

I/9
2/13

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. No. 46/2003

Date of Order. 3.8.2004

The Hon'ble Mr. J K Kaushik, Judicial Member.

The Hon'ble Mr. M K Misra, Administrative Member.

Nathoo Ram, S/o Mohbata Ram, aged about 50 years Fitter Northern Railway, Bikaner r/o Near Radio Station, Village and Post Office Udasar, Tehsile and Distt. Bikaner.

: Applicant.

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

versus

1. General Manager, North West Railway, Jaipur.
2. Divisional Engineer (H.Q) North West Railway, Bikaner.
3. Asset. Divisional Engineer, North West Railway, Bikaner.
4. Divisional Personnel Officer, North West Railway, Bikaner

: Respondents.

Mr. Manoj Bhandari : Counsel for the respondents.

ORDER

Per Mr. J K Kaushik, Judicial Member.

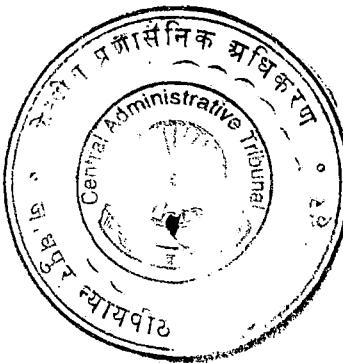
Shri Nathoo Ram has filed this O.A. inter alia for seeking a direction to the respondents to regularise his services on the post of Fitter with all consequential benefits.

2. The material facts necessitating filing of this Original Application are that the applicant was initially engaged as causal labour on dated 7.3.72. He attained temporary status on dated 31.1.73. Thereafter on 31.1.73, he was appointed as Fitter in



the grade of Rs. 260-400 and posted to work under Inspector of Works, Lalgarh where he continues to work on the same post without any interruption. He has been has been paid in regular scales of pay and also granted pay fixation in the revised pay scale meant for the post of Fitter i.e. Rs. 950-1500 and Rs.3050-4590 as per the recommendations of 4th and 5th Pay Commissions, respectively. He has also got his due increments including the stagnation increments and at present his pay fixed at Rs. 4670/- At one occasion he was subjected to screening test which he passed on dated 18.4.81. At another time, he was shown as Junior Fitter TLA which was protested against by him. He also belongs to SC community. He submitted a representation for considering his regularisation on the post of Fitter Grade III on which he has been working for the last about 31 long years. He possesses the requisite qualifications for the same. He has also not been granted the benefits under ACP scheme. The salient grounds of his claim have been enunciated in para 5 and its sub-paras of the OA.

3. The respondents have resisted the claim of the applicant and have filed a detailed and exhaustive reply. It has been averred that the applicant has been regularised on the post of Khalasi in group D vide letter dated 14.9.91 and has never been appointed on the post of Fitter. He has himself accepted, the said post of Khalasi and he can not now claim regularisation on the post of Fitter on the ground of merely working on the post of Fitter. The applicant was not a regular fitter but was only posted



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against the vacant post of Fitter and he also assured the department that as and when the vacancy arises, he shall pass the trade test of Fitter for getting regularised thereof.

4. The further defence of the respondents as set out in the reply is that the records relating to one Shri Shokat are not available and no parity in the matter of regularisation can otherwise be claimed since there is no indefeasible right to regularisation as such. The post of Fitter is to be filled in on passing the selection based on the trade test which he has not passed so far. The grounds raised in the O.A. have generally been denied and it has been averred that no regularisation can be made de hors the rules in force. No rejoinder has been filed on behalf of the applicant.

5. We have heard the learned counsel for the parties and have anxiously considered the submissions, pleadings and the records of this case. Both the learned counsel have reiterated their pleadings. There is no quarrel regarding the facts of the case. The admitted position of the case is that the applicant has been continuously employed on the post of Fitter with effect from 31.1.73 (except for a short period of about 5 days in the year 1991) and has been granted the pay in the pay scales as revised from time to time with due increment, meant for the post of Fitter Grade III which is admittedly a class C category post. It is also true that the applicant has not so far passed the trade test for the post of Fitter Grade III. It is also true that he



has screened for group D post and he passed the same and was absorbed against regular establishment in the Railways. The learned counsel for the respondents has submitted that once the applicant has been regularized on the post of Khalasi which is a group 'D' post, he cannot have any claim on the post of Fitter Grade III and the O.A. is misconceived. He has next contended that the applicant cannot be regularized merely on the basis of continuous working and fixation of pay on the post of Fitter for which a trade test is prescribed which the applicant has not passed.

