

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. Nos. 998 & 999 of 1997

New Delhi, this the 30th day of June, 1998

Hon'ble Mr. T N Bhat, Member (J)
Hon'ble Mr. S P Biswas, Member (A)

OA 998 of 1997

1. Sh. Parma Nand, S/O Sh. Govind Ram, P.W.I. (C), Staff Tents, Near Railway Station, Hissar (Haryana).
2. Sh. Prem Singh, S/O Sh. Munishi Ram, P.W.I. (C), Staff Tents, Near Railway Station, Hissar (Haryana).

APPLICANTS.

(None)

Versus

Union of India, through

1. The General Manager, Northern Railway, Baroda House, New Delhi - 110 001.
2. The Chief Administrative Officer (C), Northern Railway, Kashmiri Gate, Delhi - 110 006.
3. The Divisional Railway Manager, Northern Railway, State Entry Road, New Delhi - 110 001.

--RESPONDENTS.

(Sh. B S Jain, Advocate)

OA 999 of 1997

1. Sh. Asha S/O Sh. Gheesa, Q. No. 23-D, B.G. Railway Colony, Hissar (Haryana).
2. Sh. Pratap Singh, S/O Sh. Man Singh, Qr. No. 23-C, B.G. Railway Colony, Hissar (Haryana).

--APPLICANTS.

(Sh. P M Ahlawat, Advocate)

Versus

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

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

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

--RESPONDENTS.

(Sh. B S Jain, Advocate)

O R D E R

By Sh. S P Biswas, Member (A) -

The legal issues raised and reliefs claimed for, in these two OAs, are identical and hence they are being disposed of by a common order. The factual matrix, giving rise to filing of these OAs, in brief, is as under:-

OA 998 of 1997

The applicant No. 1, Sh. Parma Nand, was initially appointed as casual labour under P.W.I. (C) on 15.11.1971. He was given promotion as Store Issuer on adhoc basis in the grade of Rs. 950-1500 from March, 1976. He was subsequently appointed as Mate w.e.f. 3.10.80 under Asstt. Engineer Special, Panipat.

The applicant No. 2, Prem Singh, was also appointed as casual labour w.e.f. 16.5.78. He was given temporary status as Khalasi w.e.f. 1.1.1983 and was promoted as 'Mate' apparently on regular basis by Annexure A-2 order dated 2.11.87 in the grade of 950-1500 after successful trade test.

As per respondents both of them are working as Mates on adhoc basis on work-charged posts in construction organisation from October 1980 and November 1987, respectfully.

OA 999 of 1997

The applicant No. 1, Sh. Asha, was initially appointed as Gangman (Group 'D') under PWI/ Bikaner w.e.f. 24.7.1966 and transferred as Head Trolley Man in the Construction Wing, on 14.2.1976. He was promoted as Mate on adhoc basis on 16.2.1987 in the grade of Rs. 950-1500 and continues to work in the same capacity till now.

The applicant No. 2, Sh. Pratap Singh, was appointed as casual labourer on 25.9.75 under PWI (C) Hanuman Garh/ Northern Railway. He was regularised as Gangman w.e.f. 8.8.79 and promoted as Mate on adhoc basis in the Construction Organization w.e.f. 8.5.87 in the grade of 950-1500.

Both the applicants have 10 years' experience of working as Mates and stand transferred from Hissar to Hanuman Garh besides being reverted to substantive grade as Gangman, vide orders dated 11.10.96.

2. All the four applicants have sought relief in terms of issuance of directions to the respondents to regularise them as Mates in the scale of Rs. 950-1500,

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restrain the respondents from reverting them to lower posts as Gangman/ Keyman etc. and allow them to continue at the stations they are continuing as present.

3. As is evident, subject matter relates to the claim of the applicants for regularisation in Group 'C' category solely on the consideration that they have been working for a long period in higher categories though some of them have been trade-tested for the said higher posts but not appointed on regular basis.

4. The learned counsel for the applicant, in support of his contention for regularisation, places reliance on the decision of the Hon'ble Supreme Court in the case of State of Haryana Vs. Surinder Kumar & Others (JT 1997 (4) SC 82) wherein it has been held that cases of regularisation of persons, taken on daily wage basis, should be considered in terms of guidelines issue by the Apex Court in the case of State of Haryana Vs. Piara Singh (JT 1992 (5) SC 1750). In Piara Singh's case, the Apex Court laid down:

" If for any reason an adhoc 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."

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5. The learned counsel for applicants also submits that employees serving for a reasonable long period and having requisite qualifications for the job, have to be regularised in terms of the law laid down by the Hon'ble Supreme Court in the case of Jacob M. Puthuparambil & Others Vs. Karala Water Authority & Others (1991) 15 ATC 697 SC.

