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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of order : 10.07.2000

O.A. No. 445/97

Mohd. Faik son of Shri Achhan Mia aged about 43 years resident of Sanjainagar, in front of Samshano, Near Bricks Bhatta, Piro-ke-kheto-Me, Kota Jn., at present employed on the post of TS Driver under Chief Inspector of Works (C), Kota, Western Railway.

... Applicant.

v e r s u s

1. The Union of India through General manager, Western Railway, Church Gate, Mumbai.
2. Dy. Chief Engineer (Construction), Western Railway, Kota.
3. Divisional Railway Manager, Western Railway, Kota Division, Kota.

... Respondents.

Mr. J.K. Kaushik, Counsel for the applicant.

Mr. Manish Bhandari, Counsel for the respondents.

CORAM:

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

Hon'ble Mr. S. Bapu, Administrative Member.

: O R D E R :

(Per Hon'ble Mr. S.K. Agarwal)

In this O.A. filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant makes following prayer:-

- (i) That the impugned order dated 4.9.97 at Annexure A/1 so far it relates to ordering regularisation of the applicant on Group 'D' post is concerned be quashed;
- (ii) That the respondents be directed to consider absorption / regularisation on the post of Driver in Group 'C' post as per the Railway Board circular dated 9.4.97 and allow all consequential benefits.

(iii) That the respondents be directed to protect the pay of the applicant on regularisation/absorption as per rules in force.

2. The facts of the case, as stated by the applicant, are that the applicant was initially appointed as casual Driver in Group 'C' post on 6.4.84 under AEN (C)-III Bundi in Kota Division of Western Railway. Temporary status was conferred on the applicant from 15.4.85 vide letter dated 4.12.86. It is stated that the applicant was thereafter transferred to different places and his work and conduct was satisfactory. Therefore, he was granted one annual increments of pay for the post of Driver. The applicant is fully eligible to be regularised in Group 'C' post as per instructions of the Railway Board from time to time. But the respondents have regularised the applicant in Group 'D' post and did not allow the protection of pay to the applicant. It is stated that the action of the respondents in regularising the applicant on Group 'D' post is ex facie illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India and Hon'ble the Supreme Court has settled the controversy in Pam Kumar's case and allowed the protection of pay to the employee till he is promoted on Group 'C' post. Therefore, the applicant filed this OA for the reliefs as mentioned above.

3. Reply was filed. It is stated in the reply that the applicant is not entitled to any regularisation on Group 'C' post because the rules do not permit to do so. It is further stated that the applicant was regularised as per the extant rules and as per the decision of the Railway administration on the post of Group 'D'. Therefore, the applicant is not entitled to any relief as prayed for and this O.A. is devoid of any merit and deserves to be dismissed.

4. Heard the learned counsel for the parties and also perused the whole records.

5. In Union of India & Ors. ^{v. Moti Lal & Ors.} (1996) 33 ATC 304, it was held by Hon'ble the Supreme Court that persons appointed directly as casual Mates although continue as such for a considerable period and thereby acquiring temporary status are not ipso facto entitled to regularisation. In view of the above legal position, the applicant in this case is not at all entitled for regularisation in Group-C in the grade Rs. 950-1500 (RP).

[Signature]

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6. The learned counsel for the applicant submits that if it is not possible to regularise the applicant on any Group-C post then he is entitled to protection of pay as per the decision of Hon'ble the Supreme Court. The learned counsel for the respondents on the other hand submits that it is not possible to regularise the applicant on any Group-C post as regularisation of the applicant on any Group-C post will be de hors the rules. Therefore, the applicant is also not entitled to protection of pay.

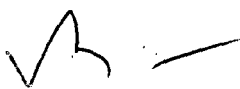
7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole records.

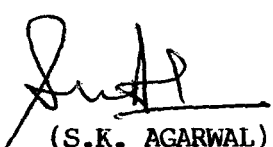
8. In Ram Kumar vs. Union of India and Others, 1988 (1) SCC 306, Hon'ble the Supreme Court held as under:-

- "(i) Railway casual labour working in 'C' category may be screened and regularised in Group-D category but their pay and allowances be protected upto their promotion in 'C' category.
- (ii) Railway casual labour working in 'C' category for 5 years may be screened in 'C' category and regularised.
- (iii) Railway casual labour attaining temporary status entitled to pensionary benefits."

On perusal of the judgement, as referred to above, we are of the opinion that the applicant is entitled to the protection of pay as mentioned above.

8. We, therefore, dispose of this OA with the direction to the respondents to protect the pay of the applicant in view of the judgement of Hon'ble the Supreme Court in Ram Kumar's case cited supra. This judgement shall not preclude the respondents to permit the applicant to work as casual driver in the pay scale of Rs. 950-1500 (old), as now it is revised, till he is promoted for Group 'C' post against the promotion quota. No order as to costs.


(S. BAPU)
Aom. Member


(S.K. AGARWAL)
Judl. Member