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CENTRAL ADMINISTRATIVE TRIBUNAL ::
GUWAHATI BENCH.

O.A./R/A. No. 146 of . . . of 1998

DATE OF DECISION ..23.3.01...

Shri Bivash.Chandra Gupta

PETITIONER(S)

Mr.R.Dutta, Mrs.G.Dutta

ADVOCATE FOR THE
PETITIONER(S)

VERSUS -

Union of India & Ors.

RESPONDENT(S)

Mr.J.L.Sarkar

ADVOCATE FOR THE
RESPONDENTS

THE HON'BLE MR.JUSTICE D.N.CHOWDHURY, VICE-CHAIRMAN

THE HON'BLE MR.K.K.SHARMA, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the judgment ?
4. Whether the judgment is to be circulated to the other Benches ?

Judgment delivered by Hon'ble VICE-CHAIRMAN

[Signature]

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 146 of 98

Date of Order: This the 23th March 2001.

HON'BLE MR. JUSTICE D.N. CHOWDHURY, VICE-CHAIRMAN
HON'BLE MR. K.K. SHARMA, ADMINISTRATIVE MEMBER

Shri Bivash Chandra Gupta, Son of Late B.M. Gupta,
resident of B.C. Gupta Complex, Malugram, Silchar,
District-Cachar(Assam) Pin -788002.

By Advocate Mr. R. Dutta, Mrs. G. Dutta.

-Vs-

1. Union of India represented by the Secretary,
Ministry of Railways,
Railway Board, Rail Bhawan,
New Delhi-1
2. The General Manager, N.F. Railway,
Maligaon, Guwahati-781011.
3. The General Manager(Con), N.F. Railway,
Maligaon, Guwahati-781011.
4. The Chief Engineer(Con), N.F. Railway,
Maligaon, Guwahati-781011.
5. The Dy. Chief Engineer(Con), N.F. Railway,
Silchar-3. Dist. Cachar(Assam).

By Advocate Mr. A.L. Sarkar,

O R D E R.

D.N. CHOWDHURY, VICE-CHAIRMAN:

Regularisation of Casual appointment and
absorption of the applicant in the permanent cadre
from the date of availability of the vacancy indicated in
the matter of computation of Pension is the Key question
for adjudication.

The basic facts relevant for the purpose are
as follows:

The applicant was trained in automobiles in the
machine shop department of Hindustan Motors Limited

contd/-

located at Uttarpara, West Bengal and worked there till 1976. Thereafter he returned home at Silchar in the State of Assam. His name was registered in the local employment Exchange for appointment as highly skilled Fitter. The name of the applicant was forwarded to the District Employment Exchange, Silchar. The Employment Officer, DEE informed the applicant that his name was forwarded to the Addl.Chief Engineer(Con) N.F.Railway, Silchar for the vacancy of Fitter Grade (1) and directed the applicant to report for interview and test on 17.8.81. The applicant accordingly reported and after duly tested he was appointed on casual basis as High skilled Fitter Grade I on pay of Rs. 20/- per day. The applicant was given temporary status with effect from 1.1.84 as highly skilled Fitter Grade I vide Memo No.E/57/1(con)/SCL(Screening) dated 23.10.86. It was averred in the application that he was the only highly skilled Grade I Fitter in the construction Organisation of the N.F.Railway. The applicant submitted his consent for screening for absorption against any Group D post. The other casual labourers in the other trades were screened and absorbed from time to time by the respondents, but no action was taken towards screening and absorption of the applicant. The applicant submitted a number of representations to the Chief Engineer(Con), N.F.Railway, Maligaon for his screening and permanent absorption. By communication dated 30.7.92 the General Manager(Con), enquired from the Deputy Chief Engineer, Construction, N.F.Railway, Silchar as to whether any order was obtained from the competent authority regarding relaxation of the

age of the applicant. In the aforementioned communication it was mentioned that as per records it was seen that the name of the applicant was not furnished either in skilled or in unskilled seniority list of his Unit. Only his bio-data was received under letter dated 18.1.91. As per bio-data record, it was seen that the date of birth of Shri Gupta was 0.5.9.1938 and he was engaged on 4.6.82 as H.S.Fitter, when he was 43 years 6 month old. The concerned officer was asked as to whether the General Manager's approval was obtained before engagement of Shri Gupta as a fresh face and as to whether approval of the competent authority regarding relaxation of age of the applicant has been obtained and if so, the officer was advised to send a copy of the same to the General Manager. In response to the said communication the Deputy Chief Engineer, Construction sent his reply on 2.11.92, which is reproduced below:

"Vide your letter under reference the clarification sought for the item No.1 & 2 could not be complied due to nontraceable of records. Regarding GM's approval and competent authority's order for relaxation of age and engagement in the job, it is stated that from 1961 to till date in Estt.side right from Jr.Clerk to APO/CO N at Silchar unit are being transferred without handing over charge to any incumbent resulting the new hands of Estt.Section tried their level best to search out the records but all are in vain. Though it is presumed that the approval and competent authority's letter might have issued but not traceable such a long distant days i.e the period of 1982.

Shri Bivash Gupta was appointed as HS/Fitter Gr.I in the year 1982 and he has got the status and scale in terms of Rly Bd's L/No.E(NG)-II/84/CL/41 dated 11.9.86 communicated vide GM(Con)/MLG's No.E/57/CON/Pt.1 dated 22.9.86 and he got only 3 years before his due retirement. His case may be considered on the ground that he is a family man, atleast after retirement he may take benefit as may be permissible. If necessary post facto approval from GM and competent authority's order may kindly be obtained from your side please. After observing the formalities his name may kindly be enlisted in the screening list so that he may be screened and get the benefit as per rules.

Under the above circumstances his case may kindly be considered for screening so that he can get the retirement benefit after his due retirement."

The applicant was finally screened on 9.9.96. His screening test was conducted by the Screening Committee and he was declared screened by paper screening and borne against 25% provision against construction Reserve Posts of Artisan Gr.I in scale of Rs. 1320-2040/- duly sanctioned vide GM/Con's Memo No.E/41/CON/CE dated 6.11.85 and E.41/CON/CE/Pt.I dated 29.8.89 as a special case as Shri Gupta was retiring on superannuation on 30.9.96.

The applicant submitted an appeal before the Railway Minister for seeking for full facility of superannuation dated 25.9.96 and for according special sanction for pensional benefits.

Failing to get any redressal the applicant moved this Tribunal seeking for appropriate order for considering his absorption from 6.11.85, from which date the vacancy was available, more specifically, the applicant sought for direction for payment of pensionary benefits, by treating his absorption with effect from 6.11.85 that is the date on which the post was vacant.

The respondents filed their written statement. In the written statement it was stated that the applicant was engaged on 4.6.98 as Casual Highly Skilled Fitter Gr.I at the age of 43 years without prior approval of the General Manager, Construction. The case was referred to the Railway Board and the Railway Board accorded their approval regarding the relaxation of age. In accordance with the Railway Board's direction the absorption was made regular by conducting special screening

as he was on the verge of retirement. Further it was pointed out that the construction Organisation was having 57 casual labourers against the work charged posts of Artisan Category. Any kind of screening in construction was stopped by the Railway in accordance with the Railway Boards order for amalgamation of seniority of both open Line and construction Casual Labourers. Subsequently, a list of 57 casual labourers (skilled) against Artisan which also included the name of the applicant was sent to General Manager(P) Maligaon for arranging screening. Finally in terms of General Manager(P) Maligaon vide communication letter dated 25.9.96 the applicant was screened against construction reserved post and his casual service was regularised. Chapter 2005 of the Indian Railway Establishment Manual Voll.II refers to the Entitlements and Privileges admissible to Casual Labour who are treated as temporary (status) after the completion of 120 days or 360 days of continuous employment. Chapter XVII Rule 2007 made the provisions for employment of casual labour in skilled categories. As per rules, normally casual labour in skilled categories should not be appointed without a trade test. A panel should be maintained by the open line to cater to the needs of the casual labour in semi skilled and skilled categories. Where no panel of suitable candidates is available, engagement in semi skilled or skilled categories may be done without trade test but it should be ensured that their suitability for semi skilled or skilled grade is adjudged well in time before they attain temporary status. Chapter XVII, Rule 2007 para (3) it has been provided that the 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 straightway 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.

