

Reserved
(On 26.07.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Dated: This the **13th** day of **August 2018**

Hon'ble Mr. Gokul Chandra Pati, Member (A)
Hon'ble Mr. Rakesh Sagar Jain, Member (J)

Original Application Number. 330/00868 of 2015

Gyan Prakash, S/o Late Ram Sewak, working as Safaiwala cum Porter at Bindiki Road, Station under Allahabad Division of North Central Raiwlay.

.....Applicant.

By Adv: Shri A.K. Srivastava and Shri M.K. Srivastava

VER S U S

1. Union of India through General Manager, North Central Railway, Subedarganj, Allahabad.
2. Divisional Railway Manager, North Central Railway, Allahabad Division, Allahabad.
3. Senior Divisional Personnel Officer, North Central Railway, Allahabad Division, Allahabad.

.....Respondents

By Adv: Shri M.K. Yadav

ORDER

By Hon'ble Mr. Gokul Chandra Pati, Member (A)

This Original Application (in short OA) has been filed under section 19 of the Administrative Tribunal Act with the prayer for following reliefs:-

- "i. to issue a writ, order or direction quashing the speaking order dated 20.05.2015 passed by respondent No. 1 (Contained as Annexure No. A-1 to Complication No. 1 of the Original Application).*
- ii. to issue a writ, order or direction in the nature of mandamus commanding the respondents to amend the letter dated 21.05.2015, 12.11.2014 passed by respondent No. 3 and give effect the C.P.C. Scale w.e.f. 03.12.2000 to the applicant along with arrears and provide the benefit from the as Juniors were given.*
- iii. to issue any other suitable writ, order or direction as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.*
- iv. to award the costs of the original application in favour of the applicant."*

2. The facts in brief as per the OA are that the applicant was appointed as Water Man under the Railways on 19.5.1981 and continued to work in different spells. He was re-engaged from 11.11.1997 as a casual labour and completed 120 days on 11.3.1998. On 2.6.1999, he was called for screening. But his case was not regularized, due to which he was not allowed to appear in the LDCE quota for subsequent promotion, although he was shortlisted as an eligible candidate.

3. Being aggrieved, the applicant filed the OA No. 824/2012, which was disposed of by this Tribunal vide order dated 1.5.2014 (Annexure A-5), directing the respondent no. 1 i.e. General Manager (in short GM) to accord post facto approval to his engagement, since it turned out that the applicant's engagement as a casual labour was without approval of the competent authority i.e. the General Manager (respondent no.1 in this OA). In compliance of the order dated 1.5.2014. The respondent no. 1 has passed the impugned order dated 21.5.2015, which has been challenged in this OA, mainly on the following grounds:-

- In pursuance to the order of this Tribunal in OA No. 2221/2010 of the Principal Bench of this Tribunal, the respondents have given the benefits to Vinod Kumar who was the applicant in OA No. 2221/2010, ignoring the case of the applicant.
- Respondent no. 1 should have granted the post facto approval from 16.7.1982, when he completed 149 days as per the para 7.2.and 7.3 of the Master Circular-40 While passing the impugned order, the respondent no. 1 did not take into account the order passed by this Tribunal in OA No. 2221/2010.
- No action was taken by the respondents although his case was recommended earlier.
- The applicant having qualified the screening test, was eligible for Central Pay Commission (in short CPC) scale w.e.f. 5.5.1999. Other engaged employees, except the applicant, were granted CPC scale, vide the letter at Annexure A-9.

- Applicant's juniors were permitted to appear LDCE quota examination for promotion, but he was not allowed.

