

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A. NO. 606/2006

This the 30th day of July, 2008

C O R A M

**HON'BLE MR. GEORGE PARACKEN ,JUDICIAL MEMBER
HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER**

Arun Namdeorao Waskar S/o Namdeoraro Waskar
Adhoc Progressman
Office of the Deputy Chief Electrical Engineer
Railway Electrification (Indian Railway)
Ernakulam
Permanent Address: New Railway Colony
Sindi (Meghe) Wardha
Dist. Waradha, Maharashtra-442 001

Applicant

By Advocate Mr. T C Govindaswamy

Vs.

- 1 Union of India represented by the
Secretary to the Government of India
Ministry of Railways, New Delhi.
- 2 The General Manager
Central Railway, Mumbai
New Delhi.
- 3 The Divisional Railway Manager
Central Railway, Nagpur.
- 3 The General Manager
Central Organisation of Railway Electrification (CORE)
Allahabad.

Respondents.

By Advocate Ms P.K. Nandini



ORDER

HON'BLE DR. K.S. SUGATHAN, ADMINISTRATIVE MEMBER

The applicant is working as an Ad hoc Progressman in the pay scale of Rs. 4500-7000 in the Railway Electrification Wing of the Southern Railway at Ernakulam. He has a Diploma in Civil Engineering. He was initially appointed as a Casual Labour Progressman in the year 1986. He was granted temporary status w.e.f. 14.1.1987. The Railway Board issued an order dated 9.4.1997 outlining certain guidelines for absorption of Casual Labours who were working in Group-C scales of pay. The applicant is aggrieved by the refusal of the Railway Administration to regularise him under the aforesaid guidelines. He had earlier filed O.A. 78/98 in the Hyderabad/Jabalpur Bench of this Tribunal. However, that O.A. was rejected by the Tribunal. Subsequently the rejection of the OA was challenged in the High Court of Bombay (Nagpur Bench) in WP NO. 2091/99. The Hon'ble High Court did not grant any relief to the applicant. However, the High Court had taken note of the observation made by the learned counsel for the respondents to the effect that if the petitioner manages to pass the departmental examination he will be empaneled in the appropriate group of post and regularised subject to availability of vacancies. It is the contention of the applicant that the Railways have refused to honour this commitment made by the counsel before the High Court. In September, 2005 the Divisional Railway Manager, Nagpur had issued a notification for filling up of



25% LDCE quota for the post of Permanent Way Supervisor in the scale of Rs. 4500-7000 from the employees working as Gangman/Gateman/Trolleyman/Mate working in the Engineering Department. The applicant responded to this notification and was allowed to participate in the examination which was held on 31.12.2005. After the said examination, the list of candidates who passed the written examination was notified on 14.3.2006 and the applicant's name figures at Sl. No. 5 of the list. Subsequently vide letter dated 29.5.06 the final panel of selected candidates consisting of 13 names were released by the respondents. The applicant's name does not figure in this panel (A-7). It is the contention of the applicant that having passed the written examination he has fulfilled the requirement of regularisation as per the submission made by the learned counsel for the respondents before the Hon'ble High Court of Bombay. The applicant has sought the following reliefs through this O.A.

(a) Declare that the refusal on the part of the respondents to absorb the applicant as a Permanent Way Supervisor despite having passed in the examination conducted by the Railway Administration for that purpose is arbitrary, discriminatory and unconstitutional.

(b) Direct the respondents to absorb the applicant as Permanent Way Supervisor. In the light of Annexure A1 and A2 read with declaration in para 8(a) above and direct further to grant all the consequential benefits arising therefrom.

(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.

2 The respondents have contested the O.A. In the reply statement filed by them it is stated that the Hon'ble High Court of Bombay had not given any relief to the applicant by way of any direction for regularisation. Out of the 24 candidates who passed the written test held on 31.12.2005, final panel was prepared by placing the candidates who have obtained more than 80% marks on top of the list. The applicant did not secure 80% marks. The scheme of placing those who secured 80% marks and above on top of the panel is provided in Para 219(1) of IREM-I (R-1). In the subsequent additional reply the respondents clarified that the total marks secured by the candidate is based on the written examination as well as the record of service and confidential reports. They also denied the contention of the applicant that he is entitled to be regularised irrespective of his position in the over-all ranking. The Railway Board letter of 9.4.1997 regarding regularisation of casual labours working in Group-C posts contained three different methods of absorption. Each method is independent of the other methods. They have also denied the contention of the applicant that the applicant should not have been subjected to inter-se assessment among all the candidates who passed the written examination. Along with the applicant other Progressman also appeared in the examination and they were also subjected to the same inter-se assessment and only those who could be selected in the panel on the basis of the scheme of examination were considered for appointment/regularisation. The applicant could not be appointed/regularised as he secured less marks.

