

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

Original Application No. 152 of 2007

Thursday, this the 26th day of February, 2009

CORAM :

HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

A. Venkatachalam,
S/o. Arumugham,
Trackman, Office of the Section Engineer,
Southern Railway, Salem North,
Residing at 397/2, Anaikattu Road,
Surampatti, Valasu, Erode. **Applicant.**

(By Advocate Mr. T.A. Rajan)

v e r s u s

1. Union of India represented by
The General Manager,
Southern Railway, Chennai : 3
2. The Senior Divisional Personnel Officer,
Southern Railway, Palghat. **Respondents.**

(By Advocate Mr. Thomas Mathew Nellimootttil)

The Original Application having been heard on 19.01.09, this
Tribunal on 26-2-09 delivered the following :

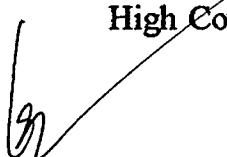
O R D E R
HON'BLE DR. K B S RAJAN, JUDICIAL MEMBER

The applicant commenced his service as Casual Labourer Bricklayer at
Salem in the Southern Railway on 21st June 1977. His services were terminated

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w.e.f. 21st September 1978, against which the applicant raised an industrial dispute vide I D (c) 17/1996 and Tribunal passed an award declaring the termination of the service of the applicant as illegal and respondents were directed to reinstate the applicant in the service, vide Annexure A-1.

2. Respondents had taken up the matter before the Hon'ble High Court in O.P. No. 1002/98, which was, however, dismissed, vide Annexure A-2 judgment dated 01-09-1998.
3. The award was published in the gazette on 28th July 1997, whereas the applicant was reinstated, that too in a lower post, only on 10th November 1998. Hence, the applicant had filed CP © No. 6/99, as the award contemplated reinstatement in the same post and not in a lower post. The Labour Court had directed the respondents that the applicant be paid the difference in the pay for the period from 10th November 1998, while no pay was ordered for the period anterior to 10th November 1998. Annexure A-3 refers. As such, the applicant moved the Hon'ble High Court against that part of the order whereby his claim for wages anterior to the date of reinstatement had been rejected by the Labour Court. The High Court, vide Annexure A-4 judgment dated 14th December 2005 allowed the writ petition, vide Annexure A-4 and held that the applicant is entitled to get back wages from August 28, 1997 till November 10, 1998. The High Court considered the claim of the applicant as per the provisions of Sec.



17 A of the Industrial Disputes Act and held, "Obviously the Labour Court has overlooked the statutory provisions contained in Section 17 A of the Act."

4. Despite the above, the applicant was placed only in a lower post and he had penned representation dated 22nd November 2006, vide Annexure A-5 but the same had not been considered by the respondents. Hence this O.A,

5. Respondents have contested the O.A. As regards the facts, there was not much of controversy. According to them, however, the judgments at Annexure A-3 and A-4 will not give any vested right to the applicant for absorption as Bricklayer. The applicant who has acquiesced to the matter is estopped from claiming absorption as a Bricklayer at this distance of time. Pursuant to Annexure A-1, the applicant was re-engaged as a Temporary Status attained casual labour w.e.f. 10th November 1998 and if the applicant was aggrieved that he should have been re-engaged in a higher scale and also absorbed as a Bricklayer, he should have approached this Tribunal at the material point of time. The O.A. is therefore, highly barred by limitation and is liable to be dismissed on this score alone. On merits the respondents stated that in terms of Annexure A-1 award, the applicant was re-engaged as a temporary status attained casual labourer in scale Rs 2610 – 3540 on 10th November 1998 under Section Engineer Permanent Way/North Salem. Casual labourers at the Engineering department are normally absorbed into regular service as Gangman

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through a process of screening and consequent empanelment. The post of Gangman is a regular Group D post. Therefore, even casual labourers who are doing skilled works and are thus getting higher emoluments prefer to join as regular gangman even though the starting salary of a gangman is less than that of a skilled casual labourer. The applicant was screened for regular absorption as Gangman/Trackman vide order dated 01st March 1999. Later on he was promoted as Senior Trackman w.e.f. 01st March 2003. It has also been contended by the respondents that in terms of provisions of Rule 2007 (3) of Indian Railway Establishment Manual Volume II, skilled casual labourers who opt to continue as such even by refusing to be absorbed as Group D employees in regular service, have got a chance of being straightaway absorbed as regular Artizans (skilled category of posts) to the extent of 25% of the 50% of vacancies which are set apart for being filled through department promotion. Thus, the skilled casual labourers in the concerned trade are entitled to be promoted to 12.5% of the regular vacancies of skilled artisans which are to be filled up. The applicant who was granted the higher scale for a limited period is not entitled to be considered for promotion as skilled artisan against 25% quota. As he has joined as regular Gangman, he is not eligible for promotion as regular artisan (Bricklayer) in 25% quota as envisaged in Para 2007 (3) of IREM. In fact such an issue has been considered by this Tribunal in OA K 248/88, 249/88 etc and this Tribunal held vide common order dated 20th November 89 that only

