

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH**

**OA 493/03**

Friday this the 21st day of July, 2006

**CORAM**

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

V.M.Chandra, aged 52 years  
W/o Mukundan, Painter,  
Office of the Section Engineer/Works,  
Southern Railway, Palghat residing at  
Railway Qr.No.178A, Hemambika Nagar,  
Railway Colony, Olavakode,  
Palghat.

.....Applicant

(By Advocate Mr. TC Govindaswamy)

V.

- 1 Union of India, rep by the Secretary,  
to Govt. of India,  
Ministry of Railways & Chairman,  
Railway Board,  
Railbhavan, New Delhi.
- 2 The Divisional Railway Manager,  
Southern Railway, Palghat Division,  
Palghat.
- 3 The Senior Divisional Personnel Officer,  
Southern Railway, Palghat Division,  
Palghat. ....Respondents

(By Advocate Mr. Thomas Mathew Nellimootil)

The application having been finally heard on 19.6.2006, the Tribunal on 21.7.2006 delivered the following:

**ORDER**

**HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER**

This is the 4<sup>th</sup> round of litigation by the applicant before this Tribunal spanning over a period of 16 years seeking the same relief. In between she approached the apex Court also and obtained a favourable

judgment. Still her grievances are not fully redressed.

2 While working as a Casual Technical Mate, she approached this Tribunal vide OA 119/91 in the first round and sought a direction to the respondents to absorb her in Group 'C' post of Junior Draughtsman or any other suitable Group 'C' post taking into account her past service and educational qualification as a holder of Diploma in Civil Engineering or in the alternative to empanel and absorb her as a Khalasi along with her juniors with all attendant benefits w.e.f. 28.7.88 This Tribunal noted her submissions that she was engaged as a Technical Mate w.e.f. 23.8.76 but was being paid salary only in the scale of Rs. 196-232 attached to Group 'D' posts. She continuously represented for getting the higher scale of pay of Technical mate in Group 'C' but she was granted only temporary status as a casual labourer w.e.f. 2.1.81. While she remained under suspension during the period from 30.6.87 to 8.9.89 due to her alleged involvement in a criminal case which was dismissed later and the said suspension period was regularized as duty, two of her juniors were promoted as Khalasis. During the pendency of OA 119/91, she was also absorbed as a Khalasi as per proceedings dated 18.9.91 and thus her alternate prayer was granted. On the basis of the submission of the Respondents themselves that she will be considered for promotion along with the other two colleagues, namely, K.K.Thangamani and K.Radha, all of them joined originally as casual workers w.e.f. 27.9.76, disposed of the said OA and directed the respondents vide Annexure.A2 order dated 3.8.92 to consider her also along with other similarly placed persons for further appointment to Group 'C' post in her turn. However, the respondents rejected her claim which forced her to approach this Tribunal for the second time vide OA



1795/93 seeking a direction to regularize her service as Technical Mate or to absorb her in any other Group 'C' post on the ground that she was appointed as Technical Mate belonging to Group 'C' category. The Tribunal desired to see a copy of the Recruitment Rules for the post of Technical Mate but no such rule was produced by the Respondents. In the reply also the respondents took inconsistent stand. On the one hand they stated in the impugned order, "there is no possibility of providing you appointment in Group 'C' service". On the other hand, in the reply statement they submitted, "Applicant will be considered for Group 'C' post according to her turn" Since the respondents did not produce the relevant rules and took inconsistent stand about her regularization in Group 'C' post, the OA was allowed on 8.12.94 with the directions to consider the following:

- (a) Whether there are posts known as 'Technical Mates'.
- (b) If there are, the rules governing appointments, and where the rules are contained,
- (c) Whether there is a register or record indicating the turn or priority for appointment as mentioned in paragraph 9 of the reply statement. (last line in page 83 of the paper book) and
- (d) If on the facts, applicant is qualified under the rules or by reason of her turn/placement.

The Tribunal also imposed a cost of Rs. 500/- on the respondents for their failure to furnish the relevant rules and for taking inconsistent stand due to which the issue raised by the applicant could not be finally adjudicated. The respondents once again rejected her claim and the applicant which forced her to approach this Tribunal for the third time vide OA 1036/95 which ultimately got dismissed as averred by the applicant in this OA. The applicant has not produced a copy of the Tribunal's order in the said OA.