3 We have heard the learned counsel for the applicant Shri TCG Swamy and the learned counsel for the respondents Ms .P.K. Nandini. We have perused the documents on records carefully.

4 The issue for adjudication in this O.A. is whether the applicant is entitled to regularisation merely on the basis of his passing the written examination held for filling certain vacancies in the LDCE quota for Permanent Way Supervisors in the pay scale of Rs. 4500-7000 in accordance with the scheme outlined by the Railway Board letter dated 9.4.1997. The applicant is relying on the submission made by the learned counsel for the respondents before the Hon'ble High Court of Bombay in WP NO. 2091/99and the aforesaid submission reads as follows:

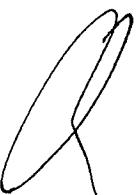
"We are informed by Mr. Sundaram, learned counsel appearing for the respondents that pursuant to the directions of the Central Administrative Tribunal, the examination equivalent to the Railway Recruitment Board was held int two parts, viz., written as well as viva voce. While the petitioner was able to pass in the written but failed to pass in the viva voce. Hence his service has not been regularised in the appropriate group of post. The petitioner continues to be treated as group-C employee as a casual Progressman.

Mr. Sundaram, learned counsel for the respondents states that as and when the petitioner manages to pass the departmental examination, he will be empanelled for the appropriate group of post and regularised subject to availability of vacancy."

5 We are unable to accept the contentions of the applicant that the submission made by the learned counsel for the respondents as

extracted above implies that the applicant is entitled to be regularised merely on passing of the written test in the departmental examination. The reference to the departmental examination in the above extract has to be construed to mean the examination in toto and not merely the written examination. We have perused the file relating to the selection process. It is observed that the applicant had obtained 32.5 marks out of 50 in the written examination, 12 out of 20 in record of service and 23 out of 30 in personality, leadership and technical qualities, making a total of 67.5 out of 100. The candidates who are included in the final select list had obtained 80% or more marks. It is also observed that there were other employees from the category of Progressman who figured in the selection process and some of whom have been finally selected. We do not find any infirmity in the selection process adopted by the respondents. The scheme of placing those who secured more than 80% marks on top of the select list is provided for in the IREM. Therefore, there is nothing wrong in adopting the said scheme.

6 The Railway Board letter dated 9.4.1997 provides for the following methods of absorption of Casual Labours working in Group-C pay scales:



- (i) All casual labour/substitutes in group-C scales whether they are Diploma holders or have other qualifications, maybe given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without

(ii) Notwithstanding (i) above, such of the casual labour in Group-C scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.

(iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group-D on the basis of the number of days put in as casual labour in respective Units.

7 The first alternative provided in the above scheme is a chance given to such casual labours as per the suitability and qualification without any age bar. It is under this provision that the applicant was allowed to appear in the LDCE examination held on 31.12.2005. There is nothing in the letter dated 9.4.1997 which states that on mere passing of the written examination such an employee/casual labour must be regularised. What is provided for in the scheme is such an employee/casual labour were given a chance to appear in the examination even though they do not form part of the feeder cadre and if they are successful in the examination they get an opportunity of getting absorbed. We are therefore not persuaded to accept the contention of the applicant that he ought to have been regularised merely on the basis of passing the written test. It is also seen that three employees who belonged to the category of Progressman and who competed in the same LDCE have been included in the final panel as they have secured more than 80% marks. There is therefore no discrimination between the feeder cadres for the LDCE and the category of Progressman.



8 For the reasons stated above, it is not possible to grant the relief sought by the applicant. The O.A. is therefore dismissed. The parties will bear their own costs.

Dated 30.7.08.



K.S. SUGHATHAN
ADMINISTRATIVE MEMBER

kmn



GEORGE PARACKEN
JUDICIAL MEMBER