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CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

No.OA 314 of 97

Date of order : 8.1.2004

Present : Hon'ble Mr.Justice B.Panigrahi, Vice-Chairman
Hon'ble Mr.N.D.Dayal, Administrative Member

A.K.MUKHERJEE

VS

UNION OF INDIA & ORS.

For the applicant : Mr.S.K.Roy Karmakar, counsel

For the respondents: Ms.U.Sanyal, counsel

O R D E R

Justice B.Panigrahi, VC

The applicant was initially empanelled for the post of Shed Khalasi temporarily and a list was accordingly prepared by the respondent No.3. The applicant was not absorbed while his turn came. Therefore he has filed a Title Suit No.333/1981 which was decreed by issuing a mandate to the respondents to appoint him to the post of Shed Khalasi on the basis of panel published on 31.12.72. Even then when the respondents did not absorb the applicant in the said post, he filed a case in the Hon'ble Court being CO No.9868(W)/1984. In the said case the Hon'ble Court directed as follows :

"Be that as it may, regard being had to the facts and circumstances of the present case, I think it would be for the ends of justice, if the petitioner is absorbed as a temporary Shed Khalasi within a period of 3 months from today, but the said appointment would be a temporary one..."

On the basis of the said direction it appears that the applicant was appointed as Khalasi on giving temporary status.

2. From the pleadings it has appeared that although he should have been regularised in the meantime but his services could not be regularised as and when his turn came. It has been averred that his case for screening test should have been considered sometime in the year 1991 but the respondents did not send any letter asking the applicant to appear for screening test, rather his juniors i.e.

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respondents No.5 & 6 have been given promotion to the rank of Khalasi Helper, Group 'D' post. Therefore he has filed this case claiming promotion to the post of Khalasi Helper from the date his juniors were promoted to the said post.

3. The respondents in this case have filed their reply and in the reply it has been inter alia stated that although the applicant was asked to appear before the screening test on 22.4.99 but he did not appear before the screening test. Therefore his regularisation matter could not be taken up. But however, subsequently, the applicant had appeared before the screening test on 6.6.2000 and accordingly he was regularised from that date. Since the applicant's turn has not come for the promotion to the post of Khalasi Helper, therefore he has not been considered to the said post. As and when his turn shall come the respondents shall take into consideration about his promotion.

4. From the reply of the respondents although it is seen that they called the applicant before the screening test on 22.4.99 but nothing has been filed on their behalf to show that in fact he was informed to appear in the said test. Without sending any information how can any one legitimately expect that he was called for the screening test for regularisation in the post of Shed Khalasi. There is no reason, had the applicant received such information regarding screening test, why he would have avoided to attend the screening test. Therefore it can be presumed that the applicant did not receive any information to appear in the screening test as a reason whereof he could not appear. It is true that he has been regularised w.e.f. 6.6.2000 but we find the private respondents although are juniors to the applicant they were regularised much earlier. Therefore in this background we hereby direct the respondent No.4 to regularise the service of the applicant from the date when his juniors namely the private respondents were regularised. In the meanwhile it appears that the private respondents had been already given promotion to the post of Khalasi Helper.

5. Ms.U.Sanyal, Id. counsel was asked to appear for the

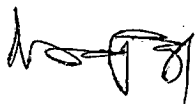


respondents as Mr.B.K.Gupta, ld. counsel for the respondents is not present today.

6. Ms.Sanyal has submitted that since the private respondents had appeared before the screening test and they were qualified, therefore they were promoted to the post of Khalasi Helper.

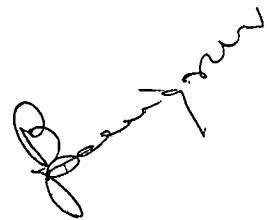
7. In this background we also direct the applicant to appear in that screening test for the post of Khalasi Helper which shall be conducted within a period of 2 months from the date of communication of this order and if he qualifies in the said test he shall be given appointment to the post of Khalasi Helper from the date when his juniors were promoted. Be it made clear that since the applicant had not worked in the post of Khalasi Helper for all these period, in case he qualifies he shall not claim any arrear of pay and allowances for the period which he has not worked.

8. With this observation the application is disposed of. No order as to costs.



MEMBER(A)

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VICE-CHAIRMAN