

O.A.No.191/2004

CORAM:

K.Devanathan,
Technical Mate (Temporary Status),
Office of the Section Engineer,
Works (Concrete Sleeper),
Southern Railway, Bommidi. Applicant

Vs.

1. Union of India, represented by the General Manager, Southern Railway, Chennai.
2. The General Manager, Southern Railway, Chennai.
3. The Divisional Personnel Officer, Southern Railway, Palakkad.

The Application having been heard on 17.10.2006 the Tribunal on the same day delivered the following

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

The applicant, a Diploma holder in the Electronics and Instrumentation Engineering, was engaged as Technical Mate w.e.f 2.3.89. On completion of 360 days of engagement, he was afforded temporary status and placed in the scale of Rs.1200-1800 w.e.f. 26.2.90. In 1993, he was absorbed as Gangman only in the scale of Rs. 775-1025 against which he moved O.A.1693/93 and that O.A. was allowed and direction was given to the respondents that the applicant should be allowed to continue as Technical Mate, till such time he is

considered in that relevant grade. As such the applicant continued as a Technical Mate.

2. Through a communication dated 13.7.93 it was informed to all concerned that, the Railway Board has communicated its approval for considering the Casual labourer Technical Mates in the geographical jurisdiction of the division for absorption as Skilled Artisans Grade III in scale of Rs.950-1500 against 25% of direct recruitment quota, alongwith other serving casual labour Artisans. Again by order dated 9.4.97 certain other avenues were also opened for such Technical Mates of group 'C' and the same are as under:

“(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 an 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 i as casual labour in respective Units.”

3. In accordance with item No.(i) above, the applicant participated in an examination conducted in the year 1998 but he was not declared successful. Nevertheless, the very same examination itself was later on cancelled.

4. The applicant was once again asked to join as Gangman against which he filed O.A.1075/97 which was decided on 28.2.2000 and this Tribunal has held as under:

“5. We have heard the learned counsel on either side and have perused the pleadings and materials placed on record. The contention of the respondents that there is no post of Technical Mates in group 'C' where the applicant could be directly absorbed, cannot stand in view of the decision in Railway Board's Circular dated 8.7.93 and the ruling of the Apex Court in V.M.Chandra Vs.Union of India and others (AIR 1999 SC 1624). The applicants are also entitled for consideration according to the Railway board's Circular dated 9.4.97.



6. In the result, the application is disposed of with a direction that the 2nd respondent shall consider the case of the 2nd applicant for regularization in an appropriate group 'C' post in the Railway Board's letter dated 8.7.93 and 9.4.97 and in the light of the ruling of the Apex Court in V.M.Chandra's case. The above exercise shall be completed as expeditiously as possible and resultant orders issued without any delay. Till an order as directed above is issued the status quo as of today regarding the posting of the 2nd applicant shall be maintained. No costs."

5. In pursuance of the aforesaid directions of this Tribunal the respondents have confirmed vide A-4 order dated 3.8.01 as under:

"In view of the above, on your option, your case will be considered alongwith eligible casual labour skilled artisans for absorption in Group'C' as Skilled Artisan as and when vacancy arises in 25% quota in Palakkad Division after training and suitability test, in view of the spirit of the judgement of the Hon'ble Supreme Court in M.V.Chandra case."

6. By A-6 order dated 5.12.2001, such absorption of Technical Mates working in group 'C' scales was made available against 25% of promotion quota of Skilled Artisans in the geographical jurisdiction of some divisions after conducting a suitability test in any of the trades.

7. The applicant vide representation dated 17.12.2003 approached the respondents requesting them to consider his case for absorption against the 25% promotion quota in the same grade as Skilled Artisan in Electrical Loco Shed at Erode in the Electrical Department.

8. The respondents have by the impugned order dated 3.2.2004 rejected the request of the applicant in respect of the above as, according to them, the same cannot be considered, as it is not a branch of the Engineering Department. In addition, by the said impugned order, the applicant was asked to exercise the option to join as Gangman as otherwise his services would be terminated and the applicant cannot be allowed to continue as a Casual Labour. It is the above order that the applicant has challenged in this O.A..

9. The respondents have contested the O.A. According to them, as can be

seen from Annexure A-1 order itself that its subject matter is "Absorption of Technical Mates in Group 'C' posts – Works Branch". The term 'Works Branch' denotes 'Engineering Branch'. Thus it is manifest from Annexure A-1 that the said order pertains to absorption of Technical Mates as Skilled Artisan in Engineering Department. The casual labourers of a particular department are considered for absorption in the said department only. The contention that casual labour Technical Mates are a special category and they can be considered for absorption as Artisan in all departments, is without any basis and hence denied. Though there is no regular post of Technical Mates, the skilled casual labourers inadvertently termed as Technical Mates, were engaged only in the Engineering Department and as per the rules of absorption, they can be considered for absorption in the Engineering department only. Thus the applicant who was engaged in the Engineering department can be considered for absorption in Engineering department alone. Annexure A-8 order is therefore not against Anns.A-1 & A-2 orders of Railway Board.

10. Counsel for the applicant submitted that the Railway Boards' order does not restrict the departments wherein absorption can take place. The restriction could only be in respect of geographical jurisdiction. Again vide order dated 5.12.20001 while prescribing 25% of promotion quota for absorption purpose this geographical jurisdiction on some division has been specified and it has been stated that, such absorption can take place, after conducting a suitability trade test in any of the trades.

11. There is force in the above contention. The underlying idea behind the Scheme of absorption is to enable the Technical Mate, as far as possible, to retain their pay scale on absorption or to reduce it one step low (975-1500) and only when driven to the wall to 775-1025. As such, there must be adequate avenue for such Technical Mates to get absorbed in any Skilled Artisan grade

subject to their passing the suitability test. The term "in any of the trade" appearing in order dated 15.12.2001 supports this view. Thus, we are of the considered view that, the limitation put forth by the Railway Board is only in relation to geographical jurisdiction and if the applicant could qualify in the said test in any of the trades, he can be accommodated in the 25% promotion quota, irrespective of the department. Further, the threat of termination as contained in the impugned order cannot also be appreciated by virtue of the fact that, the Tribunal in its order dated 22.8.00 has clearly stipulated that, till an order of absorption is issued, the status quo as of that date regarding the posting of the applicant shall be maintained.

12. In view of the above, the O.A. is allowed to that extent that the respondents shall consider the case of the applicant for absorption against the 25% promotion quota in any of the trades, subject to the applicant's qualifying in the suitability trade test and if the vacancy of Skilled Artisan in Electrical Loco Shed at Erode in electrical department is still available, the applicant shall be considered in respect of that post by calling him for necessary suitability test. Till such time the applicant is absorbed in any of the Skilled Artisans' post, he shall be allowed to continue as Technical Mate in the pay scale attached to it. No costs.

Dated the 17th October, 2006.



N.RAMAKRISHNAN
ADMINISTRATIVE MEMBER



K.B.S. RAJAN
JUDICIAL MEMBER