

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

JODHPUR BENCH JODHPUR

OA No.218/99

Date of Order: 24.07.2001

Krishan Pal Singh S/o Shri Sohan Lal Singh, aged about 42 years, formerly working as a Welder under Permanent Way Inspector (Construction), Northern Railway, Pali but now working as Welder under PWI (Construction) NR Samdari. Permanent Resident of Village Fazalpur Post Vinoli Teh. Sardhana Distt. Meerut (UP).

....APPLICANT

VERSUS

1. Union of India, through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Chief Administrative Officer (Const.), Northern Railway, Kashmiri Gate, New Delhi.
3. The Deputy Chief Engineer (Const.) III Northern Railway, Jodhpur.
4. The Divisional Railway Manager, Northern Railway, Bikaner.

....RESPONDENTS

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Mr. H.R. Soni, counsel for the applicant.

Mr. Kamal Dave, counsel for the respondents.

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Hon'ble Mr. Justice B.S. Raikote, Vice Chairman.

Hon'ble Mr. A.P. Nagrath, Administrative Member.

ORDER

(Hon'ble Mr. A.P. Nagrath)

The applicant had earlier filed an OA No.405/1996 which was disposed of on 12.2.98 with the following directions:

"In the result, this application is disposed of, at the stage of admission with a direction to consider the applicant's case for regularisation/absorption in a group 'C' post as prayed for by

in terms of provisions contained in tem No.2 of para 3 of the Railway Board's Circular dated 9.04.1997 reproduced above, subject to availability of vacancies as per his turn and by seniority in accordance with rules, as expeditiously as possibly no order as to costs".

2. In implementation of the said directions of the Tribunal the department considered the applicant's case for regularisation/absorption in a group 'C' post and communicated the decision vide letter dated 17.7.98 Annexure A/1, advising the applicant that the applicant cannot be regularised in group 'C' artisan category at this stage as there was no vacancy against 25% of the promotee quota in the artisan category on the Division. Aggrieved with this communication, the applicant has filed this OA seeking the following relief:-



- "(i) That this Hon'ble Tribunal may kindly be pleased to quash and set aside the impugned orders vide Annexures A/1 and A/4 qua the applicant.
- (ii) That the respondents be directed to fix the lien of the applicant as Welder in group 'C' category.
- (iii) That any other relief's may kindly be granted to the applicant which this Hon'ble Tribunal deems fit, proper and just.
- (iv) That the cost of the OA be awarded."

Annexure A/4 is the order dated 19.1.98 by which the applicant alongwith others have been regularised in group 'D' posts of Engineering Department.

3. Case of the applicant is that he was initially engaged as a casual Welder on 05.02.1983 which is a group 'C' post and he has continued to work as such all these years. He submits that his initial appointment

on the post of Welder was in accordance with rules, in terms of para 109 of Indian Railway Establishment Manual (IREM). It has been stated that under para 114 of IREM, General Manager has the powers to relax rules and the applicant's contention is that in his case, this power has been exercised by General Manager and he has been directly recruited as Welder in group 'C'. One of the grounds taken by the applicant is that he was granted temporary status on 03.01.1984 as Welder only and this entitles him for regularisation in group 'C'.

4. Learned counsel for the applicant while reiterating the grounds taken in the written submissions laid emphasis on the plea that the applicant's initial appointment was as per rules applicable in the case of recruitment from open market. He also placed reliance on the Railway Board's Circular dated 09.04.1997 which provides among others that the casual labour in group 'C' scales are entitled for absorption as skilled artisan against 25% of the promotee quota. The learned counsel also referred to para 2007(3) of IREM and contended that under this rule the applicant has a right to be considered for absorption only in group 'C'.

5. Learned counsel for the respondents, on the other hand, stated that the applicant has already been regularised in group 'D' post and thus, has found a position in the seniority list of his cadre in the Engineering Department in group 'D'. His rights are to be governed as per his seniority in his cadre and there is no case for giving him any preferential consideration. The learned counsel also submitted that this case was fully covered by the Full Bench decisions in the cases of Ram Lubhaya and Aslam Khan.

6. We have heard the learned counsel for the parties and also perused the written statements and the rule position.

7. We do not find any force in the arguments of the learned counsel for the applicant that the applicant was recruited as a Welder on a regular basis under provisions of para 109 of IREM. Applicant's own case is that he was initially appointed as a casual labour on 05.02.1983 and has been continuing as a Welder even now. Recruitment against regular post is governed by specific rules and the process starts with a notification inviting applications from any of the citizens interested to be considered against the vacancies advertised. No such notification has been brought to our notice. Plea of the learned counsel for the applicant that the applicant deserves regularisation against group 'C' post in terms of Rule 2007(3) of IREM against 25% promotee quota itself refutes this contention, that the applicant was recruited against a regular vacancy. We also find that the applicant was engaged initially in the construction department. Construction department of the Railway does not have a regular cadre of its own. The persons engaged as casual labourers in the construction department are regularised by the Divisions in whose geographical jurisdiction, they are engaged or where they are working over long periods. Because of the fact that the applicant was engaged and was working at Suratgarh, he has been absorbed in group 'D' in the regular cadre in the Engineering Department of Bikaner Division.