6. The Learned counsel for the applicant has placed heavy reliance on the judgement of Hon'ble Rajasthan High Court Judgement in case of **Kalu and Others Vs. Union of India and Ors** etc. etc. [2003(2) WLC page 8] and has submitted that his case is fully covered by the ratio of the same. On the other hand the learned counsel for the respondents has strenuously opposed the same and has submitted that subsequently in similar type of matter in **Shukar Chand V. Union of India and Ors** [DB.C.WP No. 952/2001 decided on dated 30.7.2003], a different view has been taken by the same High Court. He has next submitted that Hon'ble Rajasthan High Court in case of **Union of India & ors V. Deen Dayal Gupta & ors** [2003 (2) CDR 1472 (Raj) decided on dated 28.11.2002] has also adjudicated the similar controversy in favour of the department but the Judgement of **Deen Dayal Gupta** (supra) could not be brought to the notice of Hon'ble Rajasthan High Court while



E/13
D/17

hearing the case of **Kalu and ors.** (supra), hence the decision in **Kalu's** case would be per incuriam and can not be applied to the instant case as a precedent.

7. We have considered the rival submissions made on behalf of both the parties. The factual aspect of the matter as noticed above, is not in dispute. As regards the judgements relied upon by the parties, the case of **Kalu** (supra) was decided on dated 20.12.2002, case **UOI & ors V. Deen Dayal Gupta** (supra) was decided on 28.11.2002 and that of **Shukar Chand's case** on dated 30.7.2003. As per the rule of precedent, laid down by Apex Court in case of **Rajasthan Public Service Commission & Anr V. Harish Kumar Purohit & Anr.** [2003 SCC (L&S) 703] and also by a constitution bench of High Court of MP in case **Jabalpur Bus Oprs Asso & Anr V. State of MP & Anrs** [AIR 2003 MP 81], that where there are conflicting judgements of equal judges bench, the earlier one is to be followed; in other words the earlier judgement shall be considered as precedent. And if the arguments of the learned counsel for the respondents is taken at its face value, one would agree that the judgement in case of **Deen Dayal Gupta's** would hold the field. However, independent of **Deen Dayal Gupta's** case, the position of judgement in case of **Shukar Chand** would be otherwise in case comparison of same is made with **Kalu's** case; the later being of an earlier date would be treated as precedent.



8. Let us clear the applicability or otherwise of the case of **Union of India & ors Vs. Deen Dayal Gupta & ors** case, in that case the employees initially belonged to Group D post and they were promoted as Clerk on which they were regularised but from a susequent date. They claimed for their regularisation from the date they were holding the promotional post of clerk. But in the before hand, there is no such claim for regularisation form a back date. It is also not the case of regularisation on the promotional post. The applicant has been continuously working on the post of Fitter on which he is seeking regularisation. Thus the facts of this case are quite different and distinguishable from the the one of **Deen Dayal Gupta's** case. Therefore, the decision of that case can have no application to this case and the respondents do not get any support from the same. In this veiw of the matter we do not find any force in the contention of the learned counsel for the respondents and same could not impress us.

9. Now adverting to the other aspect of the matter, as we have noticed above that the judgement of Hon'ble Rajasthan High Court in case of **Kalu's** was not brought to the notice of their Lordships while deciding the case of **Shukar Chand** (supra) by the same court at a subsequent date. The earlier judgement i.e. of **Kalu's** case shall be a binding precedent since we categorically held that the decision in **Deen Dayal Gupta's** case has no application to this case. We also find that in the judgement of **Shukar Chand**, the subsequent judgement of



2/5
2/19

Apex Court especially review judgement by three judges (i.e. of larger bench) in case of **Ram Kumar V. Union India** [1996 (1) SLJ 116] was also not brought to the notice of Hon'ble High Court, whereas all the relevant Railway Board Circulars as well as the said judgements have been duly considered in **Kalu's** case as indicated in the subsequent paras of this order. It causes an anxiety and doubt as to why the judgement in **Kalu's** case was not brought to the notice of Hon'ble High Court when the respondents in both the cases were from the same Railways and were also represented by the same learned counsel. Thus the decision in **Shukar Chand** is also of no help and does not support the defence of respondents.

