

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 3rd DAY OF APRIL, 1997

Original Application No. 19 of 1994

HON.MR.JUSTICE B.C.SAKSENA,V.C.

HON.MR.S.DAS GUPTA, MEMBER(A)

Ram Naresh
S/o Shri Ram Khelawan
aged about 39 years,
R/o vill: Pure-Julahe,
Post Office:Aliabad
District Barabanki

..Applicant

Versus

1. Union of India owned and represented through and notice to be served on the Chief Administrative Officer/Construction, Northern Railway, Kashmere Gate, Delhi - 6.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. The Dy. Chief Engineer(Construction), Northern railway, Lucknow.
4. The Permanent Way Inspector-II Bye-pass, Northern Railway Lucknow

..Respondents

ALONGWITH

(2) Original Application No.18 of 1994

Satya Narain,
S/o Shri Bhawan Deen, aged
about 51 years,
R/o Vill. Umrao-ka-Purwa
Post office: Bhimganj,
District: Rae Barely

..Applicant

Versus

1. Union of India owned and represented through and notice to be served on the Chief Administrative Officer/Construction, Northern Railway, Kashmere Gate, Delhi-6.
2. The Divisional Railway Manager, Northern Railway, lucknow
3. The Dy. Chief Engineer/Construction Northern Railway, Kanpur.

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4. The Permanent Way Inspector-II
Bye-Pass, Northern Railway,
Lucknow.

..Respondents

(3) Original Application No. 724 of 1994

Baiju, son of Shri Sohan
aged about 53 years,
Kachhona, Post: Lonhara
District: hardoi(U.P.)

..Applicant

1. Union of India owned and represented
through and notice to be served on the
Chief Administrative Officer/
Construction, Northern Railway,
Kashmere Gate, Delhi-6
2. The Divisional Railway Manager,
Northern Railway, Lucknow
3. The Dy. Chief Engineer/Construction
Northern Railway,, Lucknow
4. The Assistant Engineer,
Northern Railway, Gauriganj.

..Respondents

(4) Original Application No. 1093 of 1993

Chhotey Lal, S/o Shri Ram Nath
aged about 37 years, resident of
village: Dohari, P.O. Rupamau,
Thana: Rae Bareilly,
District : Rae Bareilly

..Applicant

Versus

1. Union of India through the
Chief Administrative Officer/
Construction, Northern Railway,
Kashmere Gate,
Delhi- 6
2. The Dy. Chief Engineer/Construction,
Northern Railway, Allahabad.

..Respondents

(5) Original Application No.1092 of 1993

Daya Shanker, S/o Shri Mahadev
aged about 37 years, resident of
village: Hanuman Sahai-ka-Pura,
P.O. Auta, Thana: Meja
District Allahabad.

..Applicant

Versus

1. Union of India through the
Chief Administrative Officer/
Construction, Northern Railway,
Kashmere Gate, Delhi-6

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2. The Dy. Chief Engineer/Construction,
Northern Railway, Allahabad.

..Respondents

(6) Original Application No. 547 of 1995

1. Bhola Nath, S/o Shri Dasha Ram
2. Ram Avadh, S/o Shri Sarjoo.

Both are working as permanent Way Mate
Under Dy. Chief Engineer/Construction,
Northern Railway, Kanpur.

..Applicants

Versus

1. The Union of India owning and
representing Northern Railway, notice
to be served to the General Manager
Northern railway, Baroda House,
New Delhi.
2. The Chief Administrative Officer/
Construction, Northern Railway,
Kashmere Gate, Delhi- 6
3. The Divisional Railway Manager,
Northern railway, DRM Office
Lucknow.
4. The Dy. Chief Engineer/Construction
Northern Railway, Kanpur.
5. The Permanent Way inspector/Doubling
Northern Railway, Kanpur.

..Respondents

(7) Original Application No.564 of 1995

1. Gurudeen, S/o Shri Kariya,
aged about 46 years
2. Sukh Nandan, S/o Shri Bisheshwar,
aged about 40 years.
3. Jagdeo, S/o Shri Badri
aged about 42 years

All are working as Permanent Way
Mate under Deputy Chief Engineer/
Construction, Northern Railway,
Kanpur.

