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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD.

Dated : This the 16th day of April 2002

Original Application no. 709 of 1993.

Hon'ble Mr. Justice R.R.K. Trivedi, VC  
Hon'ble Maj Gen K.K. Srivastava, AM

Pitamber Lal, S/o Gaya Din,  
R/o Vill Arka Mahamadpur,  
Post Arka, Thasheel Manjhanpur,  
Distt. Allahabad.

... Applicant

By Adv : Sri R.C. Sinha & Sri A. Srivastava *Shukla* → Corrected vide order dated 31.5.2002

V E R S U S

1. The Union of India through it's Secretary, Ministry of Railways, New Delhi.
2. The Divisional Rail Manager (P), N. Rly., D.R.M. Office, Lucknow.
3. The Dy. Chief Engineer (Constn.), N. Rly., D.R.M. Office, Allahabad.
4. The Inspector of Works (C), -1, N. Rly., Allahabad.

... Respondents

By Adv : Sri A.K. Gaur

ORDER

Hon'ble Maj Gen K.K. Srivastava, A.M.

In this OA filed under section 19 of the A.T. Act, 1985, the applicant has challenged list of screened candidates dated 20.4.1993 issued by Dy. Chief Engineer (Const.), Northern Railway (in short Dy CE NR) Allahabad and has prayed that the

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order dated 20.4.1993 be quashed and respondents be directed not to interfere in applicant's working as <sup>Mortor</sup> Mortor Mate. He has further prayed that the applicant's designation should not be changed from Mortor Mate to gangman and applicant be paid salary on the post of Mortor Mate as and when the same is due.

2. The facts, in brief, giving rise to this OA, as per applicant, are that the applicant is working on the post of <sup>Mortor</sup> Mortor Mate under Inspector of Works (in short IOW) (C), N. Rly., Allahabad, (respondent no. 4). The applicant worked as Casual Khalasi from 01.03.1976 to 08.07.1977. He is working as Mate since 17.12.1977 under respondent no. 4 without any break. He was issued casual labour card no. 219706 and he has been supplied a photostate copy of the record of service on 1.1.1984 after having completed 2168 days of casual labour. He was medically declared fit for the post of Mortor Mate on 28.9.1984 and he was granted temporary status as Mortor Mate w.e.f. 1.1.1982 by order dated 17.08.1987 of Section Engineer (C) Allahabad. On 11.12.1985 he was informed by Asstt. Engineer (Const.) II N. Rly., Allahabad that he was medically fit for grant of temporary status on the post of Mortor Mate in grade of Rs. 210-270. Applicant was granted revised pay scale of Rs. 800-1150 on the post of Mortor Mate. His designation has all along been Mortor Mate and he is being paid salary on the post of Mortor Mate since 1.1.1982 the date he was granted temporary status on the said post. The applicant appeared for screening test on 19.11.1992 for the post of Mortor Mate on assurance by the respondents <sup>that he was being screened for the post of</sup> Mortar Mate but the list dated 20.4.1993 of screened candidates shows his name at sl no. 9 for the post of gangman. Hence this OA. The claim of the applicant has been contested by respondents and they <sup>have</sup> filed counter reply.



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3. Heard Sri A. Srivastava, learned counsel for the applicant and Sri A.K. Gaur learned counsel for the respondents and perused records.

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4. Shri A. Srivastava, learned counsel for the applicant submitted that the post of Mortor Mate is supervisory and the authorities concerned have not only reduced the applicants rank and pay scale but have changed entirely the nature of the work of the applicant by screening him for the post of gangman. The action of the respondents is arbitrary and illegal because the applicant has been granted temporary status as Mortor Mate since 1.1. 1982 and he has been drawing pay and allowances in the scale of Rs. 800-1150. The pay scale of gangman is Rs. 775-1025 which is much lower than that of Mortor Mate i.e. Rs. 800-1150 and the applicant cannot be reduced in rank without giving any opportunity to defend his case. The learned counsel argued that the applicant is entitled to be screened as per Railway Rules for the post of Mortor Mate because he is holding this post since 1.1.1982.

M. D. D. S.

Shukla.

5. Sri Srivastava, learned counsel for the applicant further submitted that impugned list of screened candidates dated 20.4.1993 as it relates to the applicant is ~~had~~ in law and the action of respondents in showing the name of applicant as gangman tantamounts to punishment without affording the opportunity of hearing. Such an action is in violation of article 311 (2) of the Constitution of India and therefore violative of principles of natural justice. Besides the action of respondents is erroneous and proves malafide as it amounts to reversion of the applicant in post and pay scale both.

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6. The learned counsel for the applicant finally submitted that act of the respondents casts stigma and according to well settled principle laid down by superior courts and this Tribunal, the applicant should be screened on the same post on which he has been working for 11 years.

7. While resisting the claim of the applicant Sri A.K. Gaur, learned counsel for the respondents submitted that the applicant has worked on several posts as per the requirement of work. The applicant has never worked continuously as Mortor Mate. The applicant was granted temporary status as temporary khalasi w.e.f. 1.1.1983 and as per Railway Board letter dated 23.10.1986 and Headquarter's Office letter dated 17.8.1987 staff working on the post was to be given temporary status in the same post. The learned counsel also submitted that in order to become a regular class IV staff it would be necessary to appear before the Screening Committee for the regularisation of the service as Khalasi. Since the applicant was working as a casual labour he was selected through the selection board i.e. screening committee for class IV staff for the post of Gangman/Khalasi on regular basis and the action of respondents is in accordance with extant rules on the subject.

