

[Open Court]

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
BENCH, ALLAHABAD**

THIS THE 27th DAY OF FEBRUARY, 2012

**ORIGINAL APPLICATION NO. 938 OF 2007
U/s 19, Administrative Tribunal's Act, 1985**

Present:-

**HON'BLE MR. JUSTICE S. C. SHARMA, MEMBER-J
HON'BLE MS. JAYATI CHANDRA, MEMBER-A**

Bhagwan Prasad son of late Sri Ram Bharosey, resident of Asuran Chowk Bhedia Garh Dubey Medical Gali, Gorakhpur.

.....Applicant

Versus

1. Union of India through General Manager, N. E. Railway, Gorakhpur.
2. General Manager, N. E. Railway, Gorakhpur.
3. Chief Manager, Karini N.E. Railway, Gorakhpur.
4. Chief Railway Officer, N.E. Railway, Gorakhpur.
5. Assistant Personnel Officer, Traffic, N.E. Railway, Gorakhpur.

.....Respondents

Advocate present for the applicant:-

Sri V. C. Dixit.

Advocate present for the respondents:-

Sri P. N. Rai.

ORDER

Instant O.A. has been instituted for the following reliefs:-

- “(i). *The Hon'ble Tribunal may further be pleased to direct the respondent No.2 to regularize the services of the applicant on the post of driver with effect from when the juniors of the applicant were regularized.*

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- (ii). *The Hon'ble Tribunal may further be pleased to direct the respondent No.2 to decide the pending representation of the applicant dated 04.01.2007.*
- (iii). *Any other suitable order or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case.*
- (iv). *Award the cost of this application to the applicant."*

2. The pleadings of the parties in brief are as follows:-

It has been alleged by the applicant that he was initially appointed as a 'Casual Jeep Driver' in North East Railway at Gorakhpur on 03rd October, 1974 and, thereafter, Temporary Status was conferred on him w.e.f. 01st January, 1984 which is evident from Annexure No.2. The work and conduct of the applicant was always upto mark and appreciated by the higher authorities. The applicant was fully qualified to be considered for regularization and he was fulfilling the requisite qualification for regularization on the post of 'Staff Car Driver'. That the applicant had been continuously working on the post of Driver since his initial appointment dated 03rd October, 1974 without any break. Considering his length of service and educational qualification the name of applicant was forwarded for regularization and the applicant had been called upon for 'Screening Test' vide order 29th July, 1999, Annexure-A-4 is the office order of the respondents. The applicant appeared in the 'Screening Test' on 17th August, 1999, and the result was declared of

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the 'Screening Test', but the name of the applicant did not find place in the list of successful candidates, whereas, the name of his juniors were included in the list of successful candidates. There was no Departmental or Vigilance Inquiry pending against applicant so as to debar the applicant from regularization. Representations were made to the respondents for his ^{regularization} ~~regularization~~ in the services, but of no avail and the matter was kept pending for indefinite period regarding regularization of the applicant. As the applicant's services have not been regularized, hence the O.A.

3. Respondents contested the case and filed Counter Reply and denied from the allegations made in the O.A. In para 8 of the Counter Reply it has been alleged by the respondents that the applicant was not found suitable by the Screening Committee held on 17th September, 1999 (Annexure-CA-1). That the reply was sent to the applicant of his representation on 02nd June, 2000 that the applicant was not found suitable for regularization in the 'Screening Test' and hence the services of the applicant were not regularized. That the O.A. lacks merit and liable to be dismissed.

4. In response to the Counter Reply of the respondents on behalf of the applicant Rejoinder Affidavit has also been filed and it has been alleged that his representation was kept pending by the

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respondents inspite of sending reminders. That the applicant retired from service on 31st January, 2009 after attaining the age of 60 years, but he was not given any 'Pension' and other 'Retiral Benefits'. That the services of the applicant was not regularized even after completion of 35 years of service, and no punishment was awarded to the applicant during his service and it is the rightful claim of the applicant and he is entitled for all 'Pensionary' and 'Retiral Benefits'.

