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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 406/1996

Date of Order : 07-01-1999

Suraj Bhan S/o Shri Pratap Singh, Aged about 40 years, Working as Jeep Driver, Under Dy. Chief Engineer, (Construction-II), Northern Railway, Jodhpur R/o Inside Mahamandir, Shivpuri, Man Sagar, Jodhpur (Rajasthan).
..Applicant.

Versus

1. Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Chief Administrative Officer, (Construction), Northern Railway, Kashmiri Gate, Delhi.
3. Dy. Chief Engineer (Construction-II), Northern Railway, Jodhpur.
4. Divisional Personnel Officer, Northern Railway, New Delhi.

..Respondents.

Mr. Y.K. Sharma, Counsel for the applicant.

Mr. S.S. Vyas, Counsel for the respondents.


CORAM :

Hon'ble Mr. A.K. Misra, Judicial Member.

Hon'ble Mr. Gopal Singh, Administrative Member.

PER HON'BLE MR. GOPAL SINGH:

Applicant, Suraj Bhan, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for issuing a direction to the respondents to consider and regularise the services of the applicant on the post of Jeep Driver in the grade of 950-1500 (RPS) with all consequential benefits.

2. Applicant's case is that he was appointed on 18.12.1976 as a Casual Labour Khalasi, granted temporary status with effect from 01.01.1984 and promoted as Jeep Driver on ad hoc basis with effect from

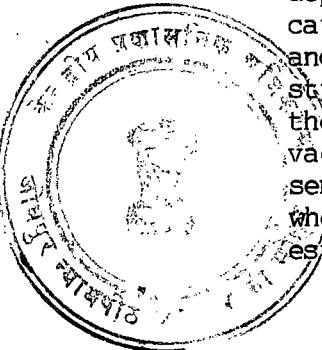
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01.01.1987. Having worked on the post of Jeep Driver for sufficiently long time, the applicant had approached the respondents for regularisation of his services as Jeep Driver. The representation of the applicant in this regard was turned down by the respondents vide their letter dated 20.12.1995 at Annexure A/l. Aggrieved by this action of the respondents, the applicant has approached this Tribunal.

3. Notices were issued to the respondents and they have filed their reply. It has been contended by the respondents that the post of Jeep Driver is a selection post in the grade Rs. 950-1500. The promotion of the applicant to the said post was against the rules and, therefore, he is not entitled to be regularised in the group 'C' post of Jeep Driver.

4. We have heard the learned counsel for the parties and perused the record of the case carefully.

5. The applicant has sought regularisation in terms of para 2007(3) of IREM II (1990 Edition) for better appreciation of the case. The provisions in para 2007(3) of IREM-II(1990) are reproduced below:-


"Casual labour engaged in work charged establishment of certain department who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period can straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labours who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test."

6. The learned counsel for the respondents has contested the stand of the applicant on the ground that his promotion to the higher post of Jeep Driver was against the rules and as such he cannot claim the benefit of para 2007(3) of IREM-II. In this connection, the learned counsel for the respondents has also cited the following judgements of the Apex Court in support of his contention :-

1. (1996) 33 Administrative Tribunals Cases 304, Union of India and Another Versus Motilal and Others.

Chhatisgarh

2. (1996) 32 Administrative Tribunals Cases 793, Union of India and Others Versus Kishan Gopal Vyas.

In Motilal's case, the applicant was appointed directly as Mate in class III post and it was held by Hon'ble the Supreme Court that persons appointed directly as Casual Mates although continued as such for a considerable period and thereby acquiring temporary status were not ipso-facto entitled to regularisation. The facts of the case in hand are clearly distinguishable than the case of Motilal and Others and as such this judgement of Hon'ble the Supreme Court does not help the respondents. Similarly, in Kishan Gopal Vyas's case where a Khalasi in Railway in class IV post appointed not in accordance with the rules to class III post of Clerk or Store Keeper was held not entitled to absorption or regularisation in the latter post. The respondents in their reply have mentioned that the promotion of the applicant to the post of Jeep Driver in group 'C' was against the rules. However, it is admitted by the respondents in their letter dated 20.12.1995 at Annexure A/1 that promotion of the applicant to the post of Driver in the scale of 950-1500 with effect from 01.01.1987 was correct. It has also been mentioned in Annexure A/1 that regularisation of the applicant in the scale of 950-1500 will be after fixing the lien of the applicant and after passing the trade test as per his seniority. It is seen from the above that the respondents are making contradictory statements in regard to appointment of the applicant on the post of Jeep Driver. It is also seen from para 2007(3) of IREM-II that regularisation of casual labour who get promoted to semi skilled, skilled and highly skilled categories does not talk of fixation of lien. Moreover, after engaging the applicant for more than ten years on ad hoc basis on the post of Jeep Driver, the respondents cannot now turn and say that his appointment on the post of Jeep Driver was against the rules. We are firmly of the view that the applicant can be extended the benefit of absorption/regularisation on the post of Jeep Driver in terms of para 2007(3) of IREM-II.

7. The learned counsel for the respondents has further argued that the post of Jeep Driver does not fall in the category of Artisan Staff and as such the applicant cannot be extended the benefit under para 2007(3) of IREM-II. In this connection, the learned counsel for the applicant has brought to our notice the Railway Board Circulars dated 21.2.94 and 11.4.80. The relevant portion of Railway Board Circular dated 11.4.80 are extracted below :-

Cirpals of

"Subject: Artisan staff-classification of-Recommendation of R.W.C.T.-1976.

The question of classification of Drivers of vehicle has been engaging the attention of this Ministry for some time past and after carefully considering the matter, it has been decided that all categories of Drivers of Motor Vehicles including Truck Drivers, Road Roller Drivers, EOT Crane Drivers, Fork Lift Drivers, Tractor, Jeep, Ambulance Drivers, Staff Car Drivers etc. whether working in the workshop/sheds or in the Administrative Establishments and who are subjected to the prescribed trade test for promotion as such should be classified as Artisan Staff for the purpose of distribution of skilled posts under the orders contained in this Ministry's letter No. E(P&A)I-78/RWCT-76/1 dated 24.8.78, retrospectively with effect from 1.8.1978, provided they had passed the requisite Trade Tests at that time."

8. It is clear from the Railway Board Circular dated 11.4.80 that all categories of drivers have been classified as Artisans staff.

9. In view of the above discussion, we find much merit in the application and the same deserves to be allowed.

10. The O.A. is accordingly allowed with the direction to the respondents to consider the case of the applicant for absorption/regularisation as Jeep Driver against 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories subject to the applicant's passing the requisite trade test, within a period of three months from the date of receipt of a copy of this order.

11. The parties are left to bear their own costs.


GOPAL SINGH

(GOPAL SINGH)

MEMBER (A)

2/1/89
(A.K. MISRA)

MEMBER (J)