

CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH,

LUCKNOW.

PS

C.A. No.526 of 1991

Kanik Ram :::::::::: Applicant

Vs.

Union of India & Others. :::::::::: Respondents

Hon. Mr. S.N. Prasad, J.M.

Hon. Mr. J.K. Singh, A.M.

(By Hon. Mr. S.N. Prasad, J.M.)

The applicant has approached this Tribunal for regularisation of the service of the applicant on the post of Carpenter since his initial date of engagement on 18-9-1975 considering his full length of service in the order of seniority along with payment of arrears of salary and other consequential benefits.

2. Succinctly the facts of the case, inter-alia, are that the applicant was initially engaged as Carpenter on 18-9-1975 at the rate of Rs.9/- per day. ^{Later on -} The applicant was paid pay scale of Rs.196-232 in 1983 while being skilled worker ^{though} he was entitled for being paid the pay scale of Rs.260-400 which has ~~again~~ been enhanced as Rs.950-1500. This pay scale of Rs.950-1500 is being paid to other skilled workers, but the applicant is arbitrarily being discriminated against them for no reason disclosed to the applicant.

2.1 It has further been stated that the work, conduct, performance and behaviour of the applicant has always been found satisfactory and neither any complaint nor charge-sheet ^{has} served ^{on} the applicant nor any disciplinary enquiry has ever been initiated against him; rather the applicant has been awarded in February, 1991.

2.2 Several juniors to the applicant who have been engaged in the establishment of the respondents as on daily wages basis, have already been regularised in service and some of such juniors to the applicant have also been promoted in the higher pay scale of Rs.1200-1800 w.e.f. February, 1990, viz. Ram Niwas Sharma and Prem Narain Sharma, both Carpenters who are at present posted under Inspector of Works, Gadsah Nagar, Lucknow. In these circumstances, the applicant is entitled for regularisation as well as for promotion in the higher pay scale of Rs.1200-1800.

2.3 The applicant preferred several representations for regularisation of his services on the post of Carpenter, but all his representations have been of no avail, though the applicant having been asked to submit his service card, had submitted it accordingly; and having considered the circumstances of the case, the applicant had been discharging the duties of Carpenter after the death of his father who was also carpenter in the establishment of the respondents, then Inspector of works N.C. Railway, Manakpur Junction had recommended the name of the applicant to the respondent No.3 for sympathetic consideration for regularisation on 16-3-79 itself; but in vain. Hence the applicant has approached this Tribunal.

3. The respondents have resisted the claim of the applicant with the contention, inter-alia, that the applicant was initially appointed in the year 1975 by Inspector of Works (I.O.W.), Manakpur, as Casual Labour and he worked in broken periods and when he completed 120 days continuous service he was allowed time scale of pay of Rs.196-232 vide letter No. AEM/1/CD/10000/2/30/Pt.111 CPC dated 9-11-84, w.e.f. 30-12-83, which the applicant

accepted and he is continuing still in the revised time scale of unskilled casual labour 3.750-940 (revised).

It is wrong to say that the applicant was engaged after undergoing any trade test ~~and~~ ^{and} the applicant was never appointed against the post of Carpenter, a skilled post of artisan staff.

3.1 It has further been contended by the respondents that the applicant was never appointed against the skilled category of Carpenter post and his regularisation against the said post is neither permissible nor can be allowed.

The mere mention of him as Carpenter by I.O.N., Manakpur, as shown in Annexure 2 would not entitle the applicant to claim regularisation against the post of carpenter on which post the applicant was never appointed.

Similarly if certain materials were issued to the applicant relating to carpentry work it can also not entitle the applicant to claim regularisation against the post of carpenter. There was no question of giving skilled category grade of carpenter without the trade test which the applicant had not undergone.

3.2 It has further ^{been} contended that the services of no casual labour junior to the applicant have been regularised in the scale as claimed by the applicant. The case of Shri Ram Niwas Sharma and Shri Prem Narain Sharma are not relevant in the case of the applicant, because seniority/regularisation/promotion is maintained/done unit-wise. In view of the aforesaid facts, the application of the applicant is liable to be dismissed.

4. The applicant has filed rejoinder affidavit wherein he has almost reiterated those very allegations and view points and facts as mentioned in the O.A.



5. We have heard the learned counsels for the parties and have thoroughly gone through the records of the case.

6. The learned Counsel for the applicant while drawing our attention to the application, counter-affidavit, rejoinder-affidavit and the papers annexed thereto has argued that the applicant has been discharging his duties as Carpenter since 1975 but his services have not been regularised in this category on the post of Carpenter though several juniors to the applicant who have been engaged in the establishment of the respondents on daily wage basis have already been regularised in service and some of such juniors to the applicant have also been promoted in the higher pay scale of Rs.1200-1800 w.e.f. February, 1990 ^{Wp.} ^{Sh.} R.L. Sharma and Prem Narayan Sharma (both carpenters) who are at present posted under the Inspector of works, 3rd Shah Nagar, Lucknow; but the applicant has been deprived of the same and as such the application of the applicant ^{should} be allowed and in support of his arguments he has placed reliance on the following rulings :-

1. (1990) 2 S.C.C. 396 - Bharwad Distt. P.M.D. Literate Daily Wage Employees Association and Others Vs. State of Karnataka and others.
2. (1991) 1 S.C.C. 28 - Jacob M. Puthuparambil & Others Vs. Kerala Water Authority and others.
3. (1986) UPLJSC 260 - Surinder Singh and another Vs. The Engineer-in-Chief C.P.W.D. and others.

