

(2024) 02 CAT CK 0047
In the Central Administrative Tribunal
Case No : Original Application No. 07 Of 2017

Hakeem Mian

APPELLANT

Vs

Union Of India Through General Manager, North Eastern
Railway, Head Quarter, Office Gorakhpur & Ors.

RESPONDENT

Date of Decision : 28-02-2024

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19(1)

Citation : (2024) 02 CAT CK 0047

Hon'ble Judges : Dr. Sanjiv Kumar, Member (A)

Bench : Single Bench

Advocate : A.D. Singh, M.P. Mishra

Final Decision : Allowed

Judgement

Dr. Sanjiv Kumar, Member (A)

1. The instant OA has been filed under Section 19 (1) of the Administrative Tribunals Act, 1985 seeking relief to regularize service of the applicant as a regular Trackman for all purposes from the date of granting the status of temporary railway employee as substitute Trackman in pay scale of Rs. 775-1025 with effect from 10.03.1987 which was followed by screening which panel was declared vide letter dated 10.11.2004 and direct the respondents to remove the rider attached with the name of the applicant being of under-age working of only 5 days by deducting from his total working days from 01.05.1978 and keeping in view of the settled law laid down by the Hon'ble High Court Allahabad in writ petition No. 10811 of 2005 -Union of India and Ors. vs. Avinashi Prasad and Ors. on 20.9.2005 and also give all resultant / consequential benefits which will flow from treating him as a regular railway employee, and to grant him due promotions in respect of his junior persons already promoted and also grant him due financial up-gradations under ACP / MACPs taking his service from substitute period i.e. from 10.03.1987 onwards with its arrears and pay 12% interest thereon for all delayed payments which was admissible to him under the Rules

and Law, and to give any other benefit deemed fit and to award cost.

2. The fact of the applicant is that he was engaged as casual labour on 01.05.1978 under IOW (special) NER, Pilibhit and he worked upto 15.06.1978. thereafter, he was re-engaged on 20.12.1986 as casual gangman (now Trackman) under PWI/NER/Pilibhit and he worked continuously upto December 1987. Thereafter, he was not allowed to work and the applicant gave a representation dated 12.11.1990 requesting the respondents to allow him to work on the post. As the applicant had completed 120 days of continuous service during the period from 20.12.1986 to 15.11.1987 in order to attain temporary status Railway employee under the rules, he further gave representation on 01.01.1991 to include his name in casual labour live register and re-engage him but without any response. Being aggrieved with the indecision the applicant filed OA No. 173/1994 – Hakeem Mian vs. Union of India and others which was finally disposed of on 02.08.2001 with a direction as under:-

"The O.A. is accordingly disposed of finally with direction to the respondent No. 2 to include the name of the applicant in the live casual labour register and treat him to have acquired temporary status in 1987. Applicant shall be allowed to work and shall be considered for regularization according to his seniority and in accordance with law. However, he will not be entitled for any back wages. There will be no order as to costs."

3. The Assistant Personnel Officer-II of the office of DRM (P)/NER/Izzatnagar decided to implement the above order of this Tribunal dated 02.08.2001 and gave a note dated 05.12.2001 to the concerned executing authority and pursuant to the order of Tribunal the applicant was granted temporary status of Railway employee w.e.f. 10.03.1987 and he was also granted time scale of Rs. 775 – 1025 of the post of Gangman/Trackman from 10.03.1987 vide DRM (P)/NER/Izzatnagar letter No. Ka/OA No. 173/1994/Engg./8/351 dated 19.06.2002. The applicant was re-engaged as substitute Trackman in higher pay scale of Trackman in Gang No. 6 PS under SSE (P Way) NER/Bisalpur in terms of Office Order dated 22.07.2002 accordingly the applicant joined there. As per the order of this Tribunal dated 02.08.2001 passed in OA No. 173/1995 services of the applicant was regularized by holding screening which was held on 18.10.2004. A panel of 6 substitute Trackman was declared vide letter dated 10.11.2004 with approval of the Divisional Railway Manager, N.E. Railway, Izzatnagar and the name of the applicant was placed at Sl. No. 5 in the said panel / select list for regularization of services of the applicant as regular Railway employee. In the said panel a rider was added that in case of Sl. Nos. 1, 2, 3 and 5 relaxation of age limit should be obtained from the competent authority by the concerned authority but no further action was taken. Against the name of applicant it was erroneously mentioned in panel in column date of first appointment as on 24.07.2002 which is contrary to record of the respondents whereas his first appointment as casual labour is on 01.05.1978, which was only 5 days under age working from the date of attaining majority, but he was granted time scale of Rs.