The applicant carried the orders in the said OA 1036/95 before the Hon'ble Supreme Court vide Civil Appeal No.11010/96. The Apex Court vide judgment dated 6.4.99 allowed the appeal and set aside the order made by this Tribunal. The Apex Court's judgment in full is extracted below as it contained most of the material facts which even the applicant has not furnished in the present OA:

"The appellant before us was initially engaged as a Technical Mate on a daily rate of Rs. 6.70 with effect from August 23, 1976 and thereafter at the daily rate which varied from Rs. 6.70 to Rs. 15.40. From time to time her services were utilized as Technical Mate as the required qualification is a diploma passed or failed. She was continued in service and she was declared to have attained temporary status in 1981. when the appellant represented that she had not been conferred with temporary status in Group 'C' the Chief Engineer took the view that the appellant was not entitled to be employed in Group 'C'. Thereafter an application was presented to the Central Administrative Tribunal, Ernakulam Bench (hereinafter referred to as 'the tribunal') seeking the relief of absorption in Group 'C'. The Tribunal set aside the action of the Chief Engineer and remitted the matter to the concerned authorities. Again the decision was rendered against the appellant and she approached the Tribunal. On this occasion the Tribunal directed the Chairman of the Railway Board to examine this matter and give appropriate relief. The Chairman of the Railway Board stated as under:

"There are no category of posts designated as Technical Mates on the Railways.....Zonal Railways have no power to introduce any new designation/category of posts. Further, designations are meant to describe the incumbents of posts in regular scales. Casual labourers who do not hold any post are not to be described by any 'designation' prescribed for regular employees and are to be described only as casual labour."

In his view a casual employee is only a casual employee and a casual employee cannot be differentiated from another casual employee and the designation of posts cannot be attached to such an employee. The Tribunal, therefore, found helplessness to give relief to the appellant and dismissed the application filed by the appellant. Hence this appeal.

*(Signature)*

The order dated October 30, 1985 by which the appellant was appointed clearly indicates that her services had been engaged as a Technical Mate since she had completed the course of diploma in technical subjects. The view taken by the Chairman of the Railway Board that there is no post of technical Mate available for absorption itself appears to be incorrect inasmuch as the Railway Board by its communication No.P(S)443/1/Misc./MP/MAS/Vo.X stated as follows:-

"Board have communicated their approval for considering the casual labour technical mates. In the Geographical jurisdiction of the division for absorption as Skilled Artisans Gr.III in scale Rs. 950-1500 against 25% of direct recruitment quota along with serving casual labour artisans."

This communication clearly indicates the manner in which a person whose services have been engaged as a Technical Mate on casual basis has to be treated. If this is the mode of providing an employment, then we fail to understand as to how the Chairman of the Railway Board could not apply the same to the appellant and give appropriate relief. Considering the long period of service the appellant had put in and the qualification possessed by her, namely, a diploma in technical subjects, it would certainly entitle her to be absorbed as a skilled Artisan in Grade III in scale 950-1500 against post available in respect of direct recruitment quota. If this aspect had been borne in mind by the Chairman of the Railway Board, we do not think that he would have rejected the case of the appellant.

The view taken by the Chairman of the Railway Board that there cannot be any designation assigned to a casual employee baffles all logic because there can be engagement of a peon on casual basis and there can be engagement of a clerk on casual basis and it cannot be said that both are casual employees and, therefore, there cannot be any distinction between a peon and a clerk as they are engaged on casual basis. In that view of the matter, we do not think that the view taken by the Chairman of the Railway Board was justified.

Considering the number of occasions the appellant had approached the Tribunal and the authorities for relief, we do not think that any useful purpose will be served by merely setting aside the order of the authorities and remitting the matter to them. On the other hand, it would be an extra ordinary case where we should direct the respondents to absorb the appellant as a Skilled Artisan



in Grade III in appropriate scale as indicated in the communication No.P(S)443/1/Misc./MP/MAS/Vo.X of the Board and the benefit thereof should be given to the appellant. However, the appellant will not be entitled to any higher monetary benefits than what she was drawing hitherto. The appellant will be fitted in the appropriate scale by giving increments and continuity in service on that basis. These directions shall be given effect to within a period of three months from today.

We allow this appeal setting aside the order made by the Tribunal and allow the application filed by the appellant before the Tribunal. But in the circumstances of the case, there shall be no order as to costs."