4. The respondents in their Counter Reply have opposed the OA by mainly averring the following:-

- The applicant was appointed as a casual labour after 2.1.1981, without approval of the General Manager. He was re-engaged from 11.11.1997.
- At the time of screening, it was found that he was engaged without approval of the GM, for which his name was not placed in the panel.
- After the applicant moved the Tribunal in OA No. 824/2012, the GM accorded post facto approval of his engagement and then his services were regularized prospectively vide order dated 12.11.2014.
- Master Circular 40 is not applicable for the applicant as he was engaged as casual labour without approval of the GM.
- The applicant was allowed CPC scale w.e.f. 5.5.1999 after completion of 120 days of continuous service, vide order dated 5.5.1999 (Annexure R-1 to the Counter Reply).
- In pursuance to the order in OA No. 2221/2010, Vinod Kumar was regularized vide order dated 5.7.2012 (Annexure R-2 to the Counter Reply). The applicant was not ignored and his services were regularized vide order dated 12.11.2014 (Annexure A-1 to the OA).
- As per the judgment of Hon'ble Apex Court in the case of State of Karnataka vs. Uma Devi, reported in (2006) 4 SCC 1, there is no fundamental right of temporary or daily wage employees to be adopted in the service.

5. The applicant has filed Rejoinder to deny the averments in the Counter Reply. In reply to the point regarding the judgment in the case of Uma Devi (supra), the applicant has enclosed the order dated 11.2.2015 passed by this Tribunal in OA No. 1627/2010, copy of which is attached as Annexure to the Rejoinder. It is also stated in the

Rejoinder that the applicant is entitled for regularization on completion of three years after completion of 120 days on 16.7.1982, which was not granted by the respondents, in spite of the order dated 1.5.2014 of this Tribunal.

6. We have heard learned counsels for both the parties and also gone through the material available on record. Admittedly, the applicant was engaged initially without approval of the General Manager, for which his case for regularization could not be taken up by the respondents after the screening on 2.6.1999, as contended by the respondents. Hence, he was not allowed to appear in the examination for LDCE quota for promotion. In para 5.8 of the OA, the applicant has averred that the respondent no.1 violated Article 14 and 16 of the Constitution of India, since his case was ignored while allowing benefits to similar employees. There is no specific plea of the applicant in his pleadings as to which similarly placed employees or junior employees were given more benefit than the applicant by the respondents. Learned counsel for the applicant has also submitted a written submission reiterating the points mentioned during oral submissions and enclosing copy of the Master Circular – 40.

7. It is seen that the order dated 1.5.2014 of this Tribunal in the OA No. 824/2012 has stated as under:-

“10. No document regarding regularization dated 5.5.1999 of 6 persons from the same list as claimed by the applicant has been provided along with the Rejoinder Affidavit. It has also not been clarified by either parties either in the RA or in the SCR as to the level at which the regularization of the above 6 persons was given and that all of these similarly situated cases as that of applicant and Shri Vinod Kumar, we have observed that all the 06 names given in the RA claiming to have been regularized / promoted do not match fully with the list of 28 persons who were recommended by the respondents to the GM for consideration of post facto approval for regularization as Group ‘D’ sent vide letter dated 16.6.2004 and reminders sent thereafter.

11. In view of the above, we direct the respondent No. 1 to pass a reasoned and speaking order on the proposal sent to him for considering grant of post facto approval and conveying his decision within a period of four months, keeping also in view the decision of the Principal Bench in O.A. No. 2221 of 2010 and the averments made in the O.A., RA, Counter Reply and Supplementary Counter Reply.”

8. It is seen from above, that in the OA No. 824/2012, the applicant failed to give the details of any similarly placed employee who was allowed regularization earlier than him. Although the applicant has compared his case with the case of Vinod Kumar, who was the

applicant in OA No. 2221/2010 before the Principal Bench, the respondents have stated that Vinod Kumar was regularized vide order dated 5.7.2012 (Annexure R-2 to the Counter Reply) and the said order was also prospective, like that of the applicant, who was regularized vide order dated 12.11.2014.

