

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. No. 491 OF 2006

Thursday this the 31st day of May, 2007

CORAM :

**HON'BLE Mr. A.K.AGARWAL, VICE CHAIRMAN
HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER**

K.P.Mammed.
Retired as Errector,
Office of the Deputy Chief Engineer(Construction-I),
Nagpur,South East Central Railway
Residing at : Sabna Manzil
Kizhilath Puthalath, Azihinillam
Via Farooke College, Malappuram District
Kerala - 673654 : **Applicant**

(By Advocate Mr. R.Premchand)

Versus

1. Union of India represented .by General Manager,
South East Central Railway, Bilaspur.
2. The Chief Personnel Officer
South East Central Railway, Bilaspur.
3. The Divisional Railway Manager
South East Central Railway, Chakradharpur.
4. The Chief Engineer(Construction)
South East Central Railway, Bilaspur.
5. The Senior Personnel Officer(Construction)
South East Central Railway, Bilaspur.
6. Senior Divisional Personnel Officer
South East Railway
Chakradharpur
7. General Manager
South East Railway,
Calcutta : **Respondents**

(By Advocate Mrs. Sumathi Dandapani, Senior with Ms.P.K.Nandini)

ORDER**HON'BLE Mr. A.K.AGARWAL, VICE CHAIRMAN**

None for the applicant. Ms Suvitha for Mrs Sumathi
Dandapani. *for respondent*

2. On the last two occasions, the applicant has been granted time to file rejoinder. But the same has not been filed so far. It appears that the applicant is not interested in pursuing the Original Application. The OA is dismissed for want of prosecution.

Dated, the 31st May, 2007.



**GEORGE PARACKEN
JUDICIAL MEMBER**



**A.K.AGARWAL
VICE CHAIRMAN**

VS

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 491/2006

FRIDAY THIS THE 24th DAY OF AUGUST 2007

C O R A M

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

K.P. Mammed S/o K.P. Mohammed
Retired Errector from the office of the
Deputy Chief Engineer (Construction-1)
Nagpur, South East Central Railway
residing at Sabna Manzil, Kizhilath Puthalath
Azhinillam Via Farooke College
Malappuram District
Kerala State.

..Applicant

By Advocate Mr. R. Premchand

Vs.

- 1 Union of India represented by the General Manager
South East Central Railway,
Bilaspur.
- 2 The Chief Personnel Officer,
South East Central Railway,
Bilaspur.
- 3 The Divisional Railway Manager,
South East Central Railway,
Chakradharpur.
- 4 The Chief Engineer (Construction)
South East Central Railway,
Bilaspur.
- 5 The Senior Personnel Officer (Construction)
South East Central Railway,
Bilaspur.
- 6 Senior Divisional Personnel Officer,
South East ~~Central~~ Railway,
Chakradharpur.

7 General Manager,
South East Central Railway,
Calcutta.

..Respondents

By Advocates Mrs Sumathi Dandapani, (Senior) and
Ms. P.K. Nandini

ORDER

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

This Application has been filed seeking regularisation in a Group-C post of "Erector" under the Chief Engineer (Construction), South East Central Railway, Bilaspur and for consequential revision of pension and other benefits.

2 The facts of the case are briefly:- The applicant was initially engaged as a "Casual Erector" (Group-C) w.e.f. 16.10.1975 under the Chief Engineer Construction, South East Central Railway, Bilaspur. The applicant continued as such till early 1993 when he was regularised in Group-D as Khalasi. The applicant challenged his regularisation in Group-D before the Calcutta Bench of the Tribunal through O.A. 675 of 1993. The Tribunal disposed of the Application on 18.8.2000 directing that the applicant's case should be considered by the respondents if vacancy was available in the Department and that should be done within three months from the date of communication of the order and that he was entitled to get all the consequential benefits including temporary status from the date of absorption. Though the applicant represented several times before the respondents to regularise him with retrospective effect and to revise his

pension, the respondents did not consider his request and the applicant was regularised only with effect from 28.1.2003 and his pension had been calculated on that basis only. It has been further submitted by the applicant that he came to know that some of his juniors were regularised as "Erector" w.e.f. 1.4.1984 as per Annexures A-10 and A-11 in January, 1996 and that the respondents had suppressed this fact before the Tribunal and such a regularisation was effected during the pendency of the O.A and hence is seeking retrospective regularisation which was denied to him.

2 He seeks the following specific reliefs:

I To declare that the applicant ought have been regularised with effect from 1.4.1984 as has been done in the case of his juniors and issue a direction to the respondents, to regularise the service of the applicant in the post of Erector with effect from 1.4.1984 and to modify Annexure A-17 order issued by the 5th respondent to that effect.

III To issue a direction to the respondents to calculate the pension payable to the applicant by protecting the pay drawn by the applicant prior to 26.2.1993 the day on which the applicant was illegally regularised in Group-D as Khalasi and revise the pension of the applicant accordingly and to grant and pay consequential retirement benefits flowing therefrom.