4. (1990) 1 S.C.C. 361 - Jhaqwati Prasad Vs. Delhi State Mineral Development Corporation.

7. The learned counsel for the respondents while drawing our attention to the pleadings of the parties and the ~~application~~ and papers annexed thereto and while reiterating the contentions as set out in the counter-affidavit, has argued that the applicant was initially appointed in the year 1975 as casual labour and he worked during different periods on the said post intermittently and when he completed 120 days of continuous services he was allowed time scale of Rs.196-232 as per order dated 9-11-84 w.e.f. ~~30~~¹²-12-83 which the applicant accepted and the applicant is still continuing in the revised time scale of unskilled Casual Labour Rs.750-940 and has further argued that the applicant was never appointed as carpenter and the applicant never underwent any trade test; and has further argued that the case of ^{~ said ~} R.N.Sharma and Prem Narayan Sharma are not relevant in the instant case as they belong to different units and as such the application of the applicant be dismissed and the above referred rulings are not applicable to the case of the applicant.

8. We have perused the above rulings. A perusal of paragraphs 4.1 and 4.2 of the Original Application and para 4 of the counter-reply of the respondents clearly shows that the applicant after having completed 120 days of continuous service was allowed time scale of pay of Rs.196-232 since the year 1983 and the above pay scale of Rs.196-232 has been revised to Rs.750-940.

9. From the scrutiny of the entire material on record it becomes quite obvious that the applicant has not

undergone any trade test so far. This is not disputed that the post of Carpenter comes under the category of skilled artisan. In this context it is significant to point out that ^{from} ~~on~~ the scrutiny of the entire material on record it becomes quite clear that no appointment letter was ever issued to the applicant for the post of Carpenter.

10. The main argument of the learned counsel for the applicant rests on the provisions contained under Rule 2007 of Chapter XX of the Indian Railways Establishment Manual Vol.II which reads as follows :-

" 2007. Employment of Casual Labour in skilled categories. - (1) Normally Casual labour should not be appointed in skilled categories without a trade test. A panel should be maintained by the open line to cater to the needs of the casual labour in semi-skilled and skilled categories. Where no panel of suitable candidates is available, engagement in semi-skilled or skilled categories may be done without trade test but it should be ensured that their suitability for semiskilled or skilled grade is adjudged well in time before they attain temporary status."

11. The provisions of above Rule 2007 show that normally no casual labour should be appointed in skilled categories without a trade test. A panel should be maintained by the open line to cater to the needs of the casual labour in semi-skilled and skilled categories.

Where no panel of suitable candidate is available, engagement in semi-skilled or skilled categories may be done without trade test but it should be ensured that their suitability for semi-skilled or skilled grade is adjudged well in time before they attain temporary status.

12. We have carefully perused the contents of Annexure R-2 to the rejoinder-affidavit and we find that some ^{works} repairs were done but the entries appearing in its annexure ² do not disclose the name of the applicant anywhere and as such the entries appearing in this annexure R-2 appear to be of no avail to the applicant; and similarly Annexures A-1 & A-2 to the C.A. are also found to be of no avail to the applicant ^{as the applicant has not undergone any trade test} as the applicant has not undergone any trade test ^{so far.}


13. This fact should not be lost sight ^{of} that as pointed out above the applicant's services have already been regularised and he has already been given pay scale of Rs.196-232 since the year 1933.


14. As regards the averments of the applicant as mentioned in para 4.7 of the application to the effect that Ramnivas Sharma and Prem Narain Sharma who ^{have been promoted and who} are Carpenters and who are posted under Inspector of Works, Bad Shah Nagar, Lucknow, it appears that they belong to different units and their seniority/regulation/promotion, etc. appear to have been maintained/done unit-wise.

15. From the foregoing discussions after considering all the view points and all the facts and circumstances of the case and all the aspects of the matter, we find that the above rulings relied upon by the learned counsel for the applicant are found to be of no avail ^{to the applicant} as the facts of the present case are different and distinct from the facts of the above rulings inasmuch as the principles regarding regularisation ^{almost} ~~which~~ ^{which} have been enunciated by Their Lordships in the above Rulings ~~different~~ ^{different} whereas the services of the applicant have already been regularised and the applicant has been allowed time scale of Rs.196-232 which has been revised ~~to~~ ^{to} Rs.750-940. ^{mentioned above.}

16. Consequently we find that the application of the applicant being devoid of merit is liable to be dismissed and the same is accordingly dismissed.

No order as to costs.


MEMBER (A) 14/9/93


MEMBER (J) 14.9.93

Dated: / /1993, Lucknow.

(tck)