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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 30.09.1999

OA No.479/95

Kailash Chand S/o Ram Kumar, posted as Cleaner under Yan Vahan Superintendent, Western Railway, Jaipur.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur.
3. Senior Divisional Mechanical Engineer, Western Railway, Jaipur.
4. Senior Divisional Personnel Officer, Western Railway, Jaipur.

.. Respondents

Mr. P.V.Calla, counsel for the applicant

Mr. U.D.Sharma, 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

The applicant in this Original Application prays for quashing the letter dated 7.6.95 (Ann.A1) reverting him and cancelling his name from the panel of 28.6.85 (Ann.A3) as also to direct the respondents to continue the applicant on the permanent cadre post of Cleaner with all consequential benefits w.e.f. 13.9.1995.

2. The case of the applicant as stated is that he was appointed as a Casual Workman on 13.5.1978 and was given temporary status on 20.9.1979. On his own request he was transferred from Phulera to Carriage Depot, Jaipur on 14.10.1981 and he had since been working at the said depot regularly with no break in his service. His name figured at Sl. No. 14 in the seniority list of Aivajee Kamagars (Substitute workers) as prepared on 31.12.1983 (Ann.A2). A screening test was held on 15.5.1985 and 23.5.1985 by the Selection Committee to prepare a penal for regular appointment of such workers. A provisional penal was circulated vide order dated 28.6.85 (Ann.A3). The name of the applicant appears at

Sl.No.12 in the said panel as a general candidate. He was subsequently appointed on temporary basis on the Group-D post of Cleaner vide order dated 2.8.1985 (Ann.A4) under Carriage Foreman, Carriage Depot, Jaipur. The applicant was also regularised on the post of Cleaner w.e.f. 4.12.1985 (Ann.A5). Another substitute worker Shri Mohammad Rafiq was also transferred from Phulera to Jaipur on his own request and had filed an application before this Tribunal (OA No.26/91). The said OA was disposed of by an order dated 22.11.94 with a direction that he also be given permanent status w.e.f. 4.12.1985 as has been done in case of the applicant in this OA. The applicant alleges that the respondents were prejudiced with Shri Mohammad Rafiq and with a view to flout and disobey that order of the Tribunal, they started taking action against the applicant, as a result of which a show cause notice was issued to him on 26.4.95 (Ann.A6) as to why his name should not be removed from the panel dated 28.6.1985 as some irregularity has been committed and the order dated 4.12.1985 for granting regular status to him was to be withdrawn. The applicant submitted his reply seeking to know as to on what basis correction is proposed to be done in the working days put in by him after a lapse of 10 years of long period and if such corrections are also being done in case of others. Thereafter impugned order dated 7.6.1995 (Ann.A1) was issued and the orders dated 4.12.1985 appointing him to a post of Cleaner on regular basis was cancelled. The applicant represents against this order but of no avail. The applicant also states that junior persons to him have been retained in the regular Group-D post and only he has been singled out for reversion. Finally, that he was not being given any work as Casual Labour after 30.9.1995.

3. In their reply the respondents have contested the case and have stated that the applicant was initially engaged as Casual Substitute w.e.f. 13.5.1978 and was given temporary status from 20.3.1979. They have denied that the applicant was given any regular appointment or had been posted against a permanent post of Cleaner w.e.f. 20.3.1979. Both the applicant and Shri Mohammad Rafiq had been working as substitute workers in Carriage Depot, Phulera and came to Jaipur on their own request and got bottom seniority in the Jaipur Unit. Though the applicant had been called for screening for the Group-D post on the basis of 1469 days of working and on that basis his name was placed at Sl.No.17A in the panel, the number of days he had worked at Phulera had been included inadvertently and by oversight. Meanwhile, Shri Mohammad

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Rafiq had approached this Tribunal and vide its order dated 22.11.1994, the respondents were directed to apply in case of Shri Mohammad Rafiq the same criterion which had been applied in the case of applicant and to pass necessary orders regarding permanent status according to law. On receipt of such orders, the entire matter was reviewed and it was realised that the applicant could not have worked for 1469 days during the period from 14.10.1981, when he joined at Jaipur on the basis of on request transfer and 31.12.1983, when the seniority list of Substitute Workers was prepared. It was thus, found that the applicant was not eligible and, therefore, the order dated 4.12.1985 was erroneous, irregular and illegal. It was accordingly decided to rectify the mistake and consequently issued a show-cause notice and considering the reply from the applicant, the order dated 7.6.1985 and reverting the applicant to the position of Casual Substitute.

5. The applicant had filed a rejoinder and an additional affidavit. The respondents also filed an affidavit in reply. These have been taken on record.

