

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCHO.A No. 209/2010Monday, this the 24th day of October, 2011.

CORAM

HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER
HON'BLE Ms. K NOORJEHAN, ADMINISTRATIVE MEMBER

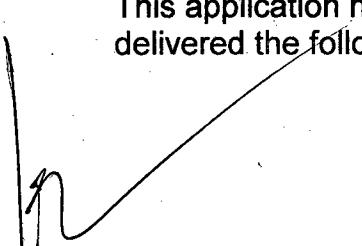
1. S.Prasannakumar,
Brick Layer, O/o the Senior Section Engineer,
Permanent Way, Southern Railway,
O/o the Executive Engineer,
Mavelikkara.
2. G.Vijayakumar,
Brick Layer, O/o the Senior Section Engineer(Works0,
Southern Railway,Kottayam.
3. P.Radhakrishnan,
Welder, O/o the Senior Section Engineer,
Permanent Way, Southern Railway,
Trivandrum.Applicants

(By Advocate Mr Siby J Monippally)

v.

1. Union of India rep. By
General Manager,
Southern Railway,
Park Town, Chennai.
2. The Senior Divisional Personnel Officer,
Southern Railway, Trivandrum Division,
Trivandrum.Respondents

(By Advocate Mr P Haridas)

This application having been finally heard on 19.10.2011, the Tribunal on 24,10,2011
delivered the following:

ORDER**HON'BLE Dr K.B.S.RAJAN, JUDICIAL MEMBER**

The three applicants in this OA who are all ITI certificate (Draftsmen Civil) holders were all engaged as Technical Mate respectively on 06-12-1983, 06-08-1981 and 06-06-1988 and they were granted temporary status respectively on 05-12-1984, 05-08-1982 and 04-06-1989. Their services were regularized with effect from 29-09-2009 and 21-04-2004 respectively. Initially, the applicants were granted regularization in Group D category in 1993 but they had refused the same and in 1997 they had filed OA No. 616/97 and the Tribunal had given certain directions for regularization in Group C and till then the status quo had been ordered, vide order dated 28-08-2000. In pursuance of the same, the respondents had vide Annexure A-1 communication dated 03-08-2001 stated as under:-

“.... on your option, hour case will be considered along with eligible casual labour skilled artizans for absorption in Group 'C' as Skilled Artizan as and when vacancy arises in 25% of DR quota in Trivandrum Division after training and suitability test, in view of the spirit of the judgment of the Hon'ble Supreme Court in M.V. Chandra case.

2. Later on, the applicants No. 1 and 3 were regularized in Group C vide order dated 22-09-2009 while Applicant No. 2 was regularized on 21-04-2004. As according to the applicants their regularization has to take place from the date they had been afforded regular pay scale, they had filed this OA seeking the following relief:

To direct the respondents to regularise the services of the applicants with effect from 05-12-1984, 05-08-1982 and 04-06-1989 respectively as Technical Mate, give them the post they are legally entitled and other consequential benefits thereof and grant such further and other reliefs as the nature and circumstances of the case may require.

3. Respondents have contested the O.A. According to them, the Tribunal is

not empowered to examine a claim relating to more than 3 years prior to the promulgation of the Act. In this OA prayer for benefits from 1982 onwards is being made without assigning any reason for the delay. Again, the respondents have raised the question of limitation in this case. In support of their contention, they had relied upon the following decisions:-

- (a) C. Jacob vs Director of Geology & Mining Indus. Est. & Anr (2008) 2 SCC(L & S) 961.
- (b) Mohan Dass & Ors Vs Union of India and others AISLA VI 2009 (2) CAT (PB)
- (c) Francis Singh vs Union of India and others (OA No 328/2005 decided on 06-03-2007
- (d) Tridip Kumare Dingal & Ors vs State of West Bengal & Ors SLJ 2009 (2) page 209
- (e) Ramesh Chand Sharma vs Udhamp Singh Kamal & Ors and State of HP vs Udhamp Singh Kamal & Ors 1999 (8) SCC 304.

4. Respondents have also raised the doctrine of resjudicata. The applicants had approached this Tribunal on many occasions, right from the period orders were issued by the Railways to regularize their service in Group 'D' posts, challenging the regularization in Group 'D' posts and they expressed willingness to continue as Group 'C' Casual Labourer with the risk of retrenchment. In spite of their contesting, they could not prove their eligibility for being absorbed in Group 'C' posts as the quota meant for them was less and accordingly, they voluntarily came forward to continue as casual labourers as Group 'C' with the risk of retrenchment. It has also been contended that the applicants had not established that there were regular posts of Technical Mate from the dates the prayer is sought for or for that matter from any other date. In fact no post itself was/is available as Technical Mate in Trivandrum Division of the Southern Railway.

5. Respondents have also contended that Group 'C' casual Labourers are entitled to be considered for regularization in regular Group 'C' posts, subject to

fulfilment of certain conditions against a prescribed quota in terms of Railway Board's letter dated 09-04-1997. There were many Group 'C' Casual Labourers like the applicants herein right from 1980 onwards. No outright absorption as Group 'C' employee is prescribed. As per the Board's circular dated 09-04-1997, the skilled casual labourers are entitled to be considered against the 25% of vacancies meant for 50% promotion quota (i.e. one eights of total vacancies) arising in a year in the Group 'C' posts concerned. As such, such vacancies arise very rarely and the applicants' chances to be absorbed against such vacancies are yet to come.

