

नियमाला के अनुसार अनुचित है: अनुचित है: अनुचित है:

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. 245/2013

Ashok Kumar s/o Shri Bhoma Ji, aged 54 years, r/o Luniapura, Regar Mohalla, 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. 367/2013

Amer Chand s/o Shri Ram Deo, aged 54 years, r/o near Old ITI School, Gandhi Nagar, 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, Sirohi.
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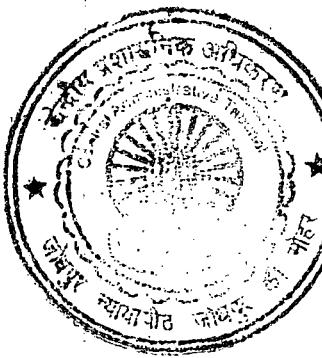
By Advocate : Mr. Govind Suthar on behalf of Mr. Manoj Bhandari

ORDER (ORAL)

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

2. The brief facts of OA No.245/2013 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 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 his name 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 challenged the order of dismissal by way of filing OA No.84/2005 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 to 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 OAs filed by Hyder Khan and Laxman Lal with reference to the above said common order Ann.A/4 passed by this Tribunal 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. The applicant has stated that the respondents ought to have granted him

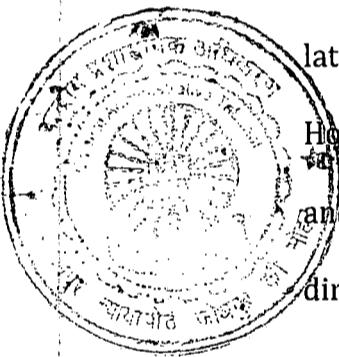


the reliefs granted to Hyder Khan and Laxman Lal whose removal was quashed by a common order Ann.A/4 and these employees and the applicant were reinstated in implementation of the order Ann.A/4. It has been further stated that after reinstatement, the applicant was subjected to face chargesheet dated 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, the 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 respondent No.2 to grant him actual salary from the date of his dismissal to the date of reinstatement after granting increments and to pay bonus to the applicant accrued to him during the aforesaid period and to grant fixation of 6th Pay Commission and payment thereof as these reliefs have been granted to Hyder Khan and Laxman Lal whose termination was quashed by order Ann.A/4 by this Tribunal and it is the duty of the respondents to suo moto grant the same benefit, but he has been treated unequally with reference to Hyder Khan and Laxman

Lal. 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. They may kindly be directed to make payment of pension and all other retiral benefits from the date of his initial appointment. The respondents may kindly be further directed to make payment of salary to the applicant from the date of his dismissal to the date of his reinstatement after granting increments and to pay bonus to the applicant accrued to him during the aforesaid period. The respondents may kindly also be directed to make fixation of VIth Pay Commission after taking into account the salary and increments accrued to the applicant during the aforesaid period. Any other relief, as deemed fit in the 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 Hon'ble Tribunal on 7.3.2008. In so far the OAs filed by Hyder Khan and Laxman Lal are concerned, it is submitted that there were directions by the Hon'ble Tribunal to make payment of actual salary and other benefits as per 6th Pay Commission to them, but in the present case, there was no such direction by the Tribunal to make payment of consequential benefits. 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

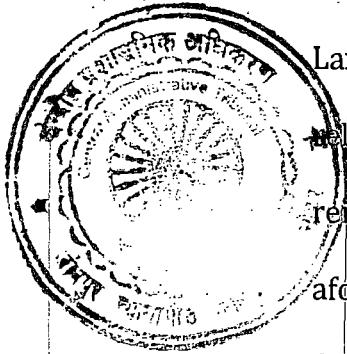


regularization. Therefore, the applicant is not entitled to the relief as prayed for.

4. In rejoinder to the reply filed by the respondents, while reiterating the averments made in the OA, the applicant has submitted that so far as submission of the respondents that case of the applicant stands on different footing with reference to the case of Hyder Khan and Laxman Lal, it is stated that the facts pertaining to initial appointment, consideration for regularization, dismissal and reinstatement and quashing of chargesheet are same in the case of the applicant as also in the case of Hyder Khan and Laxman Lal. The applicant has claimed regularization since his juniors have in the mean time been regularized and his case 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 thereafter services of Shri Narain Lal were regularized vide order dated 17.3.1983, which has been mentioned in service book of Narain Lal (Ann.A/10). It has been further submitted that due to pendency of charge sheet and disciplinary proceedings against the applicant, his case 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 both the applicants as well as similarly situated persons like Hyder Khan and Laxman Lal filed separate OAs before this Tribunal against the punishment of dismissal from service. The said OAs No. 315/2004 - Hyder Khan vs. UOI, 316/2004- Laxman Lal vs. UOI, 317/2004 - Amar Chand vs. UOI and 84/2005- Ashok Kumar vs. UOI were disposed of by this Tribunal vide order 7th March, 2008 (Ann.A/4) by setting aside the impugned order passed by the Disciplinary Authority along with consequential orders relying upon the judgment dated 5th April, 2007 in OA No.32/2004, Ranjeet Kumar vs. UOI and ors, who was a similarly situated person. Thereafter, Hyder Khan filed OA No.235/2009 and Laxman Lal filed OA No.236/2009 before this Tribunal for claiming relief of payment of salary from the date of dismissal to the date of reinstatement after granting increment and bonus accrued during the aforesaid period as well as fixation of 6th Pay Commission and the said OAs were allowed vide separate orders dated 18th March, 2013. Counsel for the applicants further contended that since the applicants are similarly situated persons to Hyder Khan and Laxman Lal, therefore, the respondents ought to have suo moto extended the similar benefit to the applicants. So far as regularization of the services are concerned, the counsel for the applicants contended that the regularization process has been 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 applicant. Therefore, he has prayed that the applicants are entitled to the reliefs as prayed for.

