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CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK

O.A.NO. 254 OF 1998  
Cuttack, this the 28<sup>th</sup> May, 2004

Krishna, son of Kamulu ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? 72
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? 73

  
(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

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CUTTACK BENCH, CUTTACK

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CORAM:

HON'BLE SHRI B.N.SOM, VICE-CHAIRMAN  
AND

HON'BLE SHRI M.R.MOHANTY, MEMBER(JUDL.)

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Krishna, son of Kamulu, Fitter Gr.III, Office of the Junior Engineer,  
TRD-I (Construction), S.E.Railway, Koraput, At/PO/Dist.Koraput

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Applicant

Vrs.

1. Union of India, through the General Manager,  
S.E.Railway, Garden Reach, Calcutta (W.B.)
2. The Chief Administrative Officer (Project), At/PO  
Chandrasekharpur, Bhubaneswar, Dist.Khurda.
3. Deputy Chief Electrical Engineer (Construction), South  
Eastern Railway, Visakhapatnam (A.P.).
4. The Chief Project Manager, S.E.Railway, Visakhapatnam  
(A.P.).
5. Junior Engineer, TRD-I (Con.), S.E.Railway, Koraput,  
At/PO/Dist.Koraput

..... Respondents

Advocates for the applicant - M/s P.K.Chand, D.Satapathy,  
B.P.Tripathy.

Advocates for the Respondents- M/s D.N.Mishra, S.K.Panda.

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SHRI B.N.SOM, VICE-CHAIRMAN

Shri Krishna, son of Kamulu, working as Fitter Grade III, under Junior Engineer, TRD-I (Construction), S.E.Railway, Koraput, has filed this Original Application seeking a direction to be issued to the Respondents to regularise his services in Group C post either in Construction Organisation or in Open Line and to quash the impugned order dated 12.3.1998 issued by the Deputy Chief Electrical Engineer (Construction), Visakhapatnam (Annexure 3) directing him to report to S.P.O. ( C ), Visakhapatnam, for absorption in Group D category in Open Line.

2. The case of the applicant is that he was appointed as Casual Khalasi on 1.11.1980 as Basic Tradesman (BTM/Fitter) with effect from 2.2.1985. Thereafter he was promoted to the post of Fitter Grade III with effect from 14.2.1989 in the pay scale of Rs.950-1500/-. The grievance of the applicant is that instead of regularising his service in Group 'C' scale in which he is at present working, Respondent No.3 is trying to revert him to a post having lower scale of pay, i.e., a post in Group D category on the plea of regularisation. He has also called this action of the Respondents illegal because no willingness or option has ever been taken from him for absorption in Group D category in Open Line. He has also alleged that non-

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regularisation of his service in Group C post is an act of arbitrariness violating the provisions of Article 16 of the Constitution.

3. The applicant has claimed that he was given PCR status with effect from 1.1.1990 and that he should have been already considered for regularisation as Fitter Grade III, a post which he is holding since February 1989.

4. This is the second round of litigation on the part of the applicant on the same issue. In his prayer he has assailed Annexure 3 which was issued by respondent No.3 in pursuance of the direction of this Tribunal vide its order dated 29.1.1998 by which the Tribunal while rejecting the O.A. had given an opportunity to the applicant that should he so desire he could submit a written undertaking expressing his willingness to be absorbed/regularised against a Group D post in Open Line and if such an undertaking is submitted by the applicant, the Respondents would be bound to accept his option.

5. In the earlier round of litigation in OA No.2 of 1994 the applicant had sought for a declaration that he is a regular Grade III Fitter and is entitled to continue as such. The finding of the Tribunal was that the applicant was holding the post of Grade III Fitter in the Construction Organisation on ad hoc basis and that an ad hoc appointee has no right to hold a post on regular

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basis. It had also been held by the Tribunal that the applicant would continue on ad hoc basis strictly in terms of his order of appointment and so long as work is there for him. It was also held by the Tribunal that the applicant had not prayed for regularisation and therefore, this issue was not adjudicated in that O.A.

6. The applicant in this O.A. has come up with the plea that he has a right to be regularised in a Group C post either in the Construction Organization or in Open Line. His other prayer is that the order issued by Respondent No.3, dated 12.3.1998 directing him to report to S.P.O.(C), Visakhapatnam, for absorption in Open Line be quashed, being arbitrary.

