

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA.

O.A.No. 458 of 1996

Date of order : 6 April, 2004.

C O R A M

Hon'ble Mrs. Shyama Degra, Member (Judicial)

Hon'ble Mr. Mantreshwar Jha, Member (Admn.)

Vijay Kumar Pandey, S/o late Asheshwar Pandey, resident of village Patahi, Lahladpur, P.O.-Patahi, District-Muzaffarpur, at present working as Senior Khalasi under Inspector of Works (Lines), N.E.Rly., Muzaffarpur.

.. Applicant.

By advocate Shri M.P. Dixit.

- Vrs. -

1. Union of India through the General Manager, N.E. Railway, Gorakhpur (U.P.)
2. The Divisional Rail Manager (Engg.), N.E. Railway, Senpur, P.O. Senpur, District- Saran.
3. The Divisional Engineer (Lines), N.E. Railway, Muzaffarpur, P.O. and District- Muzaffarpur.
4. The Assistant Engineer (B.G.), N.E. Railway, Muzaffarpur, P.O.- & District- Muzaffarpur.
5. Lall Bahadur, S/o Ghuran Senior Khalasi under Inspector of Works (line), Muzaffarpur through Asstt. Engineer (B.G.), N.E. Railway, Muzaffarpur, P.O. & District- Muzaffarpur.
6. Ram Chandra, S/o Jia Lall, Senior Khalasi under Inspector of Works (lines), Muzaffarpur, through the Asstt. Engineer (B.G.), N.E. Railway, Muzaffarpur.

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7. Nagina, S/o Sukhdeo, Senior Khalasi under Inspector of Works, Muzaffarpur through the Asstt. Engineer (B.G.), N.E. Railway, Muzaffarpur, P.O. and District-Muzaffarpur.
8. The Chairman, Trade Test Committee holding the test of Artisan, Khalasi in grade (800-1150) on 17.6.1996 in the office of Engineer Line, Muzaffarpur through the Asstt. Engineer (B.G.), N.E. Railway, Muzaffarpur. .... Respondents.

By advocate Shri P.K. Verma.

O R D E R

By Mantreshwar Jha, Member (A) :-

This O.A. has been preferred by Shri Vijay Kumar Pandey for quashing and setting aside Annexure-A/1 and A/2. Annexure-A/1 refers to result of a trade test and Annexure-A/2 is regarding rejection of the representation of the applicant for his regularisation as Fitter Khalasi. The applicant has also prayed for directing the respondents to regularise the services of the applicant from 16.5.1986 as Fitter Khalasi in the scale of Rs.800-1150/- alongwith other consequential benefits and payment of panel interest for the same.

2. The case of the applicant is that he was initially engaged as a Casual Labour Khalasi and subsequently given temporary status. He joined duties in the office of the Inspector of Works (Line), Muzaffarpur where he was given the job of Fitter Khalasi w.e.f. 15.5.1986 and he continued

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to work on that post. According to the applicant, while working as Fitter Khalasi, he was permanently absorbed as Khalasi in the scale of Rs. 750-940 and was given Sl. No. 145 but he continued to work as Fitter Khalasi. He filed several representations for his regularisation as Fitter Khalasi dated 22.7.1992 (Annexure-A/6), which was forwarded with appropriate recommendation of his controlling officer. It has further been submitted that Annexure-A/7 will show that he was deputed (नैनाल) the work of Fitter Khalasi by the Assistant (B.G.), Musaffarpur. The applicant has further submitted his application to be regularised as Fitter Khalasi vide Annexure-A/8 dated 29.1.1993. Subsequently, he filed a representation vide Annexure-A/11 dated 1.12.1995 requesting for his regularisation on the post of Fitter Khalasi w.e.f. 16.5.1986. The case of the applicant is that in respect of regularising his service as Fitter Khalasi, the respondents issued a notification for conducting trade test (Annexure-A/12) from amongst the willing and eligible candidates. The applicant wanted to appear in the trade test but he was not called for the same and the respondents No. 5 to 7 were declared pass in trade test. The applicant again represented vide Annexure-A/14 for regularising him as Fitter Khalasi w.e.f. 16.5.1986 or allowing him

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to appear in the trade test after cancelling the trade test conducted earlier in which he was not included. The case of the applicant is that the Respondent No. 5 to 7 who have been declared successful in the trade test are junior to him and that even holding the trade test is against the circular of Railway Board dated 6.1.1971 which provides that the suitability test may be either by holding a written test alongwith perusal of records or only by perusal of records. The applicant has, therefore, prayed for quashing and setting aside the result of the trade test and rejection of his representation on the ground that he was only deputed to work as Fitter Khalasi vide order dated 2/5.4.1994 and not posted on the same post. His representation has also been rejected vide Annexure-A/2 on the ground that he cannot be given regular post of Fitter Khalasi till he passes the required trade test.

