

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

25

ORDERS OF THE BENCH

Date of Order: 26.03.2012

OA No. 14/2010

Mr. Nand Kishore, counsel for applicant.
Mr. M.K. Meena, counsel for respondents.

Heard. O.A. is disposed of by a separate order on the
separate sheets for the reasons recorded therein.

Anil Kumar
(ANIL KUMAR)
MEMBER (A)

K. S. Rathore
(JUSTICE K.S. RATHORE)
MEMBER (J)

Kumawat

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH, JAIPUR.

Jaipur, the 26th day of March, 2012

ORIGINAL APPLICATION No. 14/2010

CORAM :

HON'BLE MR.JUSTICE K.S.RATHORE, JUDICIAL MEMBER
HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Habib Khan son of Shri Abdul Gaffar Khan, aged about 57 years, working as Driver under Deputy Chief Engineer (Construction), West Central Railway Kota, resident of Railway Quarter No. 919-A, New Railway Colony, Kota (Rajasthan).

... Applicant

(By Advocate: Mr. Nand Kishore)

Versus

1. Union of India through General Manager, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota.
3. Chief Administrative Officer (Construction), West Central Railway, Jabalpur (M.P.).
4. Deputy Chief Engineer (Construction), West Central Railway, Kota.
5. Shri Mohammed Rafique son of Shri Achhan Miyam, working as Driver c/o Deputy Chief Engineer (Construction), West Central Railway, Kota.

... Respondents

(By Advocate: Mr. M.K. Meena)

ORDER (ORAL)

The applicant has filed this OA praying for the following reliefs:-

- (i) the respondent no. 4 may be directed to allow the applicant to work as a Driver till such time the respondent No. 2 issue the regular order of the applicant for the post of Driver.
- (ii) They may be further directed to post the applicant as a Driver on Kota Division where his lien is being maintained.
- (iii) They may be further directed to treat the applicant as the regular duly qualified selected

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vehicle driver in the vacancies so notified vide Annexure A/1.

- (iv) They may be further directed to promote the applicant in the higher grade taking into consideration of the entire length of service and fitness as per Hon'ble Supreme Court judgment and Railway Directives.
- (v) Cost of the OA may also be awarded in favour of the applicant.
- (vi) Any other directions and orders, which are, deem proper in the facts and circumstances of the case may kindly be allowed to the applicant."

2. Heard learned counsel for the parties and perused the documents on record. Learned counsel for the applicant argued that the applicant was initially appointed as Khallasi with effect from 13.02.1980. Subsequently, he was found suitable for the post of Driver against the post sanctioned by ENC (S&C) Kota and posted as Driver (Annexure A/5). That the applicant is continuously working on the above post. That the applicant was trade tested and qualified for the post of Driver (Annexure A/6). He further argued that since the applicant has passed the trade test, therefore, it is not necessary for him to appear in the trade test over again. This is as per the directive of the Railway Board vide RBE No. 115/2003. That respondent no. 2, Divisional Railway Manager, Kota, had issued a seniority list of Casual Driver of Engineering Department, Kota Division vide their letter dated 19.12.2007 (Annexure A/7). In this seniority list, the name of the applicant appears at sr. no. 1. He argued that the persons junior to him in this seniority list namely S/Shri Pati Ram, Hari Kishan, Mohd. Shabbir, Mohd. Rafiq and Devendra Singh have been regularized by the respondent Department but the services of the applicant have not been regularized as

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Driver though he is the senior most in the gradation list published by the respondents (Annexure A/7). He also argued that the applicant's case is squarely covered by the decisions of the Hon'ble High Court in the case of **Pati Ram vs. Union of India & others** [D.B. Civil Writ Petition No. 2904/2001] decided on 14.09.2007 and **Union of India & Others vs. Presiding Officer, CAT & Another** [DB Civil Writ Petition No. 8378/2004] and other connected matters decided on 28.02.2012 and, therefore, he prayed that the present OA be allowed.

