

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.124/07

Wednesday..... this the 27th day of February 2008

C O R A M :

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

M.L.Shaji,
Technical Mate,
Section Engineer's Office/Works/Construction,
Southern Railway, Quilon.Applicant

(By Advocate Mr.Siby J Monippally)

Versus

1. Union of India
represented by Chief Personnel Officer,
Southern Railway, Chennai.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.Respondents

(By Advocate Mr.Thomas Mathew Nellimoottil)

This application having been heard on 6th February 2008 the Tribunal
on 27th February 2008 delivered the following :-

ORDER

HON'BLE Mrs.SATHI NAIR, VICE CHAIRMAN

The applicant herein entered the services of Railways as Technical
Mate (Casual Labour) on 22.10.1989 and has filed this O.A aggrieved by
the fact that he has not been granted regularisation of his services as
Technical Mate (Group 'C') till now. The following relief is sought by the
applicant :-

1. To declare the appointment of the applicant as regular
Technical Mate with effect from 22.10.1989 and grant all
consequential benefits.

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2. The applicant was appointed by order dated 23.10.1989 at Annexure A-1 as a casual labourer Technical Mate (certificate holder) on compassionate grounds. At that time he had passed SSLC, ITI, and Draftsmanship (Civil Engineering). It is alleged that there was no justifiable reason for denying him regular appointment as persons appointed on compassionate grounds are always regularly appointed and same were similarly placed like the applicant, for example, one Shri. Shaffi, S/o. Imbichi Koya was granted regularisation from the date of initial entry into the service.

3. Respondents have contested the O.A on the following grounds :-

- (a) There is no post called Technical Mate available in the Open Line of Trivandrum Division of Southern Railway.
- (b) The said engagement with effect from 23.10.1989 of the applicant was as a casual labour and not against a regular post.
- (c) The applicant had declined his absorption against a regular post in Group 'D' and was willing to continue as a Group 'C' casual labourer with the risk of retrenchment and therefore his prayer is hit by estoppel.
- (d) The applicant has not impleaded the authorities in the Project and other persons referred to in Annexure A-2 who are placed in the territorial jurisdiction of Palghat Division.

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4. The applicant has filed a rejoinder in which he has contended that he had filed O.A 635/97 against the order empanelling him in Group 'D' and the Tribunal allowed the O.A directing the applicant and similarly placed persons in the O.A to be continued in Group 'C' posts till the regularisation, duly protecting their pay scales. But the respondents have not granted regularisation even after 17 years. The applicant has also relied on the judgment of the Hon'ble Supreme Court in V.M.Chandra's case, decided by the C.A.T., Ernakulam Bench in O.A.493/03 in which it has been held that Technical Mates should be granted regularisation and regular pay scale from the date on which they were granted salary under regular pay scale.

5. Respondents have denied the averments in the rejoinder stating that Annexure R-1 order in O.A.635/97 referred to by the applicant has not directed any regularisation as such, but only consideration in appropriate grade in Group 'C' for absorption in accordance with the Railway Board's circulars dated 8.7.1993 and 9.4.1997 and the ruling of the Supreme Court in V.M.Chandra's case. According to these directions, the applicant and similarly situated persons have been given chances to appear in many of the examinations conducted by the Railway Recruitment Board or Railways, but they could not come out successful on their own merit and as such they are continuing as Group 'C' casual labourers. At the same time it is stated that the applicant and others cannot continue as Group 'C' casual labourers forever. According to the policy decision of the Railways taken in 1996 the available casual labourers have to be regularised in Group 'D' posts. In short, the respondents contend that the applicant's prayer has no merit.

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6. I have heard Shri.Siby J Monippally, learned counsel for the applicant and Shri.Varghese John for the respondents. Counsel for the applicant placed strong reliance on Hon'ble Supreme Court's order in V.M.Chandra's case as the applicant herein is a similarly placed person and argued that all the contentions now taken by the respondents had already been settled by the Hon'ble Supreme Court in the said order and that the respondents cannot reopen the very same issues. Counsel for the respondents, on the other hand, contended that the parallel drawn by the applicant to the person appointed in Annexure A-2 order is not valid as that appointment was to a post in Group 'D' services on compassionate grounds whereas the applicant was initially appointed only as a casual labourer as his father was also a casual labourer Khalasi.

7. I have gone through all the contentions and the earlier orders of this Tribunal in O.A.635/97 and batch cases and O.A.493/03 filed by V.M.Chandra and the judgment of the Supreme Court and the entire records before me. I find that the entire matter is a settled issue and the contentions of the respondents, which are mere repetition of their earlier stand in the O.As filed and before the Supreme Court, do not require any fresh consideration and have to be rejected outright. It is seen that the applicant is very much similarly placed person as V.M.Chandra, the applicant in O.A.493/03, as both were appointed as Technical Mate Casual Labourer and granted temporary status in the Group 'C' post. Respondents had contended before the Supreme Court that V.M.Chandra was not entitled for regularisation as Technical Mate as there was no post called Technical Mate. This position was outright rejected by the Supreme Court in the light of the Railway Board's circular No.P(S) 443/1/Misc/MP/MAS/Vol.X dated 13.7.1993 which reads as follows :-

"The 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 the scale of Rs.950-1500 against 25% of direct recruitment quota along with serving casual labour artisans."