3 Subsequently, in compliance of the aforesaid judgment of the Hon'ble Supreme Court, the respondents, vide Annexure A4 order dated 12.7.99, posted the applicant as a Skilled Artisan (Painter Gr.III) in the scale of pay of Rs. 3050-4590 to work under the SE/Works/PGT. Being dissatisfied by the aforesaid compliance, the applicant made A5 and A6 representations dated 28.9.99 ad 28.12.99 respectively demanding the benefit of absorption in the Skilled Grade 'C' with consequential benefits of increments/seniority and promotion to the next grade etc. at least from the date of attainment of temporary status by her on 2.1.81 and to treat her as a Workmate from that date onwards duly granting her all the accrued benefits by re-fixing her salary in the appropriate scale. She has also informed the respondents that any view other than this would tantamount to the violation of the orders of the Hon'ble Supreme Court. The respondents vide Anexure.A7 letter dated 13.6.2000 called for a copy of her Diploma Certificate in Civil Engineering for consideration and disposal of her representation. She furnished the necessary documents way back on 14.6.2000 (A8), but the respondents stopped taking any further action. Since nothing had happened thereafter, the applicant again made the A9 and A10 representations dated 18.1.2001 and 16.2.2002 respectively.

*(Signature)*

After having failed to get any response from the respondents, she filed the present OA as the 4<sup>th</sup> round of litigation before this Tribunal itself, that too, after getting a favourable judgment from the Hon'ble Apex Court.

4 In the present OA, the applicant sought the following reliefs on the ground that in terms of Annexure.A1 order of the Hon'ble Supreme Court, she is entitled to be absorbed as Skilled Artisan with retrospective effect with periodical increments and continuity in service and the failure to implement the direction of the Hon'ble Supreme Court is in violation of Article 144 read with Article 142 of the Constitution of India:

"(a) Declare that the non-feasance on the part of the respondents to grant the fitment in scale 3050-4590 by giving increments and continuity service on that basis is arbitrary, discriminatory and unconstitutional.

(b) Direct the respondents to grant fitment in scale Rs. 3050-4050 with increments and continuity in service on that basis with all consequential benefits arising therefrom, as directed by the Hon'ble Supreme Court, forthwith.

(C) Award costs of and incidental to this application

(d) Pass such other orders or directions as deemed just, fit and necessary in the facts and circumstances of the case."

5 The respondents raised the preliminary objection that the OA is not maintainable either on law or on facts as the matter has already attained its finality with the Annexure.A1 judgment of the Apex Court which has since been fully complied with by absorbing the applicant vide Annexure.A4 Office Order dated 12.7.99 as a Skilled Artisan (Painter Grade.III) in the scale of pay of Rs. 3050-4590 and posted under SEMWorks/PGT. On merits, the respondents have submitted that the applicant was initially engaged as a casual labour w.e.f. 25.8.76 and granted temporary status in the unskilled category in the scale of Rs. 196/232 w.e.f. 2.11.81. During her suspension period from 2.7.87 to

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8.9.89 some casual labourers were screened and empanelled as Khalasis w.e.f. 28.7.88. Later on, she was also screened and absorbed in a regular Group D post of Gangman w.e.f. 11.12.90. She did not join the post of Gangman claiming that she had worked as a Technical Mate and is due for absorption in Group 'C' post and continued to work as a casual labour. She was advised vide letter No.J/P 407/IX/Tech.Mate/Vol.I dated 9.3.93 that there is no possibility of providing her with appointment in Group 'C' service directly since she was engaged only as a casual labour in Group 'D' only. Therefore, she filed OA 1795/93 claiming regularization in Group 'C' post and pay in scale Rs. 330-480 with effect from 2.1.81 onwards. The said OA was also disposed of on 8.12.94 with the directions to the Chairman, Railway Board to pass fresh orders on her request which ultimately met the same fate of rejection. Vide No.E9(NG)/11/95/RC III/14 CL dated 24.7.95 the Chairman Railway Board informed the applicant that there is no category of posts designated as Technical Mate in the Railways and there was no provision to grant her claim for regularization in Group 'C' post and pay scale of Rs. 330-480 with effect from 2.1.81. Against the orders of the Chairman, Railway Board rejecting her claim, the applicant filed OA 1036/95 before this Tribunal and vide order dated 3.11.95 it was disposed of, holding that the casual labourers may attend different kinds of work but not change their characteristic as casual labour and that there is no legal rights involved in the matter of absorption and that the applicant should have got absorbed in a Group 'D' post first and seek promotion to Group 'C' post as per avenue of promotion. According to the respondents, as the applicant did not accept the order absorbing her either as Gangman or as Khalasi, there was no question of her absorption in Group 'C' post.



