

AS 8/8

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL - ALLAHABAD
BENCH LUCKNOW

Transfer Application No. 1155 of 1987. (5)

Shri C.D. Singh..... Applicant.

Versus

Union of India and others..... Opp. Parties.

Hon'ble Mr. Justice U.C. Srivastava - (V.C.)

Hon'ble Mr. A.B. Gorthi - (Member - A).

(By Hon'ble Mr. Justice U.C. Srivastava - V.C.)

The applicant who is said to be a Casual Labour who has not been regularised and ~~continues~~ to be in service Railway Administrative Department as skilled Casual labour. In this transferred case it is prayed that a mandamus be issued to opposite parties to decide the applicant's representations seeking consideration of his case for 25% reserved quota for departmental candidates and pass the necessary orders for regularisation of the applicant against said quota.

The applicant's grievance is that by reason of fulfilling the academic qualifications, he is entitled to have his claim be considered for regularisation against 25% vacancies reserved for departmental candidates and in non-consideration of his case, is clearly arbitrary and capricious; that he had a preferential right for being considered for regularisation against the said quota in comparison to Satya Narain Sharma, who has been regularised ~~by~~ in violation of the provisions of article 14 and 16 of the Constitution of India, and further he has fulfilled the requisite qualifications, non-inclusion of his name in the list of candidates sent to the Railway Board in response to its' communication dated 8.12.82 is wholly arbitrary and capricious and results in denial to the applicant of

his legal right. The applicant entered as work Mistry on daily wages at the rate of Rs. 13/- per day as sanctioned by the office of the Chief Engineer construction. From the facts as stated by the respondent, it appears that the applicant worked as Casual Mistrx between 25.7.74 to 15.6.75 as Casual Work Mistri and from 16.6.75 to 15.8.75 as Casual skilled labour and in between the period 16.8.75 to 29.11.75 he was not in the employment. Between 30.11.75 to 25.7.84 he worked as Casual ~~skilled~~ labour and from 26.7.84 to the date worked as Casual ~~skilled~~ highly skilled/ Temporary Status except work Mistry. Thus for a brief period of three months the applicant continued to remain in service from the month of July 1974 upto this date.

Grievance of the applicant is that one Satya Narain Sharma in accordance with the respondent no longer in service was appointed as Casual work Mistry at the rate of Rs.13/- per day and posted to work under the Asstt. Engineer BG/Gonda ~~skilled~~ (W) vide office order dated 24.5.75, his services were terminated on 15.11.1977 and he remained out of service till November, 1980, when the petitioner was still continuing in service yet the Railway Board vide his letter dated 19.9.79 which was in response to same letter of General Manager Gorakhpur for the absorption of one Sri Indra Deo Pandey who had indicated Casual Labour from both open line as well as on the projects who are working in skilled categories which are eligible for ~~skilled~~ regularisation against 25% vacancies reserved for departmental promotion. The Board directed that suitable action for

A7
7

regularisation of service of the said Sri Indra Deo Pandey may be taken. Thereafter a circular was issued by the Chief Engineer dated 18.4.80 directing all the Executive Engineers that the Casual Labour from both open line as well as on the projects who are working in skilled categories are eligible for regularisation against 25% vacancies reserved for departmental promotion provided only candidates working in the same recruitment unit. The applicant claims to have been working since continuously in a particular unit, but he was not being regularised against 25% vacancies ~~xx~~ and reserved for the departmental candidates/ Satya Narain Sharma who was out of service for a such long period was taken back and it was directed he may be sent for six month's training as work Mistri. After passing Training course an order was passed that he may be appointed on the posts of work Mistri order dated 19.12.81. The grievance of the applicant is even though Establishment Rule Manual para 2512 ~~vide~~ ^{frankly} for promotion for direct recruitment of 50% quota in the skilled category should be filled-up to the extent of 25% from un-skilled with educational qualification, yet the applicant was not being appointed or was regularised against this 25% quota to fulfill the requisite qualification and holding a diploma. According to the respondent

According to the respondent the applicant worked as Casual skilled labour on daily rated as per his request alongwith 10 others ~~xx~~ Casual work Mistri After expiry of the work and also due to curtailment of budget allotment for Gonda Unit all the Casual work Mistri were discharged. Thereafter applicant offered himself ~~xx~~ for the engagement in the category of Casual skilled labour which was considered and he

u

(8)

was engaged in this manner. The applicant was given temporary status in view of the Supreme Court decision in Indra Pal Yadav's case, he has been working from before the year 1981 as Casual labour. They have refuted the claim of the applicant for compression of S.N.Sharma's case on the grounds that S.N.Sharma was appointed against the direct recruitment quota purely an adhoc basis subject to the approval of the Railway Recruitment Board and not against 25% vacancies reserved for departmental employees. But it has not been stated anywhere why the other person who have also been working from before, and his services were terminated and later taken back are not considered against it's direct appointment.

It has been pointed out by the applicants that the continuation of S.N.Sharma was against the continuity of the Railway Board instructions particularly vide letter dated 21.7.1984 which provides that by way of preparation and display seniority list of the particular categories of Casual Labour employed therein including those who on completion of four months continuous service, become eligible for some of the benefits admissible to temporary railway servants. The special benefit was given to S.N.Sharma even no order. On behalf of the Railway Board, a letter dated 27.2.1978 was made in which it was instructed that Project Engineer will be eligible for retrenchment. The applicant's case is that his case was recommended for regularisation number of times, but the same was not done even though sixty were regularised in 1985 and 16 in 1989 and persons even junior to the applicant were selected as per seniority list which was published in the year 1985. The applicant have strongly refuted the averments which has been made in

4

Af

(a)

the counter-affidavit that since 1990 no selection for the said 25% quota has been made. According to them examination has taken place twice, but it's fate is not known to him. The facts stated above indicates that for but for a gap of few months, the applicant is continuously working with the Railway Administration from the year 1974 and he ful-filled all the requisite qualifications and i.e. why he on his request he was taken back and was allowed to do his job. 17 long years are enough for regularisation a person in the Railway service. The regularisation rather has become a rule of law and non regularisation is to be a ~~claim~~ ^{an exception}. It is difficult now one person who was in service of the Railway Administration more than three years, it may be in different project was taken him back in service, others should not have been discriminated which has been done in this case.

If selection has not taken place from 1980 it is for the Railway Administration which is at fault and a duty ^{is} cast upon them to make selection which is expected that the same will be done regularly. It appears that as and when they regularise any one may be senior or junior and ^a fix principle is followed. If ~~fix principle is followed then it is followed in~~ breach and accordingly we direct that the respondent shall consider the case of the applicant for regularisation within a period of three months making a selection and further in case any person who became casual labour in the trade like the applicant has been regularised, they shall necessarily regularise the applicant with due date. Let the entire process be completed within three months as mentioned above. No order as to the costs.


Member (A)


Vice Chairman