8. In terms of the above directions, the Apex Court had disposed of the case directing the respondents to absorb the applicant as a Skilled Artisan against the direct recruitment post. As far as the applicant in this O.A is concerned, this is second round of litigation. He along with others had filed O.As challenging the empanelment in Group 'D' post praying that they are entitled to be absorbed as a Technical Mates in Group 'C' in the scale of Rs.950-1500. This O.A was disposed of by a common order at Annexure R-1 dated 28th August 2000 duly taking note of the Apex Court judgment in V.M.Chandra's case supra and also the circulars of the Railway Board dated 9.4.1997. The operative portion of the directions in that order were as follows :-

" Since all the applicants are continuing as Skilled Artisans on the basis of the interim order issued by this Tribunal, the applications are now disposed of directing the General Manager to consider the case of the applicants in appropriate grade or Group 'C' for absorption in accordance with the directions contained in the Railway Board's Circular dated 8.7.1993 as also the Railway Board's order dated 9.4.1997 and the ruling of the Supreme Court in V.M.Chandra's case. The above exercise shall be undertaken and the resultant orders issued as expeditiously as possible and till final orders are issued the status quo regarding the posting of the applicant shall be maintained. No costs."

9. The Board's letter dated 9.4.1997 referred to in the order also deserved to be extracted here in order to prove the hollowness of the contentions of the respondents :-

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"3. The question of regularisation of the casual labour working in Group 'C' scales has been under considerations of the Board. After careful consideration of the matter, Board have decided that the regularisation of casual labour working in Group 'C' scales may be done on the following lines :-

- (i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar.
- (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 the respective units."

10. It is strange that the respondents are contending that they have followed the above orders whereas it is seen from the very averment that they have not understood the implication of the circulars or are deliberately interpreting the same to their advantage. As is evident from the circular extracted above, the various options given for regularisation of casual labourers working in Group 'C' scales in clauses (i), (ii) and (iii) are not exclusive of each other which intention is confirmed by the word "notwithstanding" used in clauses (ii) and (iii). Respondents are contending that the applicant and others have been given chances to appear in the examinations which is one of the option in clause (i) but they could not succeed in the same. Whereas clause (ii) directs that "notwithstanding" their appearance or passing the examination they should be considered for absorption as skilled artisans against 25% of the promotion quota which was also the specific direction given by the Hon'ble Supreme Court and also in our order in O.A.635/97. The Railway Board having considered the issue relating to regularisation of the casual labourers who are employed in

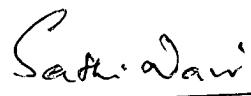
Group 'C' scales and who are duly qualified for holding the post/posts have by a specific order given them the entitlement for a 25% promotion quota as skilled artisans. Having taken such a policy decision as evidenced by the Board's order dated 9.4.1997, respondents cannot deny such consideration to those of them who are qualified and have been discharging this function. Such an action would defeat the very purpose for which the order was issued. Such an obstinate approach of the respondents even in the face of Hon'ble Supreme Court's observation is reprehensible and is resulting in unnecessarily driving each and every employee to the Court. It is really strange that even against the existence of the circulars of the Railway Board, the respondents are averring in the Court that the applicant and similarly situated persons are not entitled to be considered for absorption in Group 'C'.

11. Their contention that the Hon'ble Supreme Court's judgment in V.M.Chandra's case is to be treated as an extraordinary case and not applicable to others is again a fanciful and extraordinary interpretation which has to be rejected outright. A reading of the Hon'ble Supreme Court's judgment would clearly show that what the Hon'ble Supreme Court had meant by treating it as an extraordinary case was in the context of not remitting the matter back to the respondents because of the long legal battle which had already taken place and the Court felt any further remittance to the respondents would only delay the matter. The Hon'ble Supreme Court did not treat the case as extraordinary in terms of the merit of the case based on the Railway Board's orders.

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12. Therefore, I am of the view that in accordance with the settled ratio of the Hon'ble Supreme Court's judgment in V.M.Chandra's case, the case of the applicant does not need any further adjudication and action has to be taken as already directed by this Tribunal in Annexure R-1 dated 28th August 2000, to which this applicant was also a party. Therefore, I allow the O.A and declare that the applicant is entitled to a regular appointment as Technical Mate in Group 'C' from the date on which he had been granted a regular pay scale and in terms of the Railway Board's order dated 8.7.1993 and 9.4.1997, the respondents shall issue order of absorption of the applicant as skilled artisan against the 25% promotion quota available to such candidates. The order may be complied with within a period of two months from the date of receipt of a copy of this order. No order as to costs.

(Dated this the 27th day of February 2008)


SATHI NAIR
VICE CHAIRMAN

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