The aforesaid order of this Tribunal dated 3.11.95 was challenged by the Applicant before the Supreme Court vide Civil Appeal No.11012/96. The Apex Court vide Annexure A1 judgment dated 6.4.99 ordered the respondents to absorb her as a Skilled Artisan Grade III in appropriate scale and to give her the benefits thereof. The Apex Court also clarified in the judgment that she will not be entitled to any higher monetary benefits than what she was drawing hitherto. She will be fitted in the appropriate scale by giving increments and continuity in service on that basis within a period of 8 months from the date of the order ie., 6.4.99. The full text of the Apex Court's judgment has been extracted earlier in this order. The respondents submitted that in compliance of the orders of the Hon'ble Supreme Court as communicated from the headquarters, the applicant was posted as Skilled Artisan (Painter Grade III) in scale Rs. 3050-4590 under SE, Works, Palghat vide OO No.JW.II/31/99 dated 12.7.79 and she joined the post on 14.7.99. According to the respondents, the claim of the applicant for her absorption in Group 'C' post from 2.1.81 cannot be granted in any case as, according to the Respondents, the orders of the Supreme Court is to consider her for absorption in terms of the orders of the Chief Personnel Officer, Madras dated 24.3.94, and according to which absorption can be made against vacancies occurred after 1.5.93 ad hence the applicant has been subjected the trade test for the post of Painter and absorbed her in that post vide Annexure.A4 vide order dated 12.7.99.

6 Shri Thomas Mathew Nellimootill, counsel for the respondents vehemently argued that once the court has passed its order/judgment, the applicant/petitioner cannot file another fresh proceedings seeking the same relief. If the grievance of the applicant is the non-implementation of the



orders contained in the judgment, the remedy available to her was to file a Contempt Petition and not any fresh application before this Tribunal. In support of his contention, he relied on the judgment of the Apex Court in Ashok Kumar and others V. Delhi Development Authority, 1994(6) SCC 97 and the judgment of the Hon'ble High Court of Rajasthan in Anwar Khan Vs. State of Rajasthan and others, 1999(2) SLR 661. In Ashok Kumar's case (supra), the Supreme Court has already directed the DDA to intimate the respondents therein the amount required to be paid by them depending upon the size of the plots and on such payment within one month make the allotment in their favour. Those persons filed a Writ Petition before Apex Court again seeking mandamus against demand for excess amount. The Apex Court held that the earlier order under Article 136 has already become final and the Writ Petition was an abuse of the process of the court and not maintainable. In Anwar Khan's case (supra), an earlier Writ Petition was filed for the relief of regularization of service and grant of equal pay for equal work. However, the order passed on the said Writ Petition was not implemented and therefore the petitioners have filed another Writ Petition for implementation of the said order. The Rajasthan High Court held that such a Writ Petition as not maintainable and the petitioners should have filed a contempt petition or a petition under the provisions of Article 215 of the constitution.

7 Mr.T.C.Govindaswamy on behalf of the applicant has refuted the arguments of Shri Nellimootil and contended that the present OA is very much maintainable. He argued that once the Apex Court has passed certain orders and if it is not executed by the respondents concerned on their own, this Tribunal has the duty to ensure its execution as an executing

court. In support of this argument, he relied upon Para 2 of the Supreme Court (Decrees and orders) Enforcement Order, 1954 in support of his above contention. The said provision is reproduced below:

"2 Notwithstanding anything contained in any other law in force at the recommencement of this Order, any decree passed or order made by the Supreme Court, whether before or after such commencement, including any orders as to the costs of, and incidental to, any proceedings in that Court, shall be enforceable.

(a) where such decree or order was passed or made in exercise of its appellate jurisdiction, -- in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of the Court or Tribunal from which the appeal to the Supreme Court was preferred or sought to be preferred; and

(b) in any other case, --in accordance with the provisions of law for the time being in force relating to the enforcement of decrees or orders of such Court, Tribunal or other authority as the Supreme Court may specify in its decree or order or in a subsequent order made by it on the application of any party to the proceeding."