9. Learned counsel for the applicant relied on a judgment of this Tribunal dated 11.02.2015 in OA No. 1627/2010 – Vijay Bahadur Lal Srivastava vs. Union of India through GM, North Eastern Railway, Gorakhpur and other. This Tribunal in judgment dated 11.02.2015 held as under:-

“5. In pursuance of this order the respondents conducted the screening test and declared the result vide letter dated 19.10.2010 wherein none of the applicants found suitable in the screening test. the counsel for the applicant states that the respondents has conducted the screening test only for an eye wash and conducting the screening test was not at all necessary for them as they are completely covered and similarly situated by the order of Hon’ble High Court of Allahabad in writ petition No. 47970 of 2004 by which the award dated 11.8.2004 passed by the presiding officer Central Government Industrial cum Labour Court, Sarvodaya Nagar, Kanpur Nagar, U.P. in Industrial Dispute No. 95/1997 has been upheld. The issue before the Hon’ble High Court to decide after the award of 11.8.2004 passed by Central Govt. Industrial Tribunal cum Labour Court was as under:-

“Whether the action of management of North Eastern Railway, in terminating the services of the workman Shri Rajendra Sahi and 18 others (list annexed) and also the action of the management in not making the payment to the workman are legal and just. If not, to what relief the workmen are entitled.”

6. After a detailed deliberation on the award passed by the presiding officer, Central Govt. Industrial Tribunal Cum Labour Court on 11.8.2004 in Industrial Dispute No. 95/1997 Hon’ble High Court came into conclusion which reads as under:-

“It appears from Annexure No. 8 and order dated 7.7.1994 the workers have been given in Time Pay Scale Rs. 750-940 as they had continuously worked for more than 120 days. They have also been declared successful in the interview and in medical category A-3 examination but they will be given work according to the need by the Railway.

Thus on record it is admitted that the workers have been given pay scale of Rs. 750-940 with D.A. in time pay scale but they have not been given regular status formally. The Tribunal by the impugned award has given a find that provisions of Section 25F were not complied with by the employer as notice pay and retrenchment compensation etc. had not been given, hence the workers are entitled to be reinstated.

Since the six workers have not been paid arrears of different of pay, they shall be paid all payments in accordance with law by the employer within a month as awarded by the Tribunal and as they have been granted pay scale which connotes regular employment hence

they shall be treated as regular employee from the date of having been given pay scale i.e. 7.7.1994 for all practical purposes.

Accordingly, the writ petition is disposed of.”

7. *The Judgment of the Hon’ble High Court was got upheld by the Hon’ble Apex Court.*
8. *The counsel for the applicant states that in the light of this judgment passed by the Hon’ble High Court of Allahabad on 30.11.2007 all the applicants shall be treated as regular employee from the date of having been given pay scale. The counsel for the applicant states that all the applicants herein also were granted time pay scale. Hence, as being identically placed they would also have been given the same benefits which would have avoided unnecessary litigation as the Hon’ble Apex Court has held that similarly situated person shall be granted same relief without filing further litigation.*

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12. *It is not even disputed by the respondents that the applicants herein were engaged as casual labourers, granted temporary status after working of 120 days and also granted pay scale which in all purposes gave them the right to be treated as regular employee from the date of having been given pay scale which is 7.7.1994. They were also not given notice pay and retrenchment compensation by the respondents.*

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14. *The screening test which was held and the result was published on 19.10.2010 in the declared result all the applicants herein, were not found suitable which was shown by column क. In column ग name of 10 persons have been shown who were also screened in pursuance of writ petition no. 74970 of 2004 and in pursuance of contempt no. 3204 of 2010. All of them also not found suitable, but after declaring those ten persons unfit / not found suitable the respondents have appointed and regularized them w.e.f. 7.7.1994 by ignoring the outcome of the screening test the result of which was published on 19.10.2010 and which has been admitted by the respondents by filing their reply in rejoinder. Hence this is clearly discriminatory and the applicants have been deprived by the respondents adopting attitude which cannot be accepted in respect of similarly situated persons. The Hon’ble Apex Court while dealing regarding issue of discrimination has categorically stated in the case of Indra Pal Yadav and others versus Union of India and Others 1985 SCC (L&S) 526. Relevant portion of the order reads as under:-*

“.....There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment, if not by anyone else at the hands of this Court.”