6. To add strength to his contention in favour of the regularisation, the counsel drew our attention to the instructions of the Railway Board in their letter No. E (NG) II/84/CI/41, dated 11.9.1986 wherein it has been mentioned that:

" As directed by the Supreme Court for implementation of the above scheme each Zonal Railway should prepare a list of project Casual Labour with reference to each Division of each Railway on the basis of length of service. The men with longest service shall have priority over those who have joined lateron. In other words, the principle of last last come first go (or reverse to it, first come last go) as enunciated in Section 25 - G of the Industrial Disputes Act, 1947, should be followed."

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(21) It has been also argued that the applicants, particularly those in two OA No. 999/97 are not only being transferred but only reverted to a lower grade as Gangman keeping the juniors under PWI (C) at Hissar in higher grades.

7. The respondents have resisted the claim and would submit that the Construction Organisation is a temporary one and does not have any permanent posts against which the applicants could be absorbed on regular basis. The staff working in this Organisation have their lien in the respective divisions i.e. Delhi Division in the instant case and hence, they could be considered for promotion to higher grades as per rules only in the regular organisation in the open line. Referring to the two applicants, in OA 998/97, the respondents submit that the applicant No. 1 therein has already been regularised in group 'D' and applicant No. 2 has since been screened for further regularisation in Group 'C' post. They will be considered for promotion in the regular channel after they report physically to D.R.M., Delhi/ Northern Railway. It has also been submitted that the Construction Organisation, in the Railways, being temporary one, do not have any inter-se-seniority and, therefore, the question of retaining juniors in Construction Organisation vis-a-vis others allegedly seniors does not arise. Referring to Railway Boards' order dated 11.9.96, the respondents would say that instructions incorporated therein are not relevant to the facts and circumstances of these cases. Those orders of

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the Railway Board were issued pursuant to the judgement of the Apex Court in the case of Inderpal Yadav (Inderpal Yadav & Others Vs. UOI & Others, 1985 (2) SCC 648).

8. We have heard rival contentions of the counsel for both parties and have perused the records. The three basic issues that fall for determination in the facts and circumstances of the cases are as under:-

- i) whether mere continuance of a person as a Mate for a considerable period entitles him to be regularised as a Mate?
- ii) Conferment of temporary status as a Mate whether ipso facto entitles a person to be regularised?
- iii) Whether the officials working in the Construction Wing of the Railways in Groups 'D' & 'C' categories could be transferred to a Construction unit or open line located at a different station/ place."

9. We shall now proceed to bring out the position of law on the subject.

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23 According to Rule 109 of Indian Railway Manual, Class IV Railway servants can be promoted to Class III posts on a regular basis only after holding written and practical test, as may be considered necessary. Rule 110 of the Railway Establishment Manual provides that for promotion to higher posts in Class III the candidates should qualify in the prescribed tradetest. Therefore, we are in complete agreement with the decision of the Full Bench in Jetha Nand's case [1989 (7) SRL 161 (CAT: New Delhi)] that a pass in the selection test is mandatory before a Class IV employee can be promoted to a Class III post.

10. The matter regarding regularisation of such Mates in Group 'C' was taken up before the Hon'ble Supreme Court in an appeal and the judgement in the case of UOI & Anr. Vs. Moti Lal & Ors. 1996 (33) ATC 304 is very crucial for our purpose. On the first question, their Lordships examined the relevant provisions of the rules as well as the administrative instructions issued by the Railways and came to the conclusion that it is not permissible to appoint a person directly as a Mate since it is a promotional post from Class IV post of Gangman/Keyman. It has been held that these Gangman and Keyman can be promoted to the post of Mate in Class III subject to their suitability and efficiency being tested through trade test. It was also laid down that they have to be regularised first in Group 'D' category even though they continued to work in category 'C' on adhoc basis over a long period.

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11. As far as the second question, the Hon'ble Supreme Court recorded its considered opinion that conferment of a temporary status as a Mate ipso facto does not entitle a person to be regularised in that category. In para 13, it was observed as follows:-

"Even though in principle we are in agreement with the submission of Mr. Goswami, Senior learned counsel appearing for Railway administration but having taken into account the fact that the respondents were directly appointed as Mates though on casual basis and having continued as such mates for more than 22 to 25 years it will be wholly inequitable to require them to be regularised against the post of gangman in Class IV. In the premises, as aforesaid, we decline to interfere with the ultimate conclusion of the Tribunal on equitable ground, in the facts and circumstances of the present case. The direction will not be treated as a precedent."

In the above mentioned case of Moti Lal, the Apex Court provided relief on grounds of equity. However, as held by the Full Bench of the Tribunal in the case of D I.