6. We have heard the learned counsel for the parties and have also gone through the entire records.

7. The only issue to be decided in this case is whether the respondents were right in coming to a conclusion that the number of days the applicant worked at Phulera were not to be counted alongwith days he worked at Jaipur, where he had come on transfer on his own request and having considered that this was a mistake, deciding that those days are to be deleted and therefore the applicant had wrongly been considered for temporary appointment to a Group-D post and accordingly cancelling the order of appointment dated 4.12.1985 in favour of the applicant.

8. On careful consideration of the entire matter, we feel that according to the law developed on this subject, whereas an employee joining a new unit on transfer at his own request is liable to be placed at the bottom of the seniority list, the services rendered by him at the earlier place from where he has been transferred may be counted towards his eligibility for promotion. The learned counsel for the applicant has relied on the cases of Aruny Piyari vs. State and others reported in 1996(1) Service Case Today 791 (Rajasthan High Court) and Shri Amar Nath and Ors. Vs. Union of India and Ors. reported in 1983(1) SLJ 186

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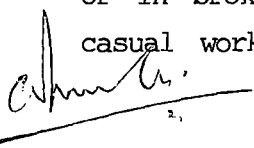
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(Delhi High Court) in support of his contentions. The above cited cases are not of much help to the applicant as the facts and circumstances of those cases are different and a mistake committed by the administration can always be corrected. However, the Apex Court in Scientific Advisor to Raksha Mantri & Anr. Vs. V.M. Joseph reported in 1998 (4) SLR 394 has laid the principles to be followed in this regard. In that case the petitioner was denied promotion to the post of Senior Stores Keeper on the ground that after having come on transfer on his own request, he had not completed three years of service as Store Keeper and, therefore, could not be promoted. Their Lordships' has held as follows:

"Even if an employee is transferred at his own request, from one place to another, on the same post, the period of service rendered by him at the earlier place where he held a permanent post and had acquired permanent status, cannot be excluded from consideration for determining his eligibility for promotion, though he may have been placed at the bottom of the seniority list at the transferred place."

The principles laid down by the Apex Court as above indicate that the services rendered by an employee at the earlier place should not be ignored for the purposes of eligibility for promotion when such an employee has come to a new place on transfer on his own request. We feel that even though the Apex Court was examining the cases where the petitioner was holding a permanent post, the principle laid down can still be applicable in this case where the applicant's eligibility for regularisation depended solely on the number of days he had worked as a substitute labour at the place from where he was transferred. In the instant case the applicant is a Substitute Worker, who had been working with the Railways since 13.5.1978 and got a chance to get a Group-D post in 1985 i.e. after more than seven years, should not suffer because of non-inclusion of the days he had worked at the previous place. It has also to be kept in mind that such a transfer was within Jaipur Division itself. We notice from para 179 (xiii)(c) of the Indian Railway Establish Manual, Vol.I that a register should be maintained by all the Divisions to indicate the name of Casual Labour, Substitute and Temporary Workmen, who have rendered six months' service either continuous or in broken period for the purpose of future requirements as casual workman and also regular employees to provide for their



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regular employment. Thus it appears that within the policy of the Railways of giving Substitute, Casual and temporary Workman prior claim over others for permanent requirement, the seniority register should be maintained at division level and they should as far as possible, be selected in the order maintained in the aforesaid register. Although the respondents in their reply have stated that Carriage Depot, Phulera and Carriage Depot, Jaipur are separate entities having separate seniority, they have not been able to show any rules/instructions which support their contention of excluding the days the applicant worked at Phulera within Jaipur Division itself. The respondents had appointed the applicant in the Group 'D' post of Cleaner after taking into consideration the days he worked at Phulera. After a long period of more than 9 years, the respondents decided to cancel the said appointment. They have tried to justify the cancellation solely on the ground that there was some irregularity found in placing the name of the applicant in the panel. This is clear from the show-cause notice issued to the applicant dated 26.4.95 (Ann.A6). The respondents have not indicated in the show-cause notice as to what are the irregularities in computation of days of work. If, as argued, the mistake was inclusion of the number of days the applicant worked at Phulera, the same should have been clearly mentioned in the show-cause notice. We, therefore, feel that the principles of natural justice have been violated and the appointment of the applicant was cancelled without the applicant knowing what exactly was the reason for such cancellation.

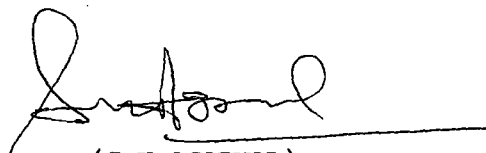
9. In the circumstances, the impugned order dated 7.6.95 (Ann.A1) cancelling the appointment given to the applicant, is wrong and we accordingly quash it. The respondents are directed to reinstate the applicant within 15 days of receipt of a copy of this order. The principles of 'no pay for no work' will apply for the period the applicant has not actually worked as Group-D Cleaner and his seniority as fixed earlier will be maintained.

10. This Original Application is accordingly allowed with no order as to costs.



(N.P.NAWANI)

Administrative Member



(S.K.AGARWAL)

Judicial Member