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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No.329/89.
T.A. No.

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DATE OF DECISION 31.7.91

Shri. Vijay Kumar. Applicant (s)

Shri Umesh Mishra Advocate for the Applicant (s)

Versus

Union of India Respondent (s)

Shri O.P. Kshatriya Advocat for the Respondent (s)

CORAM :

The Hon'ble Mr. ~~U.C.~~ U.C. Srivastav, Vice Chairman

The Hon'ble Mr. I.P. Gupta, Member

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. To be circulated to all Benches of the Tribunal ?

JUDGEMENT

(of the Bench delivered by Hon'ble Vice Chairman ~~Justice~~
Shri U.C. Srivastav)

The applicant is aggrieved as he is not being given the status of regular employee and the benefits of regular employee inspite of his demand letter dated 3.6.88. The applicant has approached this Tribunal to say that the respondents be directed to regularise him in the maintenance section and give him the benefits of promotion and other benefits which have been given to his juniors and to the employees employed subsequent to him.

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2. The applicant joined the service of the Grade-B Khalasi on 16.4.74. After ^{some} ~~16~~ months, he was appointed as Carpenter and since then the applicant states that he has been continuously working as Carpenter and was given the pay scale of Rs.260-400. Though he worked as carpenter wef. 24.10.75, he has been deprived of his promotion. In view of the Railway Board Circular, he becomes entitled to temporary status and authorised pay scale. All of his juniors have been considered for promotion but he has been ignored for being promoted as well as for the benefit of L.I.C. which is being given to other employees. Even though he was found fit he was not promoted in his line in which he is working since now. He has also given the names of the employees who have been given promotion and benefit of L.I.C. whereas he has been discriminated though he joined the services prior to joining service by them.

3. The respondents have resisted the claim of the applicants without denying that he was working as Carpenter continuously since 1975 and have stated that he was screened for the post of Gangman in the pay scale of Rs.200-250 in 1982 and necessary posting order were also issued on 8.9.82 against this regular vacancy. But he did not join that post and continued to work

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as CPC Carpenter and he cannot be regularised unless he joins as Gangman. However he has been provided all the benefits which are required to be paid to the employee of CPC scale. The CPC employees of Railways are not provided railway accommodation but are paid House Rent Allowance (HRA). The railway accommodation and LIC facilities are provided only to regular and permanent employees. There is no discrimination with the applicant in respect of employment. But he himself did not join as Gangman and has waived his right for absorption.

4. On behalf of the applicant, the learned counsel contended that the applicant has nowhere served as Gangman even for a single day and he cannot be asked to become a Gangman and cannot be regularised as a Gangman. As a matter of fact the scale of Gangman and that of a carpenter is not one and the same. The applicant was screened and after screening he was regularised on CPC scale and not that of a Gangman, in the place where he has no experience and on which he has not worked at all. If he has not accepted the same, he has not done any wrong. The order which has been filed by the respondents regarding posting of a temporary Gangman itself indicated that the grade of the said post is 200-250 where the applicant admittedly was in the higher pay scale since the year 1975. The action of

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the respondents is thus not warranted and not supported by any of the instruction or direction of the Railway Board.

5. On behalf of the applicant, a reference has been made to the Supreme Court in Ram Kumar & Ors. Vs. U.O.I. & Ors. W.P. No.15863-15506 of 1984 decided on 2.12.87 in which the question of status of Casual Labourer was considered and the benefits admissible to them was considered in the light of the facts that in 360 days they become a temporary employee. The Supreme Court has taken into consideration the fact that some of them have been empanelled and made an observation regarding litigation that the Railway administration should take prompt steps to screen such of the petitioners who have not yet been tested for the purpose of regularising their service and a direction be given to the respondents that the claim of leave of the petitioner should be considered promptly and appropriate orders for regularisation may be considered.

6. In the instant case the applicant has been working ^{for} 15 years as Carpenter and now the question of his regularisation or absorption as Gangman should not have arisen.

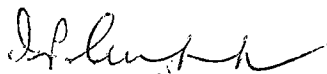
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7. Accordingly, the respondents are directed to consider the case of applicant for regularisation in the light of the fact that the persons who were taken in service in the same scale of pay after him have been regularised.

8. Let the decision in this behalf be in the light of the direction given to the Railway Board at the instance of Supreme Court and that applicant may be regularised within a period of 3 months from the date of communication of this order.

9. However, there shall be no order as to costs.


(I.P. GUPTA)
MEMBER


(U.C. SRIVASTAVA)
VICE CHAIRMAN