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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1090/1997

New Delhi, this 29th day of January, 1999

Hon'ble Shri S.P. Biswas, Member(A)

Shri Satya Prakash
s/o Shri Jivan Das
Skilled Khallasi
under DCE(Survey)
Northern Railway
Tilak Bridge, New Delhi ... Applicant

(By Advocate Shri B.S. Mainee)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi
2. Chief Administrative Officer (Construction)
Northern Railway
Kashmiri Gate, New Delhi
3. Dy. Chief Engineer (Survey)
Northern Railway
Tilak Bridge, New Delhi ... Respondents

(By Advocate Shri B.S. Jain)

ORDER

1. The applicant, initially engaged as Tracer (Group C) on 19.11.83 and continuously working in that capacity, is seeking issuance of directions to the respondents to screen and regularise his services in the skilled category from 15.11.86 when he was offered temporary status.

2. Shri B.S. Mainee, learned counsel for the applicant submitted that the claim is justified since the applicant possesses all the qualifications of Draftsman (Civil), passed the necessary trade test successfully on 22.2.88 and was placed in regular scale of Group-C in

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Rs.950-1500 right from the beginning and his appointment having been duly approved by the Chief Engineer (Construction) on 20.11.85. He drew the attention of the Tribunal to Annexure A-3 wherein it has been certified by the respondents that the applicant has qualified the requisite trade test for the post of skilled category, has been offered temporary status in the same category (Rs.950-1500) with effect from 15.11.86 and the benefit of pay and allowances of the said category has also been made admissible from 23.2.88 when he passed the trade test. His pay has been fixed at Rs.950 and Rs.970 from 15.11.86 and 23.2.88 respectively. Learned counsel placed reliance on the judgements of the apex court in the case of Ram Kumar & Ors. Vs. UOI & Ors., AISLJ Vol.IV, 1996(1) p.116 decided on 6.9.90 as well as orders in OAs 347/96 and group of OAs (545/91, 1175/91 and 1251/91) decided by Principal Bench and Chandigarh Bench of this Tribunal on 18.12.96 and 5.12.97 respectively.

2. Shri B.S. Jain, learned counsel for the respondents opposed the claim on the strength of the decision of the apex court in the case of UOI Vs. Moti Lal 1996(1) ATJ 625 as well as decisions of this Tribunal in OAs No.2215/95, 19/94, 2196/97 and OA 2148/97 decided on 21.11.96, 4.7.97, 29.5.98 and 12.8.98 respectively. In rejecting applicant's claim, respondents have also relied on the instructions in paras 2005 and 2006 of IREM Vol.II 1990 as well as instructions of the General Manager issued on 5.5.98.

3. The fate of the case, therefore, hinges on the determination of legality or otherwise of the applicant's claim for regularisation directly in group 'C' category as an Artisan casual labour. It is well settled in law that regularisation can be made pursuant to a Scheme or an order in that behalf, against a regular available vacancy and that too according to prescribed rules. If any authority is required for this proposition, it is available in **Mukesh Bhai Chottabhai Patel Vs. Jt. Agricultural & Marketing Advisor, Govt. of India & Ors.** AIR 1995 SC 413. Merely working on a post, though of a higher category, for a number of years on ad-hoc basis will not vest a person with a right to get regularised on a post which is meant to be filled up by regular recruitment under statutory rules. These regulations are, however, applicable in non-artisan categories wherein screening Group 'D' is an essential pre-condition before being regularised in Group 'C'. The rule position in respect of casual labour artisan category, in particular, is somewhat different under the respondent-Railways.

4. I find that the decision of the apex court in Moti Lal's case did not take into consideration the judgement of the Hon'ble Supreme Court in the case of **Ram Kumar (supra)** That was the case wherein the apex court while dealing with a similar situation pertaining to construction organisation of the Railway itself, observed as under:

"2. Mr. Goburdhan seems to be interested in 12 persons who have not been regularised. They seem to be skilled workers at present working in Class III. Since regularisation on the basis of our orders have to be only in Class IV posts, Mr. Sibal, on instructions, states that arrangement in respect of them is that though they are regularised in Class IV posts, they would carry the present pay they are drawing in Class III posts by protection until they are regularised in Class III posts following the Rules and instructions".

5. Again, Moti Lal's case was decided without taking into consideration the provisions in para 2007(3) of IREM Vol. II 1990 as reiterated by the Northern Railway in its order dated 14.8.96. Further, even in the case of Moti Lal the apex court did not allow the respondents to revert the MATES to Group D but allowed them to continue in Group C till they were replaced by employees of Group C selected on regular basis or get regularised in Group 'C' in their own turn while continuing to work as MATES.

6. Similarly, the various orders of the Tribunal relied upon by the respondents in denying the reliefs to similarly placed employees did not take into consideration the orders of this Tribunal in OA 347/96 decided on 8.3.96, group of OAs (No.545/91, 1175/91 and 1251/91) decided by the Chandigarh Bench on 5.12.97 as well as CP in OA No.1648/98 decided on 30.5.97.

