

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No. 503/2004

.....~~MONDAY~~.this the 20th day of March, 2006

CORAM

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

**K.Ratnakaran, S/o Krishnan,
Senior Gangman/Gang No.1,
Southern Railway,
Quilon, Section Engineer's Office,
Permanent Way, Quilon
residing at Madathil Veedu,
Perumpuzha Post, Kundara,
Quilon District.**

.....Applicant

(By Advocate Mr. T.C.Govindaswamy)

V.

- 1 Union of India, represented by
the General Manager, Southern Railway,
Headquarters Office, ParkTown PO
Chennai.3.**
- 2 The Divisional Railway Manager,
Southern Raiway,
Trivandrum Division,
Trivandrum.14.**
- 3 The Senior Divisional Personnel Officer,
Southern Railway,
Trivandrum Division,
Trivandrum.14.**

.....Respondents

(By Advocate Mrs. Sumati Dandapani)

**The application having been heard on 6.3.2006, the Tribunal on 20.
3.2006 delivered the following:**


✓

ORDER

HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act against the Respondents' order reducing his pay to a lower stage in a lower scale on his regularization as Gangman, which he was working as a Skilled Casual Labourer in the category of Blacksmith, even though his services were continued to be utilized as Blacksmith which is a Group 'C' post.

2 The applicant has joined the Railway as a casual labour in the year 1975. On passing the trade test he was engaged as a Blacksmith (Skilled) with effect from 5.3.83 in the scale of Rs.260-400 (now revised to scale Rs.3050-4590). Thereafter, he was granted temporary status as Skilled Casual Labour (Blacksmith) with effect from 29.10.83. According to the existing rules, Casual Labourers who were directly engaged in Skilled category could be regularized against 25% of the vacancies occurring in regular post in the said categories reserved for departmental promotion quota. However, his turn for such absorption did not materialize. He was later empanelled/regularized as Gangman on 27.3.94 but he did not join that post and continued to work as Skilled Casual Labour. However, since there was a directive from the Railway Board to regularize all Casual Labourers by 31.3.1997, he had to be absorbed in a Group



'D' post as Gangman in the pay scale of Rs. 775-1025 (now revised to Rs. 2610-3540) vide Annexure.A1 order dated 24.3.97. At that relevant time also the applicant was actually working as Skilled Casual Labour in the higher scale of Rs. 940-1500 (revised Rs.3050-4690). The applicant has, therefore, sought the following main reliefs in the present O.A:

- "(a) Call for the records leading to the issue of Annexure A4 and quash the same;
- (b) Declare that the applicant is entitled to have his scale of pay of Rs. 3050-4590 and the basic pay drawn at the time of regularization protected, even after his regularization in terms of Annexure.A.1 order.
- (c) Direct the respondents to restore the applicant's scale of pay and basic pay as per declaration in para 8(a) above and grant all consequential arrears of pay and allowances emanating there from."

3 The applicant's aforesaid claims, according to him, are based on the order of the Full Bench of this Tribunal dated 30.10.2000 in **Aslam Khan Vs. Union of India and others (2001(2) ATJ 1**. The question considered by the Full Bench in that case was :

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

The Full Bench held that the aforesaid question is no longer res integra as the same was covered by the decision of the Hon'ble Supreme Court in the case of **Union of India and another Vs. Moti**

Lal (1996) 33 ATC 304. Accordingly the Full Bench answered the question in the following manner:

"A person directly engaged on Group C post (Promotional) on casual basis and has been subsequently granted temporary status would not be entitled to be regularized on Group C post directly but would be liable to be regularized 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."

4 The Ahmedabad Bench of this Tribunal vide order dated 31.7.2001 in the case of Iqbal Sayad and 20 others Vs. Union of India and others ATJ 2002(1) 28 followed the aforesaid order of the Full Bench and held as under,:

"In such an event and if they were discharging the duties of junior Pointsman on the date of regularization the pay drawn by the two applicants as substitute casual labourer shall be protected in the scale of Rs. 2550-3200 on the date of their absorption which is April, 2000, in the case of Saiyed ad 1990 in the case of Mehoobmiya. This direction is in consonance with the direction of the Full Bench in the case of Aslam Khan referred to earlier."