8. In so far as his claim for regularisation in group 'C' is concerned, as mentioned by us above, the learned counsel for the applicant placed reliance on

Rule 2007(3) of IREM and also Railway Board's Circular dated 09.04.97. He also supported his contention on the ground that the applicant was granted temporary status in group 'C' as, Welder. From the facts of this case, we are of the opinion that this case is squarely covered by Full Bench Decision in OA No.57/96 Aslam Khan Vs. U.O.I. & Ors. decided on 30.10.2000. The question which came up for consideration before the Full Bench was:-

"Whether the person directly engaged on group 'C' post (Promotional post) on casual basis and subsequently, acquired temporary status, would be entitled to be regularised on group 'C' post directly or whether such person requires to be regularised in the feeding cadre in group 'D' post by providing pay protection of group 'C' post."

In this order dated 30.10.2000, the decision of Hon'ble the Supreme Court in the case of U.O.I. & another vs. Motilal & Ors., 1996 (33) ATC 304 was referred to. In that order, the Apex Court had observed as under:-

"10. So far as the second question is concerned, we are also of the considered opinion that conferment of the temporary status as mate ipso facto does not entitle the person concerned to regular absorption as mate. In the case of Ram Kumar Vs. U.O.I. this Court has held that an employee on daily wage basis under the Railway acquires temporary status on completion of a specified number of days in service and with the acquisition of the said status such employees are entitled to:

1. Termination of service and period of notice subject to the provisions of the Industrial Disputes Act, 1947).
2. Scales of pay.
3. Compensatory and local allowances.
4. Medical Attendance.

5. Leave Rules.
6. Provident fund and terminal gratuity.
7. Allotment of railway accommodation and recovery of rent.
8. Railway passes.
9. Advances.
10. Any other benefit specifically authorised by the Ministry of Railways.
11. Thus, it is apparent that a daily-wager or casual worker against a Particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularisation in accordance with the rules. (emphasis supplied)
9. Based on the above, the Full Bench of the Tribunal observed as under:-

"4. If one has regard to the aforesaid decision by the Supreme Court, a conclusion is irresistible namely, a person directly engaged on group 'C' post, which is a promotional post, on casual basis and who has subsequently acquired temporary status would not be entitled to be regularised on group 'C' post and would be liable to be regularised in the feeder cadre in group 'D' post by providing him pay protection of group 'C' post."

It is, thus, clearly established that the applicant who was engaged on a group 'C' post of casual basis and who subsequently acquired temporary status, would not be entitled to be regularised on group 'C' post.

10. Full Bench had also gone into the position relating to para 2007(3) of IREM and Railway Board's Circular dated 9.4.97 on which the learned counsel for the applicant based the claim of the applicant. After going into the rule position and the contents of circular, the Full Bench observed as under:-

"(8) On a consideration of the rules as also the administrative instructions, the Supreme Court has found that 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 the rules i.e. he can be considered for regularisation only to group 'D' post."

and answered the reference as stated below:-

"(9) A person directly engaged on group 'C' post (Promotional post) on casual basis 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 be protected."

11. Learned counsel for the applicant attempted to distinguish this case from the Full Bench judgment in the case of Aslam Khan. He has submitted written synopsis on behalf of the applicant referring to Paras 104, 109, 114, 159, 2007(2) and 2007(3) of IREM. The learned counsel has based this case on presumptions, but such an argument has no legs to stand upon. The power vested in any authority is exercised in a positive manner and there can be no presumption that such power has actually been exercised, in a given case. The learned counsel also referred to the cases of Narendra Chadha Vs. U.O.I. & Ors. AIR 1986 SC 638, AIR 1990 SC 1607 Direct Recruits Vs. State of Maharashtra, OA 2541/96 Pritpal Singh Vs. U.O.I. (Principal Bench) OA 87/98 Narendra Kumar Vs. U.O.I. Jodhpur Bench of C.A.T, RP NO.12/93 in OA No.232/92. In so far as the cases of Narendra Chadha and Direct Recruits Vs. State of Maharashtra and concerned, these are of no consequence in this case, in view of the fact that the applicant was only engaged

as casual labour and these cases do not relate to casual labour. The cases decided by various Benches of CAT or also of not any help to the applicant, in view of the Full Bench decision in the case of Aslam Khan. The learned counsel also cited the cases of Rudra Kumar Vs. U.O.I. AIR 2000 SC 2808 and Manbodhan Lal AIR 1957 SC 912. The learned counsel for the applicant made efforts in vain to find support from these cases. On the facts, these cases are distinguishable from the case before us as we have repeatedly stressed *supra*, the case of the applicant is covered on all fours by Aslam Khan's case decided by the Full Bench and we do not find any reason to hold any other view in the matter.



12. In view of the law established consequent to the above judgment of the Full Bench; and the facts of the OA before us being entirely similar in content, we are of the view that action of the respondents in regularising the applicant in group 'D' post is legal and cannot be interfered with. The applicant has failed to establish his claim for regularisation in group 'C' and this OA is liable to be dismissed. However, on his regularisation in group 'D' post his pay which he drew in the group 'C' post is liable to be protected as per principle enunciated by the Full Bench.

13. We, therefore, dismiss this OA at the stage of admission as having no merits. However, we direct the respondents to protect the pay of the applicant which he was drawing in group 'C' post, on his regularisation in feeder cadre in group 'D' post. No order as to costs.

(A.P. Nagrath)
Admin. Member

(Justice B.S. Raikote)
Vice Chairman

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