

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
ERNAKULAM BENCH

O. A. No. 537/1990  
~~LA~~ No. ~~xxxx~~

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DATE OF DECISION 26.9.91

M.Asservatham Applicant (s)

M/s.B.Gopakumar & Chincy Gopakumar Advocate for the Applicant (s)

Versus

Union of India represented Respondent (s)  
by the General Manager,  
Southern Railway, Madras-3 and 3 others

M/s.M.C.Chерian,Saramma Cherian Advocate for the Respondent (s)  
T.A.Rajan

CORAM:

The Hon'ble Mr. S.P.MUKERJI, VICE CHAIRMAN

The Hon'ble Mr. A.V.HARIDASAN, JUDICIAL MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of the Judgement? No
4. To be circulated to all Benches of the Tribunal? No

JUDGEMENT

(Hon'ble Shri S.P.Mukerji, Vice Chairman)

In this application dated 1st July 1990 the applicant who has been working as a Brick Layer as casual labourer under the Inspector of Works, Southern Railway, Thirupattur has prayed that he may be declared as senior to the 4th respondent and entitled to be absorbed as a Brick Layer with effect from the date of Annexure A3. The brief facts of the case are as follows.

2. According to the applicant he was being continuously engaged as a Brick Layer from 21.9.78 and attained temporary status with effect from 21.1.79 vide Annexure A2 dated 28.8.79. Since he was not being paid the wages of a Skilled casual labourer he along with others filed claim application before the Labour Court, Kozhikode which was allowed and he was given wages from the date on which he was granted temporary status. In accordance with the circular at Annexure A3 casual labourers

or substitutes working in Skilled grade have to be considered for direct recruitment to the cadre of Skilled Artisans in the 25% quota reserved for them. On the basis of Annexure A3 the list of eligible candidates was prepared at Annexure A4 in which the applicant's name figured at Sl.No.17. When the applicant's services were terminated with effect from 9.9.85 he moved the Tribunal in O.A 243/87 and in compliance of the judgment of the Tribunal in that case he was reinstated in service with back wages and continuity of service. The applicant's grievance is that respondent 4 who attained temporary status after the applicant on 21.8.80 and was drawing Skilled grade wages only from 8.6.81 has been inducted in the regular cadre in the 25% quota of Brick Layers overlooking the applicant's seniority. On the applicant's reinstatement when he came to know about the induction of respondent No.4 as above he represented on 25.4.90(Annexure A6) for similar treatment but the representation was returned to him stating that the order passed by the Tribunal in O.A 243/87 does not direct such a posting.

3. In the counter affidavit the respondents have stated that even though for some periods the applicant has been working as a casual labourer Brick Layer, he was working mostly as Unskilled Casual Labourer. It generally happens that when skilled work is not available, to avoid retrenchment Skilled casual labourers are engaged as Unskilled casual labourer unless he chose to be retrenched. Accordingly the applicant was being engaged both as Skilled casual labour Brick Layer and Unskilled casual labour according to availability of work and paid in accordance with the work done by him. He was granted temporary status with effect from 21.1.1979 in the scale of Unskilled casual labourer ie., Rs. 196-232. The Labour Court granted him the scale of pay of Rs. 260-400 for the period he worked as a Skilled Labour but his petition before the High Court which was transferred to the Tribunal and numbered as TA 460/86 for absorption in the Skilled grade instead of as Gangman, was dismissed by the Judgment

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dated 30th January, 1989 at Annexure.R.1(a). It transpires that the applicant's services were terminated when he remained absent unauthorisedly from 2.3.1984. but on the basis of the Judgment of this Bench of the Tribunal in O.A.243/87 he was reinstated as a temporary status attained Unskilled casual labourer. Accordingly he has no right to be reengaged as a Skilled casual labourer.

4. As regards the 4th respondent it has been stated that he had passed the required test for regular absorption as a Brick Layer and has been absorbed as such when the applicant was not in service. The applicant, however, has not passed the trade test necessary for regular absorption as Brick Layer.

5. In the rejoinder the applicant has stated that he had been initially engaged as a Brick Layer as conceded in para 2 of the counter affidavit which is supported by the order of the Labour Court which allowed him the difference in pay scale between Skilled and Unskilled casual labourer with temporary status, during the period from 6.9.79 to 5.9.83. Referring to the Judgment of this Tribunal in Exbt.R.1(a) the applicant has argued that he had not been given any chance for undergoing the trade test for absorption in the Skilled grade and also that he was out of service after 4.2.84. His argument is that <sup>since</sup> till the last day of his work prior to the termination of his service <sup>on</sup> 4.2.84 he was working as Brick Layer he should have been reinstated as Brick Layer and that he had represented for giving him a chance to pass the trade test. It was after this that his name was included at Annexure.A.4 which is the list of <sup>casual workers</sup> ~~volunteers~~ with temporary status who <sup>have</sup> ~~are~~ volunteered to work as Skilled casual labourer.

6. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. The applicant's claim in the Writ Petition No.1169/84 before the High Court of Kerala challenging his posting as Gangman and claiming to be posted as a Skilled worker in the scale Rs. 260-400 was disposed <sup>of</sup> ~~with~~ a direction that his representation be considered by the respondents. When the claim was

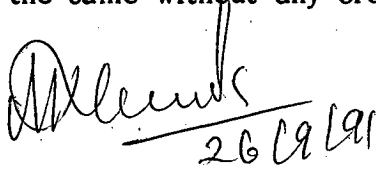
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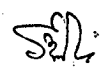
rejected by the respondents the applicant filed another petition O.P.8094/84 which was transferred to <sup>as 468/86</sup> and rejected by the Tribunal with the following observations:

"Though it is admitted that the applicant has been granted temporary status, the applicant cannot urge any legal right for absorption in the skilled category in the grade of Rs. 260-400, for the conferment of temporary status is only in the scale of Rs. 196-232, the applicant has all along been treated only as a casual labour man-mazdoor. No doubt, when there was a sanction for a short period during 1977-79, the applicant was engaged as casual labour Brick Layer. But after the expiry of the sanction, from January, 1979 onwards he had been working as casual labour man-mazdoor and was paid accordingly. It is not in dispute that the applicant has not undergone the trade test for absorption in the skilled grade. He has been screened for absorption only as Gangman. In the circumstances he cannot put forward any valid objection against his being reverted to the Gang."

From the above it is clear that the applicant not having passed the trade test <sup>in</sup> would not be absorbed in the Skilled grade of Rs. 260-400. There is nothing to show that he was granted the skilled scale of pay continuously after 5.9.83 till which date the Labour Court allowed the pay in the higher scale. In the Transferred Application No.468/86 this Tribunal rejected the application in which the applicant had challenged the order by which his representation for being given absorption and pay scale in the Skilled category was rejected. Since the applicant by his own showing has not passed the trade test for the Skilled category, he is not entitled to the same.

7. In the circumstances, we see no force in the application and dismiss the same without any order as to costs.

  
(A.V. Haridasan)  
Member (Judicial)

  
(S.P. Mukerji)  
Vice Chairman

26.9.1991

Ks.