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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 27.1.2000

OA No.409/1998

Chandra Singh S/o Shri Jai Singh, posted as Senior Khalasi (Surplus), Carriage Department, Business Sick Line, Western Railway, Jaipur.

.. applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur
3. The Senior Divisional Mechanical Engineer, Western Railway, Jaipur

.. respondents

Mr. N.K.Bhat, counsel for the applicant

Mr. T.P.Sharma, counsel for the respondents

CORAM:

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

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

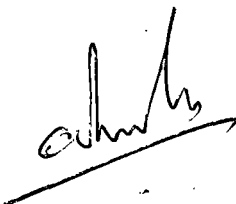
ORDER

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

In this application filed under Section 19 of the Administrative Tribunals Act, 1985, the applicant has prayed for the following reliefs:

"(I) That the respondents to be directed to allow the applicant on duty as usual as he was working prior to 4th August, 1988 in the post of Driver.

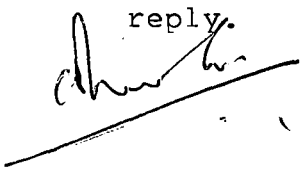
(II) That the respondents to be directed to regularise the petitioner on the post of Driver.



(III) The respondents to be directed to take further steps in order to complete selection procedure to the post of driver in pursuance of the order dated 29th June, 1998 (Annexure-A/7)."

2. The facts of the case, as stated by the applicant are that the applicant was recruited as a Permanent Khalasi and made permanent as Artisan Khalasi in April, 1984; that he was promoted as Sr. Khalasi in April, 1986; that the applicant being an expert Driver having licence was posted as Vehicle Driver w.e.f. 23.4.1993 under Superintendent (Car. and Wagon) against a vacant post in response to letter dated 21.5.1993 (Ann.A1) which gave justification for creation of a post of Truck Driver and Khalasi; that before assigning this job, the applicant was found fit for the job and was also found to have knowledge of maintenance of Truck; that the applicant was continuously performing duties of Truck Driver since 21.5.1993 satisfactorily as will be evident from Anns. A3 and A4; that in spite of this he and other employees performing the duties were not allowed benefits of the salary etc., and notwithstanding their demand for salary etc. having been recommended by their superior (Anns.A5 and A6); that all of a sudden, without any intimation or reasons, the applicant was not allowed to continue as a Driver by the verbal order of the respondent No.3 and he was singled out for being declared surplus and posted as Sr. Khalasi; that vide order dated 20.6.1998 the applicant's name was included in the panel of the employees for regularisation as Drivers but no further action was taken following the said notification of panel and that the applicant had served a legal notice dated 7.9.1998 but it evoked no

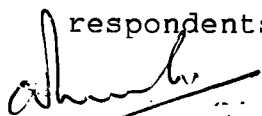
reply.



3. In their reply, the respondents have contested the averments made by the applicant. It has been stated therein that the services of the applicant were utilised as Driver on account of declaration of one Iqbal Hussain, an employee in the rank of Vehicle Driver Gr.II, as surplus; that this did not create a right in favour of the applicant to work continuously as Vehicle Driver; that the applicant was never put in the panel for the Vehicle Drivers, the order dated 31.3.1998 being only a notice eligible persons to be ready for the trade test; that due to currency of work charged Vehicle Drivers having been closed, the order of 31.3.1998 was rejected by another order dated 8.12.1998 (Ann.R1); that no junior person has been made a party in the array of the respondents and that neither any malafide or arbitrary action has been taken by the respondents nor has there been any violation of Articles 14 and 16 of the Constitution of India. The applicant has filed a rejoinder to the reply reiterating his case that the applicant was promoted on a vacant post of Truck/Vehicle Driver and added that the respondents have not annexed any document in support of their contention that the applicant was utilised on account of declaration of Iqbal Hussain, Driver Grade-II as surplus.

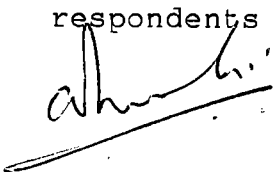
4. We have heard the counsel for the parties at considerable length and gone through the material on record.

5. The short controversy to be decided in this case is whether the applicant was appointed to the post of Vehicle Driver on a vacant post, whether his being asked to go back to the post of Sr. Khalasi was an arbitrary action and whether the respondents were bound legally and as a welfare employer, to



regularise the services of the applicant on the post of Vehicle Driver.

