

MQ

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.628 of 2011

Cuttack this the 11th day of August 2014

Laxminarayan Rout...Applicant

-VERSUS-

Union of India & Ors....Respondents

FOR INSTRUCTIONS

1. Whether it be referred to reporters or not? Yes
2. Whether it be referred to CAT, PB, New Delhi for being circulated to various Benches of the Tribunal or not? Yes


(R.C.MISRA)
MEMBER(A)


(A.K.PATNAIK)
MEMBER(J)

50

CENTRAL ADMINISTRATIVE TRIBUNAL
CUTTACK BENCH, CUTTACK

O.A.No.628 of 2011

Cuttack this the 11th day of August, 2014

CORAM

HON'BLE SHRI A.K.PATTNAIK, MEMBER(J)
HON'BLE SHRI R.C.MISRA, MEMBER(A)

Laxminarayan Rout
Aged about 45 years
S/o-Sahib Rout,
At present resident of Qr. No.C-G,
Rail Colony, Rail Vihar,
Chandrasekhpur,
Bhubaneswar,
Working as M.V. Driver, Gr.II
O/O. Chief Administrative Officer/ Con./E.Co.Rly/ Rail Vihar,
Chandrasekhpur,
Bhubaneswar.

...Applicant

By the Advocate(s)-M/s.N.R.Routray
S.Mishra
T.K.Chaudhury

-VERSUS-

Union of India represented through

1. The General Manager
East Coast Railway
Rail Vihar,
Chandrasekhpur
Bhubaneswar
Dist. Khurda.
2. The Chief Administrative Officer/ Con.,
East Coast Railway,
Rail Vihar
Chandrasekhpur,
Bhubaneswar,
Dist. Khurda.



- 51
3. Senior Personal Officer/ Con.,/Co-ordn.
East Coast Railway,
Rail Vihar
Chandrasekharpur,
Bhubaneswar
Dist. Khurda.
 4. Chief Engineer/Con.,
E.Co.Rly.,
Rail Vihar,
Chandrasekharpur,
Bhubaneswar,
Dist. Khurda.

...Respondents

By the Advocate(s)-Mr.S.K.Ojha

ORDER

R.C.MISRA, MEMBER(A):

In this Original Application, applicant, Laxminarayan Rout, presently working as M.V.Driver under the Respondent-Railways, has approached this Tribunal seeking the following relief.

- i) To quash the impugned order of rejection dated 25.08.2011 and 15.10.2012 under Annexure-A/12 and A/17.
- ii) To direct the Respondents to regularize the service of the applicant w.e.f. 28.06.1993 in the scale of rs.950-1500/-; and pass any other order as this Hon'ble Tribunal deems fit and proper in the interest of justice.

2. Sequence of events as narrated in the O.A. runs thus: Applicant entered into service under the Respondent-Railways as casual Motor



Vehicle Driver on daily rate of pay of Rs.18.75 on the terms and conditions as applicable to casual labour and posted as leave reserve Driver with effect from 28.6.1990, vide Annexure-A/4 dated 28.6.1990. While working as such, on completion of 360 days continuous service from the date of his appointment, he was granted Temporary Status vide Annexure-A/5 dated 16.9.1991 with effect from 23.6.1991 and consequently, his pay was fixed at Rs.950/- in the scale of Rs.950-1500/-(RSRP), with a stipulation that he would draw C.A as admissible. Vide Memorandum dated 19.8.1999(Annexure-A/6) a provisional part panel in respect of Project Casual Labour (PCL) unit-wise as approved by the Chief Administrative Officer(Con)/S.E. Railway, Bhubaneswar was published for regularization against Gr.D category in the scale of Rs.2550-3200/-(RPS) against 60% PCR posts under the CAO© BBS level, wherein the date of regularization of the applicant is indicated as 28.6.1993. While the matter stood thus, applicant submitted a representation dated 7.4.2008 (Annexure-A/7) with a prayer to regularize his service against the post of M.V.Driver, Gr.III w.e.f. 28.6.1993 and since, his grievances were not redressed by the authorities, he approached this Tribunal in O.A.No.198 of 2009. This Tribunal, vide common order dated 2.5.2011 disposed of the matter in the following terms:

"In view of the above, as agreed to by learned counsel for both sides, these three Original Applications are disposed of with direction to the Respondents that in case the applicants are the TPCL staff then their cases for

regularization in Gr.C post (without any back wages) should be examined by the Respondents with reference to the orders of the CAO © ECoRly. And pass appropriate orders within a period of 90(ninety) days from the date of receipt of copy of this order".

