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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

COMMON ORDERS IN
O.A.460/2004, 482/2004, 490/2004,
572/2004 & 258/2005

.....~~MONDAY~~.....THIS THE 20th DAY OF MARCH, 2006

CORAM

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

O.A.460/2004:

S.Krishnan, S/o Padayappa Naicker,
Senior Track Man, Office of the Section
Engineer/Permanent Way, Southern Railway,
Tiruppur, residing at Thottipalayam Pudur
(Kattukkadu) Ezhumathur PO,
Modakurichi (Via),
Erode Dt.

.....Applicant

(By Advocate Mr.T.C.Govindaswamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Chief Personnel Officer,
Southern Railway,
Headquarters Office,
Park Town PO,
Chennai.3.
- 3 The Divisional Personnel Officer,
Southern Railway, Palghat Division
Palghat.

..... Respondents

(By Advocate Mr.P. Haridas (rep.))

OA 482/2004:

A.Rajagopal, S/o K.P.Arumugha Asari,
Senior Trackman, Office of the Section
Engineer/Permanent Way, Southern
Railway, Erode, residing at Periathottam,

Vivekananda Nagar, Chennimalai Road,
Erode.2.

.....Applicant

(By advocate Mr. TCG Swamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Chief Personnel Officer,
Southern Railway, Headquarters Office
Park Town PO, Chennai.3.
- 3 The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

.....Respondents

(By Advocate Mr. P. Haridas (rep.))

OA. 490/2004:

P. Subramanian, S/o Periyasamy,
Senior Trackman, Office of the
Section Engineer/Permanent Way,
Southern Railway, Erode,
residing at Periahtottam, Vivekananda Nagar,
Chennimalai Road, Erode.2.

(By Advocate Mr. TCG Swamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Chief Personnel Officer,
Southern Railway, Headquarters Office
Park Town PO, Chennai.3.
- 3 The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

(By Advocate Mr. P. Haridas (rep.))

OA 672/2004:

K. Gopalan, S/o Kuppusamy,
Helper II (Brick Layer) Office of the

Section Engineer/Permanent Way,
Southern Railway, Erode,
residing at No.105, Thankaperumal Veedhi
Kallukkada Medu, Erode Dt.

.....Applicant

(By Advocate Mr. TCG Swamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Chief Personnel Officer,
Southern Railway, Headquarters Office
Park Town PO, Chennai.3.
- 3 The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

(By Advocate Mrs. Sumati Dandapani)

OA 258/2005:

K.Vijayakumar, S/o Madhavan Nair,
Welder Khalasi Helper
O/o Senior Section Engineer/Permanent Way
Southern Railway, Shoranur
residing at Kundil House, Mundamugha,
Shornur.3.

...Applicant

(By Advocate Mr. TCG Swamy)

V.

- 1 Union of India, represented by the
General Manager, Southern Railway,
Headquarters Office, Park Town PO
Chennai.3.
- 2 The Chief Personnel Officer,
Southern Railway, Headquarters Office
Park Town PO, Chennai.3.
- 3 The Divisional Personnel Officer,
Southern Railway, Palghat Division,
Palghat.

(By Advocate Ms. P.K.Nandini)

All these applications having been heard together on 6.3.2006, the Tribunal on 20.3.2006 delivered the following:

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The O.As 460/04, 482/04, 490/04, 572/04 are identical in all respects. There are minor variations in OA 258/05 which are not very relevant. All these O.As are, therefore, heard together and are disposed of by this common order.

2 All the applicants in these O.As were initially appointed as Casual Labourers in the year 1979/1980 on daily rated wages and later they were conferred upon the temporary status. In that capacity they were screened and posted as Gangman under the Permanent Way Inspector and they have joined in that post in the year 1985/1986/1987. The respondents vide Annexure.A1 letter dated 1-/2-4-2002 called volunteers from eligible Group D staff under the Civil Engineering Department in Permanent Way, Marks and Bridge Wing who fulfil the requisite qualifications for filling up the vacancies in Skilled Artisan Grade III Categories earmarked for "direct recruitment and LDCE". One of the conditions for appointment was that the concerned volunteer should have put in at least two years work in the Skilled grade or a higher grade. The vacancies were in Artisan Grade III in the category of Painter, Plumber, Carpenter, Welder and Blacksmith. The last date of receipt of the applications was 30.4.2002. Pursuant to the aforesaid letter dated 1-/2-4-02, the applicants have also applied for the post of Artisan Grade III in the respective categories. The respondents after having considered the applications received upto the last date, issued a provisional list of Group D employees, who have volunteered in response

to the notification and names of the applicants except the applicant in OA 258/05 have been included therein. However, later vide the impugned letter dated 16.3.04, they were informed that they were not eligible to be considered for the post since they did not have the minimum two years service in the Skilled Grade or higher grade as Casual Labour. In the case of the Applicant in OA 258/05, his name was not included in the list of employees who have volunteered and found to be fulfilling the eligibility criteria as his application was not received within the stipulated time. The submission of the applicants is that even though they were initially engaged as Casual Labour, they were actually working in the Skilled trades of Bricklayer, Carpenter, Blacksmith etc. and their services were utilized in that capacity both before and after their regularization as Gangman. The applicants have, therefore, contended that since they have been working as Skilled Casual Labours, they have fulfilled the condition of two years work as casual labour in the Skilled Grade. The applicants have challenged the action of the respondents in not considering them for promotion to the post of Skilled Artisan Grade III as arbitrary and discriminatory because they had actually worked as Skilled Casual Labour for more than two years and just because they were granted temporary status in the unskilled grade, the actual fact that they worked as Skilled Casual Labourers cannot be ignored.

