केन्द्रीय प्रशासनिक (प्रक्रिया) नियमावली के [illegible]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH,JODHPUR

OA 267/99

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Date of order : 09.02.2001

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1. O.A.NO. 131/1998

Jav Singh S/o Shri Shakriya aged about 40 years, R/o C/o PWI(C), Abu Road, Western Railway, at present employed on the post of Mate under Permanent Way Inspector (C), Abu Road, Western Railway.

.....Applicant.

VERSUS

1. The Union of India through the General Manager, Western Railway, Churchgate,Mumbai

2. Chief Project Manager (Construction), Western Railway, Ahmedabad.

3. Divisional Railway Manager, Western Railway Kota Division, Kota.

.....Respondents.

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2. O.A.NO. 267/1999

Jwala Prasad S/o Late Dwarika Prasad, aged about 54 years, R/o C/o Dy. Chief Engineer (C-III), Northern Railway, Jodhpur,at present employed on the post of Permanent Way Mistry, in the office of Dy.Chief Engineer (C-III), Northern Railway, Jodhpur.

.....Applicant.

VERSUS

1. Union of India through General Manager,

Northern Railway, Baroda House, New Delhi.

2. Divisional Railway Manager, Northern Railway Delhi Division, Delhi.

3. Dy.Chief Engineer (C-III), Northern Railway Jodhpur.

4. Chief Administrative Officer (Construction) Northern Railway, Hqrs. Office, Kashmiri Gate, Delh -6.

.....Respondents.

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CORAM :

HON'BLE MR.A.K.MISRA, JUDICIAL MEMBER

HON'BLE MR.GOPAL SINGH, ADMINISTRATIVE MEMBER

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Mr.J.K.Kaushik, Counsel for applicant in OA No.131/98 and O.A.No. 267/99

Mr.S.S.Vyas, Counsel forrespondentsin OA No.131/98
Mr.Kamal Dave,Counsel for respondents in OA No.267/99

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PER HON'BLE MR.A.K.MISRA :

In both these cases, the applicants have prayed for their regularisation. The controversy relating to their relief and the point of law involved being common, both these OAs are disposed of by one common order.

2. OA NO.131/98

It is alleged by the applicant that initially he was appointed as Casual Mate in Kota Division on 25.7.81 and was granted temporary status on the post of Mate w.e.f. 1.1.86 vide letter dated 19.5.96. The applicant continued to work on the post for number of

years. Vide letter dated 25.3.98, the applicant was transferred as Gangman in his parent division. Looking to the long number of years of working of the applicant on the post of Mate, he should have been regularised on the post of Mate. Two persons, junior to the applicant and holding the post of Mate, were absorbed on the post of Mate in the year 1997 and thus the applicant has been discriminated. The applicant had prayed for quashing the orders dated 25.3.98 (Annex.A/1), transferring him to the post of Gangman. He has further prayed that the respondents be directed to protect his pay. In reply, the respondents have stated that the applicant was engaged as a Casual Labour Mate. The applicant is not entitled to be regularised directly on the post of Mate as per the position of rules and the law laid down by the Hon'ble Supreme Court. The applicant is entitled to be first regularised in the Group 'D' post and thereafter his promotion to the next higher post, could be regulated as per rules in force. The applicant is not entitled to any relief.

3. OA NO. 267/99

It is alleged by the applicant that he was initially engaged as Casual Permanent Way Khalasi under the AEN, Saharanpur in Delhi Division. Thereafter, he was absorbed against regular establishment on 15.9.70 and was confirmed on the said post w.e.f. 24.12.74. The applicant was, thereafter put to work in the Construction Organisation w.e.f. 15.12.75 and was also posted on the post of Store Issuer in February 1976. xxxxxxxxxxxxxxxxx

The applicant was posted as Permanent Way Mistry after subjecting him to a suitability test, on promotion w.e.f. 26.6.85. Since then the applicant has been discharging his duties sincerely and faithfully. The claim of the applicant is that he has been working on the post of Permanent Way Mistry for more than 13 years and deserves to be regularised from the date he was working on the post. The respondents have filed their reply stating therein that the applicant is not entitled to regularisation simply because he has been discharging duties as a Permanent Way Mistry, in view of the decision of the Hon'ble Supreme Court. It is also stated by the respondents that the applicant was regularised only on the Group 'D' post. He was made Store Issuer, only on local-temporary arrangement basis. His promotion on the post of Permanent Way Mistry is also on ad hoc temporary local arrangement basis. The applicant can only be granted regularisation on the higher post as per the rules in vogue and not on the basis of long years of working. The O.A. deserves to be dismissed.

4. We have heard the learned counsel for the parties and have gone through the case files.

5. As the facts reveal, Jav Singh was directly appointed as Mate and the applicant Jwala Prasad, was appointed as Permanent Way Khalasi. But, subsequently, both of them were put to work on a Group 'C' post for number of years and due to that both the applicants have been claiming regularisation on the higher post which is a promotional post in

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case of both the applicants. Hon'ble the Supreme Court in the case of Union of India and Others Vs. Moti Lal and Others, reported in 1996 (33) ATC Page 304 has held as under :-

> "11..... that a daily-wage or casual worker against a particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularisation in accordance with the rules and, therefore, so far as the post of mate under Railways is concerned, the same has to be filled up by a promotion from the post of gangman and Keyman in Class IV subject to employees passing the trade test."

6. Following the said principle laid down by Hon'ble the Supreme Court, the Full Bench of Central Administrative Tribunal, Jaipur Bench, has held in O.A.No. 57/96 dated 30.10.2000 - Aslam Khan Vs. Union of India and Others as under :-

> "A person directly engaged on Group-C post (Promotional post) on casual basis and has been subsequently granted temporary status would not be entitled to be regularised on Group-C post directly but would be liable to be regularised in the feeder cadre in Group - D post only. His pay which he drew in the Group-C post, will however be liable to be protected."

7. Looking to the principles as described above, the applicants cannot claim to be regularised on the promotional posts simply because they have been put to work on these posts on ad hoc temporary local arrangement basis. These posts being promotional posts, applicants can be granted promotion as per rules in their turn. In the Full Bench case, while

denying the claim of the applicant for regularisation, it was further observed that the pay, which such applicant was drawing on Group-C post, is liable to be protected. Likewise, in the instant cases, the pay of the applicants is required to be protected while they are being repatriated to the post on which they have been regularised. In both these cases the claim of the applicants for regularisation deserve to be rejected, however, both the applicants are entitled to the relief of protection of their pay which they were drawing on the post of Group-C. With these observations, the O.As No. 131/98 and 267/99, are disposed of accordingly. Parties are left to bear their own costs.

Sd/
(GOPAL SINGH)
Adm.Member

Sd/
(A.K.MISRA)
Judl.Member

प्रमाणित सही प्रतिलिपि
5/6/2001
अनुभाग अधिकारी (न्यायिक)
केन्द्रीय प्रशासनिक अधिकरण
जोधपुर

jrm

Part II and III destroyed in my presence on 21.3.07 under the supervision of section officer N as per order dated 19/2/07

Section officer (Record)