

(2002) 04 DEL CK 0001
In the Delhi High Court
Case No : CWP 2128 of 2001

Sumer Singh

APPELLANT

Vs

Union of India (UOI) and Another

RESPONDENT

Date of Decision : 11-04-2002

Acts Referred:

Citation : (2002) 63 DRJ 410

Hon'ble Judges : S.B. Sinha, C.J.;A.K. Sikri, J

Bench : Division Bench

Advocate : Geeta Luthra, for the Appellant; Sunita Rao, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—Aggrieved by an order dated 29th November 2000 passed by the Central Administrative Tribunal in Original Application No. 637/99 whereby and whereunder the petitioner had been posted back to the Division wherein he held his lien in Group D post, the writ petitioner, has filed this writ petition.

2. The petitioner was appointed by the respondents as casual worker. He allegedly was given a temporary status. The contention of the petitioners herein is that they were engaged as blacksmiths from the very beginning, which is a substantive post and they should have been regularized against 25% quota allotted therefore.

3. The petitioner claimed the afore-mentioned relief purported to be in terms of Rule 2007(3) of the Indian Railway Establishment Manual Vol.II. Which is in the following terms:

"Casual labour engaged in work charged establishment of Certain Departments who get promoted to semiskilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period, can straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent

of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labours who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test."

4. The respondents issued another circular being No. EGNG-II-77/46 dated 8.6.81 which is as follows:

"Casual labour engaged in work charged establishment of Certain Departments who get promoted to semiskilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period, shall straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labours who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test."

5. The learned Tribunal, however, having regard to the rival contentions of the parties, held:

"However, it is noticed that the respondents have passed the order regarding regularisation of the applicants as Group "D" staff in the Delhi Division as far back as 23.12.1997 and 28.2.1997, which orders have not been challenged. Therefore, at this stage the applicants cannot challenge the subsequent action taken by the respondents in the impugned order dated 2.2.1999. It is further relevant to note that the respondents have stated that due to reduction of work in the Construction Organization and non availability of funds, the applicants and other who have been declared surplus were transferred to their substantive posts in their parent Divisions, which has resulted in transfer of the surplus Group "D" staff by the impugned order dated 2.2.1999. Further, having regard to the provisions in Para 2007 (3) of the IREM, which has also been considered in the aforesaid judgments of the Tribunal relied upon by the learned counsel for the respondents, I find that the claim of the applicants for regularisation and absorption as Blacksmiths cannot be granted. However, if and when the applicants pass the trade test and subject to the other conditions of suitability and eligibility as prescribed in Para 2007 (3) of IREM, they are entitle for such promotion, they shall be so considered by the respondents in accordance with the relevant law and instructions."

6. Mr. Bhardwaj, learned counsel appearing on behalf of the petitioner would submit that keeping in view the fact that the petitioners had been working in the post of Blacksmith which is a group C post, for a long time, they could not have been directed to be regularized in a Group D post.

7. Their reversion, contends the learned counsel, must be held to be contrary to law particularly when they were entitled to be regularized having regard to their long and continuous service in the posts of Blacksmith.

8. It is not in dispute that the petitioner had not been recruited in a regular post. They in term of the scheme can only be regularized in the services of Gangman. It is not in dispute that the circular letters issued by the respondents, as referred to hereinbefore, stipulate filling up of the posts of blacksmith by way of promotion. The question of promoting the petitioners would arise not only when they are appointed on a regular basis in the feeder category but also when they fulfill the conditions precedent Therefore which inter alias include passing of a trade test.

9. When a question arises as to whether a post has to be filled up by way of promotion, in the opinion of this court, the principle of regularisation would not arise. Regularisation, as is well known, is not a mode of recruitment (See Commissioner of Excise and Entertainment v. Ved Prakesh & Ors,? CW 2431/2001 decided by this court on 15thMarch 2002).

10. A person must acquire a status before he can be substantively promoted to a higher post.

11. In any event, such promotion can be granted only in the event of the fulfillment of the conditions precedent Therefore which include possession of the eligibility criteria. We are, Therefore, of the opinion that no case has been made out for interference with the impugned judgment as the petitioners do not possess the requisite qualification. Even otherwise, having regard to the fact that the said posts are promotional posts, they were not entitled to any relief. 12. The writ petition, thus, being devoid of any merit, is dismissed without any orders as to costs.