7. The Respondents have stoutly opposed the Original Application. They have submitted that after his O.A.No.2 of 1994 was rejected by the Tribunal, he was directed to report to the concerned authority for being absorbed in a Group D post in Open Line by their order dated 12.3.1998. The applicant thereupon filed the present O.A. On 18.5.1998 the Tribunal after hearing the matter on the question of interim relief at the admission stage had observed that while it was not inclined to stay operation of the letter dated 12.3.1998 (Annexure 3), but in view of the findings of the Tribunal in OA No.2 of 1994 the applicant was bound to continue as Fitter grade III on ad hoc basis so long as three persons junior to him in Fitter Grade III were

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continued as such, those three persons being Ch.Sankara Rao, T.A.V.Satyanarayan and Ch.V.S.Mangapati Rao. The Respondents have now clarified in their counter reply that none of these three persons is junior to the applicant. Further that out of these three officials, two have already been absorbed as Group D staff in Open Line and the other one has been absorbed in PCR Group D post but allowed to work as Fitter Grade III on ad hoc basis in the office of the Deputy Chief Electrical Engineer (Construction),Bhubaneswar. They have submitted that ad hoc promotion of the applicant as Fitter Grade III is being continued in casual capacity without pensionary benefit till Construction Project remains in operation and the services of the applicant are required. It has also been stated by them that the applicant attained temporary status as Khalasi with effect from 1.1.1984 and was termed as Project Casual labourer vide order dated 27.10.1986 in terms of Establishment Serial No.187/86. After completion of the said project he was inducted to Koraput Rayagada Project with effect from May 1987 along with other staff of the said organization. They have stoutly denied that he was ever granted PCR status from 1.1.1990 and that the applicant had ever been regularized against any PCR post. By submitting their reply dated 16/17.5.1990 (Annexure R/2) they have sought to substantiate this statement that in May 1990 whereas 257 casual workers were granted PCR status, the

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name of the applicant did not find place in that list and therefore, his statement that he was granted PCR status from 1.1.1990 is without merit. They have also clarified that none of the juniors of the applicant has been conferred with PCR status as yet. With regard to the claim of the applicant for regular absorption in Group C, they by inviting reference to the provisions of Establishment Serial No. 75/97 have stated that the applicant does not fulfil the conditions laid down in that circular for being absorbed in Group C . They have also stated referring to Establishment Serial No.106/60 that if an official is to be promoted temporarily as semi skilled/skilled artisan he is required to be trade-tested for adjudging his suitability for the post for which he was being considered, that passing of such a test does not confer any right on an official for regularization against regular post. They have also argued that all the posts in Construction Organization are work -charged, purely temporary in nature and are continued from year to year basis depending upon availability of works and allocation of funds and therefore, the question of giving appointment in the construction organization does not arise. Referring to the provisions of Establishment Serial No. 75/97 they have stated that the claim of the applicant for absorption in Group C post would have merit, had he been either a Diploma-holder or had he possessed other qualification, he could

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have been given a chance to appear in the examination conducted by the Railway Recruitment Board without any age limit. However, casual labourers who are not Diploma holders are not qualified to be considered as skilled artisans against 25% of the promotion quota vacancies for absorption in Group D on the basis of number of days put in as casual labourers in the respective units. They have, therefore, argued that the claim of the applicant for regularization is to be considered in the light of the provisions made in Establishment Serial No.75/97 and that is how the Respondents have offered the applicant an opportunity to be regularized in group D category in Open Line. They have further emphasized that regularization can only take place against a post in the Open Line and not in Construction Organization. The Respondents have also referred to the judgment of the Allahabad Bench of the Tribunal in the case of *Sri Ramnareshand others v. Union of India and others*, 1998 ATJ 250 (CAT), which relying on the Apex Court's decision in the case of *Union of India and others v. Motilal and others*, 1996 ATC 304, has held that mere working or getting temporary status in Class III does not entitle one to be regularised in Class III post. Referring to this Bench's decision in OA No.2/94 the Respondents have also submitted that the applicant's prayer for regularization in the Construction Organization having been found without



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merit in that O.A., he cannot be allowed to again agitate the same issue before the Tribunal.

8. We have heard the learned counsel for both the sides and have perused the records placed before us. The applicant has filed rejoinder and also an additional rejoinder and the Respondents have filed reply to the rejoinder.

9. In claiming regularisation in a Group C post the applicant has relied on the decision of Calcutta Bench of this Tribunal in OA No.1003/92, decided on 23.9.1995 (*V.A.Saradamba and others v. Union of India and others*) and the provision made in this regard in Establishment Serial No.141/63. He has argued that the Railway Board by their Establishment Serial No.141/63 had directed all concerned that wherever casual labourers engaged in work-charged establishment of certain Departments get promoted to semi-skilled/skilled and highly skilled categories due to non-availability of departmental candidates and continue to work as casual employees for very long period, they should be straightaway absorbed in regular vacancies in skilled grade (provided they have passed the requisite test) to the extent of 25% vacancies reserved for departmental promotees from the unskilled and semi-skilled categories.

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10. The Respondents have submitted that the decision in OA No.1003/92 is of little help to the applicant because all the applicants in that O.A. were direct recruit skilled artisans working in casual capacity and had attained temporary status in their respective posts. Thus the applicant in this case cannot compare his case with those applicants as he was never directly recruited as skilled artisan but was recruited as casual labourer. Having regard to the facts of the case in OA No.1003/92 and the facts of the present case, we see lot of force in the submission made by the Respondents and hold that the decision of the Calcutta Bench in OA No.1003/92 has no application in the present case.