10. Now adverting to the crux of this case, in this case two primary issues are involved. The first one is whether the employees who are working on a higher post for a considerable long time are entitled to their regularization of their services on the post they are employed because they are working for a considerably long period and the second one is whether the employees are entitled to regularize their service in group 'C' post in the light of the circular issued by the Railway Board. The first question has been answered in the negative by the Hon'ble High Court of Rajasthan at Jodhpur in **Kalu's** case. One can not claim regularization only on the basis of working for a long time and the regularization shall have to be done as per the rules in force and that too after passing the requisite selection/test.



I/16
I/20

11. As regards the second question the same was decided in favour of the employee after examining the provisions of the Rules and also the decisions of the Apex Court and the same have been eloberately dealt with in D.B. Civil Writ Petition No. 3235 etc. /2001 – **Kalu and Ors. vs. Union of India and Ors.** decided on 20th December 2002 [2003(2) WLC page 8] , by their Lordships of Hon'ble High Court of Rajasthan, in a similar matter. We find it expedient to reproduce paragraph (8) to (13) of the said judgement which reads as under: -

"(8) Still next question survives because of the reason the petitioners are claiming benefit of their absorption/regularisation on the post in Group "C" as per the decisions taken by the Railway Administration for which the Railway Administration had issued necessary orders from time to time. It is also submitted that the judgment delivered in the case of **Union of India vs. Moti Lal** and another reported in [1996(33) ATC 304] is based upon the judgment delivered in the case of, **Ram Kumar** (AIR 1988 SC 390). In fact, *Ram Kumar's* case was again placed before the Supreme Court on moving Misc. Petition and it was overruled by judgment of the three Judges Bench of the Supreme Court, which is reported in **SLJ 1996(1) SC 116**. Therefore, according to the learned counsel for the petitioners, the decision of the Tribunal is contrary to the law laid down by the three Judges Bench of the Supreme Court and the Tribunal committed illegality in relying upon already overruled judgment. It will be relevant to mention here that Kumar's case was decided by the judgment dated 2.12.1987, which was considered by the Hon'ble Apex Court in the case of **Moti Lal** reported in AIR 1996 SC 3306 and the Hon'ble Supreme Court held that:

"Thus it is apparent 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



I/17
D/21

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.

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

Even after holding that the view of the Tribunal directing the Railway Authorities to absorb the respondents on regular post as Mates was not justified, the Hon'ble Apex Court even then refused to interfere with the order passed by the Tribunal by observing as under: -

"Even though on principle we are in agreement with the submissions of Mr. Goswami, learned Senior counsel appearing for Railway Administration but having taken into account the fact that the respondents were directly appointed as Mate though on casual basis and having continuing as such Mates for more than 22 to 25 years it will be wholly inequitable to require them to be regularised against the post of Gangman in Class IV. In the premises, as aforesaid, we decline to interfere with the ultimate conclusion of the Tribunal on equitable ground, in the facts and circumstances of the present case. The direction will not be treated as a precedent."

(9) *In Moti Lal's* case which was decided on 15.2.1996, only earlier decision of *Ram Kumar's* case was considered which was decided by two Judges Bench of the Supreme Court on 2nd December 1987 and subsequent three Hon'ble Judges decision of the Supreme Court given in the same case was not brought to the notice of the Supreme Court. It appears that in above same *Ram Kumar's* case, which was decided on 2nd December 1987 by the Bench of two Hon'ble Judges a Civil Misc. Petition was filed which, was decided by the larger bench of Supreme Court, consisting of three Bench Judges. In this subsequent larger Bench judgment, reported (in 1996 (1) S. L. J. 116 (S.C.), Hon'ble Supreme Court, directed the Railway Administration to give effect to the Railway Board's instructions which were issued on 20th January 1985 for regularisation of the services of the employees against Class III Post. It will be just and proper to quote the relevant portion from the said decision, which is as under: -

"Mr. Goburdhan relying upon the Board's instructions issued on 20 January 1985 says that these people have already worked for more than five years and have



I/18

2/22

become entitled for regularisation in class III posts. If that be so, we call upon the Railway administration to give effect to the Boards instructions referred to above and considered claim of 12 persons named below for regularisation as against Class III posts subject to their satisfying the requirements laid down in the Board instructions."

