. It is, settled Principle of Law that the dispute of seniority cannot be reopened after a long lapse of time and seniority already settled cannot be unsettled after such an inordinate delay.

14. Having given our anxious thought to the pleas advanced by the parties counsel, we are fully satisfied that there is no illegality in the order dated 29.05.2003 issued by Sr. D.P.O./N.C. Railway, Allahabad/ Annexure-I. It is also seen from the record that since the category of the applicant was changed as per his request on accepting bottom seniority in same pay and grade, the claim of the applicant for grant of benefits in reference to his juniors, who were already empanelled in Traffic and Commercial Department long back is not sustainable in law. In view of the aforesaid observations we do not find any merit in the O.A. Accordingly it is dismissed with no order as to costs.



Member (A)



Member(J)

//Sushil//