5. We have heard Sri V. K. Shukla proxy counsel to Sri V. C. Dixit, Advocate for applicant and Sri P. N. Rai, Advocate for respondents.

6. There are certain admitted and undisputed facts in the present case. It is admitted that the applicant was initially appointment as a 'Casual Jeep Driver' in North East Railway at Gorakhpur on 03rd October, 1974 and, thereafter, Temporary Status was conferred on him w.e.f. 01st January, 1984. It has not been alleged in the O.A. that applicant was superannuated on attaining the age of 60 years on 31st January, 2009, but it has been alleged in the Rejoinder Affidavit that applicant was superannuated on 31st January, 2009 on attaining the age of superannuation and upto the date of his retirement he continued to work as 'Jeep Driver'. The main contention of the learned counsel for respondents is that a 'Screening Test' was

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conducted in order to regularize the services of the 'Jeep Drivers' and for that a 'Screening Test' was conducted on 17th September, 1999 and it has been alleged in the Counter Reply that the applicant failed to qualify in the 'Screening Test' and that is why his services were not regularized, but it has nowhere been alleged that the applicant was reverted to a lower post when he failed to qualify in the 'Screening Test'. It is main contention of the applicant's Advocate that the applicant continued to work as 'Jeep Driver' even after 1999.

7. The respondents' have not come with categorical stand that when the applicant failed to qualify in the 'Screening Test' on 17th September, 1999 then the work of 'Driver' was not taken from him. The respondents are trying to 'blow Hot & Cold in the same breath' which is not expected from such an Organization like Railway that they will adopt the ambiguous stand to define the case of 'Jeep Drivers'. Much reliance has been placed by the learned counsel for the respondents that as the applicant failed to qualify in the 'Screening Test' on 17th September, 1999 (Annexure-1 is the copy of the 'Screening Test') and learned counsel for the respondents argued that those who qualified in the 'Screening Test' have been mentioned in Annexure-1, and as the applicant failed to qualify in the 'Screening Test' hence his name was not mentioned in

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Annexure-1. And on the basis of Annexure-1 learned counsel for the respondents expected from us that we may presume that vide this letter applicant was not found fit for screening, but we disagree with this contention of the respondents' Advocate that from perusal of Annexure-1 it may be inferred that as the name of the applicant was not mentioned in this Annexure-1 hence it may be presumed that he was found unfit or failed to qualify the 'Screening Test'. It has not been mentioned in this Annexure-1 that except the persons whose names have been mentioned in Annexure-1 ^{were} ~~are~~ qualified and rest were not permitted to drive the Jeep of the Railway and nothing of the sort can be inferred.

8. There is one letter dated 02nd June, 2000 that the applicant's name was not published in the list of selected candidates of the 'Screening Test' and there is no other list of wait listed employees. There is no document filed on behalf of the respondents that after conducting the 'Screening Test' the applicant was ^{not} ~~was~~ permitted to ply the Jeep.

9. Applicant filed sufficient documents to establish that even after 17th September, 1999 he continued to work as Driver of the Jeep in the respondents' Organization. There is recommendatory certificate issued in favour of the applicant by the Chairman of the

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Railway Claims Tribunal, Delhi it is of dated 24th February, 2004 and it has been mentioned in this certificate that in the year 2003 for the excellent and outstanding performance of the applicant a cash Prize of Rs.500/- along-with a recommendatory certificate has been issued in favour of the applicant and from this circumstance alone it is sufficient to draw the inference that ⁱⁿ ~~since~~ the year 2003 applicant had been working as Driver and it is after 17th September, 1999. And there is no document in support of the contention of the learned counsel for the respondents that after 17th September, 1999 when the applicant failed in the 'Screening Test' then he was not permitted to drive the vehicle.

