

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH : NEW DELHI

...

O.A.1356 of 1993

Dated New Delhi, this the 6th day of May 1994

Hon'ble Shri J. P. Sharma, Member (J)
Hon'ble Shri B. K. Singh, Member (A)

Shri Chhedi Lal
S/o Shri Subrati
Gang Mate, Under,
PWI/C/GC/(TKJ), at
DELHI CANTT.

By Advocate: Shri B. N. Bhargava

... Applicant

VERSUS

1. Union of India, through
The General Manager
Northern Railway
Baroda House
NEW DELHI
2. The Chief Engineer (Construction)
Kashmirigate
DELHI
3. The Dy. Chief Engineer (Construction)
Tilak Bridge
NEW DELHI
4. The Assistant Engineer/C/GC/I
Northern Railway Station
DELHI CANTT

5. Shri D.P. Malhotra
PWI/C/GC/TKJ, at,
DELHI CANTT

By Advocate: Shri H. K. Gangwani

... Respondents

ORDER

Shri B. K. Singh, M(A)

This OA No.1356 of 1993 Chhedi Lal Vs. U.O.I. & Ors. has been filed against the order dated 8.9.92 (Annexure A/1) by which the applicant working as Gangmate along with twenty others was shifted from Gurgaon to Delhi Cantt. with immediate effect. It is alleged that he was promoted as Gangmate without any written orders from 9.8.91 and was also reverted subsequently without any written orders.



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2. The admitted facts are that the applicant was appointed as Casual Labour in 1977 and is still continuing as a Casual Labour with temporary status without regularisation of his services. A perusal of the record shows that in exigencies of public service, these Gangmen were directed to perform works of urgent nature under Permanent Way Mistry/Permanent and Way Inspector / during short spells these people also officiated as Mate under PWI. It is admitted by both the parties that Shri Chhedi Lal has officiated as Mate for the period 6.10.89 to 9.11.92 for which officiating allowance as Mate was given to him. The posts of Gangmen were created by abolishing some of the posts of Khalasis which were surplus. It is also admitted by the respondents that Shri Chhedi Lal (applicant) was kept at no.1 keeping in view his work and sincerity and when shifting took place, he was shifted from one PWI to another PWI in the same Unit, since his name appeared at no.1 in the Master Roll. About the details of working, the various documents will show that payments made have been shown in the Last Pay Certificate while transferring the applicant from one unit to the other. Annexure A/2 filed by the applicant shows that he was issued red/green flag. It is admitted by the respondents that it is issued to the Gangman and not to Gangmate. It is also admitted that on completion of urgent nature of work, one Shri Surajmani was posted on the above gang. It has been further stated that there was no question of reversion of the applicant. The averments in the written statement filed by the learned counsel for the applicant in para.4 mentions that it is not clear whether Shri Surajmani, Mate is junior or senior to the applicant. The applicant, according to him, worked as Mate in

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the same Gang along with Shri Surajmani. In support of this Annexure A/7 and A/8 have been cited. It has been further alleged that the applicant was reverted from the post of Mate on 23.9.93 as a result of the interim order on 23.9.93 passed by the Hon'ble Tribunal.

3. The reliefs claimed by the applicant are:

- (i) The Hon'ble Court may be pleased to direct the Respondents to regularise the services of the applicant from the date of completion of 360 days upto 8.8.91 as Gangman in the grade 775-1025 and further from 9.8.91 as a Mate in the grade Rs.950-1500 with all consequential and monetary benefits.
- (ii) Looking to the poor condition of the applicant an appropriate cost may be granted to the applicant.
- (iii) Any other relief the Hon'ble Court deem fit and proper be granted to the applicant.

4. A notice was issued to the respondents who filed their reply contesting the application and the grant of reliefs prayed for.

5. The material averments in the reply are these. The applicant was appointed as Casual Labour and was picked up amongst 20 others to work as Gangman. From time to time, he was utilised as Mate and he was paid for it. The period of his utilisation as such is given below:

06.10.91 to 14.7.92 under PWI/C/TKD
15.7.92 to 14.9.92 under PWI/C/GGN
15.9.92 to 04.11.92 under PWI/C/DEE
01.11.90 to 15.12.90 under PWI/C/GZB
20.9.91 to 14.5.92 under PWI/C/GZB
15.5.92 to 14.7.92 under PWI/C/GC/DEC
15.7.92 to 14.10.92 under PWI/C/GC/GGN
15.10.92 to 14.11.92 under PWI/C/GC/TKJ

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This kind of shifting is under PWIs in the same unit from time to time. It is admitted by both the parties that he was appointed as Casual Labour on 15.10.77 under PWI(Construction) Surajgarh. It is also admitted that construction organisation is not a permanent organisation and its existence and continuance depend on projects and funds. If funds are not available, construction projects are not executed and as such the question of utilising of Gangman as Mate will not arise. The respondents have further stated that Annexure 3,4&5 enclosed with the OA itself indicate that the applicant's name figures as Gangman and not as a Mate whereas the name of Shri Surajmani figures as Gangmate. The applicant is in the grade of Rs.775-1025 whereas Shri Surajmani is working in the grade of Rs.950-1500(RPS). As per extant rules of Northern Railway, a Mate is promoted on seniority basis. It is contended that a number of gangmen senior to the applicant are working under construction organisation in the same unit as Gangmen and as such there is no question of the applicant being promoted as Mate ignoring the seniors. The written statement filed by the learned counsel for the applicant is also not categorical about the juniority of Shri Surajmani. It even assures that Shri Surajmani may be senior. Regarding Annexure A/7 & A/8 submitted by the applicant, it has been stated in the reply that there is another Mate whose name is Chhedi and the applicant is only trying to take advantage of that name in his favour. According to the respondents, the PWI has no power to promote or revert any employee. The respondents admit that regularisation takes place after screening. According to them, the applicant is not yet entitled for screening since he has worked

