

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O. A. No.
XxxXxx

83

1990

DATE OF DECISION 10.6.1991

Rudramurthy R _____ Applicant (s)

Mr. B. Gopakumar _____ Advocate for the Applicant (s)

Versus

UOI rep. by the _____ Respondent (s)
General Manager, Southern Railway, Madras & Another

M/s MC Cherian & TA Rajan _____ Advocate for the Respondent (s)

CORAM:

The Hon'ble Mr. S.P. Mukerji - Vice Chairman

and

The Hon'ble Mr. A.V. Haridasan - Judicial Member

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. To be circulated to all Benches of the Tribunal?

JUDGEMENT

(Mr. A.V. Haridasan, Judicial Member)

In this application filed under Section 19 of the Administrative Tribunals Act, the applicant has prayed that the order dated 12.1.1990 of the Senior Divisional Personnel Officer, Southern Railway, Palghat at Annexure-VI reverting the applicant to the cadre of Gangman may be quashed.

2. The allegations in the petition can be briefly stated as follows. The applicant, a Carpenter by profession was engaged by the respondents as a Carpenter in ELR

service in the skilled grade from 11.7.1977 onwards. According to the extant rules in regard to absorption of skilled labourer in regular service, those casual labourers who are working in skilled grade drawing wages in the scale Rs.260-400 or above are entitled to be considered for direct absorption as skilled Artisans in the relevant trades to the extent of 25% of the vacancies arising in that grade. The second respondent had on 30.1.1986 issued an instruction that this rule should be given effect to. Pursuant to this instruction, a list of employees who have worked in skilled grade on casual basis and had obtained temporary status was prepared for direct recruitment to the 25% quota available to Carpenters. The applicant's name was 5th in the list, a copy of which is at Annexure-II. The applicant was called for a trade test and interview for empanelment in the skilled grade. Though he was at first declared successful in the trade test, a corrigendum was issued on 16.12.1986 stating that the applicant had failed in the test. While steps were in progress for filling up of the reserved vacancies without absorbing the applicant, the applicant filed OA 214/87 before this Tribunal. Finding that there has been some discrepancies in the result of the trade test in respect of the applicant, OA 214/87 was disposed of by this Tribunal by order dated 11.5.1988 (Annexure-III)

directing the respondents to hold oral test so far as the applicant is concerned afresh in order to ascertain his fitness for empanelment for the post of Gangman (Carpenter). Though a trade test was conducted for the applicant pursuant to the above order on 23.6.1988, as no order was given to him, the applicant filed OA K-101/89 praying that, direction may be given to absorb him as Carpenter from the date on which his immediate junior was absorbed regularly as Carpenter. When that application came up for admission on 13.3.1989 the learned counsel appearing for the respondents submitted that an order dated 27.2.1989 has been issued, posting the applicant under Inspector of Works, Erode as Carpenter in the scale of Rs.950-1500 (revised scale). Taking note of this submission, OA K-101/89 was closed. By order dated 27.2.1989 the applicant was absorbed as Carpenter in the skilled grade, i.e. Rs.950-1500 and he joined as Carpenter under the Inspector of Works, Erode on 14.3.1989. While the applicant was thus working as Carpenter, skilled grade he came to know that the impugned order dated 12.1.1990 reverting him as Gangman has been passed. In the said order at Annexure-VI, it was stated that the applicant was reverted as Gangman as per the directions of this Tribunal, that Skilled casual labourers who joined as Gangmen were not eligible to be considered for the post of Skilled Artisans against 25% quota, and that this quota had to be filled by absorption

of casual labourers only. As the absorption of the applicant as Artisan Skilled Grade was pursuant to the orders of the Tribunal in OA 214/87, the impugned order at Annexure-VI is illegal, unjustified and amounts to contempt of lawful orders of this Tribunal. As the applicant has all along been working in the skilled grade and as there is no direction from the Tribunal to revert persons absorbed in the circumstances as the applicant, the impugned order is liable to be quashed and set aside. The applicant has therefore approached this Tribunal for setting aside the impugned order.

3. The contentions raised by the respondents in the reply statement are as follows. That the casual labourers working in the skilled grade are eligible for selection and absorption as regular skilled Artisans against 25% quota reserved as per paragraph 2512(2) of the Indian Railway Establishment Manual is admitted. Previously even those who were absorbed as Gangman were also considered eligible for regular absorption as skilled Artizan against this 25% quota. As this practice was found to be not proper, it was decided to restrict the benefit of the absorption directly as skilled Artizans to Casual Labourers who opted to continue as casual labourers rather than being absorbed as Gangman. Though this restriction was challenged by Gangmen in a

