

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1892/92 with
T.A. No. 3217/92

199

DATE OF DECISION

08.03.99

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Sh. Jamia Prasad & Ors.

Petitioner

Sh. B.S. Maine

Advocate for the Petitioner(s)

Versus

U.O.I.

Respondent

Sh. R.L. Dhawan & Sh.B.K. Aggarwal Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. T.N. Bhat, Member (J)

The Hon'ble Mr. S.P. Biswas, Member (A)

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. Whether it needs to be circulated to other Benches of the Tribunal ?


(S.P. Biswas)
M(A)

Cases referred:

1. S.K. Sharma & Ors. Vs. UOI & Ors. (1991(3) SLR 391.
2. Shri Ram & Ors. Vs. UOI & Ors. (OA-3704/91)
3. State of Haryana Vs. Piara Singh (1992(3) SLJ 34
4. Jacob N. Puttuparambil & Ors. Vs. Kerala Water Authority & Ors. (1991(15) ATC 697.
5. Ram Kumar & Ors. Vs. UOI & Ors. (SLJ(4)1996(1)116)
6. UOI Vs. Moti Lal (1996(1) ATJ 625.
7. Mukesh Bhai Chottabhai Patel Vs. Joint Agricultural & Marketing Advisor, Govt. of India & Ors. (AIR 1995 SC 413)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

OA No.1892/92 with OA No.3217/92

New Delhi this the 8th day of March, 1999.

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

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OA 1892/92

1. Jam~~an~~ Prasad
2. Fakrudin
3. Javir Singh
4. Bir Singh
5. Mehboob
(all under P.W.I. (PQRS),
Northern Railway, Doraha) .. Applicants

(By Shri B.S. Maine, Advocate)

OA 3217/92

1. Dhanna
2. Budha
3. Puran Chand
4. Girish Chand
(All under P.W.I. (PQRS)
Northern Railway, Ambala .. Applicants

(By Shri B.S. Maine, Advocate)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi

3. Assistant Engineer (PQRS)
Railway Station, Ambala

4. P.W.I. (PQRS), Doraha .. Respondents

(By Shri R.L.Dhawan & Shri R.Bansal for Sh.B.K.Aggarwal)

ORDER

Hon'ble Shri S.P. Biswas

The background facts, questions of law and the
reliefs prayed for being identical in these two OAs,
they are being disposed of by a common order.

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2. The factual matrix giving rise to the filing of these OAs, in brief, are as under:-

All the applicants were initially engaged as casual labourers. They claim to have been promoted as Mates/Blacksmiths in the category "C" in the grade of Rs.950-1500 after they got temporary status between 1982-84. Orders at Annexure A-1 in both the OAs clearly show their status/designations, grades and dates from which they were individually given temporary status. This was in 1987. The process of regularisation started in July 1992 and all the applicants have been screened for the purpose of regularisation. The results of the screening test for Group-D post are available in Annexure R-1 dated 10.7.92. Following the said tests, applicants are to be regularised either as Khallasi or as Gangmen/Gatemen as shown against the name of each but in the lower grade of Rs.775-1025 in Group-D. The applicants are thus aggrieved since they have not been regularised/absorbed in the category of "Mates/Blacksmiths" (Group-C) although they have been working in higher posts and scale (Rs.950-1500) for more than 7-10 years. Applicants apprehend that respondents would revert them to lower posts of casual gangmen/gatemen/keymen (Group-D) after the result of the screening has been declared. It is against this apprehension that the applicants have sought reliefs in terms of issuance of directions to the respondents to regularise them as Mates/Blacksmiths in the scale of Rs.950-1500 and prevent the respondents from reverting them to lower posts as Gangmen/Gatemen etc.

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3. The basic issue in these OAs centres round the claims of the applicants for regularisation in Group-C posts solely on the circumstances that they have been working for a considerable long period in higher categories.

4. Shri B.S. Maine, learned counsel for the applicants sought to justify regularisation of the applicants in the category of Mates/Blacksmiths on the basis that they have been working for more than 7 years with temporary status. He would contend that the applicants case is covered by the instructions by the Railway Board vide their letters, dated 1.2.65 and 19.7.65. The former permits promotion to the higher scale when an employee is selected in Group-D category and the latter lays down absorption of similar persons against regular vacancies after passing trade test to the extent of 25% of the vacancies reserved for departmental promotion. The learned counsel relied heavily on the decision of this Tribunal in the case of S.K. Sharma & Ors. Vs. U.O.I. & Ors. (1991(3) SLR 391) and Shri Ram & Ors. Vs. U.O.I. & Ors. in OA-3704/91 decided on 9.9.93. In Sharma's case decided by the Jodhpur Bench of the Tribunal, it was held that the applicants therein, though casual labourers, are diploma holders and it would be hardship for them to work as Group-D employees after having worked for 7-10 years in higher posts. In the second case of Shri Ram decided by the Principal Bench, it was held that irrespective of the results of the screening for Gangmen in the open line, the temporary status already achieved by the applicants in Group-C posts in PQRS organisation

shall not be disturbed. They are also entitled to be regularised against available vacancies of Group-C whenever their turn comes in accordance with seniority after the necessary screening test prescribed under the rules.

