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**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR**

ORDER SHEET

ORDERS OF THE TRIBUNAL

23.11.2011

OA No. 311/2009

Mr. Nand Kishore, Counsel for applicant.
Ms. Sabina Bano, Proxy counsel for
Mr. V.S. Gurjar, Counsel for respondents.

On the request of the learned counsel for the parties,
list it on 19.12.2011.

Anil Kumar
(Anil Kumar)
Member (A)

K.S. Rathore
(Justice K.S. Rathore)
Member (J)

ahq

19-12-2011

OA 311/2009

Mr. Nand Kishore, Counsel for applicant.
Mr. V.S. Gurjar, Counsel for respondents.

Heard.
O.A. is disposed of by a separate-
order on the separate-sheets for
the reasons recorded therein.

Anil Kumar
[Anil Kumar]
Member (A)

K.S. Rathore
[Justice K.S. Rathore]
Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORIGINAL APPLICATION NO. 311/2009

DATE OF ORDER: 19.12.2011

CORAM

HON'BLE MR. JUSTICE K.S. RATHORE, JUDICIAL MEMBER
HON'BLE MR. ANIL KUMAR, ADMINISTRATIVE MEMBER

Suresh Chand S/o Shri Harbans Singh, aged about 44 years, working as Driver, GM's office, Jaipur NWR, Scale Rs. 4000-6000, Pay Band 5200-20200, Grade Pay Rs. 2400, R/o Railway Quarter, Type-II-B, Gandhi Nagar Colony, Jaipur.

...Applicant

Mr. Nand Kishore, counsel for applicant.

VERSUS

1. Union of India through General Manager, North Western Railway, Hasanpura Road, Jaipur.
2. Chief Personnel Officer, North Western Railway, Jaipur.
3. Prakash Chand, working as Driver Grade-III, C/o Chief Personnel Officer, North Western Railway, Jaipur.
4. Manoj Kumar, working as Driver Grade-III, C/o Chief Personnel Officer, North Western Railway, Jaipur.

...Respondents

Mr. V.S. Gurjar, counsel for respondent nos. 1 & 2.
None present for respondent nos. 3 & 4.

ORDER (ORAL)

By way of filing this Original Application, the applicant has prayed that the respondents may be directed to regularize the services of the applicant from 31.10.2003 and after 2 years in the pay scale of Rs. 4000-6000, and further seeks direction not to fill-up the vacancy created due to de-categorization of Shri Farid Mohd., and the services of the applicant may be



regularized in the pay scale of Rs. 4000-6000 against the vacancy created due to de-categorization of Shri Farid Mohd.

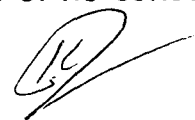
2. It is not disputed that the lien of the applicant is being maintained under General Manager, North Western Railway on and from 31.10.2003, and he has passed the trade test on 19.03.2004, and as per the direction of the RBE No. 115/03 para 3(ii), the services of the applicant should have been regularized before the private respondent nos. 3 & 4. In para 3 (ii) of RBE No. 115/03, it is made clear that it is open to the Railway administration to utilize the services of the petitioners in the open line, they must, for the purpose of determining efficiency and fitment take into account the trade tests which may have been passed by the petitioners as well as the length of service rendered by the petitioners in the several projects subsequent to their regular appointment. The applicant submits that as he has passed the trade test on 19.03.2004, therefore, he should have been regularized before the private respondent nos. 3 & 4, but he was regularized from 13.11.1997, as per annexure A/2.

3. Aggrieved and dissatisfied with the regularization of the applicant from 13.11.1997, he alleges that he is senior to the private respondent nos. 3 & 4, as the respondent nos. 3 & 4 was born in the Railway on 27.12.1992 and 19.07.2000, respectively, and they were working on adhoc as Group 'D' staff.

