

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Date of order: 16.10.2001

OA No. 449/2001 & MA No. 336/2001

Devendra Singh s/o Shri Fateh Singh r/o Village and Post Kalsada, Tehsil Bayana, District Bharatpur working on the post of Driver in the Office of Dy. GE (C), Kota.

OA No. 450/2001 & MA No. 335/2001

Hari Kishan s/o Shri Dalchand r/o Girraj Colony, Bharatpur, posted as Driver in the office of Dy. CE (E), Kota.

OA No. 451/2001

Mohd. Shabbir s/o Mohd. Yusuf r/o Behind Chaman Hotel, Nayapura, Kota, posted as Driver in the office of Dy. CE (C), Kota.

...Applicants

Versus

1. Union of India through the General Manager, Western Railway, Churchgate, Mumbai.
2. The Divisional Railway Manager, Divisional Office, Western Railway, Kota.
3. Dy. Chief Engineer (C), JP Construction Office at Kota Junction, Kota.
4. Sr. Section Engineer (C), Western Railway, Kota.

... Respondents

Mr. S.P. Sharma, counsel for the applicants

CORAM:

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

Hon'ble Mr. A.P. Negi, Administrative Member

ORDER

Per Hon'ble Mr. A.P.Nagrath, Administrative Member

The three applicants in these three OAs are aggrieved by the common order dated 12.9.2001 (filed at Ann. Al in each of the OAs) and they are seeking similar relief. These are being decided by this common order.

2. By the impugned order, the applicants are being repatriated back to their parent division. They were all working as Drivers in grade Rs.3050-4590 in Construction Organisation. In the parent division, they will be put to work in Group 'D' post as per their seniority position in the respective cadre, in which they have been assigned. Their grievance is that the impugned order dated 12.9.2001 be quashed and set-aside and that the respondents be directed not to revert them from the post of Drivers.

3. Applicant in OA No.449/2001, Devendra Singh, was initially engaged as Casual Khalasi on 30.5.1985 and was granted temporary status w.e.f. 17.11.1986. Vide order dated 19/20 June, 1989 he was promoted Driver on ad-hoc basis in the Construction Wing of the Railways at Bharatpur. He submits that consequent to the orders passed by the Tribunal in OA No. 238/97 filed by Hari Kishan, the applicant was regularised on the post of Driver vide order dated 13.11.1997.

4. Applicant in OA No.450/2001, Hari Kishan, was initially engaged as Casual Labour on the post of Driver on 21.6.1973. He was granted temporary status w.e.f. 1.1.1985 which date was later on revised to 1.1.1981. He

submits that he had earlier filed OA No.238/97, as he was being regularised on the post of Group 'D' post vide order dated 29.5.1997. The Tribunal by its order directed the respondents to consider the case of the applicant for regularisation on Group 'C' post of Driver, but he is being sent back to the parent division on a group 'D' post.

5. Applicant in OA No.451/2001, Mohd. Shabbir, was initially engaged as Casual Labour on the post of Driver on 21.1.1982. He was granted temporary status as a Driver in the pay scale of Rs. 260-400 w.e.f. 1.1.1984 and has continued to work on the post of Driver since then. He had filed an OA No. 238/97 alongwith Hari Kishan and the Tribunal by an order dated 31.7.1997 directed the respondents to consider the case of the applicant for regularisation in Group-C post of Driver. He submits that being a holder of the post of Group 'C', he cannot be sent back to a Group 'D' post.

6. The only question which comes up for consideration in these OAs is whether any person working on a Group 'C' post on casual basis in the Railways and having acquired temporary status would be entitled to be regularised on a Group 'C' post directly. The learned counsel for the applicant vehemently argued the case of the applicants on the ground that two of the applicants have been working as Drivers right from the date of their initial engagement and the applicant Devendra Singh has also been working as a Driver w.e.f. 1.6.1989. His plea was that having worked on Group 'C' post for last so many years, they are entitled to be regularised only on a Group 'C' post and they cannot be put to work on a post in lower