..Applicants

Versus

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1. The Union of India owning and representing Northern Railway, notice to be served to the General Manager, Northern Railway, Baroda House New Delhi.
2. The Chief Administrative Officer/ Construction, Northern Railway, Kashmere Gate, Delhi- 6
3. The Divisional Railway Manager, Northern Railway, DRM Office, Lucknow.
4. The dy. Chief Engineer/ Construction, Northern Railway, Kanpur.
5. The Permanent Way inspector/Doubling Northern railway, Kanpur.

..Respondents

(8) Original Application No.701 of 1995

Chand Khan, son of Shri Mohd. Khalil aged about 39 years working as Driver under Dy. Chief Engineer/Construction (Doubling), Northern Railway, Kanpur

..Applicant

Versus

1. The Union of India owning and representing Northern Railway notice to be served to the Chief Administrative Officer/ Construction, Northern Railway, Kashmere Gate, Delhi-6
2. The Divisional railway Manager, Northern Railway Lucknow.
3. The Dy. Chief Engineer/ Construction Northern Railway, Kanpur

..Respondents

(9) Original Application No. 723 of 1994

Sunder Lal, son of Shri Uttari, aged about 50 years, resident of village: Ram Janki Purwa, Thana: Patranga, Post: Rauzagaon, District: Barabanki(U.P.)

..Applicant

Versus

1. Union of India owned and represented through and notice to be served on the Chief Administrative Officer/Construction Northern Railway, Kashmere Gate, Delhi-6

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2. The Divisional Railway Manager
Northern Railway, Lucknow.
3. The dy. Chief Engineer/Construction
Northern Railway lucknow.
4. The Assistant Engineer, Northern
Railway, Gauriganj.

..Respondents

(10) Original Application No.542 of 1996

Nankoo Ram, son of Shri Dassu
aged about 42 years, resident of village:
Nakkoo-ka-pura, post: Jigna, Thana:
Jigna, District Mirzapur(U.P.)

..Applicant

Versus

1. Union of India owning and representing
Northern Railway, notice to be served to
The General Manager, Northern Railway
Baroda House, H.Qrs. office, New Delhi.
2. The Chief Administrative Officer/
Construction, Northern railway,
Kashmere Gate, Delhi-6.
3. The Divisional Railway Manager,
Northern railway, Allahabad.
4. The Dy. Chief Engineer/Construction,
Northern Railway, Patel Nagar,
New Delhi.

..Respondents

(11) Original Application No. 1034 of 1994

Sunder Lal, son of Shri Deen Dayal,
aged about 48 years, resident of village &
Post: Karari, Tehsil: Manjhanpur,
District: Allahabad.

..Applicant

BY ADVOCATE SHRI S.S.SHARMA)

Versus

1. Union of India owning and
representing Northern railway, notice
to be served on the Chief Administrative
Officer/Construction, Northern Railway
Kashmere Gate, Delhi-6.
2. The Divisional Railway Manager
Northern Railway, Lucknow.

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3. The Dy. Chief Engineer/Construction
Northern Railway, Lucknow.
4. The Assistant Engineer,
Northern Railway, Pratapgarh
5. The Permanent Way Inspector
Northern Railway, Bhadohi.

Respondents

O R D E R (Reserved)

JUSTICE B.C.SAKSENA, V.C.

All these connected OAs raise a common plea that on the basis of having worked for a number of years on Group III posts the respondents may be directed to regularise the applicants on the said Group III posts. ~~and~~ Their reversion to Group IV posts, after having been screened for the said posts, are under challenge in these OAs. In the following OAs the applicants claim that they they had worked for a considerable period as Mates and have been ordered to be reverted on the posts of Gangmen.

- (1) O.A. 19/94
- (2) OA 18/94)
- (3) OA 724/94
- (4) OA 547/94
- (5) OA 564/95
- (6) OA 542/96
- (7) OA 1034/94

2. The applicant in OA 1093/93 claims to have worked as Hammerman and feels aggrieved by his reversion on the post of Gangman, class IV post. The applicant in OA 1092/93 claims to have worked as Blacksmith, a class III post and feels aggrieved by his reversion to the post of Gangman. The applicant in OA 701/95 claims to have worked as Driver for a long period and has sought quashing of an order reverting into the post of Gangman. The applicants have prayed for a direction to be issued

102

to the respondents to regularise them on the class III posts on which they claim to have worked i.e. the post of P.W. Mates, Hammerman, Blacksmith and driver.

