

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR

Jodhpur, this the 9th day of February, 2015

CORAM

Hon'ble Mr. Justice Kailash Chandra Joshi, Judicial Member
Hon'ble Ms. Meenakshi Hooja, Administrative Member

Original Application No. 366/2013

Hyder Khan s/o Shri Kasam Khan, aged 55 years, r/o Near Christian Kabristan, Chand Mari, Abu Road, District Sirohi; Helper in the office of the Diesel Foreman, North Western Railway, Abu Road, District Sirohi

.....Applicant

By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur
2. Divisional Railway Manager, North Western Railway, Ajmer.
3. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, District Sirohi.
4. Divisional Personal Officer, North Western Railway, Ajmer
5. Diesel Foreman, North Western Railway, Abu road, District Sirohi.

.....Respondents

By Advocate : Mr. Govind Suthar on behalf of Mr. Manoj Bhandari

Original Application No. 368/2013

Laxman Lal s/o Shri Gamana Ji, aged 57 years, r/o Menawas, Gandhi Nagar, Ward No. 18, Abu Road, District Sirohi; Helper in the office of the Diesel Foreman, North Western Railway, Abu Road, District Sirohi.

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By Advocate: Mr. Vijay Mehta

Versus

1. The Union of India through the General Manager, North Western Railway, Jaipur
2. Divisional Railway Manager, North Western Railway, Ajmer.
3. Senior Divisional Mechanical Engineer (Diesel), North Western Railway, Abu Road, Sirohi.
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.....Respondents

By Advocate : Mr. Govind Suthar on behalf of Mr. Manoj Bhandari

ORDER (ORAL)

For the purpose of convenience, we are deciding these 2 OAs by a common order as the facts and points involved in these OAs are common in nature.

2. The brief facts of OA No.366/2013 are being taken for deciding these cases. The applicant was initially appointed to the post of Artisan Khalasi in Diesel Shed, Abu Road in the year 1979 along with 200 other persons. Case of regularization of services of the applicant alongwith some others was taken up by respondents after 11 years of his appointment. Respondent No.4 vide order dated 8.1.1990 directed

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respondent No.5 to submit affidavit of 11 Artisan Khalasis named therein including the applicant in support of his educational qualification and age. The applicant submitted affidavit and he has been included in the list of employees who have submitted the affidavit vide letter dated 27.1.1998 (Ann.A/2). Thereafter the Diesel Foreman, Abu Road vide letter dated 6.3.1998 informed respondent No.2 that he has not received the order of regularization and requested for sending the same. When the regularization process was going on, a charge sheet was issued to the applicant on 4.4.2002 and eventually he was dismissed from service vide order dated 19.7.2004. The appeal filed by him was also dismissed vide order dated 14.12.2004. The applicant has challenged the order of dismissal by way of filing OA No.315/2004 before this Tribunal and this Tribunal vide order dated 7th March, 2008 (Ann.A/4) quashed the order of dismissal and consequential orders. However, liberty was granted to the respondents to proceed against the applicant afresh with respect of the said charge sheet. Thereafter, the applicant was reinstated in service on 10.11.2008. The applicant has further stated that this Tribunal vide order dated 18.3.2013 passed in OA No.235/2009 filed by the applicant directed the respondents to make payment of actual salary from the date of dismissal to the date of reinstatement after granting increments and pay bonus during this period and respondents were also directed to make fixation of 6th Pay Commission. It has been further stated that after reinstatement the applicant was subjected to face chargesheet dated 4.4.2004 and

ultimately the applicant has been exonerated and the charges were dropped vide order dated 20.3.2013 by respondent No.3 holding that the charges against the applicant have not been proved and cannot be proved. During this period services of a number of juniors to the applicant and almost 200 employees appointed with the applicant have been regularized and have been made permanent and some of them have also been granted promotion, but due to pendency of disciplinary proceedings case of the applicant was not taken up for regularization to its logical end. The applicant has also filed representation dated 24.4.2013 raising his grievance and requested to regularize his services. The Railways have made provisions for regularizing the services and in compliance of these provisions, the respondents have commenced the proceedings of regularization, but the same were not completed. Therefore, aggrieved of the action of the respondents, the applicant has filed this OA praying for the following reliefs:-