775 – 1025 as on 10.03.1987 vide DRM (P) letter dated 19.06.2002. The applicant's case is not a case of relaxation in upper age limit but relaxation of only 5 days underage working period as his date of birth being as 06.05.1960. As such only 5 days under age working was to be deducted from his total working days of casual / substitute Trackman from 01.05.1978 for the purpose of assigning seniority position in forming panel position of Trackman as per settle law laid down by this Tribunal in the case of Avinashi Prasad vs. Union of India and others – OA No.1479 of 2001 which was also upheld by the Hon'ble High Court, Allahabad in Writ Petition No. 10811 of 2005 – Union of India and others vs. Avinashi Prasad and others decided on 20.09.2005.

4. The applicant represented on 05.11.2007 to the DRM (P), North Eastern Railway, Izzatnagar and the same was duly referred to the controlling authority for disposal of his grievances but without any response. The applicant further represented on 01.06.2008. Then applicant asked information under RTI Act vide representation dated 23.04.2009 and arbitrarily reply was given on 08.06.2009 stating that appointment of the applicant was done as a substitute Trackman dated 22.07.2002 as such he is not entitled for increments, promotion and seniority. Under further RTI appeal dated 31.12.2009 it was replied that in terms of letter dated 04.09.2004, screening was got done on 01.05.2005 and the result was still awaited and his age being less at the time of initial appointment, his case has been referred to General Manager, NE Railway, Gorakhpur for age relaxation of underage working being his date of birth as on 06.05.1960. The applicant again represented on 03/09.11.2010 and 15.04.2011 that he has been getting less pay in respect of his junior persons who were appointed / screened later and were given MACP and other benefits. The applicant's case is not of overage but underage and no such rule and only working days for screening seniority is taken from the date of attaining majority as pointed above.

5. The DRM (P), Izzatnagar replied to the applicant vide letter date 08.06.2011 that his case is being examined by the competent authority and on getting decision, he would be communicated with the decision. The applicant further sent his representation on 25.07.2011 and 12.11.2013 and vide registered post on 21.12.2015. The Senior Divisional Assistant Engineer, NE Railway, Pilibhit vide letter dated 08/09.06.2016 has referred the case of the applicant to the Divisional Railway Manager, NE, Railway, Izzatnagar in which it has been transpired that appointment of the applicant after screening and empanelment has not been made regular. It was also requested to take early action so that after retirement of the applicant, there should not be any difficulty to the applicant in getting his pensionary benefits and other settlement dues. The applicant is due for two financial upgradation with its arrears after completion of 10 years and 20 years from the date of granting time scale as substitute Trackman from 10.03.1987 in terms of order of Railway Board and in view of this Tribunal order dated 02.08.2001 passed in OA No. 173 of 1994, and he is eligible for MACP from the date of granting temporary status on 10.03.1987 and also for qualifying service followed by regularization by screening which was done vide

letter dated 10.11.2004. Again he submitted representation on 23.10.2016 and till now no action has been taken on the said representation. Hence, he has come before this Tribunal and he requests to allow his OA.

6. On notice the respondents have filed counter reply wherein they agree to most of the facts of the applicant that he was engaged as casual labour on 01.05.1978 and he worked till 1987 in broken spells, and the applicant was not engaged after 1987 as his casual work was stopped. Then applicant filed OA No. 173 of 1994 which was decided on 02.08.2001 and in compliance thereof the applicant was given time scale w.e.f. 10.03.1987. After passing medical test the applicant's was given appointment temporarily and appointed as substitute Trackman vide order dated 22.07.2002, wherein it was clearly mentioned that his appointment is purely temporary and he cannot claim for permanent appointment, and that his services only be regularized after passing screening test and in case a regular employee is available his temporary service may be terminated without any prior notice.

