

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

O.A. No. 809 of 1998 decided on 11.5.1999

Name of Applicant : Surinderpal

By Advocate : Shri A.K.Bhardwaj

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Versus

Name of respondent/s UOI & ors

By Advocate : Shri B.S.Jain

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/

2. Whether to be circulated to the other Benches of the Tribunal. Yes

Narashimha
(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

Original Application No.809 of 1998

New Delhi, this the 11th day of May, 1999

Hon'ble Mr. N. Sahu, Member(Admnv)

Surinderpal S/o Shri Harish Chander, r/o Gurana Road, Near Power House, Khirni Wali Gali, Meerut, U.P.
Posted as Mason under IOW(C) DLI, office of the Dy.C.o.(C), - TKD, New Delhi - APPLICANT

(By Advocate Shri A.K.Bhardwaj)

Versus

1. Union of India Through: The General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Administrative Officer (Const.), Headquarters Office, Kashmere Gate, Delhi-6
3. The Asstt. Personnel Officer (Const:II), Northern Railway, Kashmere Gate, Delhi-110006
4. The Deputy Chief Personnel Officer, Northern Railway, Headquarters Officer, Kashmere Gate, New Delhi. - RESPONDENTS

(By Advocate Shri B.S.Jain)

O R D E R

By Mr. N.Sahu, Member(Admnv)

The prayer in this Original Application is to give a direction for regularizing the applicant as a Mason and to quash and set aside the impugned order dated 20.10.1997 under which the applicant has been empanelled for regularization as a Khalasi. The next relief sought for is to declare the order of reversion of the applicant from the post of Mason Grade-II (Rs.1200-1800) to Mason (Rs.950-1500) as illegal.

2. The undisputed facts are that the applicant according to Annexure-A-8 of the OA, was taken as a

Mason on 30.3.1980. The total number of working days was 1195 as on 1.1.1984. He was in the grade of Rs.260-400. He was declared medically fit by certificate no.105439 dated 26.4.1985. In the same order Annexure-A-8 dated 29.9.1986 it is mentioned that the applicant was granted temporary status with effect from 1.1.1984. By Annexure-A-9 it is clearly mentioned that the applicant worked as a temporary status Mason in the grade of Rs.1200-2040 and was reverted in the grade of Rs.950-1500. It is also mentioned that he was initially engaged in the grade of Rs.950-1500. By a representation dated 15.7.1997 (Annexure-A-15) the applicant addressed a letter to the Deputy Chief Engineer/Const., Northern Railway, Tilak Bridge, New Delhi pointing out that along with him others were also reverted but subsequently their reversion orders were revoked and the applicant's order could not be revoked. He prayed for the revocation.

3. The applicant like others worked in the Construction organization in various categories in Group "C" on casual basis with temporary status. They were naturally reluctant to be screened and regularized in Group "D". Annexure-A-19 is a letter of the Chief Engineer to the DRM which states that those who were screened in Group "D" earlier refused to be regularized in Group "D" and continued to work as casual labour in Group "C". The Chief Engineer requested the DRM to consider their cases under Para

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2007(3) of the Indian Railway Establishment Manual (in short "IREM") for giving them an opportunity to be regularized in Group 'C'.

4. The respondents contend that the applicant was allowed to officiate as a Highly Skilled Mason on temporary basis confined only to Suratgarh Project. The order clearly stated that he would have no claim to seniority and promotion. After the project was over, he was reverted to his original scale by an order dated 21.1.1995 (Annexure-A-9). It is stated that except one Shri Netra Pal (scheduled caste) reserved against a quota vacancy, none else has been regularized. It is further submitted that the applicant had initially been recruited as a Khalasi and he willingly agreed to be screened as a Khalasi. The learned counsel for the respondents relied on the decision of the Hon'ble Supreme Court in the case of Union of India Vs. Motilal, (1996) 33 ATC 304 and stated that the applicant has to be regularized in a Group 'D' before he can be considered for regularization in Group 'C'. It is also stated that there is no vacancy in the grade of Rs.1200-1800 as a Mason. His case can be considered for that grade under the existing rules and in accordance with his seniority.

