

**CENTRAL ADMINISTRATIVE TRIBUNAL
AMHEDABAD BENCH.**

**Original Application No.323/2012
Misc. Applications No. 497/2016**

Date of Reserved : 24.01.2019
Date of Pronouncement: 16.04.2019

CORAM :

**Hon'ble Ms. Archana Nigam, Member (A)
Hon'ble Shri. M.C.Verma, Member (J)**

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Om Prakash Vashishtha Legal Heir of
Late Bhupender Omprakash Vashishta
working as Trains Clerk under
Station Manager W.Railway, Gandhidham,
C/o General Secretary,
Western Railway Kamdar Sangh,
78/9-C, National Highway Gandhidham (Kutch) – 370201.

.....Applicant

**[By Advocate : Shri Rahul Sharma
: Shri Om Prakash Vashishtha Legal Heir of
Late Bhupender Omprakash Vashishta]
Vs.**

- 1- The Union of India notice to be served to the General Manager, Western Railway, Bombay – 400 020.
- 2- The Divisional Rail Manager, Western Railway, Ahmedabad – 382345.

.....Respondents

[By Mr. V.K.Singh, Advocate]

O R D E R

Per: Archana Nigam, Administrative Member

1. Sh. Bhupender Vashishta, since dead, being aggrieved preferred instant OA having prayer: *“respondents be ordered to record the working of the applicant as trains clerk w.e.f. 1.7.89 till date with consequential benefit of regularising his service as trains clerk, due*

seniority, fixation in trains clerk cadre and due promotion as trains clerk over his juniors with back effect and back wages”.

2. The facts, as has been pleaded in OA are that applicant was appointed as Casual Labour, through verbal order and he worked as Casual Labour from 23.7.1974 to 31.3.1976, was directed thereafter to work under the S.S.Gandhidham w.e.f. 01.04.1976 and vide order dated 16.4.1980 was regularised as Group D employee. That he was posted as Trains Clerk in scale of Rs. 3050-4590, vide DRM (E) letter dated 28/6/89 (copy Annexure C), on ad hoc basis, was posted under Station Supdt. Ghandhidham and since 1.7.1989 he is working as Trains Clerk. That despite several requests he had not been regularised as Train Clerk in the then grade Rs. 950-1500. It has also been pleaded that the DRM, Ahmedabad stated that he has worked as TNC under S.S.GIM during 31.3.2003 to 31.8.2010 but this fact as well has not been recorded in his service book. It is pleaded that an employee who had worked for more than 18 months on ad hoc basis was required to be regularised in the post in which he is working on ad hoc basis and he is continuously working for more than two decades but was not regularised and hence the OA.
3. Respondents annexing service particulars of the applicant, as Annexure R-1 have filed their reply pleading that applicant was appointed as on 2.5.1976 vide DRM (E) Ajmer letter dated 7.4.1977

and was regularised on 23.3.1981. He was allowed to officiate on ad hoc basis as Train Clerk (TNC) in the scale Rs. 3050-4590 vide letter dated 28.06.1989 and posted under Station Superintendent, Gandhidham but, he was not found suitable in the selection for TNC, thus, DRM(E)All advised vide Memo dated 30.10.1990 (Annex.R/2) not to utilize the employee as TNC. That vide letter dated 19.12.2008 of DRM(E) All he was promoted in the scale Rs. 2610-3540 w.e.f. 1.3.1993 and in scale Rs. 2650-4000 w.e.f. 29.11.1997 and in scale Rs. 3050-4590 w.e.f. 15.9.2002 at par with his junior Sh. Gebalal Malu. It is pleaded that as the applicant's substantive post was Senior Points Man Grade Rs. 3050-4590, therefore his pay fixation was done at par with the said Sh. Gebalal Malu. Respondents have categorically stated that as the post of Senior Points Man being a Safety category post, therefore periodical refresher course is mandatory, therefore refresher training has been issued vide letter dated 16.8.2009 but as he was allowed to officiate as TNC on ad hoc basis therefore he felt insulted when his service was restored to his substantive post therefore, he refused to go for training and insisted for TNC training. The applicant had made a note on the letter No. ET/1136/Training dated 16.8.2009, Annexure R/4 and thereafter remained on sick leave to avoid to join his duty as Senior Points Man. That applicant approached the Central Industrial Tribunal (CIT) Rajkot vide I.T.C. No. 9/2009 in Reference No.

