

Central Administrative Tribunal
Jabalpur Bench

OA No.239/05

Monday this the 3rd day of April, 2006.

C O R A M

Hon'ble Mr.M.A.Khan, Vice Chairman

Hon'ble Dr.G.C.Srivastava, Vice Chairman

Chhahur

S/o Chhota

R/o 2653, Ratan Nagar, Indira Basti

Jhanda Chowk

Jabalpur.

Applicant

(By advocate Mr.B.K.Rawat)

Versus

1. Union of India through
Secretary
Ministry of Railways
New Delhi.

2. The Divisional Personal Officer
South Eastern Railways
Nagpur.

3. The Junior Engineer (C&D)
South Eastern Railways
Howbagh
District Jabalpur.

Respondents

(By advocate Mr.S.P.Sinha)

ORDER

By M.A.Khan, Vice Chairman

The applicant has filed this OA for grant of following reliefs:

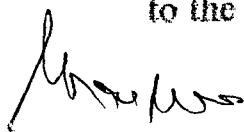
- (i) Direct the respondents to regularize the applicant on the post of Khalasi after completion of 240 days of continuous service since 25.5.80 without any break in the year or in the subsequent year till date.

[Signature]

- (ii) Direct the respondents to grant regularization for the period prior to 1.7.97.
- (iii) Direct the respondents to grant all monetary benefits of salary, gratuity after his regularization for the period from 25.5.1980 to 1.7.1997.

2. The allegations of the applicant relevant for deciding the present OA are as follows:

He was appointed on the post of Sub Shed Khalasi as per appointment order cum particulars of service w.e.f. 25.5.1980 and since then he had rendered more than 24 years of service without break. He completed more than 240 days of service in the year 1980-81. The services of the applicant were regularized w.e.f. 1.7.97 but his services for the period from 25.5.1980 to 1.7.97 have not been regularized on the post of Sub Shed Khalasi on completion of 240 days of continuous service. On 1.7.99, the respondents issued a seniority list in which the name of the applicant appeared at S.No.64 and the applicant was given seniority in the cadre of Khalasi w.e.f. 1.10.1997 although he had been working as Khalasi w.e.f. 25.5.1980. The applicant filed an OA No.548/99 claiming seniority from the date of his first appointment on 25.5.1980, alleging that an error had been committed in not regularizing the period from 25.5.82 to 30.6.97. The above OA was dismissed. Thereafter the applicant filed W.P.No.1821/2003 before the Hon'ble High Court. The Writ Petition was dismissed on 6.12.2004. The applicant has filed the present OA for separate and independent relief of regularization for the period from 25.5.80 to 1.7.97, which is separate and distinct from the question of seniority raised in the previous OA and the WP. The applicant is entitled to regularization of his services as aforesaid with all consequential monetary and promotional benefits. The applicant submitted a representation-dated 30.6.98 followed by another one on 1.9.99 in this regard but to no avail. It is stated in the OA that some similarly situated employees namely Rajulal, Narbada Prasad, Banshilal, Ramchandra Pillai and Sunderlal - some of them are juniors to the applicant - have been regularized in similar circumstances and



given seniority and promotion but the applicant alone has been discriminated against.