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casual labourers and not regular employees are entitled to be considered against 25% of 50% promotional quota, vide Annexure R-1.

6. In his rejoinder the applicant maintained that his case is different from the one relied upon by the respondents inasmuch as he was initially appointed as a casual labourer Bricklayer and on his services having been illegally terminated, he approached the Industrial Tribunal which rendered its award in his favour and the High Court had upheld the same. As per para 2007(3) skilled casual labourers are straightaway entitled to be absorbed in skilled grade. Similarly, regular employees are also entitled to be so absorbed in skilled grade, vide CPO order dated 14th August 1991, at Annexure A-6 and several such regular employees had been on the strength of the above orders of the CPO regularized in the skilled grade.

7. In their additional reply, the respondents have explained the modalities of filling up of the de-casualisation posts as contained in Annexure A-6. According to them, **the applicant on his own volition has joined the regular post of Trackman/Gangman** and having joined in the regular post, the applicant is not entitled to be considered for the skilled post of Bricklayer against 25% quota as envisaged in para 2007 (3) of IREM.

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8. Counsel for the applicant argued that the applicant has been throughout successful in his litigation against the illegal action of the respondents. First, his illegal termination was set aside. Next, when he was placed in a lower post, through the CPC he could get the difference in pay scale and he had also been successful in having the wages paid for the period anterior to the date of reinstatement w.e.f.10th November 1998, i.e. from 28th August 1997. As against the above, the respondents' attempt in challenging the award was not successful as the O.P. filed by them was dismissed. Thus, once the award ordered reinstatement and pay as earlier drawn was made available, it cannot be stated that the applicant had joined the post of Trackman/Gangman of his own volition.

9. Counsel for the respondents reiterated the contentions made in their reply and additional reply.

10. Arguments were heard and documents perused.

11. First, as to the preliminary objection relating to limitation has to be met with. The respondents contend that the applicant cannot agitate against the matter of November 1998 through this O.A. He having long back accepted the post offered to him, cannot now be allowed to claim that he should have been absorbed as Bricklayer. This contention has to be rejected for the reason

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that the applicant did not accept the post without any demur. He had filed CP before the Industrial Tribunal challenging the action of the respondents in placing him in a lower post/scale. The Tribunal directed payment of the difference in emoluments. The High Court modified the same further, in a manner advantageous to the applicant. These orders have been complied with by the respondents. The applicant further made Representation dated 22nd November 2006 requesting for the withdrawal of the order absorbing him as Gangman and absorbing him as Bricklayer, vide Annexure A-5. Thus, the objections on limitation is not tenable.

12. Now coming to the merits of the case, the admitted facts are that the initial appointment of the applicant was a bricklayer on casual basis and the applicant's services were initially terminated against which he moved the Labour Court and the labour Court has rendered its award. The Labour Court's Award, vide Annexure A-1 is as follows:-

"Considering the facts and circumstances of the case at hand, I am of the view that for the ends of justice it would be only proper to direct the Management to engage the workman on the same service conditions as he had been engaged earlier, but without back wages. However, on his re-employment he shall be paid wages applicable to the persons who had attained temporary status."
(Emphasis supplied)

13. It was the above award, which was notified in the gazette on 28th July 1997, that was agitated in the High Court by the respondents, but the writ

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petition was dismissed. The High Court, vide Annexure A-2 had held as under:-

"There is already an order Ext. W2 by the Labour Court, Kozhikode that the workman had attained temporary status, in the event of which management has not given any notice to the workman before terminating his service. On this score alone, I am of the view that workman is entitled to reinstatement in service."

