

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.32/91

NEW DELHI THIS THE 13 DAY OF JANUARY, 1995.

HON'BLE SHRI J.P. SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Shri Virendera Kumar Tiwari,
S/o Shri R.D. Tiwari,
Linemen,
Under C.T.F.O. (TD)
Western Railway,
AGRA and

Laxman Singh,
S/o Shri R.D. Tiwari
Linemen
CTFO/TD/AGC

Kirpal Singh Yadav
Linemen,
CTFO/TD/Gwaliyar

Mohmad Zahid Usmani,
Lineman
CTFO/TD/Gwaliyar

Shailender Kumar,
MRCL Lineman
CTFO/TRD/Central Railway
Gwalior (M.P.) ...Applicants

(By Advocate : Shri B.S. Mainee)

VERSUS

UNION OF INDIA, THROUGH

1. The General Manager,
Central Railway,
Bombay V.T.
Bombay.
2. The Divisional Railway Manager,
Central Railway,
Jhansi.
3. The Divisional Electrical Engineer,
Central Railway,
Agra Cantt.
AGRA. ...Respondents

(By Advocate : None)

JUDGEMENT

Shri B.K. Singh, Member (A)

In this application Annexure A-1 which

pertains to the appointment of the applicants in Group 'D' post on purely temporary basis is under challenge on the ground that these applicants are working as Linemen and should be regularised as such. The cause of action arose in the territory falling within the jurisdiction of the Allahabad Bench of the Tribunal but keeping in view the difficulties of the applicants, the permission was granted by the Hon'ble Chairman under Section 25 of the Administrative Tribunal Act for retention of the O.A. before the Principal Bench in 1991. An interim order was also issued on 11.1.91 while admitting the case that status-quo as regards the continuance of the applicants as skilled Linemen Class-III should be maintained.

2. The reliefs sought are: (i) a direction to the respondents to withdraw the notice issued on 24.11.1990 and (ii) a direction to the respondents to regularise the services of the applicants as Linemen and grant them all consequential benefits.

3. A notice was issued to the respondents who filed their reply and contested the application and grant of reliefs prayed for by the applicants.

4. We heard Shri B. S. Mainee, counsel representing the applicants and perused the record of the case. None appeared on behalf of the respondents.

5. Though no appointment letters are available on record, we have to go by the pleadings of the parties. The learned counsel for the applicants argued that the applicants in response to a notice issued by Jhansi Division of Central Railway applied for the post of Casual Linemen and they were engaged as such in 1984. It is conceded that the post of Lineman is a Group 'C' (Class-III) post. It was argued that they had been working continuously since their appointment and had been getting increments also. It was further argued that they had passed all the tests before appointment and as such they fulfil the eligibility criteria for being regularised against these Class-III posts. It was also argued that in accordance with the Railway Board's circular No.E(NG)1-70/CNS/31 dated 2.12.70 (Northern Railway Sl. No.5178), if the staff have been working for more than five years against vacancies reserved for direct recruitment quota, they are entitled to be regularised against direct recruitment quota. It is argued that the applicants had worked for more than six years in the grade of ^{Respondents} Rs.260-400 (Rs.950-1500 revised pay scale), but the

B
Contd...4

offered the post of Khalasi (Group 'D' post) in the pay scale of Rs.750-940 as per the impugned order dated 24.11.90. Aggrieved by this order, the applicants have filed this OA before this Tribunal on 1.1.91 and status quo order was passed on 11.1.91 and it is argued that since then on the basis of the orders of this court they have been working against the post of Lineman.

6. A perusal of the counter reply filed by the respondents will indicate that in reply to paragraph 4.3 of the OA, they have stated that the applicants were screened for the post of Casual Lineman, but they have denied that any test was conducted since it was not necessary for engagement as Casual Lineman. As regards paragraph 4.8 of the OA, in counter reply the respondents have stated that there is a provision in rules to consider the M.R.C.L./Skilled artisan to the extent of 25% of departmental quota for filling up vacancies of skilled artisan staff or 25% quota for M.R.C.L. artisan (i.e. 12½% of total strength). Accordingly, recruitment was made in the month of February, 1987 against 12½% quota and some of them might have applied, but the results are not known. It is further stated that they were not empanelled as suitable candidates screened on 4.2.87 and 5.2.87 against recruitment of 12½% of M.R.C.L. In reply to



Contd...5

paragraph 4.11 of the OA, the respondents have stated that the applicants were not trade tested at the time of appointment, they were only screened.

