

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

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OA No. 231/97

Date of order: 31-7-1997

Pati Ram S/o Shri Narottam Singh, aged about 39 years at present employed on the post of Driver-cum-Mechanic (T.S.) under IOW (C), Kota Division.

.. Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Kota Division, Kota.
3. Deputy Chief Engineer (C), Western Railway, Kota Division, Kota.

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

Mr. Manish Phandari, counsel for the respondents

CORAM:

Hon'ble Mr. O.P.Sharma, Administrative Member

Hon'ble Mr. Ratan Prakash, Judicial Member

ORDER

Per Hon'ble Mr. O.P.Sharma, Administrative Member

In this application under Section 19 of the Administrative Tribunals Act, 1985 Shri Pati Ram has prayed that the order dated 29.5.1997 (Ann.A1) regularising the service of the applicant on the post of Gangman Group-D may be quashed insofar as it relates

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to the applicant and the respondents may be directed to regularise the service of the applicant on the post of Driver scale Rs. 950-1500, a Group-C post, with all consequential benefits.

2. The applicant's case is that he was initially appointed on the post of Driver-cum-Mechanic scale Rs. 950-1500 in Kota Division on 30.11.1974. His scale was subsequently revised to Rs. 950-1500. He was granted temporary status on 1.1.81. The applicant had passed the trade test on 10.10.86 (Ann.A2). He had earlier filed an OA No. 192/94 for regularisation in Group-C post. The Tribunal in its order dated 30.6.94 (Ann.A3) had directed that in case persons junior to the applicant have been regularised, the applicant will also be entitled to regularisation from the date his junior has been regularised. After the judgment of the Tribunal, as aforesaid, Shri Anwar Ahmed has been regularised though he is junior to the applicant (order dated 28.11.1994 Ann.A4). The applicant claims that he is direct recruit to the post of Driver which is an artisan category and to which direct recruitment can be made according to Rule 2007 of the IPEM. Percentages for recruitment are prescribed by the Railway Board from amongst open market candidates and from amongst serving employees and he is entitled to be appointed to the post of Driver on a regular basis from amongst both the categories. The Railway Board has also since issued a circular dated 9.4.1997 (Ann.A8) which provides that a casual labour can be regularised against a Group-C post itself. The respondents' action in regularising the applicant on the post of Gangman which is a Group-D post is not in order and it will jeopardise the entire career of the applicant

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without any fault on his part. He has, therefore, prayed that he may be regularised on the Group-C post of Driver.

3. The respondents in their reply have stated that the applicant was appointed only as a casual labour. He has to prove that he had in fact passed the trade test because Ann.A2 annexed by the applicant to the OA is not a proper document. The applicant has also not proved that he is entitled to be regularised on the post of Driver on the basis of his seniority. Mr. Anwar Ahmed who is stated to be junior to the applicant, has been regularised on the post of Driver, has not been impleaded as a respondent. They have denied that the applicant is direct recruitee to the post of Driver. They have also denied that the provisions of para 3007 of the IREM are applicable. The applicant has been regularised on a Group-D post according to rules and any further regularisation on a Group-C post can only be made in accordance with the rules and on the applicant's fulfilling the requisite qualification.

4. During the arguments the learned counsel for the applicant presented before us a seniority list of project labour in Kota Division dated 13.1.1997. The applicant figures at Sl.No.2 thereof and is, therefore, entitled to regularisation because vacancies in the post of Driver are available. The learned counsel for the respondents stated during his oral arguments that since this seniority list pertains to project labour, it cannot be said to be a complete seniority list of all such employees who would be eligible for regularisation on Group-C post of Driver. He also pointed out that Shri Anwar Ahmed was regularised on the post of Driver in pursuance of the order passed by the Tribunal and,

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therefore, the applicant should not have a grievance to the effect that Mr. Anwar Ahmed who was junior to him has been regularised on the post of Driver whereas the applicant has been left out. He added that the applicant would be eligible for consideration for regularisation on the post of Driver, a Group-C post, provided he comes within the zone of consideration on the basis of his seniority and has proof to show that he had passed the trade test.

5. We have heard the learned counsel for the parties and have perused the material on record. The learned counsel for the applicant laid particular stress on the instructions contained in Ann.A8 dated 9.4.97 issued by the Railway Board, para 3 of which reads as under:

3. The question of regularisation of the casual labour working in Group 'C' scales has been under considerations of the Board. After careful consideration of the matter, Board have decided that the regularisation of casual labour working in Group 'C' scales may be done on the following lines:-

- i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by EBB or the Railways for posts as per their suitability and qualification without any age bar.
- ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisan against 25% of the promotion quota may

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continue to be considered for absorption as such.

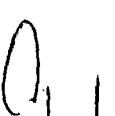
iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respect Units. "

The applicant's case is that he is entitled to be considered in accordance with item ii) of the aforesaid paragraph in Group-C post of Driver. As far as the seniority list presented by the applicant is concerned, it was not only not annexed to the OA to enable the respondents to give their comments on it but it can also not be said to be a complete seniority list of all such persons who would be eligible for consideration for regularisation on the post of Driver in the Division. Nevertheless, we are of the view that if the applicant is found senior enough to be eligible for consideration for appointment on the post of Driver and has proof to show that he has passed the trade test, he should be considered for regularisation on the post of Driver in accordance with item ii) of para 3 of the Railway Board's circular dated 9.4.1997 (Ann.A8) which has been reproduced above and other rules applicable to the matter subject to availability of vacancy. This direction, of course, would not affect the rights of Mr. Anwar Ahmed who has been regularised in accordance with the order of the Tribunal. Before undertaking this exercise, the respondents shall draw up a common seniority list in this regard.

6. The OA stands disposed of accordingly at the stage of admission with the consent of the parties. No order as to costs.

  
(Ratan Prakash)

Judicial Member

  
(O.P. Sharma)

Administrative Member