

Central Adminisitrative Tribunal, Lucknow Bench, Lucknow

Original Application No. 388/2008

This the ^{17th} day of February , 2009

Hon'ble Dr. A. K. Mishra, Member (A)

Saidur Rahman, aged about 49 years son of late Saghir Hussan, r/o Running shed Colony, LD-14-A, Terhi Pulia, Alambagh, Lucknow.

Applicant.

By Advocate Sri R.S.Chauhan.

Versus

1. Union of India, Ministry of Railway, Railway Board, Rail Bhawan, New Delhi, through its Secretary.
2. Divisional Rail Manager, Northern Railway, Lucknow.
3. Senior Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow.
4. Senior Divisional Mechanical Engineer (O&F), Northern Railway Hazratganj, Lucknow.
5. Assistant Divisional Mechanical Engineer (Power), Northern Railway, Hazratganj, Lucknow.
6. Senior Section Engineer (Loco), Northern Railway, Alambagh, Lucknow.

Respondents.

By Advocate Sri Arvind Kumar.

ORDER

By Hon'ble Dr. A. K. Mishra, Member (A)

This application has been filed against the order dated 5.8.2008 of the respondent No. 2 transferring the applicant from Lucknow to Varanasi in the post of Box Porter.

2. The applicant has been working as a Casual substitute cleaner since the date of his engagement in the year 1981. His services were terminated on 3rd September, 1981. He raised an industrial dispute before the Labour Court. In the order dated 6.5.87 of the Industrial Tribunal, the action of the management was held as unjustified and the applicant was reinstated in service. The writ petition of the respondents against this order was dismissed by the Hon'ble High Court in its order dated 28.5.99. Subsequently, an industrial dispute was raised by the applicant before the Industrial Tribunal challenging the action of the respondents in not promoting him on the post of

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Diesel Assistant. In the award dated 23.5.2001 given by the Labour Court annexed as CR-2, it was held that the case of the applicant for regularization in Group 'D' was taken up by the Screening Committee in the year 1996. On finding him suitable, he was allotted regular employment on the Group 'D' post of Box Porter. As per the findings in the award before the Labour Court, the applicant did not dispute his screening for Group 'D' post as well as the action of the respondents in deciding to regularize him on the Group 'D' post of Box Porter. However, he did not join on the post and complete the formalities necessary for issue of appropriate regularization order. In default thereof, he continued to work as casual workman without the benefits of a regular employee of the Railways. The award went against him on the ground that he did not avail himself of the regular Group 'D' post appointment due to his own fault and, therefore, could not lay claim to the promotion post of Diesel Assistant. The matter continued as such till 2008, when the respondent authorities decided to transfer him to Varanasi on the available post of a Box Porter ; hence this application.

3. The learned counsel for the applicant brought to my notice the fact that that, pursuant to the impugned order, the applicant was relieved as a substitute cleaner. The Last Pay Certificate issued by appropriate authority on 3.9.2008 clearly mention his last assignment as a substitute cleaner . He was never regularized on the post of Box porter at Lucknow. Therefore, he could not have been transferred on the post of Box Porter at Varanasi. He submits that the applicant has no grievance against the transfer order as such, but he has valid objection for change of his trade from substitute cleaner to that of Box Porter. He had no knowledge of any regular appointment on the post of Box Porter so far. He made reference to the order of the Hon'ble High Court dated 28.5.99 where his status has been acknowledged as that of a substitute cleaner. If his status had been changed to that

of Box Porter, such a position, according to him, could have been reflected in this order of the Hon'ble High Court provided the respondents had made any submission in that regard.

4. His main grouse is that he has been subjected to hostile discrimination in the matter of allotment of the post of Box Porter. According to him, the post of Cleaner is a covetable one among the Group 'D' post. Many of his juniors working in other categories have been offered the post of Cleaner at the time of regularization, but he has been singularly identified for assignment against the post of Box Porter. He has cited a few instances in this regard. Such action, according to him, on the part of the respondents is a discriminatory one. Since he has been working as Substitute Cleaner for a very long time and has got adequate experience in that line, he should have been regularized against the post of a Cleaner and not Box Porter.

5. He referred to Master Circular of the Ministry of Railways dated 30.6.1992. In paragraph 7.9, it has been mentioned that a Casual employee should be considered for regularization on the basis of seniority in the unit in which he was working at the time of his original appointment. The learned counsel for the respondents clarified that this circular is only in respect of employees who had been removed from service prior to 1.1.1981 and has no application in respect of the present applicant whose services were terminated after this appointed date.

6. The learned counsel for the applicant fairly conceded that the findings of the Labour Tribunal in its award dated 23.5.2001 about his screening in the year 1996 and his allotment on the post of Box Porter had not been challenged by him so far. This being the admitted position, it is difficult to find fault with the action of the respondents in providing a regular post of Box Porter at a place where such a vacancy exists. Neither does it stand to reason why the applicant should be steadfastly refusing to be appointed as a regular



employee of the Railways which would carry many benefits including pension on his superannuation. So far as pay scale and other allowances are concerned, the post of Box Porter is as good as the cleaner. There is no difference in the pay scale and other allowances applicable to these two posts. Therefore, the conduct of the applicant in avoiding appointment on such a post on a regular basis is not reasonable. It was mentioned by the learned counsel for the respondents that the applicant carried his grievance to Minorities Commission, which has also directed applicant to complete the formalities and take up the job of Box Porter on a regular basis.

7. In the above circumstances, I do not find any merit in this application. Accordingly the Original Application is dismissed. However, if the applicant joins on the post of Box Porter, the respondents should issue the order appointing him on a regular basis as quickly as possible subject to the applicant completing the formalities. No costs.

Akhilesh 17/02/09
(Dr. A.K. Mishra)
Member (A)

HLS/-