5 The contention of the respondents was that the aforesaid two judgments of the Tribunal are not applicable in the present case because the applicant had initially refused to be absorbed. Subsequently also he continued to work as a Skilled Casual Labour (Blacksmith) and refused to be absorbed. The applicant had approached this Tribunal by filing OA 999/97 claiming regularization in the same scale of Rs. 3050-4590. They have also stated that the Annexure A1 office order dated 24.3.97 was issued absorbing him as

Q ✓

Gangman reducing his salary to a lower scale only after this Tribunal dismissed that OA. Though the applicant challenged the same in OP No.23547/2001 before the Hon'ble High Court of Kerala but the same was also disposed of directing the applicant to file a representation to the authorities for consideration. The representation submitted by the applicant was duly considered but the same was rejected and he continued to draw the lower pay in the lower scale of pay. When the order of the Full Bench in Aslam Khan (supra) was pronounced on 30.10.2000, the applicant made the Annexure.A2 representation dated 25.8.2000 stating that even though he was regularized as a Gangman, his services were continued to be utilized as a Blacksmith and his salary was reduced to a lower scale and to a lower stage. He has claimed that he is entitled to have his pay drawn in the Group 'C' scale protected even on his regularization in terms of the orders of the Tribunal in the cases of Aslam Khan and Iqbal Saiyed and others (supra). Since the said representation was not favourably decided, the applicant filed another OA 102/04 seeking the following main reliefs:

"(a) Declare that upon regularization, the applicant is entitled to have his pay drawn in the Group 'C' scale of Rs. 3050-4590 protected.

(b) Direct the respondents to re-fix the applicant's pay in the Group 'D' post of Gangman, duly protecting the pay drawn by the applicant as Blacksmith in scale Rs. 3050-4590, with all consequential arrears flowing therefrom."

✓

The said OA was also disposed of by this Tribunal vide Annexure.A3 order dated 13.2.2004 directing the respondents to consider the representation with reference to the rules, case laws on the subject and to pass a speaking order. Pursuant to the aforesaid direction of the Tribunal, the impugned Annexure A4 order dated 6.5.04 was issued. The respondents have informed the applicant that the policy instructions of pay fixation provided that the Casual Labourers working in skilled grades on their regular absorption on unskilled grades will have their pay fixed by granting increments with reference to their length of service and since there is no change in the policy his request cannot be acceded to. They have also submitted that the judgments referred to in the representation were not applicable in his case as the direction contained therein were applicable only to the persons who sought the remedy.

6 The respondents have also relied upon the judgments of the Hon'ble Supreme Court in **Badri Prasad and others Vs. Union of India and others, 2006 SCC (L&S) 92**. The appellants in the said case started their service in the Railway as Daily Rated Employees on different posts of Khalasi, Gangman, Chowkidar between the years January, 1981 and June, 1982. They were given temporary status on the posts in which they were working. They were posted on different dates in the year 1984 to work as Storeman which is a higher post in Group C carrying a higher scale of pay. They


continuously worked on the post of Storeman for long periods during the years 1984, 1985, 1988 and 1990 till they were reverted on 29.7.1999 from Group C post of Storeman to Group D post of Khalasi in the open line. Their grievance was that having been made to work on the post of Storeman and sometimes as Clerk for a long period of more than ten years, they were entitled to be regularized and absorbed in Group C posts. The Apex Court has held that they cannot be granted the relief of regularization against the post of Storeman/Clerk on the basis of their adhoc promotion from open line to a higher post in the project or construction site but they were entitled to claim age relaxation on experience for the long period spent by them in the higher Group C posts. The Apex Court has also ordered that the pay last drawn by them in Group C post shall be protected even after their repatriation to Group D in their parent cadre. In **Inder Pal Yadav and others Vs. Union of India and others (2006) SCC L&S 119** also, the petitioners were appointed as Casual employees in different project in Northern Railway in the year 1979 to 1981. In terms of a decision of the Apex Court in **Inderpal Yadav Vs. Union of India (1995) 2 SCC 648**, a scheme was formulated and the petitioners were categorized as Skilled/Semi Skilled and Unskilled. Thereafter, the petitioners were regularized as Khalasis in Group D in the open line. However, they have been permitted to continue to serve in various projects of the Railway

2

Administration. While they were serving in such projects they have been granted provisional promotion in a particular corresponding scale of pay on the basis of supplementary trade test held in the project itself. However, the order by which the petitioners were granted local provisional or adhoc promotion made it clear that they would have no claim over their seniors in their units. The respondents have prepared a surplus list and petitioners were included therein and as a result of which they were sent back to the open line cadre at the scale of pay applicable to Group 'D' employees even though the petitioners, in the meanwhile, had been promoted to Group C and were enjoying much higher scale of pay. The Apex Court did not grant their relief for not reverting them to a lower post or to treat them as having been promoted by reason of their promotion in the projects but protected them against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other projects in future. The Apex Court held that it cannot be lost sight that the petitioners have passed the trade test to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project, they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection.

