

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH

Jaipur, this the 12th September, 2008

ORIGINATION APPLICATION NO. 349/2008

CORAM:

HON'BLE MR. M.L. CHAUHAN, JUDICIAL MEMBER
HON'BLE MR. B.L. KHATRI, ADMINISTRATIVE MEMBER

Paras Ram son of Shri Ram Narain ji aged about 48 years, resident of 918-B, Near Railway Colony, Road No. 5, Kota Jn. (Rajasthan) and presently working as Carpenter under PWI (Construction), Sr. Section Engineer, West Central Railway, Kota Division, Kota.

.....APPLICANT

(By Advocate: Mr. C.B. Sharma)

VERSUS

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur.
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.
3. Deputy Chief Engineer (C), West Central Railway, Kota Division, Kota.

.....RESPONDENTS

By Advocate : -----

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

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- "(i) That the respondents may be directed to promote the applicant in Group C cadre to the post of Carpenter Grade III and further grades from the date junior so promoted or date from vacancies are available on the basis of seniority without conducting written examination by quashing letter dated 19.2.2008 (Annexure A/1) with the further action taken by the respondents in pursuance to that with all consequential benefits.

- (ii) That respondents be further directed to fill up vacancies available under 25% quota by way of promotion instead of conducting limited Departmental Competitive Examination by quashing action of respondents for conducting limited departmental competitive examination.
- (iii) Any other order/direction or relief may be granted in favour of the applicant which may be deemed just and proper under the facts and circumstances of this case.
- (iv) That the cost of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was initially appointed as Carpenter on 21.04.1984. Since the applicant was working in the pay scale of Rs.950-1500 in Group 'C' post, the respondents instead of regularizing his services in Group 'C' regularized the services of the applicant as Gangman in Group 'D' post vide order dated 28.08.1997. Feeling aggrieved by the action of the respondents, the applicant filed OA No. 430/1997, which was disposed of vide order dated 02.08.2000 (Annexure A/2) whereby this Tribunal after relying the judgement in the case of **Jamna Prasad and others vs. Union of India and others**, SLJ 2000 (1) (CAT) 512 categorically held that "in our considered view, the respondent department did not commit any error in regularizing the applicant in Group-D post and the applicant is not entitled for regularization in Group-C post." However, this Tribunal held that since the applicant was working in Group 'C' post, his pay should be protected while regularizing his services in Group 'D' post. Further, at this stage, it will be useful to quote Para 8 of the judgement, which thus reads as under:-

"In view of the foregoing, we are of the considered opinion that the impugned order dated 28.08.1997, at Annexure A/2, does not suffer from any illegality or infirmity and the applicant has no case for interference by this Tribunal in this regard. However, the pay of the applicant on such regularization shall be protected and this order shall not preclude the respondents to allow the applicant to work on the post of Carpenter till he is promoted on the post against 25% quota meant for this purpose."

3. At this stage it may also be useful to quote Para 3 of the judgement dated 02.08.2008 in OA No. 430/97 on the basis of which this Tribunal has given the direction in Para 8 to the respondents to allow the applicant to work on the post of Carpenter till he is promoted on the post against 25% quota meant for this purpose:-

"Reply was filed. In the reply it is stated that as per the provisions contained in the Indian Railway Establishment Manual, the casual labourers are normally not appointed in the skilled category without a trade test and for regularization of such employees against 25% quota qualification for filling up this quota is ITI Certificate Courses or Training Courses and after fulfilling the conditions referred in the rules the services can be regularized only. It is stated that the applicant has been regularized in Group 'D' post and the impugned order passed by the respondents in this regard is perfectly legal and not in any way illegal, arbitrary and in violation of Articles 14 & 16 of the Constitution. Therefore, the applicant has no case for regularization against the Group 'C' post and thus the applicant is not entitled to any relief whatsoever, as claimed by him in this OA, and this OA is liable to be dismissed."

4. The respondents vide impugned order dated 19.02.2008 have notified the vacancies. At this stage, it may be useful to state that the applicant has also filed another OA No. 3/2008, which was disposed of vide order dated 26.05.2008 (Annexure A/8) in which the contention raised by the applicant was that the respondents are not carrying out the direction given by this Tribunal in earlier OA No. 430/1997, relevant portion of which has been reproduced hereinabove. The said OA was decided on the basis of reply filed by the respondents that the applicant being a substantive Group-D employee having his lien, as such cannot be promoted in Group-C without qualifying the requisite trade test. It was further stated that the only benefit allowed to the applicant was to protect his pay and allow him to work on the post of Carpenter till he is promoted in 25% quota. During the pendency of this OA, the applicant has filed MA No. 153/2008 thereby praying that

the respondents may be restrained to conduct selection to the post of Carpenter Grade III, which was subject matter of dispute in this OA (Annexure A/1). The said OA was disposed of by this Tribunal on the ground that notification dated 19.02.2008 is not the subject matter in this OA, as such it will be permissible for the applicant to file substantive OA. Accordingly, the applicant has filed this OA.