(emphasis supplied)

The question of entitlement of pension of the employees also considered by the Supreme Court and in last, it is ordered:-

"The decision is beneficial to the employees and we direct that the board's decision may be implemented."

(10) A bare perusal of the above judgements referred above (*Moti Lal's and Aslam's*) cases and the judgment of the Division Bench of this Court, **Durbeen Singh vs. Union of India** reported in 2001 (3) WLC 808; it is clear that in above cases, subsequent larger Bench's judgment delivered in *Ram Kumar's* case was not brought to the notice of courts. The subsequent judgment delivered in *Ram Kumar's* case, though was considered by the Division Bench of Delhi High Court in C.W. No. 4121/97 **Union of India vs. Lekh Raj and others** decided 18th May 2002 but the Division Bench of the Delhi High Court proceeded on wrong presumption that *Ram Kumar's* case was distinguished by the Supreme Court in *Moti Lal's* case. In fact only earlier judgment of *Ram Kumar's* case which was decided on 2.12.1987 (Writ petition Nos. 15863-15906 of 1984) was considered and not the larger Bench decision. This Court is bound by the larger Bench decision of the Hon'ble Supreme Court. It is nobody's case that the circulars have not been issued by competent authority and it is nobody's case that circulars are not binding upon the Railway Administration. The Railway Administration was fully aware of the Decision of the Supreme Court delivered in *Ram Kumar's* case still issued the various Circulars including the circulars of the year 11/15.2.1991, 13.2.97. and circular dated 9.4.1997, making Provision for straight way absorption in skill grade posts. It is relevant to quote para 2007 IREM Vol-II, issued by the Railway Administration: -

3. Casual labour engage in work charged establishment of certain Departments who get promoted to semi-skilled and highly skilled categories due to non-availability of regular departmental candidates and continued to work as casual



employees for long period, can straightaway be absorbed in regular vacancies in skill 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 casual labour who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test."

(11) In replies filed by the respondents, though large number of judgments referred and even quoted but nothing has been said with respect to the explicit plea based on the subsequent larger Bench decision delivered in *Ram Kumar's* case. As per the reply filed by the respondent, the services of the petitioner's cannot regularised either because of the reason that some of the petitioner's services have already been regularised in their parent cadre or that in view of the Supreme Court's decision given in *Moti Lal's* case and in view of the larger Bench decision the Tribunal, petitioners can not seek absorption for regularisation on the post in Group "C". It is admitted case of the respondents that, petitioner's cases were never considered for absorption or regularisation of their services in the light of various circulars which were issued from time to time and in pursuance of which circulars, the Railway Administration itself has regularised services of the employees on the higher post for which the petitioner has placed on record few orders passed by the Railway Administration. Even nothing has been said to explain why the circulars were issued if are not intended for implementation? Nothing has been said to explain why the circulars were issued, if the Railway administration was of the opinion that services of the employees cannot be regularised in view of the judgments of the Supreme Court? It has also not been explained whether the circulars are issued to redress the difficulties of the employees in the light of the observations of the Apex Court in earlier judgment of *Ram Kumar's* case wherein Hon'ble Apex Court observed: -

"for over 10 years, litigations of this type have been coming to the court. About three years back, this court directed a scheme for absorption in *Yadav's* case (1985) (2) SCC 648 which had been framed and is operative. Casual labour seems to be the requirement of the Railway Administration and cannot be avoided. The Railway establishment manual has made provisions for their protection but implementation is not effective. Several instructions issued by the Railway Board and the Northern



Railway headquarters were placed before us to show that the administration is anxious to take appropriate steps to remove the difficulties faced by the casual labour but there is perhaps slackness in enforcing them. We hope and trust that such an unfortunate situation will not arise again and in the event any such allegations coming to the court, obviously the administration will have to be blamed."