“The applicant prays that this Hon’ble Tribunal may kindly be pleased to issue directions to the respondents to regularize the services of the applicant from the date of his initial appointment and may further be directed that to give all benefits of a regular Railway employee from the date of his regularization and after his retirement to make payment of pension and all other retiral benefits from the date of his initial appointment/date of regularization. Any other relief, as deemed fit in facts and circumstances of the case may kindly be given to the applicant.”

3. In reply to the OA, the respondents have submitted that in the year 2004, the applicant’s services were dispensed with which were later on reinstated in the year 2008 after orders were passed by this

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Hon'ble Tribunal on 7.3.2008. As per the directions of the Hon'ble Tribunal, the applicant has been paid the benefit of 6th Pay Commission and regular increments vide order dated 12.9.2013. The respondents have further submitted that question of regularization depends on various factors and it cannot be claimed as a matter of right. Availability of sanctioned posts, financial sanction etc. are some of the factors which are to be considered by the competent authority while passing the orders for regularization. Therefore, the applicant is not entitled to any relief.

4. In rejoinder to the reply filed by the respondents, while reiterating the averments made in the OA, the applicant has submitted that when the process of regularization was going on, a charge sheet was issued to the applicant and eventually he was dismissed from service and was reinstated on 10.11.2008 in compliance of orders passed by this Hon'ble Tribunal. The respondents have not denied these vital averments and therefore, stand admitted by the respondents. The applicant has claimed regularization since his juniors have in the meantime been regularized and his case of regularization which was initiated in the year 1990 was not concluded and these facts have not been denied by the respondents. The applicant further submitted that one Shri Narain Lal who was appointed as a substitute along with the applicant on 20.2.1979 was given temporary status w.e.f. 20.6.1979 and thereafter services of Shri Narain Lal were

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regularized vide order dated 17.3.1983, which has been mentioned in service book of Narain Lal (Ann.A/9). It has been further submitted that due to pendency of charge sheet and disciplinary proceedings against the applicant, the case of the applicant was not taken up for regularization to its logical end. Therefore, the applicant has stated that the applicant is entitled to be regularized not only on the basis of various decisions rendered by the Hon'ble Apex Court, Rajasthan High Court and this Hon'ble Tribunal, but also because many juniors have been regularized and the action of the respondents is also violative of provisions contained in para 179 of the IRM.

5. Heard both the parties. Counsel for the applicants contended that the regularization process has started by the respondent-department and names of the applicants have been included in the list of employees but when the process was going on, a charge sheet was issued and both the applicants were dismissed from service. But since the applicants have been exonerated from the charges as the same were dropped vide order dated 20.3.2013 and they have been reinstated in service, therefore, the respondents are required to complete the process of regularization of the applicants, which they had commenced in the year 1990. Counsel for the applicants further contended that a number of junior persons appointed along with the applicants have been regularized, but the respondents have not regularized the services of

the applicants. Therefore, he has prayed that the applicants are entitled to the reliefs as prayed for.

6. Per contra, counsel for the respondents contended that the applicants cannot claim regularization as a matter of right and it is to be considered by the competent authority in accordance with law and several factors are required to be considered while deciding the question of regularization of any incumbent.

7. Considered the rival contention of the parties and perused the record. So far as regularization of the services is concerned, contention of the counsel for the applicant is that some juniors to the applicants have been regularized but the applicants could not be regularized due to pendency of disciplinary proceedings. In the OA, the applicants have averred that during this period a number of junior to the applicants and almost all the 200 employees who were appointed along with the applicants have been regularized, and in reply to this averment, the respondents have not specifically denied but submitted that regularization depends on various factors to be considered by the competent authority and it cannot be claimed as a matter of right. Now since the applicants have been exonerated from the charges, therefore, they are required to be considered for regularization and be given same treatment at par with their juniors as per the provisions of the rules.