7. The applicants ahve also filed a rejoinder which practically reiterates what has been said in the OA. After going through the record we find that the respondents have enclosed a copy of the provisional panel of suitable candidates screened on 4.2.87 and 5.2.87 for absorption of artisan staff as Lineman, Fitter, Welder, Vehicle Driver and Painter in grade of Rs.260-400(RS) in TRD cadre against the quota of 12½%. The names of the applicants do not find a place in this letter issued by DRM(P) Jhansi vide letter No.P./160/15/TRD/EL dated 28.4.87.

8. We have carefully gone through the Railway Establishment Rules and Labour Laws (seventeenth edition),1988 written by Shri B. S. Maine himself. The rules position is mentioned in the rules relating to recruitment and training. Rule.9 refers to Trades, direct recruitment of the 'vacancies' in the skilled grades in trades like Fitters, Painters, Signal Maintainers, Electrical/Mechanical, Telecommunication Maintainers etc. Out of these 50% posts, 25% are to be filled up from serving semi-skilled and unskilled staff with certain educational qualifications and the

balance 25% by direct recruitment of those comprising I.T.I. passed candidates and matriculates from open market. It is laid down that where matriculates are recruited for posts of skilled artisans they have to be paid stipend of Rs.210-218 which is next lower to the scale of Rs.260-408(RS) in which these artisans are to be appointed. This is based on Railway Board's circular No.E(NG)III/78/RCI/9 dated 24.9.81, N.R.S. No.7909. The remaining 50% vacancies are filled up by promoting semi-skilled artisans/Basic Tradesmen, provided they attain the standards prescribed in relevant trade tests. A workman is considered to have passed the trade ^{test} if he secures a minimum of 39 marks out of 60 in the practical test.(Railway Board's No.E.58 CEP/7 of 7.12.58).

9. There is a further circular wherein it is mentioned that in certain cases, the selections are not held by the Railways in time to fill up the promotion quota and direct recruitment is made with the result that the direct recruits rank senior to the promotees. The Railway Board clarified in this circular that at the time of filling up of the vacancies both by departmental promotion and direct recruitment according to the quota laid down, the promotion and direct recruitment should be arranged in

such a manner that no undue benefit goes to either side in the matter of seniority. (Railway Board's circular No.E(NG)III/78/RCI/9 dated 24.9.81) N.R.S. No.7909. It further lays down that for engagement of class-III employees into intermediate grades, their applications should be forwarded to the Railway recruitment Board provided they fulfil the requisite qualifications and in such cases the upper age limit should be relaxed to 45 years. While forwarding their applications, their experience has to be indicated so that the same can be taken into account at the time of selection. This is contained in Railway Board's circular No.E(NG)II-84/RC/2/39 of 24.2.86.

10. Class-IV serving employees are also allowed to apply for vacancies filled by direct recruitment provided they fulfil the requisite qualifications and are within prescribed age limits. These are the various circulars quoted in the aforesaid rule book. As regards the skilled posts, the learned counsel for the applicants has referred that there is Rule 15. Rule 15 refers to honorarium to Nucleus Cipher Operators. However, even if the rule produced before is accepted it only goes to show that casual labour may be promoted to semi-skilled and skilled post without being first selected as Class-IV staff. This refers to Railway Board's circular No.E(NG)64 CL/51 dated 1.2.65. It lays down that:

"Casual labour promoted to skilled or highly skilled post or recruited to such post against casual vacancies either in workshops or otherwise may be absorbed in regular vacancies in skilled grade after passing the requisite trade test, to the extent of 25% of the vacancies reserved for departmental promotees."

(Railway Board's circular No.E(NG) 65 CL/4 of 19.7.65).

11. The main issue for adjudication is whether the applicants were trade tested for the posts which they are holding or not.

12. The learned counsel for the applicants stated that the applicants were trade tested before being appointed as semi-skilled workers. The same has been rebutted by the respondents in their counter reply. The panel of people who were trade tested and cleared after trade test, has been annexed with the counter and the names of the applicants do not figure here. A careful perusal of the Railway Establishment Rules itself indicate that the regular appointment is subject to passing of the trade test and empanelment has to be done of those who have been trade tested and cleared it. We do not find any evidence available on record to show that these five applicants were ever trade tested before appointment. The respondents have produced a record of those who were empanelled for the post of Lineman, Fitters etc. and the names of the applicants do not figure in this. The respondents

have further asserted that recruitment was made in the month of February, 1987 against 12½% quota and it is not clear whether these applicants appeared.