3. It is not necessary to give in detail the pleadings of the parties. The matter relates to the claim of the applicants for regularisation on class III posts solely on the circumstance that they have worked for a considerable long period though may have not been trade tested for the said post nor appointed as per rules. The class III posts are promotion posts and their direct engagement on the said post was irregular and does not vest any right in them to claim regularisation in the class III post.

4. A bundle of OAs raising similar claim was decided by a Division Bench of this Tribunal. Applicants had sought absorption on regular basis as PW Mates. the Tribunal directed the Railway Authorities to absorb the applicants on regular basis as Mates. The matter was taken up before the Hon'ble Supreme court in an appeal and the decision is reported in 1996(33) ATC 304 Union of India and another Vs. Moti Lal and Ors. A perusal of the said judgment would show that two questions were formulated which required according to their Lordship's consideration:

- (i) is it permissible under rules to appoint a person directly as Mate in class III if not then whether the factual continuance of a person as a Mate for considerable period entitles him to be regularised as a Mate?
- (ii) Conferment of a temporary status as a Mate whether *ipso facto* entitles a person to be regularised as a mate and not as a gangman?

On the first question their Lordships examined the relevant provisions of the rules as well as the administrative instructions issued by the Railway Authorities and came to the conclusion that it is not

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permissible to appoint a person directly as a mate and it is only a promotional post from class IV post of gangman and keyman. It was held that these gangman and keyman can be promoted to the post of mate in class III subject to their suitability and efficiency being tested through trade test. The Hon'ble Supreme court noted that ~~that~~ it is no doubt true that these respondents under certain circumstances had been appointed directly as casual mates and they continued as such and further by virtue of their continuance they acquired temporary status but the Hon'ble Supreme court held that this by itself does not entitle them to be regularised as mates since that would be contrary to the rules in force.

5. As far as the second question was concerned, the Hon'ble Supreme court recorded its considered opinion that conferment of a temporary status as a mate ~~ifso~~ facto does not entitle a person to be regularised as a mate. In paragraph 13 their Lordships of the Hon'ble Supreme court observed as follows:

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

6. The learned counsel for the applicants submitted before us that the applicants in these cases also were directly appointed as PW mates or other class III posts indicated hereinabove and therefore it should be held that it would be in equitable to require them to be regularised against class IV posts of gangman.

7. In the first place, we wish to point out as was held by a Full bench of the Tribunal that a jurisdiction ~~and~~ in equity does not inhere in the Tribunal. For the said proposition reference was made to the decision of the Hon'ble Supreme Court in Jogender Singh Vs. Union of India and Ors 1989(11) ATC 474 and Union of India and Ors. Vs. Deoki nandan Agrawal 1992(19) ATC 219. The Full bench held that the Tribunal is to be guided by law in its adjudicatory process and not by considerations of equity alone. It cannot travel the reasons of equity and innovate remedies. The Full Bench decision is reported in 1997(1) ATJ page 1 D.L. Somayajulu and Ors. vs. Telecom Commission and Ors.

8. In view of the fact that the Hon'ble Supreme Court in its Judgment in Union of India Vs. Moti Lal and Ors(Supra) has clearly laid down that it would not be a precedent. We cannot extend the benefit of the direction given by the Tribunal in Moti Lal and another. The Hon'ble Supreme court has very clearly held that class III post is a promotion post and irrespective of circumstance that a person has been appointed directly contrary to the rules by a reason of such long continuance of the post cannot claim regularisation on class III post. We have no option but to reject the claim of regularisation on the class III posts as made by the applicants. The OAs deserve to be dismissed and are dismissed. We, however, wish to observe that some orders were shown to have been passed by the Railway Board by

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the learned counsel for the applicants while the judgment in these OAs have been reserved to be pronounced. We only wish to indicate that nothing in our order ^{will} preclude the applicants from being given the benefit of any policy decision or statutory instructions issued by the railway Board covering the circumstances indicated in the said executive instructions, upon proof that the applicants are so circumstanced.

9. With the above observation the OAs are dismissed. Parties to bear their own costs.

Dated: June 3rd 1997

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