156/2009 and applicant was directed to take back in service vide order dated 19.3.2010, but applicant refused to join on his substantive post and insisted for the post of TNC, that a endorsement to this effect was made Annex.R/5. Not only this, vide letter dated 9.8.2010, DRM(E), Ahmedabad advised the ARM, GIM to allow the applicant to join his substantive post of Sr. Points Man then too, he remained absent/sick leave. The C.P. filed before the CIT was rejected on 19.10.2011 being devoid of merits. The crux of the pleading of the respondents is that substantive post of the applicant was Sr. Points Man and as per rules, he was granted MACP in Grade Pay Rs.2000 and 2400 respectively. The respondents therefore prayed to dismiss this O.A. not only on ground of delay & res judicata but on merits also.

4. During pendency of the OA, respondent's counsel produced the original service record of the applicant and stated that the applicant was working as a train clerk on ad hoc basis from 28/6/89 to 30/10/1990 and since 1992 he was working as points man. Applicant on the other hand showed salary slips of relevant period asserting that his status has been recorded as trains clerk. The Tribunal in **proceeding order dated 6/8/2013**, recording these facts directed the DRM(E) to file affidavit. Applicant thereafter filed petition dated 17/9/2013, wherein giving further factual details

regarding his service he also attached pay slips of November 2001 to June 2011 revealing that during this period he has been working as train clerk. DRM(E) also filed Affidavit, dated 10/10/13 wherein in addition to facts stated in reply of O.A. it has also been asserted that the document filed by applicant, of period up to 1990, are only officiating allowance roll and that salary register of applicant is maintained by SS-GIM wherein applicant's designation has been stated as train clerk but payment was as SR P/Man and that designation of applicant in salary register and leave account is merely an clerical mistake.

5. Unfortunately, before disposal of OA, on 29.3.2014 original applicant Shri Bhupender Omparkash Vashishta died. The respondents had filed MA 257/2014 before this Tribunal to dispose of the Original Application as the applicant had expired. The Tribunal vide order dated 02.09.2014 pleased to dispose of the OA as abated. Thereafter Shri Om Prakash Vashishtha, the father of the deceased applicant, approached the Tribunal and filed MA No. 257/2014 & MA No 281/2014 to set aside order of abatement dated 02.09.2014 & to condone the delay in filling the application for setting aside order of abatement. Said applications were allowed and thereafter MA 305/2014 for substituting him as applicant as the legal representative of the deceased original applicant was filed, said MA

was also allowed and Om Prakash Vashishtha was substituted as applicant. In this case Mr. Rahul Sharma Advocate has also been appointed as Amicus curie to render help on the side of present applicant who is father of the deceased Railway employee.

6. It is also significant to note herein that in January 2017 a contention from the side of respondents, was taken that grievance regarding his service matter has also been agitated by original applicant before Central Government Industrial Tribunal-cum-Labour Court, Rajkot in ITC No. 09/2009 and before knowing the fate of that proceedings it would not be proper to proceed further in this matter. Subsequently, the record of ITC No. 09/2009 was informed to be not traceable. The issue then was considered and on 22/11/2018 this Tribunal observing that after coming into force of Central Administrative Tribunal Act it was only the Central Administrative Tribunal which was having jurisdiction and not the Central Industrial Tribunal on issues like the present one, overruled the objection of respondents and directed the party to the lis to adduce final argument.
7. We have heard the substituted applicant Shri Om Prakash Vashishta and Shri Rahul Sharma Advocate, Amicus Curie on behalf of the applicant as well Shri V.K. Singh, learned counsel for

the respondents and perused the records and written submission filed on behalf of respondents.

8. Shri Om Prakash Vashishtha (substituted applicant) urged that he is the father of the original applicant, the deceased employee, that the grievance of his son, which motivated him to prefer the OA was that he was entitled to service benefits which were not extended to him by the respondent Railway. That his son was working as trains clerk on ad hoc basis since 1989 but he was not regularised and benefit to which he was entitled to as trains clerk were also not extended to him.