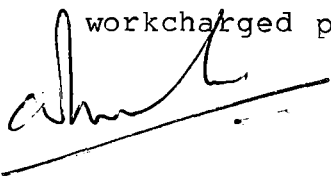
6. We have carefully considered the contentions of the rival parties. We find that no order appointing/posting the applicant to the post of Vehicle Driver was annexed. Ann. A1 appears to be a note mentioning that one Truck has been transferred from Ajmer to Jaipur and, therefore, it becomes necessary to create the posts of one Heavy Vehicle Driver, one LR &RG Driver and one Khalasi. Ann.A2 is regarding successful completion of driving test by the applicant. Ann.A3 appears to be a letter from Zonal Mechanical Engineer to Supdt. (Carriage and Wagon) stating that the applicant and Ram Kishan have been found suitable for Driver and while the applicant can be utilised for the work of regular Truck Driver, Ram Kishan can be utilised for the LR/RG Driver. The use of the word <sup>नियमित</sup> in this sentence points to the services of the applicant being utilised on a regular basis while Ram Kishan will be utilised as LR (Leave Reserve)/R.G. This cannot be construed as regular appointment/posting of these employees on the post of Vehicle Driver. This interpretation is further supported by the next two paragraphs which ask for a performance report of 3 months on applicant and Ram Kishan and seeking a proposal for creation of a post each of Truck Driver and Khalasi respectively. Ann.A4 is a certificate of satisfactory work of the applicant. Ann.A5 is forwarding of the application of the applicant and two others for the post of Driver on the transfer of Iqbal Hussain. Thus, the applicant has failed to establish that he was appointed/posted to the post of Vehicle Driver on a regular basis. We, therefore, feel that the clarification given by the respondents that the services of the applicant were just



utilised for some time on account of declaration of one Iqbal Hussain, Vehicle Driver Grade.II as surplus and his consequent transfer depicts the correct position and is acceptable. The applicant has, therefore, no right on the post of the Vehicle Driver even if one post was available and his contention that he should be allowed to continue on duty as usual as he was working prior to 4.8.1988, has no force.

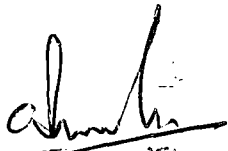
7. As regards the contention of the applicant that even if somebody had to be taken away from the duties of the Vehicle Driver, it should have been his juniors and as an example he has given the name of one Ram Kishan. The applicant has not only not made the so called junior, Ram Kishan, as a respondent but has not even annexed any document showing that the applicant was senior to Ram Kishan in his grade i.e. Senior Khalasi. There is also no prayer to this effect. In the absence of any material to base any opinion, it is not possible for us to hold that the applicant was senior to the said Ram Kishan as ad hoc Vehicle Driver and it should have been Ram Kishan who should have been brought back to his substantive post rather than the applicant.

8. As regards the question of regularisation of the applicant in the post of Vehicle Driver, the very perusal of the letter dated 31.3.1998 (Ann.A7) will indicate that it is not even a panel of employees for the post of Vehicle Driver with the applicant at Sl.No.1 but only a letter intimating employees who should be ready to face the trade test. If the posts available at the time of issuance of this letter become unavailable later on due to the currency of Vehicle Driver workcharged posts not being extended and, therefore, the notice



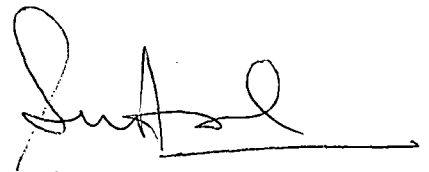
dated 31.3.1998 having to be cancelled, we cannot fault the respondents on this count. We take note of the statement made on behalf of the respondents during the arguments that as and when vacancies become available, the applicant will certainly be invited to participate in the selection process, starting with the trade test subject to eligibility etc. We cannot, however, direct the respondents to carry out the trade test of the eligible employees, including the applicant as per the order dated 31.3.1998 if it is stated by the respondents that the vacancies anticipated prior to 31.3.1998 were found to have become unavailable subsequently due to "currency of the Vehicle Driver workcharge has been closed."

9. In view of the above discussion, we do not find any merit in this Original Application and it is accordingly dismissed with no order as to costs.



(N.P. NAWANI)

Adm. Member



(S.K. AGARWAL)

Judl. Member