He has also relied upon the judgment of the Apex Court in **Criminal Writ Petition No. 7 of 1984, Philip John Vs. State of Himachal Pradesh and others. (1986 C.R.I.L.J.397)**. In that Writ Petition the petitioner has taken the ground that the Respondent State had violated the following law declared by the Apex Court in Prem Shanker's case, AIR 1980 SC 1535 while he was taken handcuffed to the Hospital for medical check up by two police constables:-

"The clear and present danger of escape breaking out of the police control is the determinant. And for this there must be clear material, not glib assumption, record of reasons and judicial oversight and summary hearing and direction by the court where the victim is produced..... rule regarding a prisoner in transit between prison house and the court house is freedom from handcuffs and the exception under conditions of judicial supervision we have indicated earlier, will be restraints with the irons to be justified before or after."

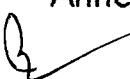
The Himachal High Court has relied upon the aforesaid law laid down by

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the Apex Court in deciding the Writ Petition.

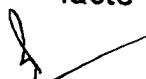
8 We have heard the counsels for the applicant and respondents extensively both on the preliminary issue of maintainability of this OA as well as on its merits. We do not find any merit in the argument of Shri Swamy that this Tribunal is an executing court for the orders of the Hon'ble Supreme Court. The Hon'ble Supreme Court has its own mechanism of executing its orders under the relevant rules and it is not depending upon of this Tribunal or any other court for this purpose. It is a different matter that the Supreme Court under Article 142 of the Constitution, for doing complete justice in any case or matter pending before it, may pass such decree or make such order as is necessary and any decree so passed or order so made shall be enforceable throughout the territory of India in such manner as may be prescribed by or under any law made by Parliament and, until provision in that behalf is so made, in such manner as the President may by order prescribed. This is an inherent power of the Supreme Court under Article 142 of the Constitution to quash proceedings pending before any court as held by the Apex Court in **Delhi Judicial Service Association Vs. State of Gujarat**, AIR 1991 SC 2176. The duty is cast upon the authorities for the enforceability of only those orders passed by the Supreme Court in any case for doing complete justice in any case or matter before it. The contention of Shri Swamy that every order contained in the judgments of the Hon'ble Supreme Court has to be enforced by authorities and courts below is not the purport of Article 142. His further contention that in view of the provisions contained in Article 144 of the Constitution that "all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court" would mean that all the courts

below have the duty and responsibility to enforce the orders of the Supreme Court in individual judgments in respect of parties concerned is also highly misplaced. At the same time we also do not agree with the respondents' contentions that the present OA is not maintainable and the remedy available to the applicant was to file only a Contempt Petition before the Apex Court and it is also time barred. In our considered opinion, this OA itself is misdirected. In para 1 of the OA, the applicant has stated that it (OA) was made 'not against any order'. In the prayer clause, the applicant had indicated that respondents have not granted her the fitment in the scale of Rs. 3050-4590 by giving increment and continuity in service. In Para 4(G) of the OA, the applicant has submitted that the Annexure.A4 order dated 12.7.99 posting her as Skilled Artisan (Painter Gr.III) in the scale of Rs. 3050-4590 was issued 'in purported implementation of the A1'. In fact the applicant should have challenged the Annexure.A4 order of the respondents claimed to have been issued in compliance of the orders of the Hon'ble Supreme Court contained in its Annexure.A1 judgment. According to the said order, the applicant was posted as a Skilled Artisan (Painter Grade III) in the scale of Rs. 3050-4590 to work under SE.Works/PGT against a post transferred from SE/PW/West/PGT temporarily from the date of her joining. As held by the Apex Court in **J.S. Parihar Vs. Ganpat Duggar and others (1996) 6 SCC 291** "once there is an order passed by the Government on the basis of the directions issued by the court, there arises a fresh cause of action to seek redressal in an appropriate forum." The Annexure.A4 order may be wrong or may not be in total conformity with the directions of the Hon'ble Supreme Court in Annexure.A1. According to the applicant herself, the said Annexure.A4