11. With regard to the claim of the applicant that his case for regularisation should have been decided by the Respondents on the basis of Establishment Serial No.141/63, the Respondents by filing reply to the rejoinder have stated that for the purpose of regularisation of casual labourer the said Establishment Serial is no longer holding the ground in view of the further instructions issued in this regard by the Railway Board under Establishment Serial No. 75/97. The applicant in spite of being given the liberty of filing an additional rejoinder on 15.3.2004, in reply to the submission made by the Respondents on 24.3.2004, has not been able to convincingly argue how Establishment Serial No.141/63 holds the ground

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in the face of Establishment Serial No. 75/97 now issued. We have carefully perused the rejoinder and additional rejoinder filed by the applicant as also the reply of Respondent No.2 to the rejoinder. From perusal of the objections to the reply filed by the Respondents we find that the applicant has made a claim to the extent that "he was promoted to a substantive vacancy in the post of Fitter Grade III" after he became successful in a trade test conducted by the Respondents and that "the applicant got regular promotion to the post of Fitter Grade III but the Respondents illegally posted the applicant to such post on ad hoc basis." We have also perused Establishment Serial Nos. 141/63 and 75/97. Establishment serial No.141 of 1963 was issued laying down the procedure for absorption of casual labourers engaged in work-charge establishment and who are semi-skilled/skilled/highly skilled categories to be straightaway absorbed in regular vacancies in skilled grade to the extent of 25% vacancies reserved for departmental promotees from the unskilled and semi-skilled categories. Establishment Serial No.75/97 contains instructions regarding regularisation of casual labourers working against Group C posts. This circular was issued for regularisation of casual labourers who were recruited against Group C posts like Work Mistri, Permanent Way Mistry, I.O.W, Pharmacist, etc. In Paragraph 3 of the circular it has been laid down that such casual



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labourers working in Group C scales may be regularised on the following lines:

- "i) All casual labour/substitutes in group C scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar;
- ii) Notwithstanding( i) above, such of the casual labour in Group C scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such;
- iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group D on the basis of the number of days put in as casual labour in respective units."

The plea of the applicant is that the Establishment Serial No.141/63 is still in vogue and he is entitled to its benefit. The Respondents have refuted it to say that Establishment Serial No.141/63 has been subsumed in Establishment Serial No.75/97. We agree with the Respondents' view point. In terms of this circular, the case of the applicant will be governed by the instruction



contained in paragraph 3 (iii), where it is said that all casual labour may continue to be considered for absorption in group D on the basis of the number of days put in as casual labour in respective units because the applicant was not recruited as casual labour in Group C scale. In other words, the regularisation of service of the applicant shall have to be done following the instructions of Establishment Serial No. 75/97.

12. There is another angle to this case to be considered by us. The claim of the applicant is that he is entitled to be regularised against a Group C post either in Construction Organisation or in Open Line. After going through the relevant Establishment Serials placed before us and the facts of the case as stated by both the parties regarding recruitment and appointment of the applicant, we find that his claim is devoid of merit because the applicant was recruited as a Casual Khalasi on 1.11.1980, granted temporary status with effect from 1.1.1984 and later on appointed against a semi-skilled post on ad hoc basis and thereafter appointed against a skilled post. Regularisation can take place only against a post to which an outsider can be initially appointed according to the recruitment rules. In the instant case, the recruitment rules for Group C posts do not provide for absorption of casual labour against these posts except in the cases as permitted under Establishment Serial No.75/97. In terms of that Establishment Serial, only a casual labour who

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was initially appointed in a post carrying Group C pay scale can be regularised subject to fulfilling the eligibility conditions. The applicant, who was initially appointed as casual Khalasi, does not come within the ambit of these rules governing regularisation in Group C post. In the circumstances, we see no merit in the O.A. which is accordingly dismissed, being devoid of merit. In the result, his prayer for quashing the impugned order dated 12.3.1998 has also no merit. No costs.

13. Before we close the matter, we would like to point out that the applicant had tried to mislead the Tribunal by filing Annexure 9, a copy of Memo purported to have been issued by the C.A.O. (Con.), Visakhapatnam dated 16/17.5.1990 regarding absorption of Project Casual Labour against 60% Group D PCR posts where his name was shown to be appearing at Serial No.305. The Respondents have disputed this document as being not genuine. We had compared Annexure 9 with the copy of the letter submitted by the Respondents along with their counter at Annexure R/2. We had also called upon the Respondents to place before us the Casual Labour Live Register to verify the claim of the applicant. Having perused the Live Register and the copy of the letter at Annexure 9, we were of the view that the applicant had tried to mislead the Tribunal by filing a letter which was not a true copy of the letter issued by the Chief Administrative Officer



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(Construction), Visakhapatnam. We not only disapprove of this unbecoming conduct of the applicant, we hereby impose cost of Rs.1000/- (Rupees one thousand) only on the applicant for adopting undesirable behaviour.

  
28/05/04

(M.R. MOHANTY)  
MEMBER (JUDICIAL)

  
(B.N. SOM)  
VICE-CHAIRMAN

AN/PS