In the matter of recruitment of Group D Railway servant, Mr. R. Dutta learned counsel for the applicant also pointed out the provisions for absorption of casual labour and particularly referred to para 179, XIII clause (a) & (b) of Indian Railway Establishment Manual Vol. I :

- (a) Substitutes, casual and temporary workmen will have prior claim over others to permanent recruitment. The percentages of reservation for Scheduled Castes and Scheduled Tribes should be observed in recruitment to temporary or permanent vacancies.
- (b) Substitutes casual and temporary workmen who acquire temporary status as a result of having worked on the than projects for more than 120 days and for 360 days on projects or other casual labour with more than 120 days or 360 days service, as the case may be should be considered for regular employment without having to go employment Exchanges. Such of the workmen as join service before attaining the age of 25 years may be allowed relaxation of maximum age limit prescribed for Group 'D' posts to the extent of their total service, which may be either continuous or broken periods."

Mr. J. L. Sarkar learned counsel for the respondents however, submitted that Clause (3) of para 2007 of the Indian Railway Establishment Manual Vol. II is applicable to the Casual labour who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test. Be that as it may the respondents' authority in the instant case did not shirk the responsibility in regularisation in the case of the applicant and as a matter of facts the applicant was screened

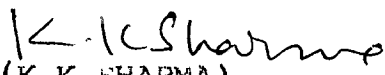
vide final order dated 25.9.96. However, we feel that full justice has not been done to the applicant by the respondents. The case of the casual labourer of like situation went up to the Supreme Court. The Supreme Court has approved the scheme subject to modifications indicated in the judgment dated 18.4.85. By order of the Supreme Court, the Ministry of Railways was directed to prepare a scheme for absorption of the skilled the semi skilled workers under Railways. The scheme was accordingly prepared and submitted before the Supreme Court. The Supreme Court finally approved this scheme and accepted the scheme in the case of Inder Pal Yadav. In the order of the Supreme Court it was made clear that those who could not come to the Court need not be a comparative disadvantage to those who rushed to the Court. If they are otherwise similarly situated, they are entitled to similarly situated, they are entitled to similar treatment, if not by any one else at the hands of this Court. The applicant is squarely covered by the scheme for same reasons and his case was not taken up in right perspective. The order itself shows that the applicant was adjusted against the post sanctioned vide Memo dated 6.11.85. Since the applicant was adjusted against the Reserve posts of Artisan Gr.I & since he was screened and finally absorbed against the post sanctioned on 6.11.85. We are of the view that the benefit of absorption should also date back from 6.11.85, so that the aforesaid period can be computed for the purpose of providing the Pensionary benefits to the applicant. As per the Railway Services(Pension) Rules, 1993 :

" A temporary railway servant who retires on superannuation or on being declared permanently incapacitated for further railway service by the appropriate medical authority after having rendered temporary service not less than ten years shall be eligible for grant of superannuation, invalid pension, retirement gratuity and family pension at the same scale as admissible to permanent railway servant under these rules"

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We order that the applicant be absorbed in the Railway from 6.11.85, for the purpose of giving the retiral benefits. This exercise has been done by us to uphold the cause of justice and confirm the order of the respondents dated 25.9.96.

Accordingly, we allow the application with direction to the respondents to treat the applicant as screened on 6.11.85 and treat him to be absorbed as from 6.11.85 on which date the post was available and retiral benefit is accordingly to be determined and disbursed accordingly. The application thus allowed to the extend indicated. It is expected that the authority should take steps as early as possible preferably within 3 months from the receipt of the order. No order as to the costs.


(K.K. SHARMA)
ADMINISTRATIVE MEMBER


(D.N. CHOWDHURY)
VICE-CHAIRMAN

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