7 ✓ We have heard Mr.TC Govindaswamy, for the applicant and

Smt. Sumati Dandapani for the respondents. Admittedly the Applicant was initially engaged as a Casual Labourer (Blacksmith) on 5.3.83 and he was granted temporary status in the very same capacity. On passing the trade test he was engaged as a Skilled Casual Labour (Blacksmith) with effect from 5.3.83 in the pre-revised scale of Rs. 260-400 (Revised to Rs. 3050-4590). Subsequently he was regularized and absorbed in Group D post as Gangman with effect from 24.3.1997 in the scale of Rs. 775-1025 when actually he was working as Skilled Casual Labour (Blacksmith) in the scale of Rs. 3050-4590. The respondents have fixed his pay in Group 'D' scale of Rs. 775-1025 protecting his last pay drawn in the scale of Rs. 3050-4590. The Applicant was not satisfied. He wanted the regularization in the Group 'C' post in the scale of Rs. 3050-4590 itself. His request was not granted. Originally he filed OA 997/97 which was dismissed. In that O.A also his claim was regularization in the Group 'C' post of Skilled Casual Labour in the scale of Rs. 3050-4590. He then claimed the same relief as given to the applicants in Aslam Khan's case (supra) which only says that regularization is possible only in the feeder cadre of Group 'D' but pay drawn in Group 'C' post can be protected. It does not say that the pay scale attached to the Group 'C' post has to be granted to the applicant on such regularization in the Group 'D' post. Same is the ratio followed in Iqbal Saiyed and 20 others case (supra). Then he filed OA 108/2004



and his reliefs were to protect his pay drawn in Group 'C' scale of Rs. 3050-4590 on his regularization in the Group 'D' post of Gangman and to re-fix his pay in the said Group 'D' post protecting the pay drawn by him in the Group 'C' scale of Rs. 3050-4590. On the directions of this Tribunal in OA 108/2004 dated 13.2.2004 the respondents vide Annexure.A4 letter dated 6.5.2004 fixed his pay at Rs. 3540 (maximum) in the Group 'D' scale of Rs. 2610-3540 attached to the post of Gangman with effect from 21.5.97 ie., his date of joining as Gangman. In the present OA, the Applicant has shifted his prayer. In this OA he wants the Group 'C' pay scale of Rs. 3050-4590 itself with the protection of the basic pay drawn by him at the time of regularization. He also wants his pay scale as well as basic pay restored. Ultimately what he is seeking is no change in his Group 'C' pay scale or basic pay drawn in that scale on his regularization against the Group 'D' post with lower pay scale. This is not what the Full Bench of this Tribunal held in Aslam Khan's case and in the subsequent case of Iqbal Saiyed decided by the Ahmadabad Bench. In Badri Prasad's case (surpa) and Inder Pal Yadav's case (supra) also the position is not different. While in Badri Prasad's case, the Apex Court ordered for protection of pay drawn in Group 'C' post on repatriation to Group 'D' post, in Inder Pal Yadav and others case, the petitioners were directed to be granted the Group 'C' pay scale if they are posted back to the same project. In

the present case also, the Applicant, on passing the trade test was appointed as a Skilled Casual Labour (Blacksmith) in the scale of pay of Rs. 3050-4590 but on regularization as Gangman in Group 'D' post he was granted the lower scale of Rs. 2610-3540 with the protection of the pay he was drawing in the higher scale of Group 'C'. Thereafter, he was promoted as Sr.Trackman in the scale of Rs. 2650-4000 w.e.f. 17.6.99 and continuing in that post. In the light of the above facts in this case and the case laws as discussed above, there is no justification for the applicant to seek a declaration that he is "entitled to have his scale of pay of Rs. 3050-4590" protected and "to restore his scale of pay" even after his regularization as Gangman which is a Group 'D' post in the scale of Rs. 2610-3540. The O.A is, therefore, devoid of any merits and it is dismissed accordingly. There is no order as to costs.

Dated this the 20th day of March, 2006


GEORGE PARACKEN
JUDICIAL MEMBER


SATHI NAIR
VICE CHAIRMAN

S.