grade i.e. Group 'D'. The learned counsel did concede that the applicants had been given lien in Kota Division on Group 'D' but he submitted that many of those juniors to these applicants are being allowed to continue as Drivers in the Construction Organisation. Even otherwise, the learned counsel submitted that the applicants had a right to be regularised only on the post of Driver. For this he placed reliance on the judgment of the High Court of Judicature for Rajasthan in SB Civil Writ Petition No. 2411/92. In that case the petitioners were working as Drivers from the very first day of their appointment but they were sought to be declared semi-permanent against the post of Helper and Beldar. It was held by Hon'ble the High Court in that case that since the petitioners were working against the post of Driver right from 1983-84, it is assumed that the posts are available in the post of Driver against which the petitioners were working and thus they were held entitled to be declared semi-permanent and permanent against the posts of Drivers. Contention of the learned counsel was that case of the applicants in these OAs is similar to the matter before Hon'ble the High Court of Rajasthan and in that view the applicants were entitled to similar relief. The learned counsel for the applicants also cited V.M.Chandra v. Union of India and ors., AIR 1999 SC 1624 in support of his contentions, by which the Apex Court held that the appellant was entitled to be absorbed as a Skilled Artisan in Grade-III in scale Rs. 950-1500 against the post available in respect of direct recruitment quota.

7. We have given our careful consideration to the

arguments advanced by the learned counsel on behalf of the applicants. It is clear that the question before us is whether the applicants who were working over fairly long periods as Casual Drivers in Group 'C' post could be sent back to their parent division, where they were granted lien or they had a right to continue on the post of Driver. We find that no seniority list has been brought on record to suggest that some persons, who were stated to be junior to the applicants as per averments in the OAs, are being retained in Construction Organisation and no junior has also been made a party to these OAs. In the absence of any seniority list to support the contention of the learned counsel and also in the absence of any so called juniors having been impleaded as party respondents, we are not inclined to go into this question. In any case, persons working in Construction Organisation, who had a lien in the parent division cannot claim as a matter of right to continue only in the Construction Organisation. A grievance would arise in their favour, if in the cadre in which they have been granted lien, some juniors have been assigned higher positions. No material has been placed before us to suggest that any junior has been given a better deal.

8. Coming to the question whether applicants have a right to be regularised only in Group 'C' post. The issue is no more res-integra. The Full Bench of the Tribunal at Jaipur by an order dated 30.10.2000 in OA No.57/96, Aslam Khan v. Union of India and ors. have settled this issue. It was held by the Full Bench of the Tribunal in that case that a person directly engaged on

Group 'C' post (promotional) on casual basis and who has been granted temporary status would not be entitled to be regularised on Group 'C' post directly but would be liable to be regularised in the feeder cadre in the Group 'D' post only.

9. Before arriving at the aforesaid decision the Full Bench also had an occasion of going into the rule position under para 2007 (3) of the Indian Railway Establishment Manual, 1990, which provides as under:-

"(3) Casual labour engaged in work charged establishment of certain Departments who get promoted to semi-skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period, can straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test."

10. In the case of Union of India and Anr. v. Moti Lal and ors., 1996 (33) ATC 304 similar question came up for consideration before Hon'ble the Supreme Court. In that case Hon'ble the Supreme Court had held that it was

not permissible to appoint a person directly as Mate which is a Class-III post as it was only a promotional post from Class-IV post of Gangman and Keyman. It was observed in that case that the mere fact that the respondents had been appointed directly as casual Mates and they continued as such and further by virtue of their continuance, they acquired temporary status, but that itself does not entitle them to be regularised as Mates since that would be contrary to the rules in force. By so observing Hon'ble the Supreme Court held as follows:-

"12. In this view of the matter the Tribunal was not justified in directing regularisation of the respondents as mates."

11. Thus, it is the settled legal position that casual labour working in Group 'C' post in the Railways even though for a number of years, do not acquire a right to be regularised only on Group 'C' post directly. The case of V.M.Chandra (referred to supra) cited by the learned counsel for the applicants is distinguishable on facts as in that case Hon'ble the Supreme Court held that the appellant was entitled to be absorbed against direct recruitment quota. The case before us is not for the post in the direct recruitment quota, but here the question is whether the applicants holding the post as Casual Driver in the Construction Organisation could be sent back to their parent division. In this background, we do not find any infirmity in the impugned order and the same does not call for our interference.

12. We, therefore, dismiss these OAs in limine.

13. In view of the order passed in the OAS, MA Nos. 336/2001 and 335/2001 have become infructuous.

(A.P.NAGRATH)

Adm. Member

(S.K.AGARWAL)

Judl. Member