series of applications such as OA-255/88, 256/88, 261/88, 282/88, 385/88, 438/88, 248/88, 249/88, 239/88 and TA-170/87, these applications were dismissed by this Tribunal holding that those casual labourers whether skilled or unskilled who had chosen to be absorbed as regular Gangman were not entitled to be considered for absorption as skilled Artisan to the extent of 25% quota under paragraph 2512(2) of the Indian Railway Establishment Manual. While steps were in progress to absorb the applicant as skilled Artisan towards the 25% quota of reserved vacancies pursuant to the direction in OA-214/87, the applicant was screened for absorption as regular Gangman and was empanelled so by empanelment list of 25.1.1988, at Annexure-R1. Pursuant to this empanelment the applicant was appointed as Gangman by order dated 23.2.1988 at Annexure-R2. The applicant joined as Gangman with effect from 12.5.1988 and worked as such till 14.3.1989. It was while the applicant was working as regular Gangman, he was absorbed as Skilled Artisan(Carpenter) as per Annexure-IV order pursuant to which he joined as Carpenter on 15.3.1989. Annexure-IV order in respect of the absorption of the applicant and one Shri KC Chami happened to be issued under a mistaken notion that they are still working as casual labourers. Immediately thereafter on 8.3.1989 and 10.3.1989 two orders were issued stating that the

appointment would be subject to the outcome of the applications pending before this Tribunal regarding posting of Gangman as Artisan against 25% of promotion quota. Finding that the appointment of the applicant and K.C. Chami who had already been regularly appointed as Gangman, towards 25% of the quota under paragraph 2512(2) of the Indian Railway Establishment Manual was irregular, the impugned order at Annexure-VI reverting the applicant a and ^{similar} order reverting Shri K.C.Chami to the parent cadre of Gangman were issued. Though Shri K.C. Chami filed OA 173/89 challenging his reversion by order dated 31.8.1990 this Tribunal ~~has~~ dismissed the application. The case of the applicant is identical with that of the said Chami and ^{therefore} the applicant is not entitled to challenge the impugned order. As the applicant was erroneously appointed as Skilled Artisan while he was working as regular Gangman ^{he} ~~has~~ no right to challenge the impugned order at Annexure-VI by which the error has been rectified. Therefore, the application is liable to be dismissed.

4. The applicant has filed a rejoinder. It has been averred in the rejoinder that when the order at Annexure-R1, empanelling the applicant as Gangman was issued, the applicant had expressed his unwillingness to be absorbed as Gangman and his preference to continue as Casual Mazdoor in the skilled grade. Along with his

rejoinder the applicant has produced a photo copy of the request made by him on 18.4.1988 that he may be allowed to continue as Casual Mazdoor instead of getting absorbed as Gangman with endorsement of the Inspector of Works and a true copy of the representation made by him to the second respondent on 16.4.1988 at Annexure-VII respectively and VIII. According to the applicant, even if the respondents have created records showing that the applicant was made to work as Gangman against his willingness to be so absorbed his right for absorption towards 25% quota cannot be defeated, and therefore, he is entitled to have the impugned order quashed.

5. We have heard the arguments of the learned counsel on either side and have also carefully perused the pleadings and documents. The undisputed facts in this case are that the applicant was appointed as Skilled Artisan by order dated 27.2.1989 at Annexure-IV and that the impugned order at Annexure-VI dated 12.1.1990 was issued reverting him as Gangman. It is worthwhile to quote the Annexure-IV order dated 27.2.1989 and also the impugned order. The operative portion of Annexure-IV order dated 27.2.1989 reads as follows:

" The following Skilled Artisan Casual Labourers, who have been empanelled for regular absorption as Skilled Artisan in scale Rs.950-1500 are absorbed as Skilled Artisan in scale Rs.950-1500 in the categories mentioned below and posted to the station noted against each.

Sl.No.	Name S/Shri	Working under	Posted To
		<u>Brick Layer in Scale Rs.950-1500</u>	
1.	K.C.Chami	IOU/CAN	IOU/CLT
		<u>Carpenter in scale Rs.950-1500</u>	
2.	R.Rudramoorthy	IOU/TPT	IOU/ED"

The impugned order at Annexure-VI reads as follows.

" Sri.R.Rudramurthy, who has been posted as Carpenter skilled Gr.III in scale Rs.950-1500 under IOU/ED against 25% quota reserved for skilled casual labour vide this office order No.J/P.407/IX/Engg. dt.27.2.89 and also on conditions laid down in this office memorandum even no. dt.8.3.89, is reverted to his parent cadre as gangman under PWI/TPT with immediate effect.

This is as per the directions of CAT/ERS, which while disposing off some cases, held that skilled casual labour, who joined as gangman are not eligible to be considered for the posts of skilled artizans against 25% quota and this has to be filled from skilled casual labour only. (Authority: CAT/ERS OA: 214/87 & 101/89)"

A reading of Annexure-IV would give an impression that the applicant was absorbed as Skilled Artizan while he was a a Skilled Artizan Casual Labour. Though in Annexure-VI it is stated that the reversion was as per directions of the CAT/ERS. while disposing of some cases that Casual Labour who joined as Gaggman are not eligible to be considered for the post of Skilled Artizan against 25% quota, it has not been stated in the impugned order that the applicant before his absorption as Skilled Artisan by Annexure-IV had opted to be

absorbed as Gangman and has joined voluntarily as Gangman.