3. The OA is contested by the respondents. In their counter reply it is stated that the applicant was appointed as a substitute Khalasi on 20.5.1980 at Howbagh station. Substitutes are appointed against the posts temporarily available due to long leave/absence or for other reasons. There are two classes (i) casual labours who are first appointed on daily rates of pay and working continuously for 240 days acquiring temporary status. Seniority of these persons for regularization is maintained separately. They are governed by Paras 2001 to 2006 of the I.R.E.M; (ii) the substitute is a second class. They are engaged on full pay against chain vacancies and where leave reserve have not been provided. They are governed under Paras 1512 to 1515 of I.R.E.M. The seniority lists of these two classes are maintained separately for regularization. Rule 1515 specifically provides that on their eventual absorption they will be treated as continuous for all purposes except seniority in the regular post. The regularization of both the posts is different. Thus the applicant who is employed as a substitute was regularized in his turn as Shed Khalasi w.e.f. 1.10.97. It is further stated that the applicant had filed an earlier OA No.548/99 claiming seniority in the cadre of Shed Khalasi from the date of appointment. His claim was negated by the Tribunal vide order dated 19.6.2003 and by the Hon'ble High Court vide order dated 6.12.04 in W.P.No.1824/03. The claim of the applicant for regularization had been finally decided. Thus the question of regularization from a date prior to 1.10.97 is barred by the principles of res judicata. On this ground alone, the present OA is liable to be dismissed. It was further submitted that the seniority of the applicant had been rightly reckoned from 1.10.97 vide Annexure R-1. This order was never challenged by the applicant. In the earlier OA 548/99 the applicant had claimed only seniority from the date of appointment, which was contrary to Para 1515 of the IREM.

Howbagh

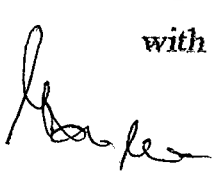
4. In the rejoinder the applicant has reiterated the contentions raised in the OA.

5. We have heard the learned counsel for both parties and perused the records.

6. The question for consideration is whether the applicant having failed to establish his claim for seniority in the previous OA 548/99 and W.P. No.1824/03 can maintain a second OA. He is seeking the same reliefs though differently worded. Learned counsel for the respondents submitted that the present OA is barred by the principles of res judicata.

7. The applicant has placed on record a copy of the order of this Tribunal dated 19.6.2003 passed in OA No.548/99 (Annexure A3) and the order of the Hon'ble High Court dated 6.12.2004 in W.P.No.1821/2003. The applicant did not produce the OA No.548/99, so the file was called for from the Record Room.

8. The applicant was regularized in service as Shed Khalasi w.e.f. 1.10.97. The OA No.548/99 was filed by him for giving him seniority w.e.f. 25.5.1980 when he had allegedly completed 240 days of service as Khalasi. He also wanted his name to be considered for further promotion to the cadre of Khalasi/ Helper and Fitter after his seniority was restored from 25.5.80. The Tribunal had considered the contentions raised by the applicant in the aforementioned OA, inter alia, that some juniors to the applicant, who were engaged after him had been regularized from the earlier dates whereas the applicant had been regularized only in 1997. The Tribunal noted that the applicant had not challenged the seniority list and the names of so called juniors mentioned in the seniority lists of 1.7.96 and 1.7.97, though the aforesaid OA was filed in 1999. It was also observed that the applicant had not disclosed the names of any junior who was engaged subsequent to the applicant and regularized prior to the applicant. It was further observed by the Tribunal that though the applicant was regularized vide order dated 1.10.97 he had not challenged the same with respect to antedating the date of regularization. The Tribunal



accordingly dismissed the said OA. A review application filed by the applicant before this Tribunal was dismissed on 27.8.2003 (Annexure A4). The Hon'ble High Court had also dismissed the W.P.No.1821/03 filed by the applicant. The relevant portion of the said order is extracted below:

"4. The petitioner did not produce any document to show that he was regularly appointed as Khalasi on 26.5.1980. On the other hand, the Record of Particulars of Service of Petitioner (Annexure R-1) clearly shows that the petitioner was appointed as Substitute Khalasi. According to the respondents, the said appointment was a temporary arrangement under which Substitute Khalasis will be given work where regular Khalasis did not turn up or where there was extra work. Subsequently he discharged the duties of Khalasi but the fact remains that his services were regularized on 1.10.1997 and not earlier. Obviously therefore, in the seniority list his date of seniority will be with effect from 1.10.97 and not earlier. The petitioner has not given the names of any persons who were his juniors but whose names were included earlier. It is the contention of the department that only the names of those who were regularly appointed or regularized will be shown in the seniority list. The petitioner was regularized on 1.10.97. He cannot have any grievance about those who were regularly appointed earlier to 1.10.1997 as Khalasis being shown in the seniority list above him. The petition has therefore no merit and is accordingly dismissed."