9. Shri Rahul Sharma Advocate, Amicus Curie on behalf of the applicant also has urged that the original applicant was promoted to the post of Trains Clerk, on ad hoc basis in year 1989, he continued to work as such till his death in harness but for the major period the salary of the Trains Clerk was not given to him nor any consequential benefits was given by the respondent department. He has placed reliance upon decisions of *Orissa High Court reported in AIR 1985 Orissa AIR 1978 SC 284 – UOI & Ors. Vs. S.K. Mohanty*, wherein it had been laid down that the employee who had worked for more than 18 months on ad hoc is required to be regularised in the post in which his working was on ad hoc, and the case of **G.V. Swamy and Ors. Vs. UOI & Ors. reported in AISLJ VIII – 1987 (2)**

610. Learned counsel has urged that respondents may be directed to record the working of the original applicant as trains clerk w.e.f. 1.7.89 till date of his death to allow consequential benefit of regularising his service as trains clerk, due seniority, fixation in trains clerk cadre and due promotion as trains clerk over his juniors with back effect and back wages and the monetary benefit to which original applicant is found entitled to be directed to be calculated and be paid to present applicant, the father of the original applicant.

10. Learned counsel for the respondents Mr. V.K. Singh, rebutting the submissions of applicant's side urged that while it is not disputed that the applicant (original applicant Bhupender O.Vaishishta) was promoted to the post of Trains Clerk in the year 1989 but applicant Shri Bhupendra O. Vaishishata not being found suitable for this post, was reverted back to his original post of Khalasi in the year 1990. He also filed written arguments to this effect. Regarding factum of showing the original applicant in salary slip and leave account as Trains Clerk, he explained that it is clerical mistake.

11. Considered the submissions. It has not been disputed seriously that original applicant was officiated/ promoted to the post of Trains Clerk, on ad hoc basis in year 1989 and he did work as such. It is the stand of the original applicant that he did duty of train clerk more than two decades and was working as such till filing of the O.A.

whereas stand of Learned counsel for the respondents, Mr. V.K. Singh is that not being found suitable for said post, original applicant was reverted back to his original post of Khalasi in year 1990 and to buttress his submission, qua reversion in year 1990, he has referred annexure R-2 as reverting order. Annexure R-2 is not thoroughly legible and curatorially it reflects that it was suggested through it not to utilize the service of applicant as train clerk but to take work of Class -D from him. Reply filed by respondents clarifies the position about Annexure R-2. In reply at para 2.4 it is stated by the respondents that the employee was not found suitable in the selection for TNC, thus, DRM(E)All advised vide Memo dated 30.10.1990 (Annexure .R/2) not to utilize the employee as TNC. In absence of any substantive material it can't be hold that original applicant had been reverted to the post of Khalasi in 1990 or at a subsequent date especially when the attendance-sheet, leave record and pay slip for the period of contention all are indicative of the fact that the applicant was working as Trains Clerk. The explanation of respondents that it is only a clerical mistake does not seem to be convincing. In absence of any evidence to the contrary and having regard to material on record, the facts and circumstances of the case it is quite clear that the claim of the applicant that original applicant had worked as Trains Clerk in the grade of Rs. 950-1500 and continued to work as Trains Clerk till the

date of his death needs to be upheld. Original applicant thus has worked as trains clerk from 1/7/89 to till his death on 29.3.2014, meant to more 23 years.

12. In view of this factual matrix as stated above, the respondents are directed to record / treat the working of the applicant as Trains Clerk w.e.f. 01.07.1989 till date of his death with all the consequential benefits permissible viz., regularisation of his services as Trains Clerk, Seniority / Fixation in the cadre of Trains Clerk and Promotion over his junior(s) with back effect as well arrears of salary. The respondents are directed to complete the aforesaid excise, including calculation of arrears of salary within a period of three months from the date of receipt of a copy of this order. Shri Om Prakash Vashishtha has claimed to be sole representative of the original applicant and has been impleaded as such as the substituted applicant hence, arrear of salary, in absence of any other lawful claimant may be paid to him.

13.The O.A. accordingly is allowed, to the extent stated above with no order as to costs. MA No. 497/2016, stated to be pending also stand disposed of in terms of disposal of O.A.

(M.C.Verma)
Member (J)

(Archana Nigam)
Member (A)