3. On the contrary, learned counsel for the respondents argued that the lien of the applicant is being maintained in Kota Division in Group 'D' post. He admitted that 50% of the vacancies of the Drivers are to be filled up against ranker quota on the basis of seniority cum suitability test. That the respondents issued a notification to fill up the post of Vehicle Driver Grade III but the applicant did not apply for the said post. Had he applied for the Vehicle Driver Grade III in view of notification then he would have been exempted from passing the qualifying trade test and would have been considered for the said post accordingly. He further argued that the applicant has neither reported sick from the Railway Hospital Kota, nor informed the office of the respondents in time. Hence period of absence is treated as unauthorized absence as a result of which his salary is not drawn. Consequently his application for taking VRS would be considered only after the applicant resumes his

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services at his parental department. He further argued that it is the jurisdiction of the department to relieve the employee for his parent department with the geographical jurisdiction of Kota and under the circumstances, the plea of seniority as pointed out by the applicant does not arise.

4. Having heard the rival submissions of the parties and after careful perusal of the record and after going through the judgments of the Hon'ble High Court in the case of **Pati Ram vs. Union of India & others** [D.B. Civil Writ Petition No. 2904/2001] and **Union of India & Others vs. Presiding Officer, CAT & Another** [DB Civil Writ Petition No. 8378/2004] and other connected matters, we are of the considered view that the case of the applicant is squarely covered by the judgments referred to above. From the perusal of Annexure A/7, which is the seniority list of casual labour working as Vehicle Driver Grade III in the pay scale of Rs.3050-4590 in geographical jurisdiction of Kota Division, it is clear that the name of the applicant appears at sr. no. 1 while that of Pati Ram at sr. no. 3, Hari Kishan at sr. no. 2, Mohd. Shabbir at sr. no. 6, Mohd Rafiq at sr. no. 10 and Devendra Singh at sr. no. 18. The Hon'ble High Court in the case of **Pati Ram vs. Union of India & others** (supra) in Para No. 20 has observed as under:-

"20 Consequently, we dispose of this writ petition by following order:

- (i) The railway administration (respondent No. 1 to 3 herein) shall act in accord with the directives contained in the order dated 31.7.1997 passed by

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the Central Administrative Tribunal, Jaipur Bench, Jaipur in OA 231/1997 – Pati Ram vs. Union of India & Others and re-consider the case of the petitioner for regularisation accordingly. In other words, the railway administration (respondents No. 1 to 3) shall draw up a common seniority list of all those eligible persons for consideration for regularisation on the post of Driver in the division as on 31.7.1997. After the said list is drawn up and if the petitioner is found, on the basis of his seniority, eligible for appointment on the post of Driver, he shall be considered for regularisation in accordance with item (ii) of para 3 of the Railway Board's Circular dated 9.4.1997 and appropriate order shall be issued.

- (ii) If the petitioner has already taken trade test for Group-C post successfully, any further trade test for his regularisation in the post of Group-C shall stand dispensed with.
- (iii) The aforesaid exercise shall be completed as early as possible and in no case later than 31st December, 2007.
- (iv) The impugned order dated 8.12.2000 stands modified in afore-stated terms.
- (v) The parties shall bear their own costs."

5. The case of **Union of India & Others vs. Presiding Officer, CAT & Another** [DB Civil Writ Petition No. 8378/2004] and other connected matters (supra) has also been disposed of by the Hon'ble High Court in terms of the aforesaid decision of Pati Ram. The case of the applicant in the present OA is similar with the facts & circumstances of **Pati Ram vs. Union of India & others** [D.B. Civil Writ Petition No. 2904/2001] and **Union of India & Others vs. Presiding Officer, CAT & Another** [DB Civil Writ Petition No. 8378/2004] and other connected matters. Therefore, the respondents are directed to apply the same ratio in the case of the applicant so far as it relates to giving him appointment on the post of Vehicle Driver Grade III. Such

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exercise shall be carried out by the respondents within a period of three months from the date of receipt of a copy of this order.

6. With regard to the respondent's arguments that the applicant has been absent from duty without any authorised leave, it is open for the respondents to take action as per rules/instructions on the subject against the applicant.

7. With these observations, the OA is disposed of with no order as to costs.

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(Anil Kumar)
Member (A)

K. S. Rathore

(Justice K.S. Rathore)
Member (J)

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