7. It is extremely important to emphasise that there are separate and distinct provisions/instructions to regularise non-artisans (like MATES

etc.) casual labours, directly recruited in Group 'C' vis-a-vis the artisan casual labours (like draftsman, blacksmith and mason etc.) directly appointed in Group 'C'. Again, existing provisions do differ for the same category of officials (i.e. casual labours appointed straightaway on Group 'C') depending on the nature of organisation they get appointed as such, i.e. in work charged establishment like Construction Wing/Survey Unit or in the open line. It is not in dispute that the applicant's direct engagement as an artisan in Group 'C' in the Construction Wing of Northern Railway is as per instructions of the Railway Board's Circular No.E(NG)11/84/CL/58 dated 20.12.85. In this case the applicant's appointment was duly approved by no less than the Chief Engineer (Construction) on 20.11.85. Even if it required GM's personal approval, as per subsequent instructions, nothing prohibited the respondents to get an ex-post-facto approval, as has been done in several cases in the past. Instructions under IREM Vol.II that would govern applicant's case are reproduced below:

"Para 2007(2) - When casual labour are engaged in skilled categories, the relevant scale for the purpose of determining their wages (as per orders regulating wages of casual labour) will be that applicable to skilled artisans. On attaining temporary status they shall be paid in that scale. No casual labour in skilled category can be engaged without the approval of an authority lower than a Divisional Engineer.

"Para 2007(3) - Casual labour engaged in work charged establishment of certain Departments who get promoted to semi-skilled, 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 labour who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test". (Emphasis is ours)

These instructions have since been reiterated by Respondent No.1 vide its circular, as at Annexure A-5, dated 14.8.96.

8. Instructions/provisions do exist for direct regularisation of casual labour in Group 'C', even though initially engaged in the same category, particularly for employees so engaged as artisans in Construction/Survey organisation. I also find that the Railway Board has issued comprehensive instructions on 9.4.97 touching upon the issues raised in this OA. R-1 and R-2 had also examined such problems on 28.4.97 and come to the conclusion that all Group 'C' casual labour working in Construction Organisation may not be spared forcibly, who are not willing to be regularised in Group 'D'. Staff who have been spared forcibly against their willingness should be taken back on the same post, grade and place where they were earlier working, if they report back. Follow-up actions are also required to be taken to get such staff regularised in Group 'C' utilising the provision of P.S.11229 cadre of Construction Reserve and also the possibilities of direct

recruitment quota being utilised for this purpose. I find that none of the instructions in the circular dated 14.8.96, 9.4.97 and 28.4.97 were brought to the notice of this Tribunal, when OAs 2196/97, 2148/97 and 19/94 (case of Ram Naresh in Allahabad Bench) were decided by this Tribunal.

9. In the instant case, applicant has not agreed to be regularised in Group 'D'. Respondents also have not come up with any details as to whether the applicant's case was ever considered under the provisions laid down for department quota to the extent of 25% as in Rule 2007 (3) of IREM Vol.II. We also do not have the details regarding availability of regularly selected Tracers/Draftsmen, senior to the applicant, who would replace the latter. The reliance of the respondents on provisions under paras 2005 and 2006 of IREM Vol.II 1990 and also on the GM's circular dated 5.5.98 are misplaced. This is because the aforesaid two provisions of the IREM deal with matters other than casual labour in "skilled" category. GM's circular deals with issues pertaining to maintenance of Live Casual Labour Register under the management of Northern Railway system.

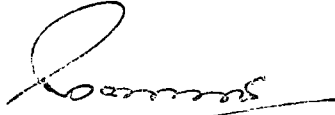
10. Under the aforesaid circumstances, I am of the firm view that the ratio arrived at by the apex court in the Ram Kumar's (supra) and by this Tribunal in the case of Daljit Kumar (supra) will be applicable on all fours to the present case.

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Respondents' action in absorbing the applicant against Group D is unjust and illegal in the light of the orders of the Railway Board dated 9.4.97 and the Zonal Railway's decision as in minutes of the joint meeting held on 28.4.97.

11. I direct the respondents to consider absorbing the applicant against Group-C post if such a vacancy is available within 25% quota in Group-C. In case no such vacancy is available, applicant shall be adjusted against Group-D post for the time being, protecting his pay and allowances for Group-C category post, untill vacancy in Group-C within 25% quota arises and shall be regularised in Group-C in turn on the available vacancy. The applicant shall also be eligible for consideration of regularisation in Group-C utilising the provisions under PS 11229 as stipulated in para 1 of minutes of the meeting held on 28.4.97 by the Chief Engineer (Construction) and Deputy Chief Personnel Officer (Construction) and others.

12. The OA is allowed and the applicant shall continue to work in the present category till regularly selected person, senior to him, is available to take over from him. There is no order as to costs.


(S.P. Biswas)
Membe(A)

/gtv/