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Somayajulu & Ors. Vs. Telecom Commission & Ors. 1997

(1) ATJ 1; the jurisdiction in equity does not inhere in the Tribunal.

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12. It is well settled in law that regularisation can be made pursuant to a scheme or order in that behalf as pointed out in M B C Patel Vs. Jt. Agri. Member AIR 1995 SC 413. The respondents are conducting screening test of Casual labourers for those who have completed minimum number of days of work on the basis of cut off date as per the scheme/ order dated 10.7.92.

13. It is not in dispute that the applicants were initially engaged as casual labourers. They were promoted on adhoc basis as Mates (except the applicant No. 2 in OA 998/97) and some of them obtained temporary status thereafter and continued to work in the capacity of Mates for 10 to 16 years. There is no formal order of promotion for them in the category of Mates nor all of them have fulfilled the stipulated conditions meant for selection to the promotional posts. That part, applicants have not established that they were in the zone of consideration for promotion in higher grades. Merely working on a post for a number of years on adhoc basis does not vest a person with the right to get regularisation on that post which is meant to be filled by regular recruitment rules/a statutory procedures.

Our views in this respect get support from the order of this Tribunal in the case of Harvinder Kaur & Ors. Vs. UOI 1991 (1) SLJ CAT 967. In the light of the law laid down as aforesaid, the action of the respondents

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in regularising the applicants in the category of Group 'D' staff cannot be faulted. Though they have been working in the higher grade as Mates, rules only permit casual labourers to be regularised in the feeder grades only, particularly when they have worked in the same grade as Gangman/ Keyman following initial appointment. We find that the problems/ principles involved in these two OAs have been examined by this Principal Bench recently in OA Nos. 2720/90 and 238/97 decided on 11.12.96 and 10.2.98, respectively. The Allahabad Bench of this Tribunal, in the case of Ram Naresh & Ors. Vs. UOI & Others 1998 (1) SLJ CAT 250 have also adjudicated similar issues. In all these cases identical reliefs claimed herein were denied applying the law in Moti Lal's case (Supra). In the background of the legal provisions aforesaid, the applicants' claim for the regularisation cannot be sustained in the eyes of law.

14. As regards a transfer of a Central Govt. employee having transfer liability, the law is well settled now. In a long line of decisions, namely, Union of India & Others Vs. S I. Abbas AIR 1993 SC 2444, N K Singh Vs. Union of India & Others (1994) 6 SCC 98, C.G.M (Telecom) N.E. Telecom Circle and Another Vs. R C Bhattacharjee & Others (1995) 2 SCC 532 and State of M.P. Vs. S S Kaurav & Others (1995) 2 JT SC 498, it has been decided that a transfer order issued by competent authority in public interest cannot be interfered with unless the said order is in violation of statutory rule, or on grounds of mala fides. Under these circumstances,

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the claim of the applicants that they cannot be transferred to another Division - Open line or Construction Wing - cannot be supported legally.

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15. Before we part with the case, we may mention that the applicants are apparently engaged in carrying out the most arduous jobs of maintenance of railway tracks and working in PQRS machines being utilised to ensure safety of the railway tracks. While working in the Construction Wing they have to move from one place to another saddled with the responsibility of strengthening the track wherever required. They are essentially field workers and have to work some times round the clock even on a rainy day. Availability of such officials even at the level of Mates, willing to be associated with safety working of the railways, particularly for high speed tracks, is not easy and immediate, though not difficult. Under these circumstances, we are of the firm view that the respondents shall do well not to revert the applicants to the lower posts till they are replaced by the Mates appointed on regular basis. However, so far as their claim for regularisation, in category 'C' is concerned, this will be considered strictly in terms of seniority and according to rules.

16. During the course of arguments in these two cases, counsel for applicants showed us an order dated 12.5.97 having been passed by the respondents touching up the issues in para 8 aforementioned. It appears that the respondents' railways have decided to regularise Group 'C' officials against "40% Construction Reserved Post" as

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envisaged in PS No. 11229 and also against the Direct Recruitment Quota. As regards Group 'D' staff, it appears that the respondents intend to take similar decision shortly. Till such time the respondents have ~~been~~ decided to continue the existing understanding i.e. "no unwilling staff will be forced to go". We want to make it clear that our orders will not preclude the applicants from being given the benefits of any new policy decision or statutory instructions issued by the respondents' railways covering the circumstances indicated in the aforesaid order on the basis of proofs that the applicants are so circumstanced.

The two Original Applications are partly allowed as aforesaid with no order as to costs.

(S P BISWAS)
MEMBER (A)

(T N BHAT)
MEMBER (J)

/sunil/

Attested

KLSKamp

CO/c III

30/6/98