has been issued in purported implementation of the Annexure.A1 and, therefore, it gives a fresh cause of action to her. As she is aggrieved by the Annexure.A.4 order, she should have challenged it before this Tribunal which is appropriate forum within the statutory limitation period as provided in Sections 19and 21 of the Administrative Tribunals Act, 1985 and after following the other statutory requirements such as exhausting the departmental remedies of making a representation etc., as provided in Section 20 of the said Act. Though the applicant has not specifically stated in Para 1 of the OA that it is aggrieved by the Annexure.A4 order and she has also not challenged the same in the OA and sought any direction against it, in view of the chequered history of this case as observed by the Hon'ble Apex Court also in itsAnnexure.A1 order as well as in the interests of justice, we treat this OA as one basically challenging the Annexure.A4 order and proceed accordingly. We also condone the delay in filing this OA as the cause of action is continuous. Resultantly, the objection of the respondents regrading non-maintainability is overruled.

9 Considering the case on merit, as already observed in this order, the applicant has been agitating for her absorption in Group C post w.e.f 2.1.81, the date on which she was conferred with temporary status. For this purpose she has filed four Original Applications including the present one and an Appeal before the Supreme court. The dispute could have been adjudicated satisfactorily in the first OA filed by the applicant in 1991 itself or at least in the second OA filed by her in 1993. This was not possible mainly because of the casual manner in which the respondents have filed their replies to these O.As. Either they have not been giving full facts or have been making contradictory statements. In the order of this



Tribunal dated 8.12.94 on the second OA No.1795/93 filed by the applicant, this Tribunal had made the observation "we have only inconsistencies and counsel is not able to enlighten us either about the rules or the placement." The aforesaid observation was made in view of the conflicting and contradictory stand taken by the respondents in their reply. In the impugned order in the said OA, the respondents have stated "there is no possibility of providing you appointment in Group C service". However in the reply statement of that OA a totally different and inconsistent view was taken by the respondents when it stated "the applicant will be considered for Group C post according to her turn". Since the respondents have been taking such conflicting and contradictory positions, the Tribunal directed them to produce a copy of the rule and to state especially the placement of the applicant and when her turn would reach. Since the aforesaid information was not forthcoming from the respondents this Tribunal had no other option but to observe that it was unable to adjudicate on the issue except to the extend of holding that there was a clear inconsistency between the statement in the impugned order and the reply statement filed in support of it. Therefore, this Tribunal vide its order dated 8.12.94 directed the respondents to pass fresh orders stating:

- (a) Whether there are posts known as 'Technical Mates'.
- (b) If there are, the rules governing appointments, and where the rules are contained,
- (c) Whether there is a register or record indicating the turn or priority for appointment as mentioned in paragraph 9 of the reply statement. (last line in page 83 of the paper book) and
- (d) If on the facts, applicant is qualified under the rules or by reason of her turn/placement.

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In terms of the aforesaid order, the Chairman, Railway Board vide his order dated 24.7.97 (as stated in para 7 of the reply statement in this OA) rejected the claim of the applicant, once again for regularization in Group C post and pay in the scale of Rs. 330-480 with effect from 2.1.81 stating that there was no category of post designated as Technical Mater in the railways. If this position was submitted in the earlier OA, the issue could have been adjudicated upon either way, at that time itself. As the applicant was not satisfied with the aforesaid reply of the Chairman, Railway Board she filed the case OA 1036/95 before this Tribunal. When the respondents have denied that the applicant was performing the duties of Technical Mate and there was no such post there in the Railways, the Tribunal dismissed the OA holding that the applicant should get absorbed first in Group D post and then only seek promotion to Group C post as per the avenue of promotion. The applicant again refused to be absorbed in a Group D post either as Gangman or as a Khalasi and insisted upon absorption in a Group C post as she was performing the duties of a Technical Mate, which is in Group C category and she had the necessary educational qualification of Diploma in Engineering. The applicant then filed the Civil Appeal No.11012/96 before the Hon'ble Supreme Court against the orders of this Tribunal dated 3.11.95 in OA 1036/95. The Hon'ble Supreme Court in its judgment also observed the contradictory stand being taken by the Railway. The Apex Court considered the letter of the Chairman, Railway Board dated 24.7.95 and extracted it in the judgment and the same reproduced here as under:

"There are no category of posts designated as Technical Mates on the Railways.....Zonal Railways have no power to introduce any new designation/category of posts. Further,

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designations are meant to describe the incumbents of posts in regular scales. Casual labourers who do not hold any post are not to be described by any 'designation' prescribed for regular employees and are to be described only as casual labour."