3. In compliance with the above direction, Sr.Personnel Officer(Con)/Co.Ordination, E.Co.Railway, vide (Annexure-A/12) dated 25.8.2011 issued a detailed speaking order, the relevant portion of which reads as under.

"That you were engaged in the Railway as Casual Vehicle driver on daily rated basis on daily rate of pay Rs.18.76 vide AENC/Laxmipur's Office Order No.84 dated 28.6.1990 being declared medically fit in A-3 category subject to terms and conditions applicable to the casual labour on Indian Railways. You were granted Ty. Status w.e.f. 23.06.1991 in the scale of rs.950-1500/-(RSRP) vide Dy.CE/C-II/LXP's Office Order No.85/91 dated 16.09.1991. Further, your service was regularized against 60% PCR Gr.Post in the scale Rs.2440-3200/- w.e.f. 28.6.1993 vide Dy.CPO(Con)/BBS's Memorandum No.DCPO/Con/P/BSS/Cas.Labour/428/00170 dated 24.09.1998 as per rules prescribed for regularization of casual labour against PCR Gr.D post and was allowed to continue to work as Adhoc Motor Vehicle driver, gr.III purely on adhoc basis. Again you were granted promotion as Vehicle driver-II(adhoc) in scale Rs.1200-1800/- purely on adhoc measure in terms of Sr.Project Manager/Koraput's Office Order No.E/166/92 dated 29.09.1992.

54

You have neither protested nor has challenged that order of regularization against PCR Gr.D post at any point of time rather accepted the benefit accrued from the order by their regularization in PCR Group-D posts.

It is well known fact that in Construction Organization most of the persons work on ad hoc measure in absence of regular vacancies and mere ad hoc promotion cannot confer on them any right to claim for regularization.

In this connection, it is to state here that due to urgent need of 20 nos. of M/V/Driver for Koraput-Rayagada Project, by placing an indent before the District Employment enhance, you were engaged as daily rated casual Vehicle driver. Subsequently after observing requisite conditions you were given temporary status as Casual Vehicle Driver, Gr.II in the scale of Rs.950-1500/- w.e.f. 23.06.1991. Thereafter, you were regularized with retrospective effect against vacant 60% Group-D post in scale Rs.2550-3200/- w.e.f. 28.6.1993 along with similarly situated persons who were continuing with Ty.Status applying the rule uniformly to grant PCR status by regularizing them in the initial grade. As per establishment Manual Volume-II, absorption of casual labour against PCR post is not automatic but subject to inter alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the railway administration.

Of late some of daily rated casual Motor Vehicle Drivers in your group who were regularized



55

against 60% PCR Group-D were again regularized against 60% Group-C Motor Vehicle driver, gr.III posts as per their seniority and turn for regularization. As you were not in turn at that time and the concept of PCR has ~~lot~~ it's utility vide Railway Board's letter No.E(NG)-II/84/PO/SE/30 dated 21.08.1988 circulated vide CPO/S.E.Railway/GRC's Esttl.Srl.no.66/2022 now there is no chance of considering you for regularization in Group-c PCR post with scale of pay Rs.950-1500/-.

This disposes Hon'ble CAT/CTC's order dated 02.05.2011 in O.A.No.198/2009".

4. Aggrieved with ^{the above} and thus alleging non-compliance of the order of this Tribunal dated 2.5.2011 in O.A.No.198/2009, a Contempt Petition bearing No.62 of 2011 was filed by the applicant. This C.P. was disposed of by the Tribunal vide order dated 21.8.2012 with the following direction.

"Heard and perused the materials placed on record. We are conscious that as per law, once an order is passed by the authority, in pursuance of an order of the Court/Tribunal, the same cannot be a subject matter of contempt. For the aforesaid reason, we cannot hold that the alleged contemnors are liable for action under the Contempt of Court Act. At the same time, we find that the order under Annexure-2 is not in tune with the letter and spirit of the order of this Tribunal dated 02.05.2011. Hence, the alleged contemnors are hereby directed to comply with the order of this tribunal dated 2.5.2011 in O.A.No.198 of 2009 in letter and spirit in a speaking order within a



period of 60(sixty) days from the date of receipt of copy of this order".