5. Reliance was also placed on the judgement of the Honible Supreme Court in the case of State of Haryana Vs. Piara Singh (1992(3) SLJ 34). The applicants would contend that the law declared in this case stipulates 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." The learned counsel for the applicants also drew our attention to yet another decision of the Apex Court in the case of Jacob M. Puttuparambil & Ors. Vs. Kerala Water Authority & Ors. (1991(15) ATC 697). It was held therein that "employees serving for a reasonable long period and having requisite qualifications for the job deserve to be regularised."

6. The applicants have also placed reliance on the judgement of the Apex Court in the case of Ram Kumar & Ors. Vs. U.O.I. & Ors. (SLJ(4) 1996(1)116) decided on 06.09.90 as well as orders in OA-347/96 and group of OAs (545/91, 1175/91 & 1251/91) decided by the Principal Bench and Chandigarh Bench of this Tribunal on 18.12.96 and 05.12.97 respectively. Shri Mainee argued that the issues in UOI Vs. Moti Lal (1996(1) ATJ 625) were decided without considering the provisions in para



2007(3) of IREM Vol.II 1990 as reiterated by the Railways in their order dated 14.08.96. While deciding Moti Lal's case, the judgement in Ram Kumar's case decided earlier was not brought to the knowledge of the Apex Court. Moti Lal's case is, therefore, distinguishable and is in *per incuriam* since the earlier 3-member judgement in Ram Kumar's case was not discussed or even referred to.

7. In the counter, the respondents would submit that applicants were engaged as casual labourers in PQRS unit and given ad hoc promotions as Mates/Blacksmiths. They were entitled to be screened for the post of Gangman and that those who have not been empanelled will have to be reverted as casual labourers to provide room for others declared successful. PQRS is a temporary unit/organisation where none can be regularised and hence steps are being taken to regularise these officials where permanent vacancies are available.

8. Arising out of the aforementioned rival contentions of learned counsel for both parties, the following three issues fall for determination:-

(a) Whether the actual continuance of a person as a Mate/Blacksmith for considerable period on purely ad hoc basis entitles him to be regularised as such as Mate/Blacksmith?

(b) Whether conferment of temporary status as a Mate ipso facto entitles a person to be regularised in that capacity and not as a Gangman?

(c) Whether the rules permit regularisation of a casual labour in Group-C in open line organisation straightaway even when they were initially engaged in Group-D and had worked there for some period but without being screened in Group-D?

9. According to Rule 109 of Indian Railway Establishment Manual, Class-IV railway servants can be promoted to Class-III posts on 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 candidate should qualify in the prescribed test. We are, therefore, in complete agreement with the decision in the Full Bench in Jetha Nand's case (1989(7) SLR 161-CAT N.D.) that a pass in the selection test is mandatory before a Class-IV employee can be promoted to the next higher category.

10. The matter was taken up before the Hon'ble Supreme Court in an appeal and the decision in the case of Moti Lal (supra) provides an answer.

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11. We shall now proceed to bring out the position of law on the three legal questions involved herein. 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 and it is only a promotional post from Class-IV category of Gangman/Keyman. It was held that these Gangmen/Keymen can be promoted to the posts of Mate in Class-III subject to their suitability and efficiency being decided as per procedure. It is no doubt true that the respondents in Moti Lal's case had been appointed directly as casual Mates under certain circumstances and continued as such. By virtue of that they acquired temporary status but the Hon'ble Supreme Court held that this by itself does not entitle them to be regularised as Mate since that would be contrary to the rules in force.

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

"Even though on principle we are in agreement with the submissions of Mr. Goswami, learned senior counsel appearing for Railway Administration but having taken into account the fact that the respondents were directly appointed as Mate though on casual basis and having continuing 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

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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."

13. 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 this Tribunal in the case of D.L. Somaya & Ors. Vs. Telecom Commission & Ors. (1197(1) ATJ 1), the jurisdiction of equity does not inhere in the Tribunal.

14. As regards the third question, the Apex Court in Moti Lal's case held that:-

"so far as the post of Mate under Railway is concerned, the same has to be filled up by a promotion from the post of Gangman and Keyman in Class IV subject to employees passing the trade test."

15. Reliefs in the case of Moti Lal (supra) were given by allowing the casual labours to continue as Mates in context of facts that they were taken directly as Mates and continued for decades. The position in the present two cases is different. For those appointed initially in Group-D as casual labourers and continued as such in the open line, like the applicants herein, there are no provisions to get such employees absorbed in Group-C directly. As regards regularisation, it is well settled in law that regularisation can be made pursuant to a scheme or an order in that behalf as pointed out in Mukesh Bhai Chottabhai Patel Vs. Joint Agricultural & Marketing Advisor, Government of India & Ors. (AIR 1995 SC 410). The respondents in this case have conducted screening labourers of PQRS for those who

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have completed minimum number of days of work on the basis of cut off date as per Scheme/Order dated 10.7.92. In the light of the law laid down by the Apex Court in the Moti Lal's case and also discussed in para 15 aforementioned, the ratio arrived at in Satish Kumar's case or in the case of Shri Ram mentioned in para 4 above shall no more hold good in the eyes of law.

