

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 273 of 2010

Reserved on 6.7.2015

Pronounced on 20th July, 2015

Hon'ble Mr. Navneet Kumar, Member-J

Hon'ble Ms. Jayati Chandra, Member-A

Ayodhya Prasad, aged about 53 years, S/o Sri Ram Lal, R/o Village Suram, Post Saigar, Tehsil Gauriganj, District Sultanpur, U.P.

.....Applicant

By Advocate : Sri U.C. Chaurasia

Versus.

1. Union of India through General Manager, N. Railway, Baroda House, New Delhi.
2. The DRM, Northern Railway, Lucknow.
3. The Sr. D.P.O., N. Railway, Lucknow.
4. The DRM (Engineer) N. Railway, Lucknow.

.....Respondents.

By Advocate : Sri D.K. Mishra.

ORDER

By Ms. Jayati Chandra, Member-A

This O.A. has been filed by the applicant under Section 19 of Administrative Tribunals Act, 1985 seeking the following relief(s):-

- (i) *The Hon'ble Tribunal be pleased to issue orders/directions to the respondents to regularize the applicant on the post of Jeep Driver and decide the representation vide Annexure no. 6 & 7.*
- (ii) *Any other relief as considered proper by this Hon'ble Tribunal be granted to the applicants.*
- (iii) *Cost of the application be awarded in favour of the applicant".*

2. The facts of the case are that the applicant was initially engaged in the year 1974 as Casual Labour in Jodhpur Division of Northern Railway and was regularized as Khalasi w.e.f. 12.5.1991. He subsequently faced competency test for the post of Motor

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Trolley Driver in the pay scale of Rs. 950-1500/- and having qualified, was posted on adhoc basis as Driver vide order dated 22.3.1993 (Annexure no.1). He continued to work on the said capacity till 17.12.1997. Thereafter, he applied for transfer to Lucknow, which was granted. His pay was fixed as per LPC dated 4.8.1997 issued to him. It is seen that he was drawing pay of Rs. 1030 in the pay scale of Rs. 950-1500/- (Annexure no.2). After joining at Lucknow Division, he was posted as Gang-man, but his services were being utilized as Driver in the office of DSE (IV), DRM, Lucknow and his pay was charged to Sultanpur as Gang-man/Trackman. He was injured on duty on 26.7.2013 and was hospitalized. After being declared medically fit, he was posted at Sultanpur as Gang-man/Trackman. In 2007, again the applicant was deployed to work as Jeep Driver. He is continuing to function as Jeep Driver continuously till filing of this O.A. The applicant has claimed through this O.A. for regularization on the post of Driver as he has been functioning as Jeep Driver from 1993 with artificial breaks and that he has been found suitable as per the suitability test held in March, 1993.

3. The respondents have disputed the claim of the applicant on the ground of delay. Section 19 of A.T. Act lays down the maximum period of 18 months from the date of cause of action for approaching this Tribunal for his redressal.

4. Coming to the merits of the case, the respondents have contested the claim of the applicant stating therein that he was initially appointed as Casual Labour and was given temporary status w.e.f. 12.5.1991. He passed medical examination of B-1 category with reading glass, as such he was found fit for the post of Khalasi and was working in Jodhpur Division from where he was transferred to the office of DRM, Northern Railway, Lucknow on his own request. He joined on 7.9.1997 in the office of ADEN, NR, Jaunpur on the post of Gang-man. More-over the applicant did not pass the A-3 medical category required for the post of Motor Driver. The applicant had been tested for suitability as Driver in the year 1993 purely as a local arrangement. More-over, it was made clear in the order dated 22.3.1993 that he should be reverted to his substantive post as soon as a regular Motor Trolley Driver was made available.

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5. The applicant has filed Rejoinder through which he disputed the averments made in the Counter Reply and reaffirmed the averments already made in the Original Application.

6. During the course of hearing, learned counsel for the applicant has cited the following case laws:-

- (i) Badri Prasad & Others Vs. Union of India & others reported in (2005) 11 SCC 304.
- (ii) Bhadei Rai Vs. Union of India & Others reported in 2005 11 SCC 298.

7. We have heard the learned counsel for the parties and have also perused the pleadings available on record.

8. The applicant, by his own averments, has stated that he was initially regularized on the post of Khalasi/Gangman. He has also confirmed that he was found medically fit for B-1 category with reading glass. He has not denied that the requisite medical category for being considered on the post of Motor Driver is A-3. He has made his claim on the plea that he was never sent for medical examination for A-3 category. This stand of the applicant does not appear to be logical since at the time of regularization, he was medically tested and he was found medically fit for B-1 category with reading glass. From the various papers produced by the applicant, it is clear that he had worked periodically as a Driver, but there is nothing on record to show that he had worked continuously. More-over, he has himself by his own averments has confirmed that he was posted on the post of Gangman from 1997, although he has stated that he was working as Jeep Driver. He has also stated that between the period of July, 2003 and August, 2007 i.e. for four years, he did not function as Jeep Driver, but worked as Gang-man at Sultanpur. Having worked as Gangman at Sultanpur during the period from July, 2003 to August, 2007 any consideration for a prior period becomes infructuous.

9. Coming to the question of having worked as Jeep Driver from July, 2007 till date, the applicant has failed to provide any posting order whereby he was promoted to the post of Driver on an adhoc/temporary basis. Similarly, he has not produced any

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departmental rule or instructions either on promotion or recruitment, which creates a right to be considered regularly against the post of Jeep Driver. Even in the cases cited by the applicant, the Hon'ble Supreme Court has held that no regularization can be claimed on promotional post on the basis of long service in the said post, although certain protection has been given. More-over, the facts of the present case are different from the cases cited. In those cases, the claimant had been granted adhoc promotion on higher post. In this case, there is no promotion order, although the services of the applicant were periodically utilized as a Jeep Driver.

10. In view of the facts and circumstances stated above, we do not find any merit in the O.A. and the same is liable to be dismissed and is accordingly dismissed. No costs.



(Ms. Jayati Chandra)
Member-A



(Navneet Kumar)
Member-J

Girish/-