

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(ALLAHABAD THIS THE 25th DAY OF OCTOBER, 2016)

Present

HON'BLE MS. JASMINE AHMED, MEMBER (J)

Original Application No.1092 OF 2007

(U/S 19, Administrative Tribunal Act, 1985)

Brahmdev Prasad, Son of Sri Rajendra Prasad,
Posted as Safai Wala Khalasi, in North Central
Railway, Madaraha Railway Station, Tehsil-Bara,
District-Allahabad.

.....Applicant

VERSUS

1. Union of India, through its General Manager, North Central Railway, General Manager Office, Allahabad.
2. Divisional Rail Manager (Karmik), North Central Railway, Jhansi, Uttar Pradesh.
3. Station Master, North Central Railway, Madaraha Railway Station, Tehsil-Bara, District-Allahabad.

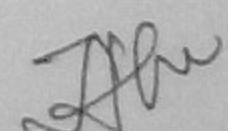
..... Respondents

Advocates for the Applicant:- Shri P.K. Srivastava
Advocate for the Respondents:- Shri A.K. Pandey

ORDER

(DELIVERED BY HON'BLE MS. JASMINE AHMED, MEMBER (J))

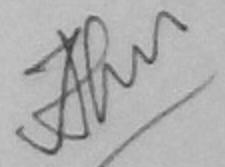
Heard Shri P.K. Srivastava, learned counsel for the applicant and Shri D.K. Tiwari proxy for Shri A.K. Pandey, learned counsel for the respondents.



2. By way of this original application the applicant has prayed for the following reliefs:-

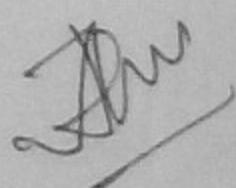
- "(a) *It is therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to Quash the Impugned order dated 30.07.2007 passed by the Divisional Rail Manager (Karmik), North Central Railway, Jhansi Division, Jhansi.*
- (b) *That this Hon'ble Court may further be pleased to direct the Respondent no.2 to add the past service period of the applicant in his service Book, and provide other consequential benefits to the applicant.*
- (c) *That this Hon'ble Court may also be pleased to pass such other and further order or direction as this Hon'ble Court may deem fit and proper.*
- (d) *That the award of the cost of the present application may be awarded in favour of the applicant."*

3. The brief facts of the case as contended in the original application is that the applicant initially joined as Khalasi on 28.02.1983 on monthly rate basis in Central Railway Jabalpur. Thereafter he was transferred in different places. He worked till 1989 and thereafter a break was given to him. On 16.07.2001 a panel of candidates/employees were considered for regularization of their services on the post they were working and on the basis of the decision of the above panel the services of the applicant was regularized w.e.f. 25.09.2001 and it is contended that since then the applicant is performing his duty with sincerity and full satisfaction of the authorities concerned with whom he is working. The applicant gave a representation for adding/entering his past service period



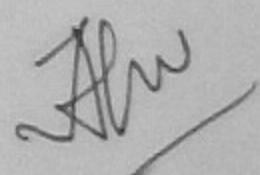
which rendered by him before regularization of his services for getting service benefits but it is contended that as no heed was paid by the respondents the applicant filed original application no.298 of 2007 before this Tribunal. On 28.09.2007 the Tribunal passed a direction to the respondents i.e. to the General Manager, North Central Railway, Allahabad to decide the representation dated 12.12.2006 of the applicant in accordance with Rules. In pursuance of the order of this Tribunal the respondent no.2 decided the representation of the applicant dated 12.12.2006 refusing to add the past services rendered by the applicant before regularization which resulted this original application before this Tribunal.

4. The counsel for the applicant stated that as the applicant was working since 28.02.1983 and thereafter his services has been regularized by the competent authority after following the prescribed procedure w.e.f. 25.09.2001, he is entitled to get benefit of his past service for the purposes of seniority and other consequential benefits which will accrue to him because of adding of his past services. In this regard he has placed his reliance on the judgment passed by the Hon'ble Apex Court in the case of Inder Pal Yadav and Others ETC. Versus Union of India and Others ETC. and also on various RBEs and

