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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

I. O.A.No.232/97

Date of order: 31.7.1997

Mohd. Sabbir

: Applicant

Vs.

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.

✓ II. O.A.No.238/97

Hari Kishan

: Applicant

Vs.

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 applicants

Mr.Manish Bhandari

: Counsel for respondents

CORAM:

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

Hon'ble Mr.Ratan Prakash, Judicial Member

PER HON'BLE MR.O.P.SHARMA, ADMINISTRATIVE MEMBER.

These two O.As involve more or less common points of facts and law and these are disposed of by a common order.

2. O.A No.232/97 has filed by Mohd Sabbir under Sec.19 of the Administrative Tribunals Act, 1985. In this application he has prayed that order Annx.A1 dated 29.5.97 regularising the service of the applicant on the post of Gangman, Group-D may be

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quashed in so far as it relates 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, Group-C post with all consequential benefits.

3. O.A No.238/97 has been filed by Shri Harikishan in which also he has sought the same relief as sought by Shri Mohd.Sabbir. He has also been sought to be regularised in a Group-D post by order dated 29.5.97 which has been filed as Annx.A1 in this O.A as well.

4. The facts of the two cases are as follows. Shri Mohd.Sabbir was initially appointed as a casual Driver on 21.1.82 in Kota Division in the Construction Department. He was granted temporary status as on 1.1.84. As Driver he has been placed in the pay scale of Rs.950-1500/-(RP).

5. Shri Harikishan was appointed as casual Driver in the same Construction Department of Kota Division on 15.5.73 and was granted temporary status as on 1.1.85. He has also been placed in the pay scale Rs.950-1500 (RP).

6. As regards Shri Mohd.Sabbir, he had earlier filed an O.A No.213/92 before this Bench of the Tribunal seeking regularisation in the Group-C post which he has been holding. The Tribunal vide order dated 25.9.96 (Annx.A2) directed the respondents to consider the case of the applicant for regularisation in Group-C post as and when the post is available and the applicant's turn comes. This O.A had been filed jointly with certain others and the same order has been passed in the cases of all the applicants including the present applicant. In spite of this order, the respondents have not regularised the services of the applicants on the post of Driver. Applicant Shri Harikishan, however had not filed any application before the Tribunal earlier seeking his regularisation.

7. The case of both the applicants is that persons junior to these applicants including one Anwar Ahmed have been

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regularised. As per the instructions of the Railway Board placed as Annx.A5 in both the applications, there is a provision for filling-up of 25% posts from amongst open market candidates and 25% posts from amongst serving employees in the skilled and semi-skilled categories having the prescribed qualifications. The applicants are eligible for being considered and appointed on a regular basis as they are serving employees in the same category in which they seek regularisation. They have also referred to certain subsequent instructions issued by the Railway Board on 9.4.97, placed as Annx.A7 in both the applications. These also provide for regularisation of casual labour who are working in Group-C posts on the same posts which they are holding. However, in spite of the applicants being eligible for regularisation on the post of Driver, the respondents have ordered regularisation of the applicants on the post of Gangman scale Rs.775-1025. This regularisation in the lower category would jeopardise the careers of the applicants. They have, therefore, prayed that instead of their being regularised in Group-D post of Gangman they may be regularized on the post of Driver which is a Group-C post.

8. The respondents in their reply have stated that an employee can be regularised or absorbed only in accordance with the rules. With regard to the judgment of the Tribunal, Annx.A2, they have stated that the regularisation has to be made subject to the availability of the post and has to be even otherwise in accordance with the rules. The applicants cannot be granted promotion out of turn. The applicants are not justified in claiming that they should be granted regularisation on the ground that Shri Anwar Ahmed had been granted regularisation. Shri Anwar Ahmed is senior to the applicants and he was in fact regularized on the basis of an order of the Tribunal. The

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applicants can be considered for promotion against 25% quota also as referred to in Annx.A6 only if vacancy is available. Further according to them, Group-C casual labours have to be considered for their absorption as Group-C employees on the basis of their seniority.

9. During the oral arguments, the learned counsel for the applicants referred to Annx.A7 dated 9.4.97, being the latest instructions issued by the Railway Board on the subject and drew our attention to paragraph 3 thereof which amongst others provides that such of the casual labours in Group-C scales as are at present entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such. This provision according to him has to be linked with the provision in Annx.A6 which provides that 25% of the post may be filled-up from amongst serving employees in scale of semi-skilled categories, having the prescribed qualifications. Therefore, now the applicants who have been working on the post of Driver as casual labour but in a Group-C post are entitled to be considered for regularisation or absorption in Group-C post of Driver in accordance with the provisions of Annx.A7 dated 9.4.97.

10. The learned counsel for the respondents stated that regularisation of the applicants can be considered only in accordance with their seniority position. The applicants have not shown that they are entitled to be considered for regularisation in accordance with their seniority having regard to their seniority position. The regularisation will also depend upon the availability of vacancies and the rules applicable to regularisation.

11. We have heard the learned counsel for the parties and have perused the material on record.

12. As regards order Annx.A2 dated 25.9.96 passed in the case

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of Shri Mohd.Sabbir and others, the direction was for consideration for regularisation of the applicants in Group-C post as and when the post is available and the applicant's turn for regularisation comes. Seniority position of the applicants for the purpose of consideration for regularisation in Group-C is very much relevant. In the circumstances, we direct that in view of the relevant para of Annx.A7 referred to above, which constitute the latest instructions of the Railway Board on the subject, the applicants shall be considered for regularisation on Group-C post of Driver, as and when vacancy is available and the applicant is found eligible for absorption in accordance with other rules and regulations applicable in the case. These very direction would be applicable in the case of applicant Shri Harikishan as well. We direct accordingly.

13. As regards the other persons mentioned in these applications who have already been regularized in accordance with the Tribunal's directions or otherwise, no order shall be passed to their detriment in pursuance of the directions issued now.

14. The O.As stand disposed of accordingly. No order as to costs.



(Ratan Prakash)

Judicial Member.



(O.P.Sharma)

Administrative Member.