

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH
JODHPUR

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Date of Order : 26.6.2001.

ORIGINAL APPLICATION NO.149/1999

Kushal Singh S/o Shri Mohan Singh aged 50 years, working as Fitter under Inspector of Works, Northern Railway, Lalgah, Bikaner, R/o Quarter No. 223-C, New Railway Colony, Lalgah, Bikaner, Rajasthan.

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Applicant.

VERSUS

1. Union of India Through General Manager, Northern Railway Headquarters, Baroda House, New Delhi.

Additional Divisional Railway Manager, Northern Railway, Bikaner.

Divisional Personnel Officer, Northern Railway, Bikaner.

4. Assistant Engineer, Northern Railway, Bikaner.

5. The Divisional Superintendent (Engineer), Northern Railway, Divisional Office, Bikaner.

Respondents.

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Mr. Bharat Singh, Counsel for the applicant.

Mr. Manoj Bhandari, Counsel for the respondents.

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CORAM :

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

Hon'ble Mr. A.P.Nagrath, Administrative Member

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ORDER

(Per Mr.A.K.Misra)

The applicant had moved this OA with the prayer that the respondents be directed to declare seniority position of the applicant

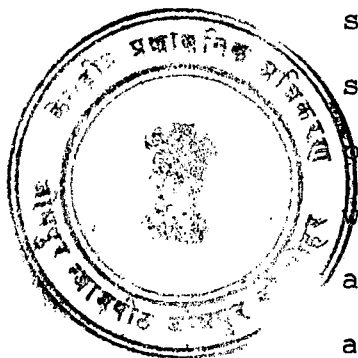
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and implement the order dated 14.8.1996, ~~Annex.A/1~~ of the General Manager, Northern Railway, New Delhi regularising the services of the applicant on the present post of skilled category on the basis of his seniority position with all consequential benefits.

2. Notice of the OA was given to the respondents who have filed their reply to which a rejoinder was filed by the applicant.

3. We have heard the learned counsel for the parties and have gone through the case file.

4. The claim of the applicant is that he was engaged as Casual Labour Fitter on 8.5.1972 on daily wages. He was given temporary status and central pay scale on 7.11.1972. The applicant was screened on 18.9.1991 as Casual Labour Khalasi and was given central pay scale of fitter on 28.9.1991. Since then he has been continuously working as Fitter. It is alleged by the applicant that he submitted a representation dated 20.7.1998 Annex.A/1 (for treating the applicant as regularised in 'C' class on the post of Artisan as Fitter). It is also stated by the applicant that as per the judgement of the Central Labour Court on 5.1.1985 the applicant was paid the difference of daily wages and central rate wages. On 14.8.1996 the General Manager Northern Railway issued a letter based on rule 2007 (3) of the Indian Railway Establishment Manual, Vol.II (for short 'IREM') that casual labour artisans who have worked for more than 5 years as artisan should be regularised. In pursuance to the aforesaid letter the applicant submitted a representation for regularisation as artisan but nothing was communicated to the applicant. In the year 1997 Railway Board issued a letter that casual labour working in category 'C' for long time be regularised. Since the applicant had been working on the post of artisan as fitter for more than 5 years he is entitled to get the benefit of



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regularisation in terms of the said circular. However the applicant was screened in class IV category but he is continuing on the post of 'C' category and being paid accordingly.

5. The contention of the respondents is that the applicant was appointed as Daily Rated Casual Labour and was given C.P.C. w.e.f. 7.11.1972. The applicant was screened in the year 1981 and was posted in class IV category vide order dated 18.4.1981. The applicant thereafter posted as Gangman but he refused to be posted as such. Therefore, he was treated as permanent khalasi vide order dated 14.9.1991. In the year 1991 applications were invited for appointment to the post of Fitter in the Artisan skilled category but the applicant did not apply for the same. Further in the year 1992 again applications were invited in the similar fashion but again the applicant did not apply for the same. In pursuance of the said communication trade test was held in January 1993 and the result thereof was declared in March 1993. A further selection for artisan category again took place in 1993 and applications were invited in Sept. 1993. The applicant again did not apply in pursuance thereof. The selection process for artisan category was held in the year 1995 and appointments of successful candidates were made accordingly. The applicant did not apply for being trade tested in any of the notified trade tests as mentioned above. Therefore, the applicant cannot now claim regularisation on the basis of his working on that post for number of years. The claim of the applicant deserves to be dismissed.

6. The learned counsel for the applicant has argued that the applicant deserves to be regularised on the basis of long number of years of working on the post of fitter for which regular pay scale is being paid to him. On the other hand, it was argued that the applicant cannot be regularised against the rules. As per rules the applicant was required to be trade tested. The applicant was given couple of opportunities for appearing in the trade test organised in



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the year 1993 and 1995 but the applicant did not apply for the same and therefore the applicant cannot claim regularisation without having successfully appeared in the trade test. It was also argued by the learned counsel for the respondents that in view of the Full Bench decision of the Central Administrative Tribunal rendered in Aslam Khan Vs. UOI & Ors. in OA No. 57/96 dated 30.10.2000, the applicant cannot be regularised on the group 'C' post directly, a number of years of working notwithstanding.

7. We have considered the rival contentions. In our opinion, the case of the applicant is covered by the Full Bench decision in which similar claim of regularisation was debated in view of para 2007 (3) of IREM. In this case, decision of Hon'ble Supreme Court rendered in Union of India and Ors. Vs. Moti Lal and Others was also considered.

In the aforesaid judgement of Hon'ble the Supreme Court reported in 1996 (33) ATC 304 it was held that :

"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 grangman and Keyman in Class IV subject to employees passing the trade test.

12. In this view of the matter the Tribunal was not justified in directing regularisation of the respondents as mates."

8. Thus it is clear that the claim of a candidate for regularisation is required to be dealt-with as per the rules. Even the rules provide that for being absorbed in the regular vacancies in skilled grades requisite trade test is required to be passed by the candidate and vacancies to the extent of 25% reserved for departmental promotions can be filled-in from amongst the skilled



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and semi skilled categories. In this case there is nothing on record which may go to show that applicant had successfully trade tested for regularisation as per his claim on the post of artisan in category 'C'. On the contrary, the respondents have stated that the applicant did not avail the opportunities of appearing in trade tests which were organised in the year 1993 and thereafter in 1995. When the applicant had not availed the opportunity of appearing in the trade test he cannot as of right claim regularisation directly on the post of category 'C' on the basis of number of years of working on such post. The Full Bench had answered the reference in Aslam Khan's case in the following terms :-




"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."

9. In view of the above, the applicant cannot claim regularisation directly on group 'C' post as per his claim. The circulars which the applicant has cited in his OA and is taking support to strengthen his contention provide for trade test before a candidate is regularised on a group 'C' post. The applicant had not availed the opportunity of appearing in the trade test as mentioned above, therefore, the claim of the applicant for being regularised on sheer length of working on group 'C' post has no relevance. In our opinion, the case of the applicant is fully covered by the decisions cited above and the applicant is not entitled to any relief in the instant case.

10. In view of the above discussions, the O.A. of the applicant deserves to be dismissed and is hereby dismissed. No orders as to cost


(A.P. Nagrath)

Adm. Member


26/6/20
(A.K. Misra)

Judl. Member

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