15. ***Accordingly, relying on the view on the judgment passed by the Hon'ble High Court in writ petition no. 47970 of 2004 which was upheld by Hon'ble Apex Court that if an employee is granted time scale he should be treated as regular employee from the date of having been given pay scale for all practical purposes, I am of the view that the applicant herein are similarly situated and are entitled to be treated as regular employee from the date when they were granted pay scale. The respondents after declaration of the screening result, have regularised the candidates placed in column X in pursuance of Hon'ble High Court of Allahabad's order. The applicants in this case also similarly hence, they are also entitled to be regularized.***
16. ***In view of the above, the original application is allowed. The respondents are directed to reinstate the applicants and give the arrears from the date of applicants were given pay scale without giving any effect to the result of the screening test published on 19.10.2010 as previously done in regard to the applicant in Writ Petition No. 47970 of 2004. I am passing this order keeping in view the principles of parity which has been well settled in various judicial pronouncements. No costs."***

10. In this OA, the applicant's counsel submits that the applicants are similarly placed as the applicants in OA No. 1627/2010 and hence, they are also entitled for the same relief i.e. to be treated as a regular employee with effect from the date when the applicant was given the pay scales which was allowed to the applicants in OA No. 1627/2010.

11. We are unable to agree with the contentions of learned counsel for the applicant, since the facts in OA No. 1627/2010 are different from the present OA before us. In OA No. 1627/2010 no question was raised as to whether initial appointment had the approval of the competent authority, which is the case in present OA, where it is clear that the applicant was appointed as a casual labour without approval of the competent authority, i.e. GM. Hence, the case of the applicant before us is different from the case of the applicants in OA No. 1627/2010. Hence, the decision in OA No. 1627/2010 will not apply in the case of the applicant in the present OA and OA No. 1627/2010 is distinguishable on facts.

12. it is also noted that the reliefs prayed for by the applicant in this OA do not include any claim for being regularized with effect from a particular date (although it is indicated in the Rejoinder), as against the date of 12.11.2014 the date from which the respondents have regularized the applicant's services, although the learned counsel for the applicant submitted at the time of hearing that the applicant be extended similar relief as in OA No. 1627/2010, which we have held in para 11 to be distinguishable. No details regarding the juniors of the

applicant who have been allowed higher benefits have also been furnished by the applicant in the OA. However, it is noticed that in the case of Shri Vinod Kumar, he was regularized w.e.f. 05.07.2012 in pursuance to order of the Principal Bench in OA No. 2221/2010, was initially engaged on 04.04.1997 without approval of the GM, as stated in order dated 08.03.2011 (Annexure A-7) of this Tribunal. Hence, the applicant was initially engaged prior to 04.04.1997 without prior approval of GM as in the case of Shri Vinod Kumar.

13. From the above discussions, Shri Vinod Kumar can be considered as the applicant's junior, who was regularized w.e.f. 05.07.2012 i.e. before the applicant. Since in both cases, post facto approval of the GM was obtained, as a senior employee, the applicant will also be entitled to be regularized w.e.f. 05.07.2012 or a date prior to 05.07.2012. Further, we are not inclined to set aside the orders dated 21.05.2012 alongwith the speaking order and the order dated 12.11.2014, as prayed for in the OA, since it will imply setting aside of the order regularizing the applicant, in service and since it is not necessary.

14. In view of above, we dispose of the OA with direction to the respondents to consider the case of the applicant for regularization of his services w.e.f. 05.07.2012 or prior to that date with consequential benefits in accordance with the extant rules and the guidelines of the Railway Board and pass an appropriate order, under intimation to the applicant within a period of three months from the date of receipt of a certified copy of this order.

15. The OA is disposed of as above. No order as to costs.

(Rakesh Sagar Jain)
Member (J)

(Gokul Chandra Pati)
Member (A)

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