

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM

O.A. No. 173/89
T.A. No.

499

DATE OF DECISION 31.8.90

K.C.Chami & Another Applicant (s)

M/s K Ramakumar & Advocate for the Applicant (s)
VR Ramachandran Nair
Versus

Union of India rep. by the Respondent (s)
General Manager, S.Railway, Madras & 3 others

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? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. To be circulated to all Benches of the Tribunal? *Yes*

JUDGEMENT

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

In this application filed under Section 19 of the Administrative Tribunals Act, the applicants have prayed that the order dated 6.3.1989 of the Senior Divisional Personnel Officer, Palghat, Annexure-B cancelling the Office Order No.3/P 407/IX/ENGG. dated 27.2.89, absorbing the applicants as Skilled Artizans(Annexure-A) may be quashed, and that the respondents may be directed to allow the applicants to work in the post of skilled artizans in the scale of Rs.950-1500 pursuant to the Annexure-A order. The material averments in the application can be briefly stated as follows.

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2. The applicants are working as Brick Layer and Blacksmith respectively in the Palghat division of Southern Railway. Both of them have long service as skilled artizans and were granted temporary status long back. The first applicant was fixed in the pay scale of Rs.196-232 with effect from 21.8.1980 and the second applicant was also fixed in the same scale in the year 1981. They are eligible to be fixed in the higher pay scale as skilled artizans in the scale of Rs.950-1500. The first applicant had already filed OA K-242/87 against his appointment in the lower category in the Gang. While so, the Senior Divisional Personnel Officer, Palghat issued the order at Annexure-A, absorbing the applicants as skilled artizans in the scale of Rs.950-1500. The second applicant pursuant to this order joined as Blacksmith under the Inspector of Works, Palghat. But the first applicant was not relieved from his present post. But in the meanwhile the third respondent had issued the impugned order at Annexure-B, cancelling the absorption of the applicants as Skilled Artizans by Annexure-A order. This cancellation ^{was} done in violation of the principles of natural justice without giving the applicants an opportunity to be heard and without any justifiable ground. Therefore, the applicants have filed this application, praying that the impugned order at Annexure-B may be set aside and the respondents may be directed to allow the applicants to continue as skilled artizans on the basis of the Annexure-A order.

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3. The application is resisted by the respondents.

The cancellation of Annexure-A order by the impugned order at Annexure-B is sought to be justified on the ground that the names of the applicants were included in the Annexure-A order by mistake without adverting to the fact that both of them had already been absorbed in the regular service as Gangmen, and that regular Gangmen are not entitled to be absorbed towards the 12¹/₂% of the quota for the casual khilasis for promotion to the post of khilasis under paragraph 2512(2) of Chapter 25 of the Indian Railway Establishment Manual. The mistake was rectified by issuing the impugned order. It is averred in the reply statement that, documents to show that the applicants have been absorbed as regular Gangmen, namely empanelment list, copies and ~~of~~ of the Muster Rolls produced by the respondents would establish that the applicants have suppressed the fact of their earlier absorption in the Railway service and that the claim of the applicants lacks bonafides. It has also been averred that, in OA 255/88, 256/88 and 261/88, this Tribunal has rejected the claim of the Gangmen for absorption as skilled artisans to the vacancies reserved for casual khilasis as per paragraph 2512(2) of the Indian Railway Establishment Manual, and that, therefore, the claim of the applicants is devoid of any merit.

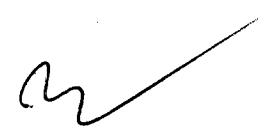
4. We have heard the arguments of the learned counsel on either side and have also perused the documents produced.

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Under our direction, the learned counsel for the respondents have made available for our perusal, the service registers and the other records pertaining to the empanelment of the applicants in the regular service of the Railways. The only question that arises for consideration is whether the Annexure-B order cancelling the absorption of the applicants as skilled artizans in the scale of Rs.950-1500 by Annexure-A order is sustainable or not. This order is sought to be justified by the respondents on the ground that, Annexure-A order was erroneously issued. ^{have} The respondents ~~contended~~ that under paragraph 2512(2) of the Railway Establishment Manual, casual khalasis are entitled to be promoted to 12½% vacancies of regular khalasis based on their seniority and that casual khalasis who have already been absorbed in the regular service as Gangmen would not be entitled to be absorbed in these vacancies. This contention of the respondents is not disputed by the applicants seriously or even if ^{it} disputed, such a dispute will not stand as ~~would be~~ against the provisions of paragraph 2512(2) of the Railway Establishment Manual. Once a casual labourer is screened and absorbed in the regular service of the Railways as Gangman, then he ceases to be a casual labourer, and therefore, he cannot claim the benefit of absorption to regular service to the 12½% vacancies to the post of khalasis available to casual khalasis. The averments in the application did not disclose that the applicants 1 and 2 have been regularly absorbed as Gangmen. On the other hand a reading of the averments in the application would give

