

In the Central Administrative Tribunal
Calcutta Bench

OA 1095/96

Present : Hon'ble Mr.S.Biswas, Member(A)
Hon'ble Smt.Shyama Dogra, Member(J)

Swapan Kumar Sinha, Son of Late A.K.Sinha, residing at Village Sultanpur, P.O. Jagacha, Dist.Howrah and working for gain as Box Carrier, TNI, Howrah, S.E. Rly

...Applicant

-Vs-

- 1) Union of India, service through the General Manager, S.E. Rly, Garden Reach, Calcutta-43
- 2) General Manager, S.E. Rly, Garden Reach, Calcutta-43
- 3) Chief Personnel Officer, S.E. Rly, Garden Reach, Calcutta-43
- 4) DRM, S.E. Rly, Kharagpur
- 5) Divisional Personnel Officer, S.E. Rly, Kharagpur
- 6) TNI, S.E. Rly, Howrah

...Respondents

For the applicant :

Mr.S.K. Ghosh

For the respondents

Mr.P. Chatterjee

Date of Order :

11/6/03

ORDER

Smt.Shyama Dogra, JM :

This original application has been filed by the applicant with a prayer to give direction to the respondents to assign him proper seniority and give him promotion benefits from the date his juniors were given the same and also to pay all consequential benefits. His further prayer is to direct the respondents to decide his representations filed on 12-7-96 and 22-7-96 which are still pending before the concerned respondents.

2. The respondents have filed a written statement and submitted that applicant was under-going screening process in view of the order of this Court passed in OA 1076/94 and thereafter he was empanelled vide provisional part panel dated 29-1-96. The applicant's position in the said panel was assigned as Sr.No.7 in order of seniority according to aggregate length of

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service and thereafter he was posted in the Gr. 'D' post on regular measure with effect from 4-3-96. Therefore, since the applicant was disengaged with effect from 31-5-80, ~~the~~ the period of past services cannot be taken into account for the purpose of various service benefit to the applicant as prayed for and he cannot claim the seniority at par ^{with} his juniors, along with consequential benefits, in view of the fact that his seniority cannot be compared with his juniors who are posted on regular measure much earlier on completion of all formalities as to attainment of temporary status, screening, medical examination etc.

3. In reply to the written statement, the applicant has stated that since the applicant has ~~attained~~ the temporary status after completion of 120 days ^{in the year 1980}, therefore, his services would not have been terminated without issue of Show Cause and as he had worked for 183 days from 1-12-79 to 31-5-80 and in spite of rendering his service he was disengaged in a very illegal manner. Even the applicant's name was not forwarded for screening process for no fault of his. Though his juniors were sent for the same purpose, which deprived him of his legitimate claim for his regularisation and fixation of seniority and other consequential benefits at par with his juniors.

4. We have heard the learned counsel for the parties and perused the records produced before us.

5. After perusal of Annexure-R1, it is found that by putting the applicant along with other persons for screening process, the competent authority has approved age relaxation of the overaged substitutes of the panel. Annexure-R3 envisage that the applicant was posted on regular measure in the scale of Rs750-940 on 4-3-96.

6. It is the admitted fact that only those Casual Labourers/Substitutes or employees of Group 'D' cadre are entitled for screening process who attained the temporary status after ~~completion of~~ ^{requisite} number of working days, meaning thereby that when they are regularised after completion of that process, the entire period of their prior service as Casual Labour has to be reckoned for the purpose of fixation of seniority and for the purpose of

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further consequential benefits. Therefore, it cannot be said that the incumbents who are undergone the screening process etc. are not in continuous service with respondents. Therefore, we find force in the contention of the applicant that he is to be treated in continuous service for the purpose of fixation of seniority to make him entitled for grant of pensionary benefits and other service benefits as permissible under law, because it has been held by the Hon'ble Apex Court that a casual labour who has attained the temporary status is entitled to the constitutional protection envisaged by Art.311 of the Constitution. Thus he cannot be terminated unless some allegations of misconduct has come into picture against the said employee. Therefore, it can safely be held that the applicant is to be treated in continuous service from the date of his initial appointment i.e. from 1979 for the purpose of fixation of seniority and for the purpose of payment of other service benefits as permissible under Law. However, the applicant is not entitled for payment of backwages on the principle of "No work no pay".

7. The respondents have not come out with any cogent reasons that why the applicant ~~could~~ not be allowed to undergo such ~~screening~~ process along with his juniors. Therefore, the applicant should not suffer for the fault, if any, ~~being~~ committed by the respondents.

8. In view of overall analysis and the observations, we have made above, we are of the considered opinion that the applicant is entitled for the relief as claimed ^{for} in the OA. Therefore, respondents are directed to treat the applicant in continuous service as directed above and decide his representation dated 12-7-96 with regard to fixation of seniority vis-a-vis his juniors in accordance with law. We also inclined to pass this

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order in view of the fact that those persons have not been made party, who may be affected while fixing the seniority of the applicant and they are not before us to agitate their matter. Therefore, respondents are directed to look into that in the light of the observations made above and thereafter pass appropriate speaking and reasoned order after hearing the applicant, who is at liberty to ^{additional documents if required} submit ^{also} to the concerned respondent, who is directed to decide the representation by treating the OA as his representation within a period of 3 months from the date of receiving the order/production of the copy of the order.

9. In terms of these directions and observations, this OA stands disposed of. However, there is no order as to costs.

Shyama Dogra
(Smt. Shyama Dogra)
Member(J)

S. Biswas
(S. Biswas)
Member(A)