9. A careful reading of the aforesaid order would show that the applicant could not substantiate his claim that he was regularly appointed on 26.5.1980. Rather, the service particulars of the applicant would show that he was working as a Substitute Khalasi and that his services were regularized on 1.10.97 and not earlier. The seniority of the applicant, therefore, would be from 1.10.97 and not from an earlier date. Further the applicant cannot have any grievance about those who were regularly appointed prior to 1997 as Khalasis being shown in the seniority list above him. The Hon'ble High Court did not find any merit in the claim of the applicant.

10. In the present OA also, the applicant has asserted that he had completed 240 days of continuous service from the date of his

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appointment i.e. 25.5.1980, therefore he ought to have been regularized from 25.5.80. Though differently worded, the claim of the applicant in substance and effect remains unchanged with that of his earlier claim. The question of applicant's seniority based on regular service as Khalasi has already been decided and rejected by the Tribunal and it was upheld by the Hon'ble High Court also.

11. The argument of the learned counsel for the applicant that the applicant has got a new cause of action as he was working as a substitute Khalasi prior to 1.10.97 is devoid of any force. He had filed OA No.548/99 for granting him seniority from 25.5.1980 when he had allegedly completed 240 days as casual Khalasi, in other words, from the date on which on completion of 240 days working he should have been regularized in service. The basis of his claim of seniority and regularization in the service w.e.f. 25.5.1980 remained the same i.e., his working as Casual Labourer for over 240 days. The question of regularization was the main issue in the OA. His service w.e.f. 25.5.1980 could be counted towards seniority if it was held that he had rendered regular service w.e.f. 25.5.1980 or should be regularized in service as Khalasi from that date. Without such a finding, relief of seniority could not have been granted to the applicant. So the contention of the applicant that the present OA is based on a different cause of action is devoid of merit.

12. Assuming, though not deciding, that the basis or the cause of action in the present case is different from the basis or cause of action in the earlier OA, the cause of action for claiming regularization from 25.5.1980, the date from which he claimed seniority, was available to him to claim the relief of regularization also. Yet he did not claim that relief specifically in the aforesaid OA. Having not done so, the applicant after dismissal of the OA 548/99 and the W.P. No.1821/03 cannot maintain a separate OA for that relief since he could claim seniority on the post of Khalasi from the date of his regularization.

13. Even on merit, the case of the applicant cannot be allowed. A clear finding was recorded by the Hon'ble High Court that the

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applicant was working as a substitute Khalasi before his services were regularized on 1.10.97. That finding has become final. The applicant cannot now circumvent that order by pleading that he on completion of 240 days shall be deemed to have been regularized in service since the applicant was working as a substitute Khalasi and his services continued to be temporary. There is no material to record a finding that the applicant was holding a regular post of Khalasi from 26.5.1980.

13. For the reasons recorded above, we do not find merit in the OA. It is dismissed. Parties to bear their costs.

G.C. Srivastava
(Dr. G.C. Srivastava)
Vice Chairman

M.A. Khan
(M.A. Khan)
Vice Chairman

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पृष्ठान्न सं ओ/न्या.....जबलपुर, दि.....
पतिलिपि अद्योहितः--

- (1) सचिव, उच्च न्यायालय एवं एडवोकेटजन, जबलपुर
- (2) आदेशक श्री/.....के काउंसल
- (3) प्रत्यक्षी श्री/.....के काउंसल
- (4) मंचपाल, को.उ.अ. जबलपुर एवं सी.उ.सूचना एवं आवश्यक कार्य.....

B.K. Rawat, Adv.
P.R. Singh
Adv.

Resubd
10/4/16
SR

10/4/16
अध्यक्ष