

(63) (2e)

CASE NO. 63 OF 1977 DATED 21.1.1978, CIRCUIT BENCH LUCKNOW.

Registration P.L. No. 1947 of 1977
(... No. 5241 of 1975)

Abdul Khaleq Petitioner/
Applicant.

Versus

Union of India and others Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.
Hon'ble Mr. A.P. Gorathi, J.J.D.

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

This is a transferred case under Section 29 of the Administrative Tribunals Act, 1975. The applicant filed a writ petition before the High Court praying that a writ of mandamus may be issued directing the respondents to allow the applicant to continue in cadre-II i.e. in the pay scale of Rs. 330-480 and further the respondents may be directed to treat him as a successful candidate of the trade test held in the year 1977 by the Selection Board as in the case of other candidates who had been declared successful in their trade test like Mr. Sri Razzaq and that the order dated 25.9.1985 contained in Annexure-9 by which his application was cancelled may be quashed.

2. The applicant was appointed on 17.3.1977 in North Eastern Railways as Captain I year doing the work of a 'Driver' and by working continuously, 120 days, he attained 'Temporary Status' and was given a regular scale. A trade test for a driver was held on 15.9.1985. The applicant in the pay scale of Rs. 330-480 along with applicant along with 7 other persons qualified for the above selection. Thereafter, the rail officials have not no

objection against the regularisation of the services of the applicant and a letter dated 13.4.1982, in this behalf, was also issued by the respondents. The applicant made a representation that now he may be posted against a clear vacancy but his representation remain pending. The applicant was transferred from the Engineering Department to the Medical Branch with the post of Ambulance Car Driver on Administrative exigencies. Though, according to the respondents he was transferred on his own request. But no document has been produced which may indicate that in what manner he was transferred because from a subsequent document, it appears that 7 drivers from one branch included the name of the applicant were transferred to the Medical Branch. There is no rule or direction of the Railway Board which may clarify the position of the Casual Workers after attaining the Temporary Status. It has also not been stated that in what manner their seniority is to be calculated after transfer from one branch to another branch in same department, and it has also not be stated that the casual workers are not regularised, and are only entitled for inclusion of their name in the life register how a particular rule regarding giving the bottom seniority or taking of option arises from them. In the year 1984, an order was issued telling the applicant that he has been regularised in service. On 27.7.1984, the applicant was promoted as Ambulance Driver Grade-II in the scale of Rs. 330- 430 from Ambulance Driver Grade-II i.e. Scale of Rs. 260-400. Thereafter, the said order was recalled by the impugned order stating that by mistake the order was passed and the respondents have further stated that

because there was only one vacancy as such only one result could be declared and there was no other vacancy, the applicant could not have been declared pass in the said examination. The factual position from the facts stated above is that the applicant did pass the trade test. The dispute arose when the applicant did not appear in the trade test again for regularisation.

3. The contention on behalf of the applicant is that the applicant having once passed the trade test in which he has been declared ~~pass~~ to have pass notwithstanding the fact that there was only one vacancy and his position was second, he can not be required to pass the trade test again for regularisation which was done. Even if there was a mistake in regularisation the services of the applicant, because after once regularising the applicant and giving him appointment consequently, an adverse order could have been passed only after after giving him an opportunity of hearing but the same was not done. It is too late to ask the respondents to give the opportunity of hearing to the applicant, thereafter to pass the said orders. 10 years have passed and it appears that the vacancies latter on became available, there appears to be no reason why the applicant who had earlier pass the trade test will not be regularised in view his position in the said test against the vacancy/ arose subsequent to the appointment of the person.

4. The learned council for the respondents has contended that in view of the bottom seniority, the applicant can not claim this benefit which we have rejected as not supported by any rule of law. The

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learned counsel for the respondents further contended that as the earlier ^{order} was passed by mistake, the applicant will be required to appear in the trade test. It seems that all these have been because of the error and mistake on the part of the respondents and the respondents can not eat the entire fruits of their own mistake or error or negligence and carelessness. In our view, the applicant who has passed the trade test earlier can not be required to appear in the test again.

5. Accordingly the respondents are directed to consider the claim of the applicant for regularisation and promotion in the next vacancy which occurred after appointment of the said Azzay as his position was next to him. Let it be done within a period of 3 months. The application is disposed of with the above terms. Parties to bear their own costs.

J. S. S.
Member (A)

ls
Vice-Chairman

Dated: 29.1.1962
(A.U.)