5. The learned counsel for the applicant on the other hand relied on an order of the Division Bench in the case of Shri K. Veerachamy Vs. Union of India and others, ATJ 1994 (2) 638. That was also a case where the applicants working as Artisans in Class-III

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posts holding temporary status challenged the action of the respondents of regularizing them in Class-IV. The ratio in this case is that employee recruited to a given scale cannot be reduced to a lower scale. It is held that casual labourers working in Class-III for long periods should be considered only for Class-III. In another decision in the case of Shri Shiyaji Vs. Union of India and others, O.A.No.653 of 1998 decided on 6.4.1999 the applicant was engaged as a casual labour against a work charged post and was given temporary status as a Gangman with effect from 1.1.1982. His paper lien as a Gangman was fixed with effect from 5.10.1984. The decision was to regularize him as a Hammerman in his own turn subject to his fulfilling the rules and availability of vacancies.

6. The learned counsel for the respondents has filed a decision of Jodhpur Bench of the Tribunal in the case of Ram Singh Vs. Union of India and others, (A no. & date of decision not legible), wherein it is held relying on Motilal's case (supra) that a person appointed as a casual labour cannot straightaway ask for absorption in a Group 'C' post and he has to be first regularized in a Group 'D' post. Accordingly, the Tribunal held that the applicant in that case is not entitled for absorption in the semi-skilled or skilled category of Group 'C' in the scale of Rs.950-1500 straightaway. In that case also the applicant was appointed on a post carrying the scale of pay of Rs.950-1500. He was, however, a casual labour. Absorption in Group 'C'

post as per para 2007(2) of the IREM Vol.II is dependent on several conditions and qualifications prescribed in the said paragraph. In another order in the case of Shri Rafique Vs. Union of India and others, OA No.936/97 decided on 22.10.1997 relying on Motilal's case (supra) this Tribunal has held as follows -

"5. I have considered the matter carefully. The matter in the present OA is squarely covered by the ratio of Union of India and anr Vs. Moti Lal and others (supra). In that also the applicants had been directly appointed as Casual Mate in Class-III posts, had acquired temporary status as Mates and their names also shown in the seniority list as Mates. The following main issues were framed by the Supreme court in the aforesaid Moti Lal's case.

- (a) Is it permissible under Rules to appoint a person directly as Mate in Class-III and if not, then whether the factual continuance of the person as a Mate for a considerable period entitles him to be regularized as a Mate?
- (b) Conferment of temporary status as a Mate whether ipso facto entitles a person to be regularized as a mate and not as a Gangman?

6. So far as the first question is concerned the Supreme Court has held that "on examining the relevant provisions of the Rules as well as the Administrative instructions issued by the Railway authorities we are of the considered opinion that it is not permissible to appoint a person directly as a Mate and it is only a promotional post from Class-IV post of Gangman and Keyman. These Gangman and Keyman can be promoted to the post of Mate on Class-III subject to the suitability and efficiency being tested through trade test. It is no doubt true that these respondents under certain circumstances had been appointed directly as casual Mates and they continued as such and further by virtue of their continuance they acquired temporary status but that by itself does not entitle them to be regularized as Mates since that would be contrary to the Rules in force. In my considered opinion the respondents did not acquire a right for regularization as

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Mates from the mere fact of their continuance as casual Mate for a considerable period.

7. The above ratio was also followed by this Tribunal in the other two cases cited by the learned counsel for the respondents. In the light of the above decision of the Supreme Court in Moti Lal's case (supra) and the decisions of the Co-ordinate Benches of this Tribunal, I agree with the learned counsel for the respondents that the present case has no merit and that the applicant cannot claim regularization in Class-III post of Mate."

7. I have carefully considered the submissions made by rival counsel. The fact remains that the applicant elected to be screened and absorbed as a Group "D". The applicant no doubt had been engaged as a Mason but that was as a casual labour. He had no right to a post, in spite of the number of days he worked as a Mason. Subsequent promotion was only adhoc. In fact a casual labour cannot claim to any promotional post. He must be recruited to an existing post. The respondents found that there are existing vacancies and posts as Khalasis. They invited him to be screened for the same. He agreed. He was screened and empanelled. Therefore, he cannot now complain that he should have been regularized as a Mason. Moti Lal's case (supra) is an authority for the proposition that there cannot be a direct casual labour recruited to Class-III against a permanent post. It is another matter if under the rules the respondents consider the applicant's case in accordance with his seniority, eligibility, qualification and trade test him for his suitability. The applicant can still hope to be considered for this and the respondents shall consider the

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applicant's case for any vacancy in the Mason's cadre to a substantive post if it exists in accordance with the rules.

8. In the result, the OA is dismissed. No costs.


(N. Sahu) 11/5
Member (Admnv) 29

RKV.