The impugned order is now sought to be justified by the respondents on the ground that the applicant while step was in progress for his absorption as Artizan Skilled

Grade was empanelled as a regular Gangman by Annexure-

R.1 order dated 25.1.1988, that he was appointed as regular Gangman as per Annexure-R.2 order dated 23.2.88,

that he has joined as Gangman with effect from 13.5.1988 till 14.3.1989, and that, therefore as ~~as~~ regularly

absorbed Gangman he was not on the date of issue of

Annexure-IV entitled to be absorbed towards the 25%

reserved quota, and that, therefore the Annexure-VI

order was issued rightly to rectify the error committed

by the administration in absorbing the applicant as

Skilled Artizan by Annexure-IV order. The applicant has

in his rejoinder stated that, when he was sought to be

empanelled as a Gangman vide Annexure-R.1 order, he

submitted to the second respondent his unwillingness

to be so empanelled, and that when he was compelled

by the Inspector of Works to go to the Gang, he had

submitted a request to him to permit him to remain in

the category of Carpenter instead of sending him to the

gang. The applicant has produced a photo copy of the

request submitted by him to the Inspector of Works with

the endorsement of the IOW, that it was received by him

on 18.4.1988 ~~has been produced~~ as Annexure-VII. A copy

of the submission made by the applicant to the Senior

Divisional Personnel Officer, Palghat inviting his attention to the case which was then pending before the Central Administrative Tribunal, Madras Bench regarding the result of the trade test and expressing his preference to continue as Casual Labour (Carpenter) to being empanelled as Gangman without prejudice to his rights as claimed in the application before the Madras Bench had been produced as Annexure-VIII. An additional counter affidavit was filed on behalf of the respondents in which the second respondent has averred that when the Inspector of Works, Tiruppathur was specifically asked about the Annexure-VIII letter, ^{he said that it} was not received by him, but has stated that the signature in Annexure-VII was his, and that the circumstances under which the signature happened to be there was not explained. It has also been stated that the letters Annexure-VII and VIII were not seen received in the office. The applicant has produced the original copy of Annexure-VII bearing the signature of the Inspector of Works. He has also produced the postal acknowledgement showing the receipt of the Annexure-VIII letter in the office of the second respondent. Therefore, the averment in the additional reply statement that the Annexure-VII and VIII submitted by the applicant expressing his unwillingness to be absorbed as a Gangman and his preference to continue as Casual Labour ^{was not seen} received in the office cannot be accepted as true. In OA 214/87 the applicant had challenged the result of the trade test in which he

was said to be not qualified in the Viva-voce and prayed that he should be directed to be appointed as Carpenter.

This Tribunal had in the order dated 5.5.1988 at Annexure-III directed the respondents to conduct a viva-voce test afresh in the case of the applicant within a period of one month from the date of receipt of that order.

It was within 20 days of this order at Annexure-III that the Annexure-R.1 order empanelling the applicant as regular Gangman was issued. In response to this order the applicant has in Annexure-VII and VIII letters expressing his unwillingness to be absorbed as Gangman and his preference to continue as Casual Labour (Carpenter).

The trade test pursuant to the order in OA 214/87 was held on 23.6.1988. Since the respondents did not absorb him as Carpenter skilled grade, the applicant filed OA K-101/89 for a direction to appoint him as Carpenter.

This application was disposed of by this Tribunal on the basis of the submission of the learned counsel for the Railways that the second respondent had issued orders on 27.2.1989 posting the applicant as Carpenter in the scale of Rs.950-1500 under the Inspector of Works, Erode.

From what is stated above, it is seen that the applicant has all along been fighting for his regular absorption as Skilled Carpenter in the 25% reserved quota, and that he had opted to continue as a Casual Labour till he is so absorbed. While so even if the respondents have compelled the applicant to work as Gangman and even

if the applicant had worked as Gangman as is sought to be established by the muster sheet, Annexure-R.3 that cannot prejudice the claim of the applicant to be absorbed towards the 25% quota in the skilled grade because he has not voluntarily joined as Gangman on being empanelled by Annexure-R.1 as he has categorically expressed his unwillingness to be so empanelled in Annexure-VII and VIII. The case of K.C.Chami mentioned in the reply statement of the respondents stand on a different footing. In that case there was nothing to show that Chami had expressed his unwillingness to be empanelled as Gangman on the other hand it was brought out in that case that Chami had joined as a Gangman without any protest. Therefore, the contention of the respondents that the case of the applicant is identical with that of Shri KC Chami cannot be accepted. The attempt of the respondents to defeat the claim of the applicant for absorption as skilled Carpenter towards the 25% reserved quota by empanelling him as a Gangman against his wish and option as expressed in Annexure-VII and VIII cannot be allowed to stand in the circumstances explained above. Hence, we are of the view that the applicant has a legitimate grievance which is to be redressed in this application.

6. In the conspectus of facts and circumstances, we allow the application and set aside the impugned

order Annexure-VI and direct the respondents to allow
the applicant to continue as Skilled Artizan (Carpenter)
on the basis of his appointment in that grade by
Annexure-IV order. There is no order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER


(S.P. MUKERJI)
VICE CHAIRMAN

10.6.1991