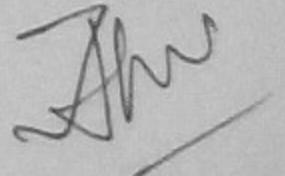


stated that 50% of Temporary status Casual Labour Service on Absorption in regular employment may be taken into account towards the minimum service of 12/24 years for the grant of benefit under the ACP scheme. He states that on this analogy his past services rendered for regularization shall be counted for seniority and after determination of seniority he is entitled for other consequential benefits. In this regard he has also placed his reliance on the judgment passed by the Hon'ble Apex Court in the case of *Vinod Kumar Sharma versus state of Uttar Pradesh and Another, AIR 2001 SC 1802* and states that as per this judgment the seniority was counted taking into account the rendered service of an applicant before regularization also. He also placed his reliance on the case of *Chandra Prakash Versus State of Uttar Pradesh and another, AIR 2002 SC 1652* and states that as per this judgment also he is entitled for counting of his past services before regularization for the purpose of determining of seniority and purpose of other consequential benefits thereof.

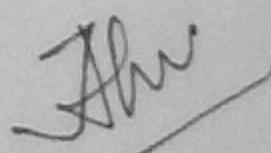
5. The respondents has filed their counter affidavit and contested the case firstly on the issue of limitation and also denied that the applicant is entitled for determining of his seniority and consequential benefits thereof taking into consideration the past services rendered by



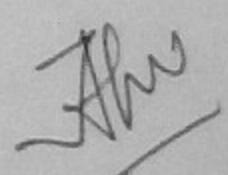
him before regularization. The counsel for the respondents vehemently argues that the case is badly barred by limitation and on this point only the OA is liable to be dismissed. He also states that there is no provision for the casual Railway employees under Railway service to count and add the past services period as a casual labourer for the determination of seniority and giving other benefits. In this regard he also states that as per paragraph 2511(a) of Indian Railway Establishment Manual (I.R.E.M.) the service prior to absorption in the regular cadre will not count for seniority which will be determined on the basis of their regular appointment after due screening/selection vis-à-vis other regular railway servants, subject to the proviso that if the seniority of certain individual railway servants has been determined in any other manner pursuant to judicial decision or otherwise, the same shall not be altered. He also contends that seniority amongst the incumbents of a post in a grade unless specifically stated otherwise, is governed by the date of appointment to the grade. The grant of pay higher than initial pay does not, as a rule, confer on the Railway Employee, seniority above those who are already appointed against regular posts. Hence he contended that the original application is frivolous having no legal base, accordingly liable to be dismissed.



6. Heard the rival contentions of the parties, perused the documents on record and also gone through the judgments relied upon by the counsels for the parties. It is not disputed by both the parties that the applicant was engaged as casual employee and afterwards regularized in the department after following the prescribed procedure w.e.f. 25.09.2001. The contention of the counsel for the respondents that the matter is barred by limitation does not hold good as the respondents have decided the representation of the applicant on merit vide order dated 30.07.2007 and the applicant has filed the OA in the year 2007 itself. The main issue here in this matter is whether the applicant is entitled for determination of his seniority from the date he has joined with the respondents as a Casual Khalasi much before he has regularized w.e.f. 25.09.2001? In this regard the counsel for the applicant has placed his reliance upon two judgments passed by Hon'ble Apex Court (Supra) wherein it has been perused in the case of Chandra Prakash that the issue involved was placed for decision before a three Judge Bench for final decision. Hence the judgment relied upon by the applicant was not a final judgment. Afterwards it has been decided by Hon'ble Apex Court and other various courts that an employee who joined the department on a casual basis and serving for a period of 120 days, who acquired the



temporary status and afterwards being screened by a duly constituted body and after finding fit has been regularized is entitled for 50% of his service rendered after getting temporary status for the purposes of pension and pensionary benefits. Here the issue is of giving/determining seniority for consequential benefits. It is settled proposition of law that a regularized employee can claim seniority only from the date of regularization. The Hon'ble Apex Court has laid down that if the initial appointment is not according to the rules, subsequent regularization of service does not entitle an employee to the benefit of the intervening service for the seniority. Here in this case the applicant joined as a Casual Khalasi, worked intermittently and afterwards become regularized hence if the service rendered by him prior to regularization is considered for the purposes of seniority, it will upset the seniority of the other person already in the seniority list who were appointed following prescribed rules, it may happen that he has to be placed over the other employees who have already in the seniority list, hence it will disrupt the settled position and create a chaos in the department. Taking into consideration the facts and circumstances of the case and also the settled proposition of law the applicant's claim of determining his seniority and consequential benefits thereof, calculating the period rendered by him as a Casual



Khalasi before regularization does not hold good nor justified hence being devoid of merit the Original application is dismissed.

Jasmine Ahmed
(Jasmine Ahmed) ←
Member-J

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