10. Moreover, it will be relevant to consider that whether applicant was found unfit to ply the Jeep of the Railway, because in the 'Screening Test' on 17th September, 1999 according to the respondents applicant failed to qualify the 'Screening Test', but there are documents issued by the respondents themselves in which the performance of the applicant was found upto the mark. There is certificate dated 06th June, 1991 of the visit of the then Railway Minister on 03rd February, 1991 the applicant's performance was found recommendatory and certificate was issued by respondents to this effect. There is also one certificate of qualification of the applicant issued in the year 1995 during the celebration of 14th

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Railway Week and according to this certificate a cash Prize was awarded to the applicant for his excellent and outstanding duties and for dedication and devotion to duties, hence from this document it can be inferred that the work and conduct of the applicant had been excellent and all of a sudden it cannot be believed that in the year 1995 applicant failed to qualify the 'Screening Test', but besides all these facts it is an undisputed fact that the applicant continued to discharge the duties of a Driver upto the date of his retirement in the year 2009. It is strange and surprising that the applicant continued to work as 'Car Driver' since 1974 without any break and there is no disciplinary inquiry at all initiated against him till the date of his retirement in the year 2009, but he was not regularized. When Temporary Status was conferred on the applicant in the year 1984 then there was no reason for permitting the applicant to work as Driver even without regularization. When the applicant worked for more-than 35 years uninterrupted with outstanding record then he deserves to be regularized and it is the legitimate expectation of the applicant, which every Govt. Servant and Employee expects and the denial on the part of the respondents is not justified. There must be certain valid reason for not regularizing the services of the applicant and after superannuation in the year 2009 the Pension and other Retiral benefits were refused to the applicant on the pretext that he was not regularized. But considering these outstanding and

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dedicated service rendered by the applicant in the Respondents' organization it may be presumed that his services deserve to be regularized and there is no reason to refuse regular benefits in the year 2009 that he failed to qualify. The names of certain successful employees were mentioned in Annexure-1, but there must be some speaking order regarding the services of the rest of the persons who failed to qualify the test. But if an employee failed to qualify the test even then he continued to work on the same post without any adverse consequence then it will be presumed that the services of the applicant were satisfactory and he ought to have been regularized. It shows indifferent and callous act of the respondents. In our opinion applicant deserves to be regularized from the date when his juniors were regularized. We will not like to comment on the point that whether the period of Temporary Status shall be counted for the purpose of qualifying services, it is for the respondents to consider as per rules.

11. It will be a futile exercise to give any direction to the respondents to decide the representation of the applicant. It will further shows that the respondents had been callous in redressing the grievance of the applicant. When the O.A. is before us and we are satisfied that the applicant has proved his case then instead of providing another occasion to the applicant to come in litigation in second round we can curb that stage even at the time of disposal of

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this O.A., because the attitude of the respondents had been callous and what is to be done on the representation it is known to everybody? It is the duty of the Govt. Organization not to provide any opportunity to their employees to enter into endless litigation, but unnecessarily the applicant had been compelled to approach this Tribunal.

12. For the reasons mentioned above we are of the opinion that the applicant continued to work as Driver w.e.f. 03rd October. 1974 upto the date of his retirement on 31st January, 2009, but his services could not be regularized on that ground that he failed to qualify the 'Screening Test'. In the year 1984 Temporary Status was conferred on the applicant. Under these circumstances we are of the opinion that the applicant is entitled to be regularized from the date when his juniors were regularized. O.A. deserves to be allowed.

13. O.A. is allowed, respondents are directed to regularize the services of the applicant as per rules from the date when his juniors were regularized and applicant shall be paid all the 'Retrial Benefits' as well as 'Pensionary Benefits' as per rules. The order shall be complied with within a period of three months from the date when the copy of this order is produced before them. Applicant shall

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produce a copy of this order before the respondent Nos. 02 to 05 at the earliest. No order as to costs.

J. Chandra

[Jayati Chandra]
Member-A

/Dev/

Justice S. C. Sharma

[Justice S. C. Sharma]
Member-J