

Date of Order: 16.12.99

OA No.336/95

Hanif Mohd. S/o Shri Nasir Khan at present employed on the post of Truck Driver in Jaipur Division at Phulera.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Divisional Personnel Officer, Western Railway, Jaipur Division, Jaipur.
4. Chief Permanent Way Inspector, Western Railway, Jaipur Division, Phulera.
5. Sr.Divisional Mechaniscal Engineer, Western Railway, Jaipur Division, Jaipur.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. M.Rafiq, counsel for the respondents

CORAM:

Hon'ble Mr. S.K.Agarwal, Judicial Member

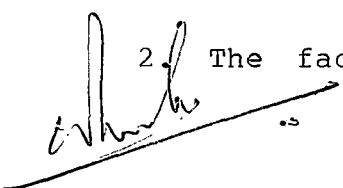
Hon'ble Mr. N.P.Nawani, Administrative Member

ORDER

Per Hon'ble Mr. N.P.Nawani, Administrative Member

Applicant in this OA prays that respondents be directed to pay to him salary of Truck Driver in the scale of Rs. 950-1500 w.e.f. 1.8.1990, pay him arrears with interest and protect his pay.

2. The facts of the case indicate that the applicant was

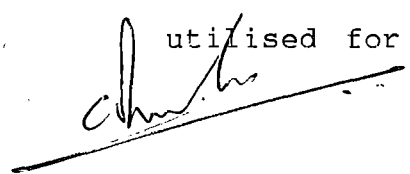


13

: 2 :

initially appointed as Gangman on 23.2.1989. The 5th respondent (Sr. Divisional Mechanical Engineer, Western Railway, Jaipur Division, for short SDME) had invited applications for trade test for the post of Truck/Jeep Driver vide order dated 11.5.1990 (Ann.A1). The trade test was conducted and result declared on 20.6.1990, wherein the applicant passed and his name appeared at Sl.No.6 (Ann.A2). In pursuance, the applicant was also given a posting vide letter dated 1.8.1990 and his name was at Sr. No.5 (Ann.A3). Vide order dated 30.4.1992, the respondents published the seniority list of vehicles drivers and invited objections, if any; applicant was at Sl.No.5 i.e. was the junior most (Ann.A4). The applicant is holding the post of Driver continuously but the respondents are not giving him the pay scale of Driver Rs. 950-1500 (RP); instead he is being paid in the scale of Rs. 775-1025(RP). Representations have been made by the applicant, which evoked no response (Ann.A5 and A6). Certain documents will show that the applicant is working on the post of Driver (Ann.A7,A8 and A9).

3. Respondents, contesting the case, have filed a reply. They have, however, stated that the applicant was promoted on provisional and officiating basis for a limited period for 6 months against a work-charged post and on expiry, no subsequent work charged period was sanctioned to him. (Ann.R1 dated 18.10.1995). The seniority list mentioned by the applicant was confined to only these adhoc/officiating employees who had passed the trade test and were working against work-charged posts and that issue of such a seniority list does not entitle the applicant to claim regularisation on the said post. It is only when the truck of the unit is utilised for some specific purposes that the Driver Licence

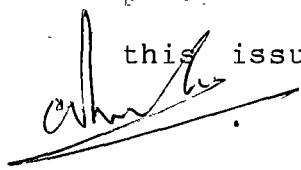


holders S/Shri Chuttanlal, Senior Khallasi and Hanif Mohd., Sr. Gangman are allowed to drive the truck on the oral instruction of the higher officers.

4. We have heard the learned counsel for the parties and gone through the records carefully.

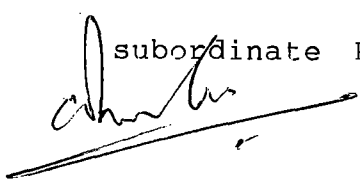
5. The learned counsel for the applicant contended that the applicant was promoted under 25 per cent quota from Group-D to Group-C; was so promoted after completion of all formalities; is working on the said post continuously and is fully entitled to the salary of Rs. 950-1500 (RP) at par with four other persons shown at Sl.Nos. 1 to 4 in the promotion order dated 1.8.1990 (Ann.A3). Such non-payment of salary is illegal, arbitrary and colourable exercise of power, unfair trade practice and against the principle of equal pay for equal work and thus violative of Articles 14, 23 and 39(d) of the Indian Constitution. On the other hand, the respondents have denied that the applicant was promoted on regular basis after completion of necessary formalities and he cannot be allowed the benefits to which he is not entitled. It is, therefore, wrong to say that non-giving him salary of the post of Truck Driver is illegal, arbitrary and colourable exercise of power and violative of Article 14 of the Constitution, nor are actions of respondents violative of Article 23 and Article 39(d) of the Constitution of India.