III To issue such other orders or directions as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

3 The respondents in the reply statement have submitted that the applicant has approached this Tribunal after a delay of more

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than two years and that he is seeking the same reliefs which he had sought in O.A. 675/1993 filed before the Calcutta Bench of the Tribunal which was granted. The service particulars of the applicant are admitted by the respondents. He was initially engaged as Casual Erector under BRI/Con/Bandamunda on 16.10.1975 and subsequently granted temporary status w.e.f. 1.1.1981 and continued as such in the Construction organisation till 22.7.1993. On 23.7.1993 he reported in Chakradharpur for permanent absorption in Chakradharpur Division and had been posted as Khalasi under IOW/I Bandamunda vide South Eastern Railway's order dated 2.8.1993. He had been promoted as Semi Skilled Khalasi w.e.f. 1.9.1996 in Chakradharpur Division. After the judgment of the Tribunal in O.A.675/1993, the Chief Engineer, Construction, Bilaspur had taken up the matter of granting a permanent Group-C post to the applicant and it was decided to engage him in Construction Organisation against a Group-C work-charged post on adhoc measure keeping his lien in Open line. Based on this administrative decision, he was posted as adhoc Erector under CE(C) Bilaspur and retired on superannuation on 31.5.2003 from that post and all his settlement payments were released. The respondents have also submitted that the CAT Calcutta Bench had allowed the O.A.675/93 based on the decision of the Apex Court in Piara Singh's case (1992 (4) SCC 11-A) and this decision has been subsequently overruled by the Constitution Bench of the Apex Court in Secretary, State of

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Karnataka and Others Vs. Uma Devi & others (AIR 2006 SC 1806) and therefore the applicant is not entitled to get the benefits flowing from the judgment. The respondents have reported that the service of the applicant has been regularised as Group-D in Chakradharpur Division on 23.7.1993 and therefore he cannot compare himself with the so called juniors who are working in the Construction Department.

4 A rejoinder has been filed by the applicant stating that the respondents have shuttled the matter between various offices for denying the benefits to the applicant which would be clear from the records produced by the applicant. He was vigilant in the case having approached this Tribunal in 1993 itself. He was entitled to similar benefits which were granted to his juniors and the question of res judicata does not arise in this matter.

5 We have heard learned counsel Shri R. Premchand for the applicant and Mrs. Sumathi Dandapani, Senior Advocate and Ms P.K. Nandini appearing for the respondents.

6 The applicant has been fighting his case since 1993 and has come before this Tribunal for the second time as the benefits already granted by the order of the Tribunal (Calcutta bench) in O.A. 675/1993 had not been granted to him. The conduct of the respondents as borne out from the records would show that they have not made any effort to implement the order of this Tribunal dated 18.8.2000 and had been viewing the matter in a casual manner. What is worse is that they have come up with a plea in

the reply statement that the judgment of the Tribunal in O.A. 675/1993 itself is invalid since it was based on a decision in 1992 which has been been overruled in 2006. They also try to put the blame on the applicant that he did not exercise the option to file any Contempt Petition. The tenor of the reply statement of the respondents shows that they have no respect for law and is to be condemned outright.

7 To recapitulate the facts, the applicant while working as "Casual Erector" since October, 1975 had approached the Calcutta Bench of this Tribunal against the order of absorption issued by the respondents absorbing him despite his unwillingness in a regular Group -D post instead of a Group-C post for which he had appeared in the interview and had been selected. The Tribunal was satisfied that the order of regularisation of the applicant in the Group-D post was unsustainable and quashed the said order further directing the respondents to consider the case of the applicant for absorption in any of the vacancies falling within 25% of regular posts created in the Construction Organisation and also declaring that he is entitled to get all consequential benefits including temporary status of "Casual Erector" from the date of absorption till the regular appointment is made. Consequence of the order would be that the applicant had to be put back in the earlier post of "Casual Erector" which he was holding till his regular absorption in Group-D. The said absorption having been quashed and

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consequently the respondents should have regularised him in a Group-C post. The order of the Tribunal was dated 18.8.2000. Annexure A-5 would show that the applicant gave a representation dated 7.9.2000 enclosing the copy of the judgment to the Senior DPO, South Eastern Railway, Chakradharpur which was duly forwarded and recommended favourably by the Section Engineer and Assistant Engineer under IOP(I) Bondamunda. There is an endorsement made therein by the above mentioned officer that the post of G.L. Fitter has been lying vacant and was available for accommodating him since 1.9.2000. No action was taken on this letter, Annexure A-6 dated 16.11.2000 is the correspondence between the Chief Engineer (Construction) BSP and the Dy. CE (Construction) CKP stating that an excadre post is being created to accommodate the party and that this may be informed to the applicant to avoid Contempt of Court. This position was communicated to him by Annexure A-7 dated 28.11.2000. No action was taken even then to comply with the Tribunal's directions. It is evident now that these letters were issued presumably to avoid initiation of Contempt Proceedings. Correspondence started again in 2002 when the applicant gave another representation dated 13.7.2002 and the Chief Engineer (Construction) took up the matter with the CPO, South Eastern Railway for giving directions to implement the orders of the Tribunal. Subsequently as admitted by the respondents themselves after a number of discussions with the Construction