6. It has also been contended by the respondents in their reply that the initial engagement of the applicants, grant of temporary status and their subsequent engagement as Skilled Casual Labourers were under the Dy. Chief Engineer/Construction/Trivandrum, i.e. Project Organization situated within the Trivandrum Territorial Jurisdiction. As per the rules in force, the casual labourers in the construction (Project) Organization, whether skilled or semi-skilled or unskilled are also to be considered for regularization in Group 'D' post of Gangman by the process of empanelment, along with the other casual labourers within the territorial jurisdiction of the Division. This is so because, there is no regular post in the Construction Unit for empanelling them and without the regularization, the casual labourers are not entitled for any service benefit in Railways. Applicants' other averment that similarly placed persons have been regularized has not been proved by them. No group 'C' casual labourer has been regularized in Group 'C' effective from 1982 and if at all anybody has been regularized after 1997 it was on the reason that he was senior to the applicants. Thus, their claim for regularization from 1982 etc., is not maintainable.

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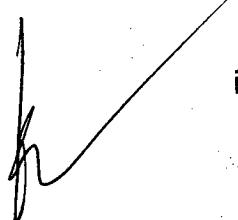
7. Counsel for the applicant argued that the decision of this Tribunal in OA No. 616/97, Order dated 27-02-2008 in OA No. 124 of 2007, Judgment in WP (c) 19324 of 2008 (relating to the aforesaid OA No. 124 of 2007), the Railway Board's order dated 09-04-1997, Apex Court judgment in M.V. Chandra case are all in favour of the applicants and thus, the applicants are entitled to be considered for regularization from the dates they had been granted regular pay scale.

8. In contrast to the above, the counsel for the respondents relied upon the counter and argued that when there is no vacancy available, the question of regularization does not arise. None of the juniors to the applicants had been regularized as such. All have been regularized in their turn. Hence, the OA be dismissed.

9. Arguments were heard and documents perused. As early as in 1995, on an identical subject matter another Application OA 1036 of 1995 was considered by the Tribunal but the same was dismissed vide order dated 03-11-1995. This was challenged before the Apex Court vide **V.M. Chandra v. Union of India, (1999) 4 SCC 62.** During the pendency of the above civil appeal, the Railway Board had issued a circular on 09-04-1997 which inter alia reads as under:-

"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 qualifications 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 respective Units.

10. When the civil appeal before the Apex Court came up for consideration, the Apex Court has delivered the following judgment:-

"The appellant before us was initially engaged as a Technical Mate on a daily rate of Rs 6.70 with effect from 23-8-1976 and thereafter at the daily rate which varied from Rs 6.70 to Rs 15.40. From time to time her services were utilised as Technical Mate as the required qualification is a diploma passed or failed. She was continued in service and she was declared to have attained temporary status in 1981. When the appellant represented that she had not been conferred with temporary status in Group 'C' the Chief Engineer took the view that the appellant was not entitled to be employed in Group 'C'. Thereafter an application was presented to the Central Administrative Tribunal, Ernakulam Bench (hereinafter referred to as "the Tribunal") seeking the relief of absorption in Group 'C'. The Tribunal set aside the action of the Chief Engineer and remitted the matter to the authorities concerned. Again the decision was rendered against the appellant and she approached the Tribunal. On this occasion the Tribunal directed the Chairman of the Railway Board to examine this matter and give appropriate relief. The Chairman of the Railway Board stated as under:

"There is no category of posts designated as Technical Mates in the Railways.... Zonal Railways have no power to introduce any new designation/category of posts. Further, designations are meant to describe the incumbents of posts in regular scales. Casual labourers who do not hold any post are not to be described by any 'designation' prescribed for regular employees and are to be described only as casual labour."

In his view a casual employee is only a casual employee and a casual employee cannot be differentiated from another casual employee and the designation of post cannot be attached to such an employee. The Tribunal, therefore, found helplessness to give relief to the appellant and dismissed the application filed by the appellant. Hence this appeal.

2. The order dated 30-10-1985 by which the appellant was appointed clearly indicates that her services had been engaged as a Technical Mate since she had completed the course of diploma in technical subjects. The view taken by the Chairman of the Railway Board that there is no post of Technical Mate available for absorption itself appears

to be incorrect inasmuch as the Railway Board by its Communication No. P(S) 443/I/Misc./MP/MAS/Vo.X stated 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 Grade III in scale Rs 950-1500 against 25% of direct recruitment quota along with serving casual labour artisans."