6. Per contra, counsel for the respondents contended that there was a specific direction of Hon'ble Tribunal in the case of Hyder Khan and Laxman Lal to grant them actual salary and other benefit as per Sixth Pay Commission and, therefore, in compliance of the said order, they have been granted the benefits, but in the case of the applicants, there was no such direction by the Hon'ble Tribunal to make payment of consequential benefits. Counsel for the respondents further 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.

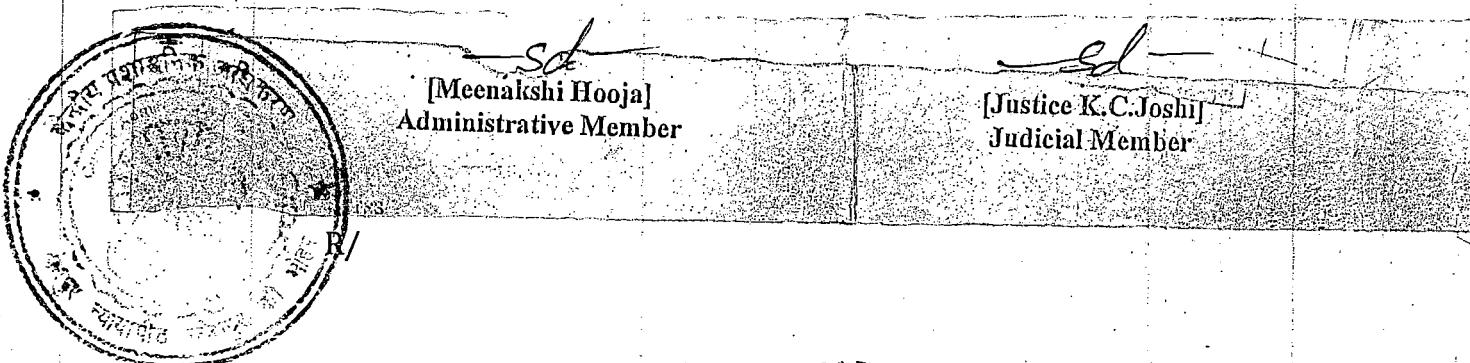
7. Considered the rival contention of the parties and perused the record. It is an admitted fact that this Tribunal vide common order dated 7th March, 2008 (Ann.A/4) has disposed of four OAs including the OAs filed by the applicants in the present OAs. Thereafter the respondents reinstated all the four persons. Thereafter Shri Hyder Khan and Laxman Lal filed OAs before this Tribunal for payment of salary from the date of dismissal to the date of reinstatement after granting increments and for bonus as well for fixation of 6th Pay Commission and the said OAs were allowed vide order dated 18th March, 2013. In compliance of the order dated 18th March, 2013, the above named two persons have been granted the benefit, but the said benefits have not been granted to the applicants. In these circumstance, we are of the view that the respondents should have granted same benefits as have been granted to Shri Hyder Khan and Laxman Lal, being similarly situated persons.

8. So far as regularization of the services is concerned, contention of the counsel for the applicants is that some juniors to the applicants have been regularized, but the applicants could not be regularized due to pendency of disciplinary proceedings. The applicants have averred in the OAs, that during this period a number of juniors 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 at par with their juniors as per the provisions of the rules.

9. Therefore, in view of the facts and circumstances of the case, the respondents are directed to extend the same benefit to the applicants as has been extended to Shri Hyder Khan and Laxman Lal, the applicants being similarly situated and consider the case of regularization of the applicants and, if found eligible, regularize them as per provisions of rules with consequential benefits within a period of 3 months from the date of receipt of a copy of this order.

Both the OAs stand disposed of in above terms with no order as to costs.



CERTIFIED TRUE COPY

Dated.....19/2/2015

D.K. Shaen

न्यायालय अधिकारी (न्याय.)

Section Officer (Judi.)

राष्ट्रीय न्यायालय अधिकारी

Central Administrative Tribunal

न्यायालय अधिकारी, नोट्सर

Notary Public, India

न्यायालय अधिकारी, नोट्सर

COMPARED &
CHECKED

[Signature]

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