

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

(10)

O.A. No. 87/1998
TAT-NOT

-199

DATE OF DECISION: 16.03.2000.

Harendra Kumar Sharma Petitioner

Mr. Y.K. Sharma, Advocate for the Petitioner (s)

Versus

Union of India & Ors. Respondent(s)

Mr. S.S. Vyas, Advocate for the Respondent (s)



CORAM :

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

The Hon'ble Mr. Gopal Singh, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? *NO*

2. To be referred to the Reporter or not? *Yes*

3. Whether their Lordship; wish to see the fair copy of the Judgement? *NO*

4. Whether it needs to be circulated to other Benches of the Tribunal? *NO*

(Gopal Singh)
(Gopal Singh)
Adm. Member

(A.K. Misra)
(A.K. Misra)
Judl. Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR.

O.A. No. : 87/1998

Date of order : 16.3.2000

Harendra Kumar Sharma S/o Sh. Jogi Chandra Sharma, aged 39 years, presently posted as Electric Khallasi, under Senior Electrical Foreman, Northern Railway, Suratgarh, Resident of Block No. E/41A, Old Railway Colony, Suratgarh.

..Applicant.

Versus

1. Union of India through General Manager, Northern Railway, H.Q. Office, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Bikaner Division, Bikaner.
3. Divisional Personnel Officer, Northern Railway, Bikaner.
4. Chief Electrical Engineer (Construction), Northern Railway, Tilak Bridge, New Delhi.
5. Senior Electrical Foreman (Const.), Northern Railway, Suratgarh.
6. Senior Electrical Engineer (const.), Northern Railway, Jodhpur.

..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, Harendra Kumar Sharma, has filed this application under section 19 of the Administrative Tribunals Act, 1985, praying for setting aside the impugned order dated 18.9.1997

Gopal Singh

(Annexure A/1) and for a direction to the respondents to restore the applicant to the post of Black-Smith and for a further direction to restore the pay of the applicant at the rate of Rs. 1440/- with effect from 18.9.1991 and pay the arrears of difference with interest at the rate of 18%.

2. Applicant's case is that he was initially engaged as Casual Labour in the Electric Branch of Construction Organisation and he was appointed as Hammerman on 27.6.1979 in the pay scale of Rs. 210-270 and then promoted in the skilled category of Black-Smith. The applicant while working at Bhatinda in Construction Organisation had filed a case No. 384/91 before the Labour Court on 19.6.1991 claiming wages in Group 'C' scale and this application was allowed by the Labour Court which entitled the applicant revised scale rate of skilled Casual Labour from 25.5.1981 to 14.4.1983, revised scale rate of Black-Smith with effect from 15.8.1983. The arrears on account of the Labour Court were given to the applicant only after he filed a Contempt Petition in the Labour Court. The respondent department conducted a screening for regularisation of Casual Labour in the year 1986 and the applicant also appeared in that screening. As a result of screening, the applicant was offered the post of Electric Khalasi and was appointed as such vide respondents letter dated 30.9.1991 (Annexure R/4). It is the contention of the applicant that since he was working in a Group 'C' post in the Construction Organisation, he should have been screened by the Division for a Group 'C' post and given appointment on a Group 'C' post. Further, the applicant contends that he was drawing a pay at the rate of Rs. 1440/- in the Construction Organisation and this pay should have been protected by the respondents on his appointment to a Group 'D' post in the Division. The applicant

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had also made a representation in this regard vide his letter dated 28.12.1994 which was decided by the respondents vide Annexure A/1, on the direction of this Tribunal. Feeling aggrieved of the order of the respondent at Annexure A/1, the applicant has filed this application.

3. Notices of the OA were issued to the respondents and they have filed their reply. The respondents have contested the application on the point of limitation on the ground that the applicant was appointed as Electric Khalasi grade Rs. 750-940 in the year 1991 after due screening but he filed a representation in the year 1994 and further, the applicant should have approached the Tribunal when his representation was not replied by the respondents within a period of six months from the date of its presentation. The applicant has approached this Tribunal only on 24.3.1998 much beyond the period of limitation. It is, therefore, contended by the respondents that the application is barred by limitation and should be dismissed on this count alone. It has also been averred by the respondents that the applicant while working as temporary status Casual Labour, was utilised on the post of Black-Smith on adhoc basis in the grade of Rs. 950-1500 with effect from 15.01.1988 against work charge post. He was not promoted on the post of Black-Smith and was utilised as Black-Smith on purely temporary local arrangement basis and, therefore, he was not entitled for regularisation directly on a Group 'C' post. It is also contended by the respondents that the award given by the Labour Court has no relevance as far as his regularisation in Group 'C' post of Black-Smith in grade of Rs. 950-1500 is concerned.

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

5. It is seen from the due and drawn statement prepared by the respondents consequent upon the award given by the Labour Court in their order dated 11.01.1993 that the applicant has been given wages at the rate of the scale of Group 'C' post right from 25.5.1981 and he was lastly given the pay of Rs. 1440/- from 01.8.1991. Thus, the applicant had been treated as working on a Group 'C' post from 25.5.1981. The service record produced by the respondents at Annexure R/1 indicates that the applicant was promoted as Black-Smith on adhoc basis with effect from 15.01.1988 on pay of Rs. 950/- in the scale of Rs. 950-1500. It can safely be presumed that though the applicant was working on the post of Black-SMith from 25.5.1981, he was given the adhoc appointment with effect from 15.01.1988. On his appointment in the Division on Group 'D' post, the applicant was given pay in the scale of Rs. 750-940 and his pay was fixed at Rs. 858/-. The learned counsel for the applicant has cited the judgement of Hon'ble the Supreme Court in Ram Kumar & Ors. Vs. Union of India & Ors. reported in 1996(1) SLJ, 116. In this judgement, it has been held by Hon'ble the Supreme Court as under :-

"On commitment given by counsel for respondents directed -

- (A) Railway Casual Labourers working in 'C' category may be screened and regularised after screening in 'D' category but their pay and allowance be protected upto their promotion in 'C' category.
- (B) Railway Casual Labourers in 'C' category for five years be screened in 'C' category and regularised.
- (C) Railway Casual Labourers attaining temporary status entitled for pensionary benefits for orders issued by Railway Board be given that benefit."

6. In terms of the above judgement of Hon'ble the Supreme

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Court, the applicant should have been screened for Group 'C' post. However, the respondents have screened him for a Group 'D' post and appointed him as such. The pay which he was drawing as Black-Smith in the Construction Organisation i.e. Rs. 1440/- should have been protected, in terms of the above judgement. Further, drawal of lesser pay than entitled gives a continuous cause of action every month and, therefore, we are of the view that the application is not barred by limitation.

7. In the light of above discussion, we allow this OA with the direction that on his appointment as Electric Khalasi after screening, the pay of the applicant what he was drawing as Black-Smith would be protected till he is appointed to a Group 'C' post.

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

Copal Singh

(COPAL SINGH)

MEMBER (A)

Am 16/3/2012

(A.K. MISRA)

MEMBER (J)

SM.

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23/3/2000

Part II, and III destroyed
in my presence on 10-10-06
under the supervision of
section officer () as per
order dated 23/8/06

Section officer (Record)