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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application No. 195/2005

Date of order: 24.01.2007

**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER
HON'BLE MR. R.R. BHANDARI, ADMINISTRATIVE MEMBER**

Nathoo Ram S/o Shri Mohbata Ram Ji, aged about 53 years, resident of - Village Udasar, P.O. and District - Bikaner (Raj.) at present working as Fitter in the office of I.O.W. North-West Railway, Lalgarh, Bikaner (Rajasthan).

...Applicant

Mr. Y K Sharma, counsel for the applicant.

VERSUS

1. Union of India through General Manager, North-West Railway, Jaipur (Raj.).
2. Divisional Personnel Officer, North-West Railway, Bikaner (Raj.).
3. Assistant Engineer, North-West Railway, Bikaner (Raj.).
4. Inspector of Works, North-West Railway, Lalgarh, Bikaner (Raj.).

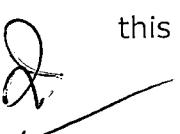
...Respondents

Mr. Manoj Bhandari, counsel for respondents.

ORDER

(By Mr. J K Kaushik, Judicial Member)

Shri Nathoo Ram has preferred this Original Application under Section 19 of the Administrative Tribunals Act, 1985, wherein he has questioned the validity of order dated 16.07.2005 (Annexure A/1) and has prayed for setting it aside with further prayer for issuance of any other order or direction deemed fit in the facts and circumstances of this case.



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2. We have heard learned counsel for both parties and have carefully perused the pleadings and records of this case. The brief facts of this case are that the applicant was granted temporary status on 31.01.1973 and thereafter he was posted to work on the post of Fitter in the grade of Rs. 260-400 on 31.01.1973. Since then he has been working as Fitter and his pay has been fixed on the same. However, he was not regularized on the post of Fitter and he had to invoke the jurisdiction of this Bench of the Tribunal vide O.A. No. 46/2003 which came to be allowed vide order dated 03.08.2004 (Annexure A/2). The respondents were directed to consider the case of the applicant for regularisation on the post of Fitter Gr. III in the light of the judgement in Kalu's case, which was decided by the Hon'ble High Court of Rajasthan. D.B. Civil Appeal was filed against the said judgement before the Hon'ble High Court of Rajasthan and the same was dismissed by upholding the decision of this Tribunal. Thereafter, the respondents have conducted the trade test for the post of Fitter and the applicant has been regularized vide communication dated 19.10.2005 (Annexure R/4) at page 41 of the paper book.

3. Learned counsel for the applicant has contended that the applicant has not been regularized from the date he was put to work as Fitter Gr. III and the regularisation has been given effect to from a prospective date. He has also submitted that one similarly situated person Shri Shokat Ali was granted the regularisation without passing any trade test. Shri Shokat Ali was junior to the applicant but similar benefits have not been extended to the applicant.

4. Learned counsel for the respondents has submitted that in the matter of regularisation, the diverse factors are to be taken into

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consideration and normally the regularisation is to be done from a prospective date and there was no abnormal situation in the instant case therefore, the respondents action cannot be faulted with.

5. We have considered the rival submissions put forth on behalf of both the parties. Firstly, as regards the passing of the trade test is concerned, it would never be agreeable that a person in the Artisan Category is regularized without passing a trade test and it was necessary for the respondents to subject the applicant to the trade test before the regularisation. They have therefore acted well in consonance with the rules so far as conducting the trade test is concerned. As regards the regularisation of one Shri Shokat Ali without passing the trade test is concerned, we are not equipped with the complete details in as much as Mr Shokat is not even a party respondent before us. However, if any illegality has been done in the past and Shri Shokat Ali was wrongly given the benefits of regularisation without passing the trade test, the equality clause cannot be invoked since the equality cannot be applied against the illegality and one has to base his claim on an enforceable right. We have not been shown any law providing that one could be regularized in the Artisan Category without passing the requisite trade test. Therefore, the contention of the learned counsel for the applicant cannot be sustained.

6. As regards the regularisation from back date is concerned, if the applicant is allowed to be regularized from back date i.e. about 32 years back and that would amount to upsetting the settled position in as much so many persons must have enjoyed their promotion in between and their position might have become irreversible. Recently

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the Hon'ble Apex Court in the case of **Chairman, U.P.Jal Nigam & Anr. Vs. Jaswant Singh & Anr.**, [JT 2006 (10) 6 500] has held that those who sleep on their rights, they cannot take advantage if any, if one comes to the Court and enjoyed the benefits granted to them. We are also in agreement with the version of the learned counsel for the respondents that the regularization has to be prospective and diverse factors are involved while considering the regularization e.g. the roster has to be seen and the vacancy position is to be taken into consideration etc. In this view of the matter, we do not find any fault with the action of the respondents and are of the considered opinion that there is no ground for interfering with the action of the respondents.

7. In the premises, the result is rather very unfortunate but we are left with no option except to dismiss this Original Application, which we direct, but with no order as to costs.


 (R R BHANDARI)
 ADMINISTRATIVE MEMBER


 (J K KAUSHIK)
 JUDICIAL MEMBER

Kumawat

Received copy of order
Priority class
31/11/07
for S. M. MANGALAKAY

26/11/07
26/11/07

Part II and III destroyed
In my presence on 26/11/07
under the supervision of
Section Officer as per
order 26/11/07

Section Officer (Record)