7. In pursuance of the letter dated 04/05.03.2004 issued by General Manager (P), Gorakhpur a screening test of 16 substitute employees was held by relaxing the upper age limit. The 16 substitute employees were found fit for regularization and thereafter, the matter was sent to General Manager, vide letter dated 24.12.2004 for approval. The General Manager, Gorakhpur by means of letter dated 18.03.2005 granted approval only for 12 persons out of 16. The name of the applicant alongwith other three persons was not approved by the General Manager, Gorakhpur who is the competent authority. Thereafter the name of Shri Jageshwar and the applicant was again sent to the General Manager for necessary approval on 15.06.2005. The General Manager was informed that the applicant was engaged on 01.05.1978 and thereafter, in the year 1987 his casual services were stopped. It was also informed that in pursuance of the order passed by this Tribunal in OA No. 173 of 1994 he assumed charge on 24.07.2002 and that is why his engagement date was shown as 24.07.2002, whereas, he was initially engaged as casual labour on 01.05.1978. Therefore, he may be provided for relaxation in upper age limit. Thereafter, reminders were also sent to the office of General Manager for approval on 23.06.2006, 13.01.2010 and 22/23.06.2010.

8. In the screening test it was apparent that the applicant age was above 40 years and so his upper age limit relaxation has to be there, and on the day of his first engagement as casual labour on 01.05.1978 he had not yet completed 18 years and his age was short by 5 days which also needed to be regularized. The respondents assert that the service of the applicant is not regularized till date even after the screening test due to non approval of the competent authority. Therefore, as per rule a temporary employee cannot be entitled for the benefit of ACP and MACP. Hence, they argue that there is no case for the applicant to any of the benefits claimed and his OA should be dismissed.

9. The applicant has filed rejoinder wherein he reiterates his case as in the OA.

10. The case came up for final hearing on 16.02.2024. Shri A.D. Singh, learned counsel for the applicants and Shri M.P. Mishra, learned counsel for the respondents were present and heard. I have gone through the records carefully and considered the rival contentions.

11. From the record it is evident that most of facts of the parties are not disputed. In the case of the applicant the only contention of the respondents is that as in his case on the date of his first appointment his age was 5 days less than 18 years and he was 40 years of age when he was to be regularized in Govt. service. So there was need for competent authority to give those two relaxations although he was otherwise found eligible in the screening test. The respondents have not disputed that in the order of this Tribunal in OA No. 173 of 1994 following was ordered:-

"The OA is accordingly disposed of finally with the direction to the respondent no. 2 to include the name of the applicant in the Live Casual, Labour Register and treat him to have acquired temporary status in 1987. The applicant shall be allowed to work and shall be considered for regularisation according to his seniority and in accordance with law. However, he will not be entitled for any backwages. There will be no order as to costs."

12. And there is no appeal against that and the order has attained finality and the respondents department have tried to implement the same, and pursuant to this the applicant was given temporary status w.e.f. 10.03.1987 and time scale vide letter dated 19.06.2002 as substitute Trackman. The applicant sent for screening for regularization on 06.02.2004 and appeared on 18.10.2004 and with the approval of the Divisional Railway Manager vide letter dated 10.11.2004 six substitute Trackman screening was declared in the form of a select list for regularization, which is at page 31 of the OA and which is also not disputed by the respondents. In the said list at Sl. No. 5 the name of Shri Hakeem S/o Meia Abdul Aziz Khan substitute Trackman with date of birth 06.05.1960 is mentioned.