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and Personnel divisions the order at Annexure A-1 dated 27.12.2002 was issued posting the applicant as a Casual Erector in the scale of Rs. 4000-6000 under CE (Construction), Bilaspur. Such an order should have been issued immediately on receipt of the judgment of the CAT Calcutta Bench and the respondents took more than two years to arrive at this position. Even this order constitutes only a partial implementation of the direction of the Tribunal as it was specifically declared that he was entitled to get all consequential benefits including the temporary status from the date of absorption, the date of absorption being 26.2.1993. The respondents then regularised the service of the applicant by Annexure A-17 dated 7.7.2003 w.e.f. 28.1.2003 and settled his pension payments accordingly as the applicant had by then retired on 31.5.2003. Thus not having implemented the order for more than two years and extending only part benefits to the applicant, the respondents had strangely contend now that the applicant should have approached the Court for contempt instead of making fresh claim at this stage. The respondents had not approached the High Court in appeal and having accepted the finding of the Tribunal, the Respondents now argue that the judgment of the Tribunal is not correct in view of the judgment of the Hon'ble Supreme Court in **Umadevi's** case in 2006. These arguments show that the respondents have scant respect for the law and the orders of the Tribunal/Courts. Even on the point of law the respondents cannot take the plea that Piara Singh's case is no

longer valid in the case of the applicant. The applicant is not seeking any fresh regularisation. He was already regularised by the respondents after following due procedures. The only contention was whether he should be regularised as a Group-D or Group-C considering his qualifications. Considering the fact that he fulfilled the qualifications and ⁱⁿ accordance with the ratio of **Piara Singh's** case and also on the submission by the respondents that 25% posts are created as regular posts in the Construction Organisation, the Tribunal had directed that the applicant should be regularised in a Group-C post. It is now borne out by records that a post of "Casual Erector" was vacant on 1.9.2000. The respondents also communicated a decision to the applicant that an ex cadre post is being created for the purpose. After all that, for two years the matter was kept pending. The respondents now take the stand that there was no vacancy to implement the order of the Tribunal. This is preposterous as the word "vacancy" was used in the order only to denote the post falling within 25% which the respondents themselves averred are going to be created.

8 Another factor which has come to light now is during the pendency of the OA itself the respondents issued Annexure A-10 and A-11 orders absorbing number of Erectors who joined after the applicant and were juniors to him, in Group-C posts. Had the applicant been aware of this position he could have contested the fact before the Tribunal and the inevitable conclusion has to be

drawn that the respondents deliberately suppressed this information before the Tribunal. If this fact was before the Tribunal in the year 2000, the order would have been different. Though the applicant made an averment to this effect the respondents have not controverted this except to say that the employees who have been regularised in Annexure A-11 orders cannot be said to be juniors to the applicant as the applicant had become a regular Group-D Khalasi in the Open Line at that time. This statement again is sidestepping the issue and is in open defiance of the orders of this Tribunal which had quashed the regularisation in the Group-D post. Once the order regularising the applicant as Group-D is quashed the applicant should have been reverted to the earlier post w.e.f. that date and if that had been done the applicant would have been senior to all those who have been regularised by Annexure A-11 order in the Construction Organisation. In fact that is the crux of the applicant's case. In the light of these new facts brought to the notice of the court, the applicant becomes eligible for consideration for regularisation from 1.4.1984, as granted to those in the A-11 order.

9 In short, the respondents have been from the beginning reluctant to implement the judgment of the Tribunal and had been finding some excuse or other. We are more than convinced that the applicant has not been given justice by the respondents. On the other hand, the respondents have been thwarting the process

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of justice. We find that this is a fit case to award costs as the respondents are squarely responsible for the non-implementation of the orders of the Tribunal in the earlier O.A. We direct that the respondents collectively shall be liable for payment of cost of Rs. 5000/- to the applicant.

10 In the light of the above discussions, we allow the O.A. and direct the respondents to modify Annexure A-17 order regularising the service of the applicant in the post of "Erector" w.e.f. 1.4.1984 the date from which similarly placed employees in the Construction Wing have been regularised in Group-C posts. He shall be also entitled to consequential retiral benefits flowing therefrom. The respondents shall issue revised orders in accordance with the above direction including revision of his pension and other retiral benefits.

Dated 24-8-2007.


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

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