

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. O.A. 1407/1987. DATE OF DECISION: 3-12-1991.

Aquil Applicant.

V/s.

Union of India Respondent.

CORAM: Hon'ble Mr. B. S. Sekhon, Vice Chairman (J).
Hon'ble Mr. P. C. Jain, Member (A).

Malik B.D. Thareja, counsel for the applicant.
Mrs. Shashi Kiran, counsel for the respondent.

P.C. JAIN, MEMBER (A): JUDGMENT

The applicant, who was posted as Gangman under P. N. L. Hapur, Northern Railway, had filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs: -

- "i) This Hon'ble court to pass a decree declaring that the act of Respondent in not utilising the petitioner on 23.7.1983 as Aligner was wrong and that the petitioner be forthwith appointed as Aligner in any of the two Thermit Welding ganges under Assistant Engineer Hapur in the grade 260-400 RS.
- ii) Difference of wages paid to the petitioner at casual Labour rate and the revised scale rate paid to permanent Gangman during the period 18.4.78 to 31.7.1980.
- iii) Difference of wages paid to the petitioner at Casual Labour rates as aligner (Artisan) and the revised grade 260-400 paid to the Permanent Aligner between the period from 1.8.80 to 15.7.1983.
- iv) Difference of wages paid to the petitioner as Gangman and the wages of the Aligner in the grade 260-400 revised from 23.7.83 to 22.8.83.
- v) The cost of this petition be paid by the respondent to the petitioner.
- vi) Any other relief, or reliefs, this Hon'ble court deems fit in the above circumstances."

2. At the time of hearing on admission and interim relief, on 12-10-1987, a Bench of this Tribunal, on the basis of the agreement of the learned counsel for the applicant, admitted the O.A. only with regard to reliefs prayed for in sub-paras (i), (v) and (vi) of para 9 of the O.A. (already reproduced above) and the O.A. was not admitted in respect of the reliefs in sub-paras (ii), (iii) and (iv) of para 9.

3. The respondents have opposed the O.A. by filing a return and the applicant has filed a rejoinder thereto.

4. In regard to the first relief, the case of the applicant is that while he was working as Casual Labour Gangman pursuant to his appointment as Casual Labour on 18.4.78 under P.W.I Hapur, he was ordered by the respondents to work as Aligner in the Thermit Welding Gang under Shri S.P. Paul, P.W.I., Hapur with effect from 1.8.80. He was also sent for the training course under the Assistant Engineer Thermit Portion Plant Charbagh, Lucknow as Aligner, and he passed the test after training and the respondents issued a Competency Certificate dated 25.7.81 (P-1). The date mentioned by the applicant in his O.A. as 25.7.87 is obviously incorrect. He is said to have continued to work on the post of Aligner upto 15.7.1983 and was also sent for medical test allegedly for permanent absorption. It is clear from the material on record that the applicant was sent for medical examination for B-1 category which is meant for Gangman and not for A-3 category which is for Artisan staff. He passed the medical test in B-1 category on 20.7.83, whereupon he was put to work as Gangman with effect from 23.7.83, but another Casual Labour named Suresh who was junior to the applicant was appointed to work as Aligner without any sufficient cause and without any notice. He made oral submissions and written representations but without success. Similarly, another Casual Labour Khalasi from Loco side, namely,

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Jatinder Singh son of Shri Om Parkash was also appointed from the same date as Moulder which is also an Artisan post of the same grade as Aligner. The applicant contends that Jatinder Singh was junior to him as a Casual Labour, but concedes that he was sent for medical test in category A-3 and not for B-1, and this is said to have caused a clear discrimination in violation of Articles 14 and 16 of the Constitution.

5. The case of the respondents, in brief, is that the applicant had worked as Aligner for 865 days only and for giving him the authorised scale of Rs.260-400 of Artisan with effect from 1.11.1982, he should have completed 1500 days as Artisan upto 30.10.82, vide circular dated 26.11.82. As he had not completed the required number of days as Aligner, he was not entitled to the scale of pay for the post of Artisan. It is also stated that the applicant was temporarily utilised as Aligner against a temporary sanction given in 1980 for 90 days pending passing the other formalities. During this period, the applicant was sent for training from 20.7.1981 to 25.7.1981 as a training programme for thermit welding was received from the Shop Superintendent. The certificate of training was no guarantee to allow him to work as Aligner in future. He was sent for medical test for absorption as permanent Gangman and he was allowed the grade of Gangman which was accepted by him. On his absorption as such, Shri Suresh said to be senior and interested Casual Gangman had been adjusted as temporary Aligner against the same temporary sanction. According to the respondents, they have not received any submissions or representations from the applicant, nor any application from Branch Secretary, N.R.M.U. or from any other source. It is also stated that Shri Jatinder Singh son of Shri Om Parkash had completed 1500 days as Moulder and, therefore, he was given the authorised grade of Rs.260-400 with effect from 31.12.85.

6. We have carefully considered the material on record and also heard the learned counsel for the parties. As regards the challenge to the promotion of S/Shri Suresh and Jatinder Singh, the applicant has neither made them as respondents, nor the challenge against them has been made within limitation. Apart from this, we are not stating anything in this regard for the simple reason that the applicant has not sought any relief vis-a-vis the above two persons. Learned counsel for the applicant urged before us that the applicant was utilised as Aligner during the period after the O.A. was filed in September, 1987 and that that period of engagement has not been taken into account by the respondents. He also stated that the applicant was again employed as Aligner in the second half of 1990 and he was working as such till date. The contention of the respondents regarding giving the scale of Rs.260-400 is not very relevant in view of the fact that the O.A. in regard to the relief prayed for with regard to the difference of wages has not been admitted. The applicant having been appointed as a Casual Labour and not as a Casual Artisan, he was entitled to consideration for regularisation as a Casual Labour and he has already been regularised as a Casual Labour Gangman. The post of Gangman is obviously lower than the post of Aligner and his promotion to the post of Aligner will have to be considered in the light of the rules/orders on this point. Neither party has produced before us copy of any such rules or instructions. Even assuming that passing of the trade test for the post of Aligner would be a condition precedent for eligibility, apart from seniority in the feeder cadre grade, if any, it is seen that the trade test said to have been passed by the applicant was not for regular appointment to the post of Aligner. Letter dated 12-7-88, a copy of which has been filed by the applicant along with rejoinder, shows that the applicant had passed the trade test for the post of Aligner in 1988 but only for work-charged posts which were to be filled up on ad-hoc basis and it appears, as stated by the learned counsel for the C.

applicant, that the applicant was being utilized against a said post of Aligner.

7. In the light of the foregoing discussion, the O.A. is disposed of in terms of the direction that the respondents shall consider the applicant for promotion to the post of Aligner if he is eligible under the rules / orders of the competent authority for such consideration, within a period of three months from the date of receipt of a copy of this order by them. In the facts and circumstances, we leave the parties to bear their own costs.

3/12/91
(P.C. JAIN)
Member(A)

B.S. Sekhon
(B.S. SEKHON)
Vice Chairman(J)

3-12-91