

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR

Date of order: 21.11.2000

OA No.15/2000

Pameshwar S/o Shri Pooran Mal Yadav, aged about 59 years at present employed on the post of Driver in Western Railway, Jaipur Division, Jaipur.

.. Applicant

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager (Estt.), Western Railway, Jaipur Division, Jaipur.
3. Section Engineer, (PWI) C, Western Railway, Ajmer

.. Respondents

Mr. Shiv Kumar, counsel for the applicant

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

CORAM:

Hon'ble Mr. Justice B.S.Paikote, Vice Chairman

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

Order

Per Hon'ble Mr. Justice B.S.Paikote, Vice Chairman

This application is filed for a direction to the respondents to take the applicant on duty forthwith and respondents may be further directed to pay the arrears of pay to the applicant w.e.f. 1.12.1999 till he is taken on duty.

2. It is the case of the applicant that he joined as a Truck Driver on casual basis in the year 1984 and he was employed in the construction unit of the Railway Department. While he was working at Ajmer, a letter dated 29.7.99 was issued to the applicant that the applicant among other 7 persons had the lien at Jaipur Division but their services may be spared to work as Driver, PWI (C) Ajmer.



Thereafter, he was relieved from Jaipur Division so as to enable him to join at Ajmer vide letter dated 30.11.1999. He filed this application contending that his services are not been taken either at Jaipur or at Ajmer. It is in those circumstances this Tribunal vide interim order dated 10.4.2000 directed the respondents to take the applicant on duty either at Ajmer or at Jaipur. It is now brought to our notice that there was another letter regularising the services of the applicant vide letter dated 31.7.1997/11.9.97 on Group 'D' post as Gangman in the Engineering Department of the Jaipur Division, pay scale Rs. 775-1025 (RP). This letter has not been referred to in the application. This letter clearly indicated that the applicant's services were regularised as Gangman posting him to Phulera vide Item No. 63 in the list annexed to the letter. From reading of the order, we do not find that the applicant had at any time accepted the regularisation and joined at Phulera. The applicant has suppressed the fact established in this case. It was only in the circumstances, without noticing this letter, this Tribunal passed the interim order dated 10.4.2000. It appears that the applicant was also transferred from Ajmer to Jaipur vide letter dated 30.11.99 under respondent No.2 and he was accordingly relieved from Ajmer. In Paragraph 4(5) of the application it states that he was not taken on duty at Jaipur inspite of his representation. In fact, from the order of regularisation dated 31.7.1997/11.9.1997 he was directed to join at Phulera in Jaipur Division but he was not posted at Jaipur City as such. It is not the case of the applicant that he joined at Phulera at any point of time. From this it is not clear that the applicant has accepted his regularisation in Group 'D' post or not and joined at Phulera by accepting the Group 'D' post. From this it is clear that the applicant has not come with clean hands. He is doing hide and seek with the Department. His prayer is only for a direction to the respondents to pay the arrears of pay w.e.f. 1.12.1999 and treating him as on duty w.e.f.




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1.12.1999. Thus, we find that the relief as prayed for by him straightaway cannot be granted.

3. However, the learned counsel for the applicant strenuously submitted that in view of the Full Bench Judgment of this Tribunal dated 30.10.2000 passed in OA No. 57/96, the applicant would be entitled to the pay protection of Group 'C' and regularisation on the post of Group 'D'. This limited relief, we think would be just, in the interest of justice, which can be granted to the applicant on the basis of regularisation on Group 'D' post w.e.f. 31.7.1997/11.9.97, in view of the law declared by the Full Bench of this Tribunal. So far as the arrears are concerned, he shall be entitled if the Department is satisfied that the applicant has worked either at Phulera or at Ajmer as per the letter of the Department dated 3.5.2000 filed at Ann.B2 alongwith the reply. It has been made clear that the applicant has lien at Phulera in Jaipur Division and he was asked to join at Phulera but we find that the application is silent regarding the fact whether actually he joined his duties at Phulera after regularisation or not. For the above reasons, we pass the order as under:-

Application is partly allowed. The respondents are hereby directed to allow the applicant to join on Group 'D' post at Phulera, if he has not already joined. His pay in Group 'C' post is liable to be protected in view of the Full Bench Judgment of this Tribunal dated 30.10.2000 in OA No.57/96 on the basis of regularisation in Group 'D' post vide letter dated 31.7.1997/11.9.1997. He would be entitled to arrears, if any, for the period he has worked on Group 'D' post in pursuance of the order dated 31.7.97/11.9.97. No costs."



(N.P.NAWANI)  
Adm. Member



(B.S.RAIKOTE)  
Vice Chairman