16. The undisputed facts are that: (i) All the applicants were initially engaged as casual labourers and after having worked for some time they were promoted purely on ad hoc basis to the post of Mate/Blacksmith; (ii) All of them were appointed in the open line and obtained temporary status at different points of time and are also presently working in Group-C post in PQRS organisation which is in the open line; & (iii) None of them were appointed straightaway as casual labourer in Group-C in the construction units.

17. In these circumstances, regularisation has to be in terms of law laid down in Moti Lal's case. This is because provisions of para 2007(3) of IREM 1990 Vol.II shall apply only to those officials initially engaged in the work-charged establishment. Similarly, instructions reiterated by the respondents in their Circular dated 14.8.96 would not be applicable to the applicants herein because of being engaged in the open line. Those instructions would apply to the casual

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labourers who are directly recruited in skilled category (Group-C) in workcharge/construction organisation after qualifying in the trade test. The cases of the applicants are not covered under these.

18. We find that even in the case of Ram Kumar, relied upon heavily by the applicants, their Lordships held that regularisation of casual labourers have to be only in Class-IV posts. However, as a measure of special dispensation it was ordered that though they were to be regularised and screened in Class-IV posts they could draw salary of Classs-III posts they were already drawing as a measure of protection until they are regularised in Group 'C' following rules and regulations. The ratio in Ram Kumar's case will not be applicable to the applicants herein for two reasons. Firstly, in Ram Kumar's case, the applicants belonged to the skilled (Artisan) category and not to Mates. Secondly, it is true that some of the applicants herein are working in skilled category as blacksmith but we do not know if all the Blacksmiths amongst the applicants fulfil all the conditions stipulated in Board's instructions dated 20.01.85. This was a pre-condition in Ram Kumar's case. There are no averments specifically in this respect in these OAs.

19. It is not in dispute that the applicants were initially engaged as casual labourers (Group-D). They were promoted on ad hoc basis as Mates and obtained

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temporary status after 1982 onwards and continued to work in that capacity for more than 7-10 years till July 1992 when the process of screening started. There was no formal order of promotion for them in the category of Mate nor they appear to have fulfilled the stipulated conditions meant for selection to the promotional post. That apart, applicants have not established that they were in the zone of consideration for promotion to the higher grades of Mates/Blacksmith. Merely working on a post for a number of years on ad hoc basis will not vest a person with the right to get regularised in that post which is meant to be filled up by regular recruitment/selection procedure. Our views in this respect get support from the order of this Tribunal in the case of Harvinder Kaur & Ors. Vs. U.O.L. (1991(1) SLJ CAT 967). In the light of the law laid down as aforesaid, the action of the respondents in regularising the applicants in category Group-D cannot be faulted. Though they have been working in the higher grades as Mates, rules only permit casual labourers in such open line cases to be regularised in the feeder grades, particularly when they have worked in the lower grades as Gangmen/Keymen following initial appointment. We find that the directions/provisions involved in these OAs were examined recently in OA-2720/90 and 238/97 decided on 11.12.96 and 10.02.98 respectively. Identical reliefs claimed therein were denied applying the law in Moti Lal's case (supra). In the background of the detailed reasons aforesaid, both the OAs deserve to be dismissed.

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20. Before we part with this case, it is to be mentioned that applicants herein were initially engaged in carrying out arduous work of maintenance of railway track with the help of sophisticated PQRS machines. Applicants are in a moving unit travelling from one place to another with responsibilities of strengthening the track wherever required. They are on TA/DA most of the time unlike those in Moti Lal's case. Availability of such officials, even at the level of Mates, willing to be associated with PQRS system is not immediate and easy. This is because PQRS machines are required to be utilised by Mates/other responsible railway officials to ensure safety of high speed Rail Routes. Because of the very nature of speed requirements, PQRS working cannot be deferred even on rainy days and may have to be put into operation even in nights depending upon requirements.

21. Under the circumstances, we are of the firm view that the respondents shall do well not to revert the applicants to the lower post till they are replaced by Mates appointed on regular basis. In other words, so far as regularisation of the applicants in category "C" is concerned, their claims will have to be considered strictly in terms of seniority and according to rules.

Q.P.

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22. In the result, we dismiss both the OAs with the direction that applicants shall be allowed to continue on ad hoc basis till regularly selected persons are physically available on the spot to take over from them.

23. There shall be no order as to costs.


(S.P. BISWAS)
MEMBER (A)


(T N BHAT)
MEMBER (J)

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