5. In obedience to the above direction, Sr. Personnel Officer(Con)/Co.Org.E.Co.Railway, issued speaking order dated 15.10.2012 vide Annexure-A/17, the relevant portion of which reads as under:

"Orders of CAP© on 21.7.1998 is as under:

Gr.'C' TPCL staff should be regularized in Gr. 'C'. Details to be completed within a week's time & orders issued by 31.07.1998.

In your original application you have sought relief to regularize the service w.e.f. 28.06.1993 in scale Rs.950-1500/- which was rejected by the competent authority. Regularization depends upon the availability of posts in the cadre and there is no PCR post available in Construction Organization. Since no Group-C PCR post of Vehicle driver, gr.III was available, your case was not considered for regularization against the PCR post of Vehicle Driver, Gr.III. Moreover, adhoc promotion cannot confer any right for your regularization. The person of your group who were regularized in Group-D were against regularized in Group-C Motor Vehicle, Gr.III post as per their seniority and turn for regularization subject availability of posts. As you are not in turn at that time, your case was not considered for regularization in Group-C post.

This complies the Hon'ble CAT/CTC's order dated 21.08.2012 IN cp No.62 of 2011".



6. This is the background based on which applicant has approached this Tribunal in the present O.A. seeking relief as indicated above.

7. Respondent-Railways have filed their counter, additional counter resisting the claim of the applicant. In turn applicant has also filed rejoinder. Both applicant and Respondents have filed their written note of submissions.

8. In the written note of submission filed by the applicant, a few points which have been highlighted are as under.

- i) Applicant entered into Railway Establishment w.e.f. 23.06.1991 as a Driver, Gr.III in scale of Rs.950-1500/- and prior to that he was a casual labour, and as per rules of Railway, casual labourers are not employees. Moreover, from the recording in the Service Book of the applicant it is very much clear that the entry date of the applicant into Railway is w.e.f. 23.6.1991 in the scale of Rs.950-1500/-.
- ii) Since 23.06.1991 applicant is continuing in the post of Vehicle Driver, Gr.III and enjoying the scale meant for that post and never enjoyed any scale less than Rs.950-1500/- being an employee of Railway. Further, by way of adhoc promotion the applicant placed in the scale of Rs.1200-1800/- as a Vehicle Driver, Gr.II on adhoc measure.
- iii) One P.K.Swain who was brought to the cadre of Driver in scale of Rs.950-1500/- w.e.f. 14.04.1993 whereas the applicant was already in the said cadre w.e.f.



58

23.06.1991 and vacancy, if any, will go in favour of the applicant.

9. The learned counsel for the Respondents in the written notes filed by him has pleaded that prayer of the applicant is barred by time, and cannot be agitated at such a belated stage. He has not taken timely steps in the matter and the bar of limitation cannot be waived in his favour. There is no doubt that Sri P.K.Swain was initially regularized as Group-D PCR, and when vacancy became available in Group-C PCR, he was regularized against such vacancy. But Sri p.k.Swain is senior to the applicant in this O.A., and since no further Group – C PCR vacancy was available, the applicant was deprived of this benefit. Any relief provided to applicant would be prejudicial to the interest of employees who are senior to him.

10. The applicant's counsel has submitted a citation, which is the order of Calcutta Bench of this Tribunal in O.A.No.182 of 1994 dated 8.1.2001, which was confirmed by the Hon'ble High Court of Calcutta in WP CT No.287/2001. The learned counsel for Respondents has contended that this citation was not applicable to the present O.A. In the case decided by Calcutta Bench, the applicants were promoted as PCL vehicle driver after selection by the Selection Board as per the rules. In the present O.A., the applicant did not face Selection Board for promotion. It is clear from Annexure-6 that applicant passed the Screening conducted by the Selection Committee and was recommended for regular absorption against Group-D category.



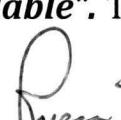
50

According to learned counsel for Respondents this brings out the difference between the two cases.

11. Having heard the learned counsel for the parties, we have gone through the pleadings and the documents adduced on record.