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as Gangman only w.e.f. 15.10.77 and that he would be regularised in his own turn. It has been further stated that the applicant's name has been sent for screening to Bikaner Division.

6. We have heard the learned counsel of rival parties at great length and perused the record of the case. It has been admitted by the respondents that whenever Shri Chhedi Lal worked as a Mate, he was paid the wages of a Mate and not of a Gangman. The period has already been indicated. This is admitted by the learned counsel for the applicant also. However, he has argued that the applicant continued to work as Mate till 23.9.93. This period is not indicated in the spells for which the applicant has been paid the wages of a Mate. The last period when he was utilised as Mate was 15.10.92 to 14.11.92. In view of categorical assertion that Annexure A/7 & A/8 relate to another person Chhedi, there is no other proof that Shri Chhedi Lal has been utilised as Mate and has not been paid for it. Since the records are with the respondents and they have categorically indicated the periods when Shri Chhedi Lal was utilised as Mate and paid for the same their version has to be accepted, unless rebutted with a solid documentary proof from the applicant. No such documentary proof is there. After the authenticity Annexure A/7 & A/8 have been brought under a cloud, we have ^{no option but to} accept ^{that} the version of the respondents the spells for which the applicant worked as Mate has been paid as such.

7. The relief sought for by the learned counsel for the applicant is regularisation of the services of the applicant from the date of completion of 360 days upto 8.8.91 as Gangman in the grade of Rs.775-1025. Regularisation

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depends on vacancies followed by the procedure of screening the candidates. This further depends on the seniority of the various persons working as Gangmen. It is admitted that there are Gangmen senior to the applicant who are still working as Gangmen and as such the question of regularising the present applicant does not arise. It was further argued that the name of the applicant had been sent to Bikaner Division for screening since there must be vacancy in that Division. The cases of other Gangmen senior to the applicant have not been sent to ^{other} Divisions. About Surajmani, the written statement filed by the learned counsel for the applicant has not categorically stated that he is junior and no other name junior to the applicant has been mentioned who had been promoted as a Mate. In view of the clear assertion of the respondents that they are maintaining a seniority list and that the applicant will be regularised in his own turn whenever the vacancies are available after he is screened and found fit and since there is no order of appointment in favour of the applicant as a Mate, we have to accept the contention of the learned counsel for the respondents. No prima-facie case has been established that any Gangman junior to the applicant has been promoted and also in view of the fact that there are no Recruitment Rules for Gangmen working in the construction Division, it would be difficult to accept the contention of the learned counsel that the applicant was reverted on 23.9.93 after the Tribunal passed the interim order on 21.9.93. If he was working as a Mate and had been promoted as such,

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there should have been a documentary evidence to that effect, which is not there. The number of spells that he worked as Mate and was paid for, have been indicated in the counter reply. In view of ^{there being} ~~no~~ other documentary evidence to the contrary, we have to accept this. If the applicant was working as a Mate when the interim order of 21.9.93 was passed and he was reverted on 23.9.93, the applicant was well within his right to show that the orders of the Tribunal had been wilfully flouted by the respondents and they should have been hauled up for contempt of court. Unfortunately, this also has not been done.

8. Taking the totality of facts and circumstances of the case, we do not find any merit in the application.

9. Although on merits the applicant has no case, but before parting we would like to observe as follows:

- (i) It is impressed upon the respondents that they should make Rules under Proviso to Article 309 for the recruitment and promotion of Gangmen because in a welfare State like ours every Ministry is expected to be a model employer and it is a common phenomenon that one who joins Government service, expects atleast two promotions in his service career. If promotions are not available, atleast two Selection Grades - junior and senior should be provided in the


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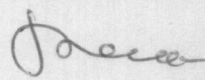
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cadre of Gangmen. The construction work is of a perennial nature and its execution cannot be stopped for want of funds. The Planning Commission makes funds available for laying new tracks every year and thus the plea of the respondents that the construction work is dependent on projects and funds, is not tenable. We are of the view that this is a work of perennial nature and when the work is of a perennial nature, we cannot allow people to start their career as a Casual Labour and retire as a Casual Labour. A Gangman should start his career as a Gangman but should atleast have two promotions or alternatively two Selection Grades in his service career. Everyone joins a Government service with these expectations and a welfare State is expected to fulfil these aspirations and expectations if the record of service is unblemished.

- (ii) We would further impress upon the respondents to abolish superfluous posts which have not been filled up in category 'D' to regularise these Gangmen who have been working for practically more than a decade.

10. With these observations, the OA is disposed of finally, however with no order as to costs.


(B. K. Singh)
Member(A)


(J. P. Sharma)
Member (J)

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