The records are not available. It has further been stated that they were not empanelled as suitable candidates screened on 4.2.87 and 5.2.87 against recruitment of 12½% quota. There is nothing on record on behalf of the applicants to demolish this contention contained in the counter reply. This panel was published vide letter No.P.160/15/TRD/EL dated 28.4.87 and is enclosed with the counter. It has been categorically stated that they were never trade tested before their engagement. There is a mystery surrounding this particular case. The whole question hinges on whether anyone can be appointed to skilled post without a trade test. The reply is a categorical 'No'. No rights can accrue even if a man has worked for five or six years as a Casual Lineman for regularisation till he is trade tested and he obtains a minimum of 39 marks out of 60 as per Railway Board's circular referred to above. There is no evidence on record to show that the applicants obtained 39 marks out of 60 and cleared the trade test. They have been continuing as Lineman because of an interim order passed by this Tribunal and the dogmatic slumber on the part of the respondents to get it vacated.

Administration . On the basis of pleadings it is difficult to say that the applicants had been trade tested or they were ever empanelled as Lineman/Fitter.

The irresistible presumption on the basis of the

photocpy placed on record issued by Railways as a result of screening and trade test on 4.2.87 and 5.2.87 dated 28.4.87, is that these were either not tested or they did not obtain the requisite minimum of 39 marks out of 60 and as such were not included in the panel or that they did not appear in the trade test. They are continuing as Lineman on the basis of an interim order of this Tribunal. This being so and the appointment being dehors the rules cannot be sustained. The impugned order placed collectively as Annexure "A-1" does not contain any threat of termination at all. It is only for an appointment on a temporary basis of the applicants against Group 'D' posts (Class-IV). These are merely offers of appointment given to the applicants. There is not even a whisper about any reversion or termination at all since no formal appointment of these applicants as Linemen is there. It is also difficult to accept the proposition that they would have continued as such without passing the trade test.

12. The actual grievance did not arise in 1990 since actual grievance is not contained in the letters issued on 24.11.90 since these are simply offers of appointment to Group 'D' (Class-IV) posts. In order to

Contd...11

B

skirt the limitation reference has been made to these letters collectively marked as Annexure A-1. If they were actually working as Linemen, the cause of action arose when the railways published a panel of 8 Linemen/Fitters, 1 Fitter(Remote Control), 1 Welder, 2 Vehicle Drivers and 1 Painter against 12½% quota on 28.4.87 and if cause of action arose in 1987 and the application was filed on 1.1.91, it is hit by limitation since this Tribunal does not have any power to condone delay of nearly four years as has been held by the Hon'ble Supreme Court in a catena of judgements, State of Punjab Vs Gurdev Singh (1991) 4 SCC 1 and in case of Ratan Chander Samanta JT (1993) SC p.418. The application becomes non maintainable under Administrative Tribunal Act, 1985 because the letters placed collectively at Annexure A-1 are simply offers of appointment and the applicants were required to communicate their acceptance or to insist on a trade test being conducted for their regularisation. There is no representation to the effect that they wanted a trade test for their regularisation. Thus, the orders impugned do not reflect any intention on the part of the respondents to retrench them or to terminate their services. However, the provisions of the Railway Board are there that even a Casual Lineman will have to be subjected to trade test and he will have to obtain ^a minimum of 39 marks out of 60 before his case can be taken up for regularisation.

In view of the categorical assertios contained in the counter reply that they were not trade tested at the time of their recruitment and that they were subsequently trade tested and were not found suitable and as such were not empanelled, it would be difficult for this Tribunal to help them in Full Bench decision in regularisation. / Jethanand's case in this respect, will come in their way. However, since they have been working as Linemen on the basis of the interim order of this Tribunal they have been paid the wages for the period they/worked as such. The judgements quoted by the learned counsel for the applicants are not relevant to the issue in question, i.e. their regularisation and empanelment as Linemen.

13. As stated above, the cause of action arose in 1987 and the application has been filed on 1.1.91 and as such it is barred by delay and laches and on merits also it fails and the application is dismissed as such leaving the parties to bear their own costs.

14. However, while parting with this case, since the applicants have been continuing as Linemen on the basis of the interim order of this Tribunal and on account of their initial appointment as such, the respondents are directed to subject them to further trade test by relaxing age as per the instructions

B

Contd...13

contained in the Railway Establishment Rules. If they clear the trade test, they may be regularised from the date they clear the trade test against available vacancies, if any. All those who have been empanelled earlier after passing the regular trade test will rank senior to these people since they have become members of the cadre earlier and if the present applicants do not clear the trade test, they would be liable for reversion to Class-IV post which were originally offered to them in 1990.

(B. K. Singh)
Member(A)

J. P. Sharma
Member(J)

dbc