3. Written statement has been filed on behalf of the official respondents wherein it has been submitted that the application is barred under section 20 and 21 of the Central Administrative Tribunals Act, 1985 as the applicant has not exhausted his remedies. It has further been submitted that the applicant was temporarily appointed as un-skilled Khalasi in the scale of Rs.750-940 vide



Office order No. E/227/Screening/Muzaffarpur/1141 dated 3/4.9.1990 and not as Fitter Khalasi as claimed by the applicant (Annexure-A/5). It has been submitted in the written statement that prior to and subsequent to the date of temporary appointment of the applicant, he was deputed as Helper to the fitter Khalasi and he was never posted as Fitter Khalasi, which is an Artisan post. The respondents have made reference to Annexure-A/6 by which the applicant has himself admitted that his service was utilised even otherwise in his representation. The case of the respondents is that, letters of recommendation referred to by the applicant vide Annexure-A/6 and A/7 do not vest any right, much less justiciable right to the applicant for regularising and posting as fitter Khalasi. It has further been submitted on behalf of the respondents that the post of Fitter Khalasi being the post of Artisan grade, the test was conducted as per joint seniority list on the basis of relevant Railway Board's circular and the Respondents No. 5 to 7 who were senior to the applicant as per joint seniority list (Annexure-A/12), who were found suitable, and, therefore, it was not necessary for the applicant being junior to the Respondents No. 5 to 7 to appear at the trade test as his seniors were declared successful. It has further been contended that the

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applicant has not challenged the seniority position as shown in the joint seniority list as per Annexure-A/12. It has further been submitted that the applicant has already taken advantage of re-structuring scheme and his promotion as Senior Un-Skilled Khalasi in the scale of Rs. 775-1025/- vide order dated 28.11.1994.

4. Rejoinder has been filed on behalf of the applicant to rebut the contentions of the respondents in the written statement. Arbitrariness and malafide has been attributed on the respondents in denying him the relevant regularisation as fitter Khalasi. A particular mention may be made of point advanced by the applicant in the rejoinder. It has been submitted that since Fitter Khalasi is himself a Khalasi, it amounts to being a helper to the fitter, Khalasi and, therefore, cannot be any helper to the fitter Khalasi. He has also emphasised in the rejoinder that no reference of Railway Board's circular has been made in the written statement of the respondents on the basis of which trade test has been conducted.

5. We have gone through the averments made by both parties and heard the ld. counsel at length. We have carefully gone through the records. It is quite evident from the records that the applicant has been working as Fitter Khalasi whether on deputation or otherwise

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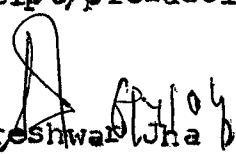
since 16.5.1986 to the satisfaction of his immediate superiors. This may not confer the applicant justiciable right of regularisation in the grade of Fitter Khalasi as he was only unskilled khalasi from 16.5.1986. Annexure-A/2 which is sought to be quashed and set aside on the ground that the trade test was not required has also indicated that the applicant was deputed to work as Fitter Khalasi w.e.f. 2/6.4.1994. The applicant had also been promoted as selection grade Unskilled Khalasi on 20.8.1994. The question of regularisation of the applicant as Fitter Khalasi w.e.f. 16.5.1986 would, therefore, not arise in any case. The question of his regularisation as Fitter Khalasi w.e.f. April, 1994, the date from which he was deputed to work on that post as would be evident from Annexure-A/2 would arise provided he is senior and otherwise eligible. Whether or not, the trade test was a condition precedent remains open because the respondents have not quoted any relevant Railway <sup>Cypher</sup> ~~respondents~~. It, however, clearly transpires from Annexure-A/12 which <sup>is</sup> the joint seniority list that the applicant was junior to Respondent No. 5, 6 and 7. This list also shows the applicant as Khalasi Helper. The only point for consideration is whether, the applicant has worked in addition to his duties as fitter Khalasi w.e.f. 6.4.1994 entitles him to any special

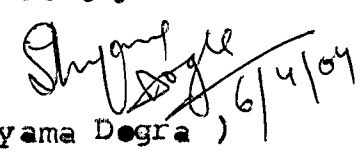
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dispensation with regard to regularisation as Fitter Khalasi even without passing trade test mainly on the ground that he has discharged the work of Fitter Khalasi to the satisfaction of his immediate superiors. This has to be examined afresh by the official respondents in the light of submissions made by the applicant. We are not inclined to grant any other relief to the applicant under the facts and circumstances of the case as discussed above.

6. That being so, the O.A. is disposed of with the observations made hereunder :-

The Respondent No.2 is directed to consider the claim of the applicant with reference to his claim for regularisation as Fitter Khalasi w.e.f. the date of his deputation to the post after giving an opportunity to the applicant of being heard and pass reasoned and speaking order in accordance with law in terms of observations made above within a period of three months from the date of receipt/production of this order. No costs.

  
( Mantreshwar Jha )  
Member (Admn. )

  
( Shyama Dogra )  
Member (Judicial)

MPS.