This communication clearly indicates the manner in which a person whose services have been engaged as a Technical Mate on casual basis has to be treated. If this is the mode of providing an employment, then we fail to understand as to how the Chairman of the Railway Board could not apply the same to the appellant and give appropriate relief. Considering the long period of service the appellant had put in and the qualification possessed by her, namely, a diploma in technical subjects, it would certainly entitle her to be absorbed as a Skilled Artisan in Grade III in scale 950-1500 against a post available in respect of direct recruitment quota. If this aspect had been borne in mind by the Chairman of the Railway Board, we do not think that he would have rejected the case of the appellant.

3. The view taken by the Chairman of the Railway Board that there cannot be any designation assigned to a casual employee baffles all logic because there can be engagement of a peon on casual basis and there can be engagement of a clerk on casual basis and it cannot be said that both are casual employees and, therefore, there cannot be any distinction between a peon and a clerk as they are engaged on casual basis. In that view of the matter we do not think that the view taken by the Chairman of the Railway Board was justified.

4. Considering the number of occasions the appellant had approached the Tribunal and the authorities for relief, we do not think that any useful purpose will be served by merely setting aside the order of the authorities and remitting the matter to them. On the other hand, it would be an extraordinary case where we should direct the respondents to absorb the appellant as a Skilled Artisan in Grade III in appropriate scale as indicated in Communication No. P(S) 443/I/Misc./MP/MAS/Vo.X of the Board and the benefit thereof should be given to the appellant. However, the appellant will not be entitled to any higher monetary benefits than what she was drawing hitherto. The appellant will be fitted in the appropriate scale by giving increments and continuity in service on that basis. These directions shall be given effect to within a period of three months from today.

5. We allow this appeal by setting aside the order made by the Tribunal and allow the application filed by the appellant before the Tribunal. But in the circumstances of the case, there shall be no order as to costs.

11. Before the above judgment could be pronounced, the applicants had earlier filed OA No. 616/1997 in which the grievance ventilated was that these

applicants should be regularized as Group C and not Group D in accordance with the Railway Board Circular dated 08-07-1993 and 09-04-97. The Tribunal took into account the aforesaid judgment of the Apex Court and allowed the OA as below vide order dated 20-08-2000 :-

"Since all the applicants are continuing as Skilled artizans 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 on Group 'C' for absorption in accordance with the direction contained in the Railway Boards' Circular dated 08-07-93 as also the Railway Boards' order dated 9-4-97 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 position of the applicant shall be maintained."

12. The applicants thus continued as Group C Skilled Artizans till their regularization in 2004/2009. Now, the applicants have moved the Tribunal seeking the relief as extracted earlier.

13. The question for consideration is whether the applicants are entitled to have their services regularized from the date of their initial engagement and if so, what are all the consequential benefits that would be available to them.

14. At the very outset, we have to consider the preliminary objection raised by the respondents relating to limitation. Their contention that the CAT is not empowered to consider the claim of the applicants for regularization from the date of their initial engagement, which dates back to pre 1985 i.e. prior to constitution of the CAT has to be summarily rejected. The order of the Tribunal in OA No. 616/97 was to consider regularization and when the regularization has been made from a particular year (i.e. 2004/2009), the applicants have claimed antedating the date of regularization. Thus the cause of action had arisen only recently.

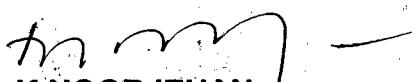
whose services have been engaged as a Technical Mate on casual basis has to be treated. If this is the mode of providing an employment, then we fail to understand as to how the Chairman of the Railway Board could not apply the same to the appellant and give appropriate relief."

18. Thus, all that the applicants' entitlement is that their services are to be regularized in Group 'C' and the same is against the 25% of Direct Recruitment quota along with serving casual artisans. This is what has been precisely done by the respondents as is evident from their counter. According to them, the ratio of vacancies falling under direct recruitment for absorbing the applicants and others similarly situated being just one eighth of the total number of vacancies in a year, no group C casual labourer has been regularized in Group C effective from 1982 and if at all anyone had been regularized, it is only after 1997 and all such persons who were regularized are senior to the applicants.

19. Even the earlier order dated 20-08-2000 mandated the respondents to absorb the applicants in Group C and till then status quo to be maintained. This obviously would mean that the absorption shall be against the vacancies meant for casual labourers i.e. 25% of the D.R. Quota as contained in the judgment of the Apex Court which has been cited by the Tribunal in their order dated 20-08-2000.

20. Under the above circumstances, we are not able to discern any illegality in the respondents' not having regularized the applicants from 1982. The applicants would certainly have a case if any of the juniors to the applicants got regularized prior to their regularization. Though in para all that could be granted to the applicant is notional regularization from the date their immediate senior if no juniors to them had been regularized. Regularization could take place only

against a regular vacancy and as whereas, pay scale is admissible even in temporary status service. As such, the applicants cannot have any grievance of not having been absorbed from the date they had been granted regular pay scale. The Apex Court's judgment has been misconstrued or misinterpreted by the applicants. In respect of the period of temporary status, of course, as per rules certain portion of the same would serve as qualifying service, which the applicants are entitled to. The OA is, thus, devoid of merits and is, therefore, dismissed. No costs.


K. NOORJEHAN
ADMINISTRATIVE MEMBER


Dr K.B.S.RAJAN
JUDICIAL MEMBER

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