14. The respondents, no doubt reinstated the applicant but not in the same post. The applicant was asked to join in a post carrying a lower pay scale and the applicant had to move the Labour Court in contempt jurisdiction. In its order in CP No. 6/99, the Labour Court held as under:-

"It was contended by learned counsel for the respondents that a casual labourer who has only attained temporary status cannot claim wages payable to the brick layers of permanent status.

It is too late to advance these contentions in the light of the direction in Ex P-1 and P-2."

15. It is the case of the applicant that once the applicant had to be reinstated, there is no question of placing him in any post other than bricklayer with necessary status. Reinstatement meant only resumption or restoration.



16. Respondents' contention is that as per Annexure R-1, the applicant who was reinstated as Trackman, cannot try to get the promotion under the slender quota of promotion of skilled artisan. They has placed reliance upon the decision of the Tribunal, vide Annexure R-1.

17. Annexure R-1 order relied upon by the respondents had followed yet another order of the Tribunal in TA No. 170/87, wherein the decision ran as under:-

"Having been absorbed as regular Gangman on their own volition, the petitioners have to look forward to promotion in their own line to the grade of senior Gangman, Keyman etc., They cannot share the slender promotion quota of 12-1/2% in the skilled cadre available to those who are working in the skilled or semi-skilled category on a casual basis. The respondents stated that if they want they can opt to become a Khalasi like the third petitioner and then look forward to further promotion as Khalasi Helper and then as Skilled Artisan."

18. The argument of the applicant was that the above decision does not apply to the case of the applicant as he did not of his own volition joined the post of trackman, whereas his agitation throughout has been that he should be reinstated as only a bricklayer. Further, he had relied upon Annexure A-6 order, whereby even regular casual labourers could be posted as skilled artisans. Annexure A-6 is an order from CPO wherein the mode of filling up the artisans in the Engineering Department. The modes prescribed are as under:-



- i) 50% by seniority cum suitability (trade test) from among
 - (a) artisan khalasis/helpers in the grade of 800 – 1130;
 - (b) khalasis in the grade of Rs 750 – 940;
 - (c) erstwhile casual labour artisans in the scale of Rs. 950 – 1500.
- ii) The balance 50% will be filled up by serving casual labour artisans in scale of Rs 950 – 1500.
- iii) After exhausting the above, remaining posts if any from among other serving casual labour in scales of Rs. 950 – 1500 .

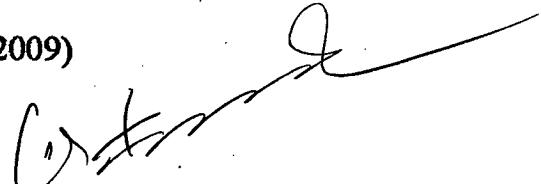
19. Once the Labour court had rendered its award for reinstatement, followed by payment, on reinstatement, of wages 30 days from the date of gazette notification of the award, which the applicant was drawing prior to termination the entitlement of the applicant is certainly, as claimed by him, for reinstatement as Bricklayer and not in any lower post. Support can be had from the decision of the Apex Court in the case of *U.P. SEB v. Natwar Singh*, (2005) 11 SCC 552, wherein the Apex Court has held as under:-

"5. It is the case of the workman himself that his appointment was purely on ad hoc basis and he was being paid consolidated salary of Rs.600 per month. It is while so serving as an ad hoc employee, his services were terminated without following the requirement of law under Section 6-N of the U.P. Industrial Disputes Act. If that be the case, then on being found that the ad hoc employee is entitled to reinstatement in the same post on the same pay scale as was being drawn by him on the date of his termination other questions like the management putting him on a particular pay scale and further regularisation of his services will not arise. By doing this the Industrial Tribunal has gone beyond the scope of the dispute."

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20. Accordingly, the O.A. is allowed. It is declared that the non absorption of the applicant to the post of Bricklayer is illegal. The applicant is entitled to be absorbed only as a Bricklayer and accordingly the respondents are directed to absorb the applicant as Bricklayer from 30 days of the date of gazette notification of the award. However, in treating the applicant as having been absorbed as Bricklayer, the applicant is not entitled to any back wages now. (Nor has the applicant specifically claimed for such arrears of pay and allowances). Of course, seniority etc., of the applicant in the grade of Bricklayer would be as per law.
21. This order shall be complied with, within a period of six months from the date of communication of this order. Under the circumstances, there shall be no orders as to costs.

(Dated, the 26th day of February, 2009)


Dr. K B S RAJAN
JUDICIAL MEMBER

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