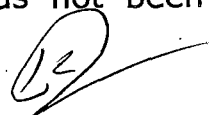


4. Per contra, the learned counsel appearing for the official respondents has submitted that the applicant is mixing the issue with the different issue by raising the issue of seniority / lien and the claim in connection with the regular promotion as Driver are quite different and separate cause of action and therefore, the present Original Application is not sustainable in the eye of law in view of the mandate of Rule 10 of the Central Administrative Tribunals (Procedure Rules), 1987, and further the issue raised in the present Original Application relates to the year 2000 and/or 2003, therefore, the present Original Application deserves to be dismissed in view of the provision of Section 20 read with 21 of the Administrative Tribunals Act, 1985.

5. So far as the merit of the case is concerned, it is contended on behalf of the respondents that the applicant did not submit any objection for granting him lien on the post of Group 'D'. Thus, the lien of the applicant was maintained on North Western Railway, Jaipur against the work charged post from time to time on higher pay scale and hence, the claim for higher scale of pay is contrary to the pay regular/scale, against which the applicant has been granted lien, is not sustainable in the eye of law. Further it is submitted on behalf of the respondents that the lien granted to the applicant is against the regular post of Group 'D' and the applicant on the basis of having qualified the trade test for appointment on work charged post in the pay scale of Rs. 3050-4590 (RP) in the construction unit is of no consequence.

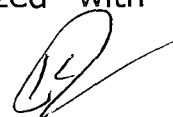


Learned counsel appearing for the official respondents referred the Annexure A/6, and after referring the Annexure A/6 submits that the lien of the applicant has been specifically shown in Group 'D' 'artisan staff' in the construction unit. Thus, the averments made are of no relevance with reference to the post to which the applicant is holding on regular basis and his lien maintained against the same, and further he referred the Annexure A/5 and submits that the applicant was granted lien against Group 'D' post in the cadre of headquarters office, North Western Railway with effect from 31.10.2003 and therefore, he cannot claim the relief at par with private respondent no. 3 & 4. He further submits that as per Annexure A/9, the applicant has been working on ad hoc basis as Driver in the pay scale of Rs. 4000-6000 and has been transferred and relieved from construction unit and therefore, he will not be entitled for payment in the construction unit since he was working under the work charged post of Chief Track Engineer, North Western Railway, Jaipur, and also he submits that the reliance which has been placed by the applicant to the provision of RBE No. 115/2003 is not attracted in the case of the applicant for the reason that the applicant after having been granted lien against the Group 'D' post. Moreover, no appointment has been made to the post of Driver in the pay scale of Rs. 3050-4590 (RP) and therefore, the question of consideration of the eligibility of the applicant did not arise. As regard to Shri Farid Mohammed, Driver, it is submitted on behalf of the official respondents that it is incorrect to say that he has not been declared



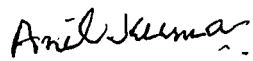
medically de-categorized, rather the Senior Medical Officer vide Medical Certificate dated 16.07.2009 made a recommendation to give light work to Shri Farid Mohammed for three months and accordingly the official respondents has posted Shri Farid Mohammed against a clerical post for three months, and immediately lapse of three months, he will occupy the post of Driver, thus, as prayed by the applicant that not to fill up vacancy created due to de-categorization of Shri Farid Mohd. does not arise.


6. Having heard the rival submissions of the respective parties and upon careful perusal of the material available on record, we are satisfied with the submissions made on behalf of the official respondents to the extent that as claimed by the applicant that he may be considered against the vacancy created due to de-categorization of Shri Farid Mohd., does not arise as Shri Farid Mohd. has temporarily given the light work on the recommendation of the Senior Medical Officer for a period of three months and immediately after lapse of three months, he will occupy the same post of Driver in the pay scale of Rs. 4000-6000, therefore the relief as has been claimed by the applicant cannot be granted as being contrary to the factual aspects. Further the official respondents have rightly regularized the services of the applicant with effect from 13.11.1997 as per Annexure A/2 and we find no illegality in the order of regularization, thus, the claim of the applicant that he may be regularized with effect from



31.10.2003 and after 2 years in the pay scale of Rs. 4000-6000 does not sustain.

7. As per the observations made hereinabove, we find no merit in the present Original Application, and the same deserves to be dismissed being bereft of merit. Thus, the Original Application stands dismissed with no order as to costs.


(ANIL KUMAR)
MEMBER (A)


(JUSTICE K.S. RATHORE)
MEMBER (J)

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