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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JODHPUR BENCH,
JODHPUR

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Date of Order : 22.10.2001.

O.A.NO. 161/2001

Mahesh Chandra S/o Shri Netra Pal age about 42 years, working as Balck Smith under the Permanent Way Inspector (C), Northern Railway, Luni, Resident of Railway Quarter, Luni.

.....Applicant.

VERSUS

1. Union of India through General Manager, Northern Railway, Headquarter Office, Baroda House, New Delhi.
2. The Chief Administrative Officer (Construction), Northern Railway, Kashmiri Gate, Delhi.
3. Deputy Chief Engineer (Construction-I), Northern Railway, Jodhpur.
4. Divisional Railway Manager, Northern Railway, New Delhi.

.....Respondents.

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CORAM :

Hon'ble Mr.Justice B.S.Raikote, Vice Chairman
Hon'ble Mr.Gopal Singh, Administrative Member

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

Mr.Kamal Dave, Counsel for the respondents.

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ORDER

PER MR.GOPAL SINGH :

In this application under section 19 of the Administrative Tribunals Act, 1985, applicant, Mahesh Chandra, has prayed for setting aside the impugned order dated 6.1.2000 (Annex.A/1) and for a direction to the respondents to regularise the services of the applicant as Black Smith in the grade of Rs. 950-1500 and thereafter, in the grade of Rs. 1200-1800 with all consequential benefits and protect the pay.

Gopal Singh

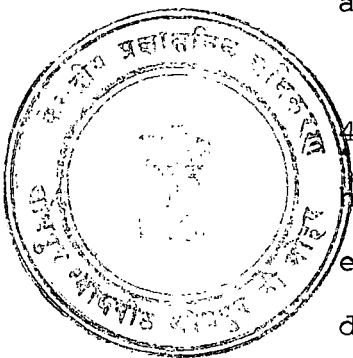
2. Applicant's case is that he was initially engaged as a Casual Labour Khalasi on 4.1.1978, however, his services were utilised as Black Smith from the date of his engagement. The applicant was officially shown to have started working as Black Smith from 24.10.1982 and an entry to this effect was also made in his casual labour card. Subsequently, the applicant was transferred and posted as Black Smith under Permanent Way Inspector, Nangal Dam. The applicant was subjected to Trade Test for the post of Black Smith and ~~qualified~~ and he qualified for it. The applicant has also qualified the screening test for the regular Class IV post and thereafter, he was regularised in class IV post against 40% Construction in the year 1988 reservation / in response to the respondents' letter dated 2.5.1988 (Annex.A/5).The applicant was further promoted in the scale of Rs. 1200-1800 vide respondents letter dated 2.7.1994 (Annex.A/6). The applicant had earlier approached this Tribunal vide O.A.No. 137 of 1995 which was disposed of on 8.1.1999 with a direction to the respondents to consider the case of the applicant for absorption as Black Smith as per the Railway Board's Circulars dated 9.4.1997 and 2.2.1998, subject to his passing the selection test for the same as per rules and as per his turn and seniority. In compliance to the orders dated 8.1.1999 of this Tribunal passed in O.A.No. 137 of 1995, the applicant was informed that his lien is fixed as Gangman and he was screened as Gangman in the year 1997 and his case for regularisation as Black Smith will be considered as and when vacancy arises against the 25% of the promotee quota on his turn as per his seniority after passing the requisite selection/suitability test. The applicant was further advised to watch for the notice to be issued calling for applications for the post of Black Smith and apply for the same, vide respondents order dated 31.12.1999 (Annex.A/1). This Order dated 31.12.1999 (enclosure to letter dated 6.1.2000), has been challenged by the applicant and he has prayed for regularisation of his services as Black Smith.

3. In the Counter, the respondents have denied that the applicant's

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services are being utilised as Black Smith from the date of his joining the department. The applicant was granted temporary status with effect from 1.1.1983 as Gangman and was assigned the work of Black Smith against purely temporary ad hoc and local arrangement. It is also pointed out by the respondents that the Construction Organisation is a temporary organisation and employees are appointed against work-charged^{posts} and further that the Construction Organisation being a temporary organisation, is not competent to conduct any exercise for regular promotion and the promotional rights of the applicant can only be considered as per avenue of promotion by the parent division, where his lien is fixed. It has also been pointed out by the respondents that at present there is no vacancy in the cadre of Black Smith and none of the junior to the applicant, has been promoted/regularised as Black Smith and that the case of the applicant will be considered as and when vacancy arises in the 25% quota. It has, therefore, been averred by the respondents that the application is devoid of any merit and is liable to be dismissed.



4. The contention of the applicant that he was officially shown to have started working as Black Smith with effect from 24.10.1982 and an entry to this effect was made in his casual labour card, has not been denied by the respondents. It can, therefore, be taken that the applicant is working on the post of Black Smith from 24.10.1982. Thereafter, he was screened and his lien was fixed on the post of Gangman with effect from 1.1.1997 and the applicant still continuing on the post of Black Smith. The respondents have also considered his case for regularisation as Black Smith and have come out vide their letter dated 31.12.1999 (enclosure to letter dated 6.1.2000), that his case for regularisation as Black Smith, would be considered against the 25% promotion quota as and when vacancy arises.

5. The question 'whether the person directly engaged on Group 'C' post (promotional post), as casual basis and subsequently, acquired

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temporary status, would be entitled to be regularised on Group 'C' post directly or whether such person requires to be regularised in the feeder cadre in Group 'D' post by providing pay protection of Group 'C' post', had come up for consideration before the Full Bench at Jaipur, and after detailed examination, it was held vide order dated 30.10.2000, passed in O.A.No. 57/1996 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."

The view of this Tribunal held earlier in regard to regularisation on Group-C post, has also been examined by the Larger Bench in the above mentioned case. The learned counsel for the applicant has brought to our notice, the judgement dated 6.9.1999 of Hon'ble the Rajasthan High Court in D.B.Civil Writ Petition No. 3140/1999, wherein, our view held in O.A.No. 320/1996 decided on 28.5.1999, has been upheld. In the light of orders and judgement dated 30.10.2000 passed in O.A.No. 57/1996, we are of the view that the applicant is not entitled to regularisation on a Group-C post directly but, would be liable to be regularised in the feeder cadre in Group-D post only. On his appointment to a Group-D post, the applicant would, however, be entitled to protection of his pay which he drew in the Group-C post. Accordingly, we pass the order as under :-

"The O.A. is partly allowed. The applicant would be entitled for regularisation on a Group-D post. He would, however, be entitled to protection of his pay which he drew on a Group-C post in the eventuality of his reversion to a Group-D post. No order as to costs."

(Gopal Singh)
Adm.Member

(Justice B.S.Raikote)
Vice Chairman

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Rec'd
~~10-25-07~~
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Part II and III destroyed
in my presence on 22-5-07
under the supervision of
section officer (1) as per
order dated 12-13-02
VGNM
Section officer (Record)