(emphasis supplied)

(12) It is unfortunate that despite above observation of the Apex Court, made in the year 1987, and more than 14 years have passed, the litigation has not come to end. It is true that in view of the decisions referred about the employee cannot claim regularisation merely because they were holding the post for a long period but there appears to be no bar in framing any policy to absorb the employees after considering the difficulties of the employees. Framing of policy for absorption of the existing employees working for very long period is not unknown in service jurisprudence. Allegations of Arbitrariness and choose and pickup in the matter of regularisation of services of the employees can be avoided of by properly framed scheme. There appears to be no justification for the Railway Administration in not complying with their own circulars, which were issued to give benefit to the employees. In recent judgment, **Gujarat Agriculture University vs. Rathod Labhu Bechar & Others** reported in AIR 2001 SC 706, Hon'ble Supreme Court, not only upheld the claim for regularisation of the employees who completed more than 10 years of continuous service with minimum of 240 days in each calendar years by ordering relaxation in eligibility clause on the ground that "those working for a period of 10 or more years without any complaint is, by itself a sufficient requisite qualification". The Hon'ble Supreme Court after considering the scheme framed for absorption of the employees, held that "The Court is cautious in exercising its discretion. On the one hand it has to keep the interest of the workers alive and on the other to see that employer does not become spineless for the lack of funds eroding the very workers interest." Hon'ble Supreme Court further held that "financial viability is no ground to its disentitle claim of workman" as absorption in phased manner itself is a mechanism which takes care of financial difficulties of the



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H/25
I/25

employee also. Therefore, even when the employees cannot claim regularisation of their services on a post only on the basis of their long working on the post on which they have not been regularly appointed, can certainly claim and take benefit of the scheme framed by their employer and the employer after framing scheme for absorption of the employees can not deny the benefit of the scheme to the employees.

(13) Therefore, in view of the subsequent judgment of the larger Bench of the Supreme Court given in *Ram Kumar's case* reported in 1996 (1) S. L. J 116 (S C), writ petitions filed by the petitioners deserve to be allowed, hence allowed. The impugned judgments of the Tribunal rejecting the claim of the petitioners for regularisation of their services in Group "C" are set aside. It is held that as per the circulars dated 11/15.2.1991, 13.2.1997 and 9.4.1997, the petitioners are entitled to be considered for regularisation of their services in Group "C" posts. It is further made clear that any order of regularisation of the petitioner's services on lower post i.e., in Group "D", if passed after issuance of above referred circulars by the Railway Administration, will not come in way of the petitioners for consideration of their case for regularisation in accordance with the circulars referred above. The respondents are directed to consider the cases of each individual petitioner, on merits strictly in accordance with circulars mentioned above, and if the petitioners are found entitled for the relief, it may be accorded to them as early as possible. No order as to the costs."

12. Now, adverting again to the facts of this case and applying the aforesaid proposition of law we find that the controversy involved in the instant case squarely covered on all fours and we have absolutely no hesitation in following the same; rather we are bound to follow the same. We may also observe that applicant has been working on the post of Fitter for the last over 31 years, there must have been regular work for the said post



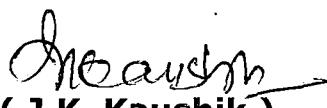
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2/26

especially when he has been paid the due salary and allowances meant for the same. But we fail to understand as to why he has not been subjected to trade test so far; after all the test is to be arranged by the respondents and is not within the control of the applicant. We are making this observation since the respondents have repeatedly stressed on their ground that he could not be regularised since he did not pass the requisite trade test (as if he were given chance but he did not appear or succeed.). Nothing prevented them to subject the applicant to trade test and even now it could be done.

13. The upshot of the aforesaid discussion is that the Original Application has merits and substance and the same stands allowed. The respondents are directed to consider the case of the applicant for regularisation on the post of Fitter Gr.III in the light of the aforesaid observation of Rajasthan High Court in their lordships' judgement in **Kalu's** case supra within a period of four months from the date of receipt of a copy of this order. The parties are left to bear their own costs.


(M K Misra)

Administrative Member


(J.K. Kaushik)

Judicial Member

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