

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

...

Original Application No. 446/2002

Jabalpur, this the 24th day of June, 2004

Hon'ble Shri M. P. Singh, Vice Chairman
Hon'ble Shri Madan Mohan, Member (J)

Gokul Prasad Nishad
S/o Sh. Rajaram Nishad,
R/o Behind Shiv Video Hall,
P.O. Shiv Nagar,
Distt. Raigarh (Chhattisgarh).

..Applicant

(By Advocate: Shri S.Paul through his junior)

-versus-

1. Union of India through
Secretary,
Ministry of Communication,
New Delhi.
2. The Superintendent,
Railway Mail Services (RMS),
Raipur Division, (RP Dn),
Raipur.
3. The Sub Divisional Inspector,
Railway Mail Services,
R.P. III Sub Division,
Bilaspur (Chhattisgarh).
4. The Sub Record Officer,
O/o Sub Record, Chhindwara
(Railway Mail Services),
Chhindwara (MP).

..Respondents

(By Advocate: Shri F. Shankaran)

ORDER (ORAL)

By Madan Mohan, Judicial Member -

By filing this original application, the applicant has sought the following main reliefs:

- i) direct the respondents to count seniority of the applicant w.e.f. 13.7.1981 for all purposes.
- ii) consider the applicant for regularisation.
- iii) direct the respondents to regularise the applicant from the date his juniors were regularised with consequential benefits.

2. The brief facts of the case are that the applicant was initially appointed as Extra Departmental Mailman in



the Railway Mail Service (RMS). The applicant was served with a chargesheet. He denied the charges in toto. A departmental enquiry was initiated against the applicant and he was removed from service vide order dated 28.7.1989. Against the removal order, the applicant approached the Assistant Labour Commissioner raising an industrial dispute. The Assistant Labour Commissioner initiated conciliation proceedings between the parties. When no amicable settlement could arrive at, the A.L.C. sent the failure report to appropriate Government. In turn the appropriate Govt. sent an industrial dispute vide order dated 20.11.1990 to the Central Government Industrial Tribunal-cum-Labour Court, Jabalpur for its lawful adjudication. The dispute was registered as CGIT/LC/R/226/90 by the Tribunal. The C.G.I.T. proceeded with the case and passed its order dated 6.1.1999 (A/1) by which the removal order was set aside without back wages. The Tribunal further made clear in its order that in case the applicant is not reinstated in service within one month he will be entitled for wages and other admissible allowances. The applicant submitted the award of the Tribunal but he was not re-instated. Therefore, he filed complaint before A.L.C. for execution of award passed by the C.G.I.T. and further drawn the attention of Regional Labour Commissioner, Jabalpur on 12.9.2000 against non-implementation of the award of the Tribunal dated 6.1.1999.

2.1 The respondents filed writ petition against the aforesaid award which was dismissed by the Hon'ble High Court vide its order dated 6.9.2000 in admission stage itself. Thereafter, the applicant was re-instated in service vide order dated 1.11.2000 (A/2) and he joined on 7.11.2000. In the meantime, several juniors to the applicant were regularised by the respondents as Extra Departmental Mailmen. However, the case of the applicant for regularisation has not been considered inspite of the fact that he was on the roll of the department. He submitted his representation on 15.2.2001 (A/4) requesting



to regularise him from the date of his juniors were regularised. However, no heed was paid to his request. Hence, this O.A. has been filed seeking the aforesaid reliefs.

3. Heard the learned counsel for both the parties and perused the material on record.

4. It is argued on behalf of the applicant that the applicant will be satisfied if he is directed to be regularised as Extra Departmental Mailman from the date from which his juniors have been regularised by the respondents, as the C.G.I.T quashed the order of removal of the applicant with further direction that in case the applicant is not re-instated within one month from the date of the said order he will also be entitled to the back wages with all admissible allowances. But the respondents did not reinstate the applicant within the stipulated period and rather they approached the Hon'ble High Court by filing a writ petition. The applicant was re-instated only after dismissal of the writ petition filed by the respondents. But the applicant has not been regularised as yet though his juniors have been regularised.

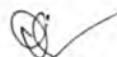
5. In reply, the learned counsel for the respondents argued that applicant has now raised a new query of his regularisation in service through this O.A. The regularisation of applicant cannot be compared with others as during the period from July 1989 to November, 2000 he was not in service and others were regularised as per their turn in accordance with the relevant instructions. It is further argued that the case of the applicant for regularisation will be considered in accordance with the relevant rules as and when vacancy arises.

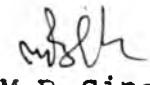
6. After hearing the learned counsel for both the parties and having perused the record carefully, we find that the punishment of removal from service imposed upon the applicant was quashed and set aside by the C.G.I.T., Jabalpur and the applicant was re-instated in service on 7.11.2000. It is an



admitted fact that the applicant was not re-instated within the stipulated period as the respondents moved the Hon'ble High Court by filing a writ petition which was dismissed. The applicant only after the dismissal of the writ petition filed by the respondents was re-instated. Meanwhile several juniors were regularised by the respondents as Extra Departmental Mailmen but the applicant was not considered for regularisation to which he was legally entitled. The arguments raised by the respondents that the applicant at the relevant time was not in service has no force and is rejected, because when his removal order was quashed and set aside and he was re-instated in service he will be deemed to be in service.

7. In the facts and circumstances of the case, the O.A. is allowed and the respondents are directed to regularise the applicant as Extra Departmental Mailman from the date on which his next junior was regularised and he will be entitled to all consequential benefits in accordance with rules and law. No costs.


(Madan Mohan)
Judicial Member

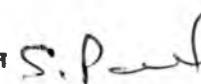

(M.P. Singh)
Vice Chairman

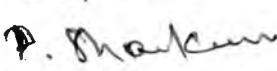
/na/

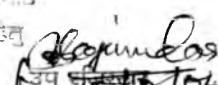
पृष्ठांकन सं ओ/न्या..... जवलपुर, दि.....
प्रतिलिपि दर्शनी किए गए--

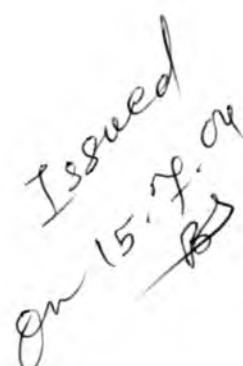
- (1) सचिव, उच्च न्यायालय के दर्ता एवं उद्दाम, जबलपुर
- (2) अधिकारी श्री/श्रीमती..... को कांसल
- (3) प्रत्यार्थी श्री/श्रीमती..... के काउंसल
- (4) दर्शक, को काउंसल

सूचना द्वारा आवश्यकता का दर्शनी है।


S. Patel


P. Mukherjee


Rajendra


Issued
on 15/8/04