13. The Divisional Railway Manager letter dated 10.11.2004 for the persons at Sl. No. 1, 2, 3 and 5 it was mentioned that relaxing of age limit should be obtained from the competent authority and a proposal was sent to the competent authority and the same never came back after due approval. So the only issue between the parties are that the applicant being overage at the time of regularization being of 40 years of age and at the time of first appointment on 01.05.1978, the applicant was under age by 5 days. Hence, in his case these two parameters have to be relaxed for which the competent authority had not taken decision. But the respondents have failed to show any reasons why since the year 2004 the respondents have not been able to take a decision on proposal dated 10.11.2004 which is at page 33 of the OA particularly for the applicant. The respondents do not dispute that in due course for everyone who had been working for long time in the department; for their regularization upper age limit for eligibility of a post is relaxed in a routine manner. Hence, nothing on record is forthcoming why the respondents failed to take a decision on the matter.

14. Further, the applicant has cited a case law in Civil Misc. Writ Petition No. 10811 of 2005 – Union of India and another vs. Avinashi Prasad and another decided on 20.09.2005 wherein Division Bench of Hon'ble Allahabad High Court has ruled, "That a person who was underage and having the age of 16 years 11 months and 1 day at his initial engagement as a muster roll employee. There is no statutory rule prohibiting a person below 18 years of age to be employed as a muster roll and in case the present petitioner had engaged him and taken work from him for so many years continuously, and paid him a salary, as such a plea was not available to them", and that the Hon'ble Court did not find any illegality in the impugned judgment of the Tribunal and they ruled following:-

"There has been earlier several round of litigations. Earlier in the first round of litigation, certain direction had been issued by the Tribunal for screening and considering for regularization to certain muster roll employees, who had completed a particular i.e. 165 days in employment. The respondent - employee's claim was rejected only on the ground that though he had completed that particular period, but he was only 16 years 11 months and 1 day at his initial engagement as the muster roll employee. The learned Tribunal has set-aside that order pointing out that there is no statutory rule prohibiting a person below 18 years of age to be employed as a muster roll employee, and in case the present petitioner had engaged him taken work from him for so many years continuously, paid him a salary, as such a plea was not available to then, we do not find any illegality in the said impugned judgment."

15. The respondents have not been able to controvert this as to this order was not final or this has been set aside by the Hon'ble Apex Court or any other Court subsequently. In the case of the applicant he was only 5 days younger than 18 years. Labour Laws permit that even less than 18 years person could participate in the labour force. So, as per this Hon'ble High Court order the only option left for the respondents was to allow him all benefits, if at the most what the applicant concedes that they could have deducted 5 days of service from his eligible service if they found him any younger than the age required for entering the job market (18 years). The fact that the applicant could not have been legally engaged as averred by the respondents, but that also is not substantiated by any law or evidence by the respondents. So considering the case of the applicant covered by the said ruling, and as the applicant has already retired on 31.05.2020, considering the case of the applicant as a very exceptional case and an extraordinary case where inordinate delay in taking decision by the competent authority has jeopardised the livelihood and regular source of adequate income to the applicant who has retired on superannuation without any pension. Hence, I have no doubt in my mind that the applicant has made out a convincing case in his favour of himself to interfere with the unexplained inordinate inaction of the respondents in his case in approving his age relaxation and being underage at the time of his joining regular service and giving him all consequential benefits.

16. Hence, I pass following orders:-

"The OA is allowed. The respondents shall deem it a case of upper age relaxation by the competent authority for being eligible for regularization and also eligible from the first day when he was engaged and he was 5 days less than the age 18 years, considered by the respondents as the age at which he would have joined as casual labour by deducting 5 days from the eligible service of the applicant and with these two relaxation to regularise the service of the applicant as a regular Trackman for all purposes from the date of granting the status of temporary Railway employee as substitute Trackman to the applicant in the pay scale of Rs. 775 – 1025 w.e.f. 10.03.1987; followed by screening for which panel was declared vide letter dated 10.01.2004. The name of the applicant to be considered with reference to his juniors being regularized and given benefit of ACP and MACP and all consequential benefits which flow from treating him as a regular Railway employee.

As the inordinate delay in the decision making has been on the part of the respondents which is unexplained, hence, the respondents are directed to calculate all the consequential benefits to the applicant with 6% simple interest to be payable within 3 months time from the date of receipt of a certified copy of this order".

18. All associated MAs, if any, also stand disposed of accordingly. No costs".