The Supreme Court further observed in its judgment that the order dated 30.10.85 by which the applicant was appointed clearly indicate that her services had been engaged as a Technical Mate and she had completed the course of Diploma in technical subjects. Therefore, the Supreme Court held that the view taken by the Chairman of the Railway Board that there was no post of Technical Mates available for absorption was incorrect. The Apex Court has also extracted the communication of the Railway Board No.P(S)443/I/Misc./MP/MAS/Vo.X which also proves the existence of the post of Technical Mates. The said communication extracted in the AI judgment of the Apex Court is extracted herein-below also:

"Board have communicated their approval for considering the casual labour technical mates. In the Geographical jurisdiction of the division for absorption as Skilled Artisans Gr.III in scale Rs. 950-1500 against 25% of direct recruitment quota along with serving casual labour artisans.

The Supreme Court has, therefore, held that the aforesaid communication clearly indicates the manner in which services of a person engaged as a Technical Mate on casual basis has to be treated. The Chairman of the Railway Board should have applied the same to the applicant also and should have given appropriate relief to her. The Apex Court has also observed that considering the long period of service the applicant had put in and the qualification possessed by her, namely, the Diploma in Technical subjects, it would certainly entitled her to be absorbed as a skilled Artisan in Grade III in the scale of Rs. 950-1500 against the post available in respect of direct recruitment quota and there was no reason to reject her

case. Considering the number of occasions the applicant had to approach this Tribunal for the same relief, the Supreme Court vide Annexure.A1 judgment dated 6.11.99 treated it as an extra ordinary and exceptional case and without remitting the case back to the authorities directed the respondents to absorb the appellant as a Skilled Artisan in Grade II in appropriate scale ie., Rs. 950-1500 against 25% of direct recruitment quota and to give the benefit to the applicant but without any entitlement for any higher monetary benefits than what she was drawing thereto and to fit her in the appropriate scale giving increments and continuity in service within a period of three months from that date ie., by 6.7.99. The claim of the Respondents is that they have fully complied with the aforesaid directions of the Hon'ble Supreme Court by issuing Anenxure.A4 Office Order dated 12.7.99. The usual lack of indifference and seriousness on the part of the respondents is manifest in the Annexure A4 order also. It states that it is issued "in compliance with the orders of Hon'ble Supreme Court in OA 1036/95 whereas the orders of the Ho'ble Supreme Court is contained in its judgment in Civil Appeal No.11010/96 dated 6.4.99. The OA No.1036/905 mentioned in the A4 order was one of the O.As filed by the applicant before this Tribunal which was actually dismissed on 3.11.945. Anenxure.A4 order also says that it was issued with the approval of the DRM concerned. The only conclusion that can be drawn is that neither the DRM nor any other responsible officer of the Respondents have seen the case before the A4 order was issued or they have mechanically aprpoved it with out proper application of mind, particularly on the Apex Court order. We have pointed out this because such inconsistencies and contradictions have been noted by this Tribunal on earlier occasions also which have

been stated elsewhere in this order. Even the Apex Court in its A1 judgment also pointed out many of the inconsistent stand taken by the respondents Railways.

10 Therefore, the issue before this tribunal is on a very narrow compass. It has to adjudicate only as to whether the Annexure A4 order issued by the respondents is in accordance with the orders contained in the Annexure A1 judgment of the Hon'ble Supreme Court. While the respondents' contention is that the A4 order is in full compliance of the Annexure A1 judgment of the Apex Court, inasmuch as they have appointed the applicant as a Skilled Artisan (Painter Gr.III) in the scale of pay of Rs. 3050-4590 and she already joined that post on 14.7.99, the applicant's contention is that in terms of the Annexure A1 judgment, she should have been absorbed in Group 'C' Grade and granted the scale of pay at least w.e.f. 2.1.1981 i.e., the date from which she was granted the temporary status. She has also submitted that she should have been given increments from that date and her seniority for the purpose of promotion to next higher grade also should have been reckoned from that date. When the Apex Court itself has not specified the date from which she was to be granted the Group 'C' post and its pay scale, not only the operative part of the judgment but the entire judgment as a whole has to be considered for this purpose. On the basis of the facts available on record and confirmed by the Apex Court in its judgment, there cannot be any further dispute that the applicant was initially engaged on daily rate w.e.f 23.8.1976 and her services were utilized as Technical Mate as she had the required qualification. She was granted temporary status w.e.f 2.1.1981. It is also an undisputed fact that Technical Mates were entitled to be absorbed as