an impression that the applicants 1 and 2 are casual labourers who have attained temporary status and are eligible for absorption towards the 12½% vacancies to the post of regular khalasis in terms of paragraph 2512(2) of the Railway Establishment Manual. When confronted with this specific contention in the reply statement that the applicants 1 and 2 have been appointed as Gangmen on the basis of their ranking in the empanelment list R1(c) and R1(d) ^{by} ~~orders~~, copies of which are produced as R1(e) and R1(f) respectively, and that they have joined as Gangmen with effect from 21.1.89 and 21.5.87, the applicants have in the rejoinder stated that, though the respondents have issued posting orders empaneling the applicants as Gangmen and had recorded that they had joined duty as Gangmen, infact they have been continuing as Brick layer and Blacksmith respectively. In the Additional reply statement, the respondents have averred that the applicants 1 and 2 have been working as Gangmen ~~that~~ they have not been working independently as Brickman and Blacksmith and inorder to substantiate this averment, the photostat copies of Muster Roll sheets of the first applicant for the month of July, 89, August '89 and February '90 are produced as Ext.R1(h), R1(i), R1(j) respectively and photostat copies of the second applicant for the period May '87 and February '90 are produced as R1(k) and R1(l). These documents show that the applicants 1 and 2 have been working as regular Gangmen. The service registers of the

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applicants 1 and 2 show that the applicants have been regularly absorbed as Gangmen and have been working as Gangmen. So the contention of the respondents that the Annexure-A order was issued absorbing the applicants as skilled artizans in the scale of Rs.950-1500 inadvertently taking them as casual mazdoors is found to be true and correct. A reading of Annexure-A would make the position clearer. The Annexure-A starts with the following words:


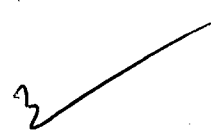
"The following Skilled Artizan: Casual Labourers, who have been empanelled for regular absorption as Skilled Artizan in scale Rs.950-1500 are absorbed as skilled Artizan in scale Rs.950-1500 in the categories mentioned below and posted to the station noted against each."

The names of the applicants are shown. Below the names it is written as follows:

"The above Casual Labourers have passed the required Trade Test in the respective Categories and their absorptions in skilled grade is provisional and subject to approval by the competent authority. They will be on probation for a period of one year from the date of joining as regular skilled artizans and their continuance in the skilled grade will be subject to review on completion of the probation. However the administration reserves the right to revert them as casual labourer even during the probation period in case their unsuitability is established earlier than the completion of the probation period."

The above extracted recital in Annexure-A would show that the Divisional Personnel Officer while issuing this order proceeded under impression that the applicants 1 and 2 were

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artizan casual labourers on the date of issue of Annexure-A namely 27.2.89. But finding that the applicants 1 and 2 had ~~been~~ already joined as Gangmen and are working thus with effect from 21.1.89 and 21.5.87 onwards respectively, the mistake was rectified by the third respondent issuing the impugned order Annexure-B, cancelling the absorption of the applicants as skilled artisans. As observed by us earlier, once a casual labourer after empanelment joins the regular service of the Railway as a Gangman, then ^{he} ceases to be a casual labourer and therefore, after absorption as Gangman, he is not entitled to claim promotion to the 12½% quota available for artizan khalasis for direct absorption in the skilled grade. We had in a number of cases disposed of earlier, for example TA 170/87, OA Nos. 255/88, 256/88, 261/88, 248/88, 249/88, 282/88, 385/88, 438/88 etc. held that a skilled casual labourer who has been absorbed as Gangman on the basis of a screening and empanelment will not be thereafter entitled for direct absorption as skilled artizan in the quota for direct appointment as contained in paragraph 2512(2) of the Indian Railway Establishment Manual. This being the position, we are convinced that the respondents were within their right in issuing the impugned order at Annexure-B, soon after the mistake committed by them in Annexure-A was noticed. Giving a notice or an opportunity to be heard in these circumstances is absolutely unnecessary as the applicants did not derive any vested rights on the basis of the erroneous order

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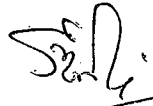


issued only a few days back. Therefore, we are of the view that the applicants have no legitimate grievances.

5. In view of what is stated above, we find that, there is no merit in the application and therefore, we dismiss the same without any order as to costs.


(A.V. HARIDASAN)
JUDICIAL MEMBER

31.8.90


(S.P. MUKERJI)
VICE CHAIRMAN

31.8.90

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