8. Sri A.K. Gaur, further submitted that Mortor Mate is a promotional post and the applicant could not be screened directly for the post of Mortor Mate. As per extant rules laid down in Railway Establishment Manual the screening has to be conducted initially for Group 'D' staff i.e. Khalasi/Gangman. The applicant was fully aware that screening was conducted for absorption as Gangman/Khalasi and he gave his willingness and consent for the same. He is now a regular class IV group D



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employee and is entitled to get all benefits like other group 'D' staff. The applicant cannot claim his appointment directly on a promotional post i.e. Mortor Mate. The learned counsel has placed reliance on Full Bench Jaipur Judgment of this Tribunal in Aslam Khan Vs. U.O.I. & Ors 2001 (2) ATJ pg 1 and argued that in Aslam Khans's case (supra) it has been decided <sup>that</sup> one would be liable to be regularised in the feeder cadre in group 'D' post only which has <sup>been</sup> ~~be~~ done in the the instant case.

9. We have considered the submissions of learned counsel for the parties and have carefully perused the record. The main contention of the applicant is that he was given temporary status w.e.f. 1.1.1982 as Mortor Mate on which post he has been continuing for 11 years and he should not be brought down to the post of gangman whereas the respondents have pleaded that the applicant was granted temporary status as temporary khalasi w.e.f. 1.1.1983 and he never worked continuously as Mortor Mate. In fact as per respondents the applicant has worked on several posts as per the requirement of work. We do not agree with the submission of the learned counsel for the respondents. In the record of service of the applicant as casual labour there are entries about applicant's working w.e.f. 1.3.1976 (Ann 1) and it is clearly mentioned that the applicant worked continuously as Mate/Mortor Mate since 15.3.1979 to 1.1.1984. Even in the transfer order dated 21.7.1982 placed as Annexure 2 the designation of the applicant has been given as Mortor Mate. Perusal of order dated 11.12.1985 issued by Asstt. Engineer (Const.) N. Rly., Allahabad makes it further clear that the applicant was given the temporary status as Mortor Mate in the scale of Rs. 210-270.

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The applicant had been medically examined for appointment as Mortor Mate and was declared fit in A-3 category. Even the respondents in Para 4 of their written statement have averred that the applicant worked as Mate from 15.3.1979 to 14.12.1982 and as Mortor Mate from 15.12.1982 to 31.3.1983. The respondents are silent in their counter <sup>in reply</sup> about the post in which the applicant worked thereafter. In the impugned list of screened casual labour dated 20.4.1993, the designation of the applicant at sl. no. 9 has been shown as Mortor Mate. The genuineness of the documents placed before us by the applicant as various annexures to the O.A. has not been challenged by the respondents at any stage and we take these as authentic. Therefore, we have no doubt in our mind that the applicant was granted temporary status as Mortor Mate and he has been continuously working on that post till filing of this O.A. on 20.4.1993.

10. The next question before us arises whether the action of the respondents is correct or not in regularising the applicant against the post of gangman. The legal position in this regard has been settled by Full Bench <sup>of this Tribunal</sup> Jaipur decision in case of Aslam Khan (supra). For convenience sake we would like to quote the relevant para which is as under :

"8. On a consideration of the rules as also the administrative instructions, the Supreme Court has found that a daily wager or a casual worker against a particular post, who acquires a temporary status having worked against the said post for a specified number of days does not acquire a right to be regularised against the said post; he can only be considered for regularisation in accordance with rules i.e. he can be considered for regularisation only to Group D post.

9. In the result, we answer the reference as under:  
A person directly engaged on Group C post ...7/-



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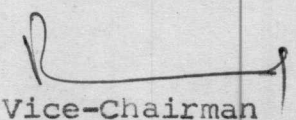
(promotional) on casual basis and has been subsequently ~~granted temporary status~~ would not be entitled ~~and has been subsequently~~ granted temporary status would not be entitled to be regularised on Group-C post directly but would be liable to be regularised in the feeder cadre in Group-D post only. His pay which he drew in the Group-C post, will however be liable to protected."

In the light of above decision we would like to observe that the action of the respondents in screening the applicant and regularising him as gangman Group 'D' post is absolutely in order. However, the applicant is entitled to pay protection. Besides we would further like to observe that since the applicant has been working as mate for more than 11 years, he should <sup>not</sup> be disturbed <sup>and should be</sup> allowed to continue as Mortor Mate. He should be promoted as Mortor Mate on regular basis when his turn falls due.

11. In view of the aforesaid discussion, the O.A. is allowed and finally disposed of with direction to respondents that the applicant will be regularised as gangman with pay protection from the date of issue of list dated 20.4.1993 of Screened Casual labour (Ann-8) and the applicant shall not be disturbed and would continue to work as Mortor Mate till he is promoted.

12. There shall be no order as to costs.

  
Member (A)

  
Vice-Chairman

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