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Central Administrative Tribunal
Principal Bench

O.A.No.936/97

Hon'ble Shri R.K.Ahooja, Member(A)

New Delhi, this the 22nd day of October, 1997

Shri Rafique
s/o Shri Zahoor
Quarter No.22-B, B.G.Railway Colony
Northern Railway
Hissar (Haryana).

... Applicant

(By Shri P.M.Ahlawat, Advocate)

Vs.

Union of India through

1. The General Manager
Northern Railway
Baroda House
New Delhi - 110 001.

2. The Chief Administrative Officer (Const.)
Northern Railway
Kashmiri Gate
Delhi - 110 006.

3. The Divisional Railway Manager
Northern Railway
Bikaner (Rajasthan).

... Respondents

(By Shri B.S.Jain, Advocate)

O R D E R

The applicant's case is that he was initially engaged as Temporary Mate on daily wage basis w.e.f. 11.8.1976 in the Construction Organisation and worked there till 14.3.1980. Thereafter, he worked under another construction division w.e.f. 15.3.1980 till 14.1.1984. He was also similarly engaged as Mate on daily wages from 7.10.1993 in the Construction Organisation of Chief Administrative Officer(C), Kashmiri Gate, Delhi. The applicant submits that he should have been regularised as Mate Grade as per extant rules, but he was only given the Temporary Status as Mate Grade Rs.225-308 w.e.f. 1.1.1982. He has also alleged that though the General Manager (P) has directed the CAO(C) and DRM repeatedly to regularise the services of such Temporary staff but the same has not been done in his case. He has now come before this Tribunal seeking a direction to the

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respondents to grant him Temporary Status and regularise his services as Mate Grade Rs.225-308/Rs.260-400/Rs.950-1500 from the date of completion of 180 days continuous service, with all consequential benefits, keeping in view his temporary service as Mate in two spells w.e.f. 11.8.1976 to 6.7.1987 and 7.10.1993 onwards.

2. The respondents submit that the applicant was screened and regularised as Gangman on 7.1.1987 and was given lien under AEN/Suratgarh in Bikaner Division. The applicant had also worked as Gangman from 7.1.1987 to 7.10.1993. They say that the Construction Organisation is a temporary organisation and does not have any permanent posts. Further they submit that as per the decision of the Supreme Court in Civil Appeal No.3619-24/96, Union of India & Anr. Vs. Moti Lal & Others, the applicants are to be regularised in the Group 'D' before they can be considered for regularisation in Group 'C'. The respondents therefore say that the applicant has no ground or reason to be aggrieved and the OA is liable to be dismissed being without any merit and devoid of legal force.

3. I have heard the learned counsel on both sides. The learned counsel for the applicant submits that as per Para 2007(2) of Indian Railway Establishment Manual, Volume-II, casual labourers engaged in semi-skilled or skilled categories are to be given temporary status and pay in that scale. He relies on the judgment of Hon'ble Supreme Court in State of Haryana Vs. Piara Singh, 1992(3) SLJ 34. He also argued that in the said judgment it has been stated that if for any reason an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation, provided he is eligible and qualified according to rules. In this case the applicant has been working as Mate for nearly 12 years and is

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therefore entitled to be regularised as a Mate. The learned counsel also points out that as per the orders of the Railway Board, persons working in Construction Division are to be considered for regularisation against the vacancies in the Open Line.

4. The learned counsel for the respondents, on the other hand, relied on the Judgment of this Tribunal in the case of Union of India & Anr. Vs. Moti Lal & Others (Supra) and the subsequent orders of this Tribunal in OA No.19/94 (Ram Naresh Vs. Union of India & Others), Allahabad Bench of this Tribunal and O.A.No.2215/95 (Shri L.P.Mishra Vs. Union of India & Others), Principal Bench, CAT.

5. I have considered the matter carefully. The present OA is squarely covered by the ratio of Union of India & Anr. Vs. Moti Lal & 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 regularised as a Mate?

b) Conferment of temporary status as a Mate whether ipso facto entitles a person to be regularised 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

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Class-III subject to their 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 regularised as Mates since that would be contrary to the Rules in force. In ^{my} ~~our~~ considered opinion the respondents did not acquire a right for regularisation as 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 decisions 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 regularisation in Class-III post of Mate.

8. The applicant has also sought grant of temporary status as a Mate Grade Rs.260-400(RS)/Rs.950-1500(RPS). I find that on his own admission, he has been granted temporary status as far back as in 1982. If he was not satisfied with the action of the respondents then he should have agitated the matter at the appropriate time. In view of the fact that the present application is filed after a delay of nearly 15 years, this relief can also not be considered on the ground of laches and limitation.

The OA stands dismissed. No costs.

/rao/

R. K. Ahooja
(R. K. AHOOJA)
MEMBER (A)