5. We have heard the learned counsel for the applicant at admission stage. Learned counsel for the applicant has argued that in terms of provisions contained in RBE No. 53/97 dated 09.04.1997, the case of the applicant for promotion should be considered without considering other Group 'D' employees as according to him, the case of the applicant is covered by Para 3(ii) of the said order. Learned counsel for the applicant has also placed reliance on the judgement rendered by the Rajasthan High Court (Jaipur Bench) in DB Writ Petition in the case 2904/2001, **Pati Ram vs. Union of India & Others**, WLC (Raj.) 2008(1) 667 decided on 14.09.2007.

6. We have given due consideration to the submission made by the learned counsel for the applicant. We are of the view that applicant has not made out any case. At this stage, it will be useful to quote Para 3 of RBE No. 53/97, which thus reads as under:-

"3. The question of regularization of the casual labour working in Group 'C' scales has been under considerations of the Boards. After careful consideration of the matter, Board have decided that the regularization of casual labour working in Group 'C' scales may be done on the following lines:

- (i) All casual labour substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examination conducted by RRB or the Railways for

- posts as per their suitability and qualification without any age bar.
- (ii) Notwithstanding (i) above, such of the casual labour in Group 'C' scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.
 - (iii) Notwithstanding (i) and (ii), all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective Units."

7. Thus from Para No. 3, as quoted above, it is no doubt true that as per Clause (ii) of Para No. 3, casual employee in Group 'C' are entitled for absorption in artisans category under 25% promotion quota while considering their case for absorption but according to us the applicant is precluded from claiming benefit under this clause for the reason that in the earlier OA No. 430/97 decided on 02.08.2000, the case of the applicant was based on this clause but the said prayer of the applicant was rejected by the Tribunal by categorically holding that the applicant no-doubt belongs to Group 'C' but he cannot be absorbed by way of his promotion against Group 'C', his case has to be considered against Group 'D'. and the respondents have not committed any error in regularizing the services of the applicant in Group 'D' post. In view of the categorical finding given by the co-ordinate Bench in earlier OA, it is also not permissible for us by way of this OA to grant relief to the applicant. According to us, the limited protection given to the applicant in the OA No. 430/1997 was that the ^{prayer} ~~prayer~~ of the applicant ~~_____~~ shall be protected and also that on account of absorption of the applicant in Group 'D' cadre, the respondents will allow the applicant to work on the post of Carpenter till he is promoted on the post against 25% quota meant for this purpose. This last part of the direction was given by this Tribunal in view of the stand taken by the Department in Para No. 3 of the judgement dated 02.08.2000, relevant portion of which has been quoted above, where it was specifically pleaded by the respondents

that as per provisions of IREM, the casual labourers are normally not appointed in the skilled category without a trade test and for regularization of such employees against 25% quota, qualification for filling up this quota is ITI certificate Course or Training Course and after fulfilling the condition referred in the rules, the services can be regularized only. Now the respondents have notified the vacancies against 25% quota meant for promotion to employees belonging to Group 'D' cadre. According to us, provisions of Para No. 3 of RBE No. 53/97 are not attracted in the instant case which deals with the absorption of casual labourers against Group 'C' and 'D' categories at initial stage. As already stated above, the applicant has already been absorbed in Group 'D' category which regularization has already been upheld by this Tribunal in earlier. According to us, issue involved in this case is regarding promotion of the applicant against 25% quota in Group 'C' category which has to be held by way of selection of service record from the employees who has put in requisite years of service in feeder category as per provisions contained in Chapter II, Section B, Rules governing the promotion of Group 'C' staff as contained in IREM Vol. I (1989 Edition). Such a consideration cannot be confined only to the category of the applicant. Further reliance placed by the applicant to the judgement rendered by the Hon'ble High Court (Jaipur Bench) in the case of Pati Ram (supra) is wholly misconceived. In that case, this Tribunal has given the direction (i) to draw common seniority list of all those eligible persons for consideration for regularization on the post of Driver (ii) if the petitioner has already taken trade test for Group 'C' post successfully, any further trade test for his regularization in the post of Group 'C' shall be dispensed with. It was under these circumstances, the Hon'ble High court has directed the respondents to implement the direction given by this Tribunal dated 31.07.1997 passed in OA No. 231/1997. The case in hand is not of such nature. On the contrary, as per the directions given by this Tribunal, the applicant is not entitled for his regularization for Group 'C' post but his right was protected to the extent that the applicant was allowed to

work till he is promoted against the post of Carpenter against 25% quota meant for the purpose, which obviously means that such post has to be filled in accordance with rules and consideration cannot be confined to the category of applicant only. Thus the judgement cited by the learned counsel for the applicant is not applicable in the facts & circumstances of this case.

7. With these observations, the OA is disposed of with no order as to costs.


(B.L. KHATRI)
MEMBER (A)


(M.L. CHAUHAN)
MEMBER (J)

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