12. Admittedly, applicant was initially appointed as Casual Vehicle Driver on daily wage basis at Rs.18.75 per day on usual terms and conditions of appointment applicable to Casual Labour in Indian Railways with effect from 28.6.1990. The above appointment was no doubt through an approved process of selection. On completion of 360 days continuous service from the date of appointment, applicant was conferred with Temporary Status with effect from 23.6.1991 and accordingly, his pay was fixed at Rs.950/- in the scale of Rs.950-1500/- (RSRP). Vide Memorandum dated 19.8.1999(Annexure-A/6), his service was regularized against Gr.D category in the scale of Rs.2550-3200/-(RPS) against 60% PCR post under the CAO © BBS's level with effect from 28.6.1993 notwithstanding the fact that applicant was at that point of time working as V/Driver, Gr.II, which was a higher grade. This is why, against Foot Note-2 of Memorandum, it has been indicated that **"the staff who are working in the higher grade are allowed to continue in their existing grade on ad hoc measure"**. This apart, against Foot Note-10, it has been categorically indicated that **"the above staff shall be considered for Gr.C regularization as per their turn in the combined seniority list or the unit seniority, as the case may be, as and when PCR, Gr.C post available"**.

The above regularization of the



60

applicant against Gr.D PCR posts, in our considered view, decidedly, is having regard to the fact that ***he was initially appointed as Casual Motor Vehicle Driver on daily rate of pay on the terms and conditions as applicable to Casual Labour in Indian Railways***. Therefore, there was nothing wrong on the part of the Respondent-Railways in this regard. Applicant did accept the above regularization against Group-D posts being well acquainted with his position then in existence and with full knowledge of the condition that he would be considered for Gr.C regularization as per his turn in the combined seniority list or the unit seniority list, as the case may be, as and when PCR Gr.C posts were available. As of date applicant has not called in question the legality and validity of Memorandum dated 19.8.1999(Annexure-A/6) either before the authorities in the Respondent-Railways or before the Tribunal in the earlier round of litigation. Be it noted that if at all the prayer of the applicant in this O.A. is allowed, it would entail regularization against two posts of distinct and independent nature from a particular date. Secondly, appointment of casual labours under the Railways is guided by a scheme, which culminates in regularization subject to other conditions of Rules after conferring Temporary Status on the employee concerned. On the other hand, appointment to Group-C post in the Railways is unlike the norms of appointment of casual labours and this is the background in which though applicant's initial appointment was as casual Motor Vehicle Driver on daily rate basis, yet, conditions as applicable to Casual Labour, were made applicable to him thus

Q
Ree

61

conferring a right in the Respondent-Railways only to regularize him under the scheme set out for regularization of Casual Labours against Group-D PCR posts. If applicant was not satisfied with his regularization of service in Group-D cadre with effect from 28.6.1993, what prevented him to agitate his grievance when Annexure-A/6 dated 19.8.1999 came to be issued ? Whilst examining the matter in judicial scrutiny, we cannot but hold that unless and until Annexure-A/6 dated 19.8.1999 is declared void ab initio, it would be against all canons of law to accede to the prayer made by the applicant in this O.A.

13. As revealed from the averments, this is a matter where cause of action for the applicant arose at different point of times. Although there was considerable delay in approaching the Tribunal by the applicant in O.A.No.198/2009 as against the cause of action that arose therein, but having regard to the fact that the Tribunal had disposed of the said matter on merit and also subsequently, passed orders in CP No.62/12, we refrain ~~ourselves~~ from expressing any opinion on the point of limitation. In so far as point urged by the applicant regarding one P.K.Swain, his date of appointment as Driver being with effect from 14.02.1990, he was regularized as such from 14.5.1993, which is prior to the date of appointment and regularization of the applicant on 28.6.1990 and 28.6.1993, respectively. It is significant to note that applicant having worked as Driver-Gr.II was regularized in Gr.D category against 60% PCR with effect from 28.6.1993. This position as on date stands unaltered. In this regard we may add that ~~it is~~ only the

Quer

62
conditions of appointment will govern the future service benefits of the applicant and not the nature of duties assigned and discharged by him from time to time. Therefore, the action of the Respondent-Railways in our opinion, hardly warrants intervention by the Tribunal.

14. Having regard to the discussions held above, we hold that the applicant is not entitled to any relief sought for in this O.A. Accordingly, the O.A. being devoid of merit is dismissed. No costs.

R.C.MISRA
(R.C.MISRA)
MEMBER(A)

A.K.PATNAIK
(A.K.PATNAIK)
MEMBER(J)

BKS