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Skilled Artisan in the scale of Rs. 950-1500 (pre-revised) granted to Group 'C' staff. The Apex Court clearly stated in its judgment that the appointment of the applicant dated 30.10.85 was as a Technical Mate as the casual Technical Mates were entitled to be absorbed as Skilled Artisan Gr.III in the scale of Rs. 950-1500 against 25% of the direct recruitment quota and the said mode of regularization should have been applied in the case of the applicant. It was in this view of the matter that the Apex Court directed the respondents to absorb her as a Skilled Artisan in Gr.III and to grant her the benefit thereof without any higher monetary benefits hitherto drawn by her. The applicant was to be fitted in the appropriate scale giving increments and continuity in service on that basis. It was, of course, for the respondents to calculate the number of posts of Technical Mates arisen under the 25% direct recruitment quota after her appointment as a Technical Mate vide order dated 30.10.85 so as to absorb her against the said quota in her turn. The respondents have not done so. It was for this reason that this Tribunal in the first round of her litigation itself ordered on 3.8.92 in OA 119/91 that the respondents should consider her for appointment in Group 'C' in accordance with her turn. However, the Respondents rejected her claim which resulted in a series of further litigations ending up with the present one. The respondents, till today have not come out clearly as to the number of posts of Technical Mates available when the applicant was initially engaged as a Technical Mate on 23.8.1976 or when she was conferred with the temporary status on 2.1.1981 or when the order dated 30.10.1985 was issued by them wherein it was clearly indicated that her services had been utilized as a Technical Mate. As a result, the dispute continued to remain unresolved.

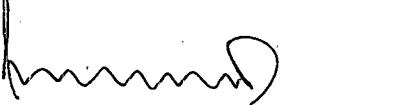


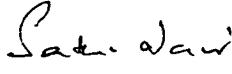
Considering the number of occasions the applicant had to approach this Tribunal and the authorities for relief it was only bring the dispute to an end once for all, the Apex Court adopted the extra ordinary course of action of directing the Respondents to absorb the applicant as Skilled Artisan in Grade III in appropriate scale as indicated in the communication No.P(S)/443/1/Misc/MP/MAS/Vo.X of the Board and to give the benefit to her, instead of setting aside the order and remitting the matter to them. The Respondents have once again frustrated the hope of the Apex Court by passing the half baked Annexure.A4 order without granting the desire benefits to the applicant with the result that the present round of litigation has become inevitable for the applicant. We, therefore, do not intend to leave the matter to the Respondents any further to decide the date from which the applicant should be granted the Group C scale and other consequential benefits. As ordered by the Apex Court in the Annexure.A1 judgment, the applicant shall be treated as absorbed as a Technical Mate in Group 'C' category in the scale of pay of Rs.950-1500 (revised to Rs. 3050-4590 w.e.f 1.1.86) with effect from 30.10.85 and her pay in the said scale shall be fixed accordingly from the same date. She shall be given annual increments from that date notionally to determine her basic pay as on 6.7.99 i.e., the time limit of three months period granted by the Supreme Court to give effect to its A1 judgment instead of the date of her joining on the post of Skilled Artisan (Painter Gr.III) on 14.7.99, on the basis of the A4 order dated 12.7.99. Her pay in the aforesaid scale shall be further increased annually by granting the periodic increments. On the basis of the pay so fixed as on 6.7.99, she shall be granted all further actual consequential monetary benefits including the arrears of pay and



allowances. Her seniority in Group 'C' also shall be reckoned from 30.10.85 for her entitlement for consideration for further promotion or/and any other career progression scheme as applicable to the Railway employees. The aforesaid direction shall be complied with within a period of three months from the date of receipt of this order. However, there shall be <sup>no</sup> order as to costs.

Dated this 21st day of July, 2006

  
**GEORGE PARACKEN**  
**JUDICIAL MEMBER**

  
**SATHI NAIR**  
**VICE CHAIRMAN**

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