6. We have given our anxious thought to the rival contentions. It looks odd to us that the respondent No.5, the SDME invited applications for appearing in trade test for the post of Driver, conducted a trade test and at the end of all this issued a promotion order for only 6 months. It was



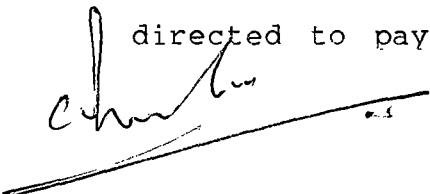
13

understandable if he did this in the hope that the post of Driver, whether work-charged or otherwise, will be continued from time to time and will be available for a longer period. This was done during May-August, 1990 and the applicant, along with four others, was appointed, albeit on stop gap adhoc/ officiating basis for six months w.e.f. 1.8.1990. Presumably, but this has not been specifically admitted by the respondents, these people did work on the post of Driver and were paid, during such period of their working in the pay scale of Rs. 950-1500. We, therefore, feel that during this period respondents must pay them in the scale of Rs. 950-1500, if not already paid. This must be ensured by SDME. It is after the expiry of this period of 6 months that the situation becomes unclear and confusing. Respondents have admitted that the services of the applicant and one Chuttan Lal were being utilised for driving the Unit Truck. A perusal of Annexures A7 to A9 exemplifies the confusion. Vide Ann.A9 dated 3.7.94 (Chief Railway Permanent Way Inspector (for short PWI) writes to Chief Construction Inspector (for short, CCI) saying that the applicant has been relieved w.e.f. 4.7.94 and his pay has been shown as Rs. 835/- in the pay scale of Rs. 775-1025, though the 'subject' of letter is transfer/posting (adhoc basis) from Group-D to Vehicle Driver, RPS (Survey and Construction) Department, Jaipur. Thus, notwithstanding the 'subject', the letter appears to be transfer order of a Group-D employees in Rs. 775-1025 pay scale. Vide letter dated 21.10.1994 the CCI writes to Sr. Cashier, Jaipur to pay the applicant Rs. 2349/- as his pay between 21.9.1994 and 20.10.1994 i.e. for one month, the letter does not mention in what pay scale. Thereafter, vide letter dated 28/29.10.1994, the CCI at Jaipur writes to his subordinate PWI, Phulera stating that the applicant Driver




(emphasis supplied) was being relieved to join under him (PWI) w.e.f. 29.10.94 and his pay scale would be Rs. 950-1500 with pay Rs. 950 (emphasis supplied). This letter clearly indicates that the applicant was serving as Driver and was, in the same capacity, deputed to work under PWI, Phulera. Finally, the respondents have enclosed letter dated 18.10.95 from PWI, Phulera to Sr. Divisional Personnel Officer in which the inability of the letter writer (PWI) is expressed to engage the applicant on the post of Driver, there being no sanctioned post of Driver in that Unit. This letter of 18.10.1995 also mentions that the services of the applicant and one Chuttan Lal being utilised as Driver to drive the truck of the unit whenever required. In a matter like this, the theory of legitimate expectation also comes into play, generated by the applicant going through the entire laid down process of selection and at the end of it getting the job only on off and on basis. The only thing we can cull out from this confusion and contradictory positions taken by the superior CCI and the subordinate PWI is that the applicant must be considered to be employed in the position of the Driver upto 29.10.1994 the date the applicant was relieved as Driver by CCI vide his letter dated 28/29.10.1994 (Ann.A7) and we, therefore, hold that the applicant is entitled to the pay scale of Driver upto this date. We, however, have to accept the position that after 29.10.1994 the respondents could not employ the applicant as Driver since there was just no post of Driver available in the unit of PWI, Phulera, except that he is required to drive the truck of the unit as and when required, for which he must be getting compensated in some manner.

7. The OA, therefore, succeeds partially. Respondent No.5 is directed to pay the applicant in the pay scale of Rs. 950-



1500 from the first day he worked as Driver after expiry of 6 months of issuance of the promotion order dated 1.8.1990 till 29.10.1994, after deducting whatever he has already been paid during this period. This direction may be complied with as expeditiously as possible, preferably within a period of four months. The Original Application is accordingly disposed of with no order as to costs.


(N.P. NAWANI)

Adm. Member


(S.K. AGARWAL)

Judl. Member