

**Ram Kumar Vs. the General Manager, Northern Railway, Baroda House, New Delhi and Another**

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**Court :** Central Administrative Tribunal CAT Delhi

**Decided On :** Jan-20-2012

**Judge :** The Honourable Mrs. Meera Chhibber, Member (J) & the Honourable Mr. Shailendra Pandey, Member (a)

**Appeal No. :** O.A. No. 299 of 1997

**Appellant :** Ram Kumar

**Respondent :** The General Manager, Northern Railway, Baroda House, New Delhi and Another

**Advocate for Pet/Ap. :** For the Applicant: A.P. Dhamija, Advocate. For the Respondents: P.K. Yadav, Advocate.

**Judgement :**

Mrs. Meera Chhibber, Member (J)

1. Applicant has sought the following relief:-

“(i) Direct the respondents to absorb him to the permanent post of driver immediately and continue his seniority from the date of passing the test as skilled Driver/screening, i.e., since 18.4.1981. (ii) Direct the respondent to make the service of the applicant permanent for the post of Khallasi after completion of 360

days of continuous service”.

2. This OA was initially dismissed vide judgment dated 17.5.2000 whereupon the matter was carried to the Hon'ble High Court of Delhi by filing Writ Petition No.7437/2000. The said Writ Petition was disposed of on 15.9.2011 by quashing the order passed by the Tribunal and remitted the matter to the Tribunal for deciding the OA on merits by observing that since the petitioner had not appeared before the Tribunal, the Tribunal presumed the petitioner did not have any further grievance whereas applicant had stated Tribunal had not dealt with the claim of the petitioner that on passing of the trade test he should have been regularized as Driver moreover persons junior to him have been regularized, this aspect has not been looked into by the Tribunal which is required to be dealt with. This is how the matter has now been placed before us.

3. It is stated by the applicant that he was appointed in the Signal and Telecommunication Department (Construction) in the Northern Railway as casual labour, i.e., Khallasi on 5.12.1974. He was given temporary status with effect from 1.1.1981. While he was working as casual Khallasi, he was selected and transferred for discharging the duties as daily rated Driver on 15.8.1978 and since then he has been discharging the duties as a Railway Truck Driver.

4. On 23.1.1981 applicant had undergone and qualified the screening test for skilled Mechanic-cum-Driver at the SandT Training School, Ghaziabad and on 18.4.1981, he was promoted to the category of skilled Driver-cum-Mechanic in the grade of Rs.260-400 in the SandT Department (Construction) against 25% vacancies reserved for departmental promotion from unskilled Driver to skilled Driver category. On 1.9.1990 Sr. Signal and Telecom Engineer (hereinafter referred to as SSTE) (Construction), Tilak Bridge, New Delhi requested SSTE (Construction), Northern Railway, Charbagh, Lucknow for regularization of applicant as temporary status project casual labour against 60% construction reserved post. On 24.10.1990 SSTE/C/NR of Lucknow Unit replied that applicant was transferred to Lucknow Unit after regularization of reserved post in Lucknow Division, therefore, he could not be regularized by Lucknow Unit as such he was returned back to Delhi at SSTE (Construction) Division.

5. On 26.2.1996 the applicant was promoted as a permanent employee for the post of Khallasi in the grade of Rs.750-940 (RPS) whereas applicant had been drawing his salary as Driver in the grade of Rs.1200-1800 (RPS) since 1990 and the last basic salary drawn by the applicant was Rs.1530/- in the month of December, 1996. He has thus sought the relief, as mentioned above.

6. Respondents have taken preliminary objection to the maintainability of the OA on the ground that the OA is barred by limitation, therefore, it is liable to be dismissed on this ground alone.

7. On merits, they have stated applicant was initially engaged as casual Khallasi on 5.12.1974. He further worked as Hammerman w.e.f. 15.1.1975. After completion of 180 days of continuous service on 6.6.1975, he was given CPC scale w.e.f. 7.6.1975. He worked as T/man w.e.f. 15.6.1975 to 14.8.1975. He was promoted to work as Motor Mechanic Driver with effect from 15.8.1978 in the grade of Rs.950-1500 (RPS) on ad hoc basis and from 18.6.1980 he has been working as Highly Skilled Driver in the scale of Rs.330-480 revised to Rs.1200-1800 (RPS) on ad hoc basis. He was given temporary status with effect from 1.1.1981 in the grade of Rs.330-480 revised to Rs.1200-1800 (RPS) vide letter dated 27.10.1986. They have also stated that applicant was given scale of Driver in the grade of Rs.1200-1800 (RPS) on ad hoc basis. Presently he is working as Highly Skilled Driver in the scale of Rs.1200-1800 (RPS). With regard to the screening in 1981, they have stated though applicant was sent to SandT Training Centre, Ghaziabad but he did not qualify. They have further stated that applicant was never promoted against 25% vacancies reserved for departmental promotion. On the contrary, applicant was screened in Delhi Division and panel was also issued for regularization. At that time applicant was working under SSTE/C/LKO, therefore, SSTE/C/LKO was asked to get the above post regularized from Delhi Division vide letter dated 1.1.1990.

8. Applicant was finally regularized as SandT Khallasi in Delhi Division w.e.f. 16.5.1996. However, since he was working in the grade Rs.1200-1800 as driver on ad hoc basis, he continued to draw his pay as Driver as per the extant rules. They have further stated that employee himself offered for regularization to the

post of Class-IV as SandT Khallasi Grade Rs.750-940 (RPS) on 26.2.1996, therefore, he cannot question his regularization as a Khallasi.