3 The respondents in their reply denied the contentions of the applicants. The applicant in OA 460/04 is a Gangman. He was promoted as Senior Gangman. But he volunteered for the post of Bricklayer Khalasi and having found suitable he was posted as Bricklayer Khalasi and he

joined the post on 27.12.99. The promotion avenues for Bricklayer Khalasi are first as Bricklayer Khalasi Helper and then as Bricklayer. Later, on his own request for a transfer as Bricklayer Khalasi/Trackman, he was transferred to his former post of Gangman/Trackman under the Section Engineer, PWI, Tirpur and he joined on that post on 27.6.2000 and he has been continuing there. The applicant in OA 482/04 was also promoted as Sr.Gangman. The respondents have denied his contention that since he worked as a Skilled Casual Labour for at least two years, he is to be treated as having fulfilled the eligibility condition of two years work in the Skilled Grade or higher Grade. The case of the applicant in OA 490/04 is also similar to that of the applicant in OA 482/04. In this case also the respondents have denied that his services were utilized as Carpenter even after regularization as Gang man. The applicant in OA 572/04 was promoted as Sr.Gangman. He had volunteered for the post of Bricklayer Khalasi and having found suitable he was posted as Bricklayer Khalasi in the scale of pay of Rs. 2550-3200 under the Section Engineer, Permanent Way, Erode on 15.1.2000. Afterwards he was promoted as Bricklayer Khalasi Helper in the scale Rs.2650-4000 on 21.8.2001 and is still continuing in the said capacity. In the Annexure A1 notification there is no vacancy for the Bricklayer category and hence he could not be considered for the Skilled Artisan Grade III posts referred to in the Annexure.A1 letter dated 1/2-4-2002. In the case of the applicant in OA 258/05, while working as Gangman, he volunteered for the post of Welder Khalasi and was posted as Welder Khalasi with effect from 22.12.93. Later he was promoted as Welder Khalasi Helper on 13.6.94. There were only three vacancies notified in the Welder category, with one post earmarked for SC

and other two posts for unreserved. The last date of receipt of application was 30.4.02. The applicant did not submit his application in response to the A2 notification within the stipulated period. Hence he was not considered for promotion to the aforesaid post of Skilled Artisan Grade III.

4 Later, on the orders of this Tribunal on the Miscellaneous Applications filed by the Applicants for production of the aforesaid letter dated 22.6.2001, the respondents produced it with an affidavit stating that it was issued in anticipation of ratification by the Railway Board but the same was kept in abeyance vide letter dated 6.1.2005 since the Board's ratification was not forthcoming. However, in the meanwhile the respondents have already finalized a list of six candidates who fulfilled the eligibility criteria as laid down in the aforesaid letter of the chief Personnel Officer dated 22.6.2001 and issued necessary orders promoting and posting them as Skilled Artisan Grade III on 26.10.2004. The Respondent No.1, the General Manager, Southern Railway has also filed an affidavit stating the aforesaid subsequent developments. During the hearing of these O.As, the Respondents have further submitted that the Railway Board vide their letter dated 29.12.05 refused to ratify the order dated 22.6.2001 and the Chief Personnel Officer himself has cancelled the same vide his letter dated 22.2.2006. These letters have been taken on record with the consent of parties.

5 We have heard the counsel Shri T.C.Govindaswamy, for applicants in all these cases and Shri P.Haridas, Smt. Sumati Dandapani and Ms.P.K.Nandini for the respondents. The very genesis of all these O.As is the Annexure.A1 order dated 1-2/4/2002 which contained a reference to the letter No.P(S)536/1/Divisions/Vd.II dated 22.6.2001 according to which

the Chief Personnel Officer, Southern Railway has granted a special dispensation for filling up vacancies in the Skilled Artisan Grade III categories earmarked for "Direct Recruitment and LDCE" from the suitable Group 'D' staff under Civil Engineering Department of PGT Division. The present position is that the letter dated 22.6.2001 itself has been cancelled on 22.2.2006 though there were many developments during this period including the order dated 26.10.2004 promoting six candidates selected in pursuance of the said letter dated 22.6.2001. Since the order dated 26.10.2004 is not the subject matter of these O.As, we do not like to express our opinion on it. In view of all those subsequent developments which have taken place after filing these O.As, in our considered view, the present O.As would not survive any more. Since the foundation of the Annexure.A.1 order dated 1-2/4/2002 itself has fallen, the superstructure built on it is also bound to fall. These O.As have, in fact, become infructuous and, therefore, they are dismissed accordingly. There shall be no order as to costs.

Dated this the 20th day of March, 2006

GEORGE PARACKEN
JUDICIAL MEMBER

SATHI NAIR
VICE CHAIRMAN

S.