9. They have specifically stated that no junior staff was given promotion or regularized as stated by the applicant. He was declared successful for the category of Grade-III Driver in the scale of Rs.950-1500 (RPS) vide letter dated 20.3.1997. They have thus submitted that the applicant cannot be regularized as Grade-III w.e.f. 1981 as claimed. The OA may, therefore, be dismissed.

10. We have heard both the counsel and perused the pleadings as well.

11. Perusal of the earlier order shows this Tribunal had dismissed the OA of the applicant by observing that respondents have stated applicant has been regularized in Class IV post and that he had been called for the trade test of Vehicle Driver Grade of Rs.950-1500 in January, 1997 and he has been regularized in Class-III category of Driver Grade of Rs.950-1500. He has not been demoted from the grade of Driver which facts have not been controverted or proved by the applicant, therefore, there is no justification to interfere in the matter. However, before the Hon'ble High Court of Delhi, counsel for the applicant had submitted he was not seeking regularization as Khallasi but appointment to the post of Driver on regular basis on the basis of trade test in which applicant had appeared and was declared successful vide letter dated 20.3.1997. It was noted by the Hon'ble High Court that this aspect has not been dealt with by the Tribunal, therefore, OA may be decided afresh after dealing with this aspect. Though it is stated by the applicant that he had undergone and qualified the screening test for skilled Mechanic-cum-Driver at the SandT Training School, Ghaziabad on 21.1.1981 but he has not annexed any such order to substantiate this averment. Similarly he has also not annexed any order to show that he was promoted to the category of Skilled Driver-cum-Mechanic in the grade of Rs.260-400 in the SandT Department (Construction) in the year 1981 against 25% vacancies reserved for departmental promotion quota from unskilled Driver to skilled Driver category. The respondents have categorically stated in their reply that though applicant had appeared in the screening test for the post of Mechanic-cum-Driver in 1981 but he had failed to qualify. The result has not been annexed by the respondents also,

meaning thereby there is no such document on record which can throw light whether applicant had passed the screening test in 1981 or not. It is only averment versus averment, therefore, no positive finding can be recorded that the applicant had passed in the screening test in 1981. The fact remains that after 1981 order dated 16.5.1996 was issued whereby applicant was regularized as Class-IV Khallasi in the grade of Rs.750-940 (RPS) in Delhi Division but since he was performing the duty of Driver, he continued to draw the salary as a Driver. It is, therefore, wrong to allege that he was reverted. It is now settled law that even if a person was working in Construction in Grade-III on ad hoc basis, he has to be regularized in Group-D on open line. The only thing is his pay has to be protected. In the instant case respondents have stated he continued to draw the salary of Driver, so no prejudice can be said to have been caused to him (page 37).

12. Admittedly, the only relief claimed by the applicant is to direct the respondents to absorb him to the permanent post of driver immediately and continue his seniority from the date of passing the test as skilled Driver/screening, i.e., since 18.4.1981. We have already noted above that no supporting document has been filed by the applicant. On the contrary it is seen that vide letter dated 19.1.1997 (page 55) issued by the DRM's Office, New Delhi to the CAO/C/Kashmere Gate, Delhi, DY.CPO(C) Kashmere Gate, Delhi and all Dy. CE (Construction), the staff of construction organization who were holding lien in Delhi Division but were put to work in construction organization against work charged posts were required to be trade tested for forming a panel of Drivers for promotion to the existing work charge posts. In this letter, applicant's name figured at Sl.No.9. Respondents have further stated that pursuant to the above letter, trade test was held and vide letter dated 20.3.1997 (page 44) applicant was shown to have passed the trade test for the post of Vehicle Driver Grade Rs.950-1500 (RPS). It goes without saying that in case the applicant had already passed the trade test, he would not have appeared in the trade test again in the year 1997. The very fact that he had appeared in the year 1997 in the trade test again shows that he had not qualified in the trade test held in 1981. Counsel for the respondents produced letter dated 24.10.1997, which is taken on record, to show that not only was the applicant regularized as a Vehicle Driver but vide order dated 14.9.2010, the applicant, along with other persons had been given the benefit of

2nd MACP also w.e.f. 1.9.2008. Moreover, applicant's name is also shown in the seniority list of Vehicle Driver Grade-III at Sl.No.40. None of these orders has been placed on record by the applicant or challenged. These orders clearly show that after applicant had passed the trade test, he has been given all the benefits. In any case the respondents have explained that even though applicant was earlier regularized as a Class-IV Khallasi in the Delhi Division but throughout he continued to draw the salary of a Driver because he was working in the Construction Organisation as a Driver on higher pay scale.

13. Since applicant has not placed on record the result of the screening test held in 1981, it cannot be presumed that he had passed the screening test in 1981. It is also relevant to note that in the counter-affidavit respondents have specifically stated that applicant was never promoted against 25% vacancies reserved for departmental promotion which fact has not been controverted or proved by the applicant to the contrary. They have also stated in reply to para 5 (b) that no junior staff was given promotion or regularized as Driver as stated by the applicant. Even this aspect has not been controverted by the applicant or proved to the contrary by placing some document on record.

14. It is thus clear that no case has been made out for interference by the Tribunal. Applicant was though regularized as Khallasi in Delhi Division but he continued to perform his duty as Driver initially on ad hoc basis and thereafter as regular driver after passing the trade test in 1997 and also continued to draw the salary of Driver throughout and has been given the benefit of 2nd MACP, therefore, the relief, as claimed by the applicant, cannot be granted.

15. The OA is, therefore, dismissed being devoid of any merit. No costs.

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