

—7—

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH
ORIGINAL APPLICATION NO:233/2006
WEDNESDAY THE 20TH DAY OF DECEMBER,2006**

CORAM:

HON'BLE MR.GEORGE PARACKEN, JUDICIAL MEMBER

K.C.Chami,
Staff No.32, Bricklayer
Southern Railway,Quilandi.
Kozhikode District.

... Applicant

By Advocate Mr.P.Chandrashekhar

V/s.

1. The Union of India, represented by
Secretary to Government of India,
Ministry of Railways, New Delhi.
2. Southern Railway, represented by
its General Manager,
Chennai.
3. The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.

... Respondents

By Advocate Ms.Deepa for Mr.P.Haridas

This OA having been heard on 20th December, 2006, the Tribunal on the same day delivered the following:-

(ORDER)

Hon'ble Shri George Paracken, Judicial Member

This case was dismissed for default on 21/11/2006. On filing MA-1109/2006, the OA was restored on 1/12/2006 and adjourned the matter for today for disposal. Today also neither the applicant nor his counsel is present.

It is seen that the applicant is not interested in pursuing the matter, Hence OA is dismissed for want of prosecution.


**GEORGE PARACKEN
JUDICIAL MEMBER**

abp

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.No.233/2006

Monday, this the 23rd day of April, 2007.

CORAM:

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

K.C.Chami, Staff No.32, Bricklayer,
Southern Railway, Quilandi,
Kozhikode District.

... **Applicant**

(By Advocate Shri P. Chandrasekhar)

Vs.

1. The Union of India, represented by
Secretary to Government of India,
Ministry of Railways, New Delhi.
2. Southern Railway represented by its
General Manager, Chennai.
3. The Senior Divisional personnel officer,
Southern Railway, Palakkad. ... **Respondents.**

(By Advocate Mr.P.Haridas)

The application having been heard on 5.4.2007,
the Tribunal on ...23-4-07...delivered the following:

ORDER

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

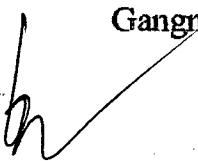
The applicant was engaged as casual labourer from 21.6.1978 and was
working as Bricklayer; was granted temporary status on 21.8.1980; screened for

absorption as Gangman in the scale of Rs.775-1025 and was empanelled as per Memorandum dated 14.12.1988. Right from the beginning of joining Southern Railway, applicant had always been engaged as Bricklayer. Since he had passed the required trade test, the applicant was empanelled as Bricklayer in the scale of pay of Rs.950-1500 as per office order dated 27.2.1989. Though the applicant continued to be engaged as Bricklayer, he was not given the pay scale of Bricklayer. In fact, he had been designated as Gangman but, he was doing the work of Bricklayer at Quilandy. Applicant submitted Petition dated 25.7.1993 requesting that he will be given the pay scale of Bricklayer. Juniors of applicant have been absorbed as Bricklayers and in other trades they are getting more pay than the applicant. The applicant alone is singled out for discriminatory hostile treatment. Though the applicant is even now working as Bricklayer, he is denied scale of pay of Bricklayer. The applicant sought the following reliefs:

- i. Order declaring that the applicant is entitled to be absorbed in the service of the respondents as Bricklayer.
- ii. Directing the respondents to absorb the applicant as Bricklayer and pay to him the pay and allowances due to him as Bricklayer for the period during which he has worked as Bricklayer and grant to him all consequential monetary and other benefits.

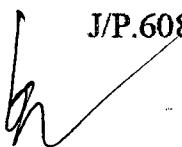
2. The respondents have contested the O.A. Taking into account the fact that the applicant was engaged in skilled work of Bricklayer during the period from 21.8.80 to 20.2.82, he was granted temporary status in the skilled grade of Rs.260-

400 vide Annexure R-1 . It was clearly mentioned in Annexure R-I that he will be reverted to scale Rs.196-232 from the date he had worked as CPC Man Mazdoor. The contention of the applicant that right from the beginning he was engaged as Bricklayer, is denied. Casual Labourers in the Engineering Department are normally absorbed into regular service as Gangman through a process of screening and consequent empanelment. The post of Gangman is a Group D post. 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 Gangman is less than that of a skilled casual labourer. The applicant was screened for regular absorption as Gangman vide Annexure A-2 Memorandum dated 14/12.12.88. He joined as Gangman in scale Rs.775-1025 on 21.1.89. In terms of the provisions contained in para 2007(3) of Indian Railway Establishment Manual(IREM) – Volume II (Para 2512 (ii) of earlier Manual), 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 straight away absorbed as regular Artisans (skilled category of posts) to the extent of 25% of vacancies which are set apart for being filled through departmental 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. Vide Annexure A-2 Memorandum dated 14.12.88 (and accordingly) he joined as Gangman on 21.1.89. The applicant was considered for promotion as skilled



artisan against 25% quota vide Annexure A5 in terms of para 2007(3) of IREM, which is set apart for casual labourers. In as much he had joined the regular post of Gangman, he is not eligible for promotion as regular artisan (Bricklayer) in 25% quota in terms of para 2007(3) of IREM. Hence, the order of absorption of the applicant as skilled artisan vide Annexure A-5 was cancelled vide Memo.No.J/P 407/IX/Engg.dated 6.3.89.(Annexure R-2). The applicant is not eligible for promotion as skilled artisan in the 25% quota as envisaged in para 200(3) of IREM. In fact this Hon'ble Tribunal have considered the above issue in O.A. K.249/88 etc. and have held vide common order dated 20.11.89 that only casual labourers and not regular employees are entitled to be considered against the 25% of 50% of promotional quota vide order dated 20.11.89 at Annexure R-3. Since the applicant had already joined the regular post of Gangman, he is not eligible for promotion as regular Bricklayer in the above quota. Hence, the promotion granted vide Annexure A-5 as Bricklayer was cancelled as per Annexure R-2. In fact the applicant was granted promotion as Senior Gangman in scale Rs.2650-4000 and is presently working in the above grade.

3. The applicant has filed a rejoinder, in which it is stated that, Shri P.John, Trackman, was promoted as Carpenter, Shri K.Murugan, Trackman as Blacksmith and Shri Sarachandran Pillai, Tackman as Welder as per order No. J/P.608/IX/rankers Quota (25%) as per order dated 26.10.2004 of the APO/E



Palakkad. There is no justification in denying promotion to applicant stating that he is a Gangman, not a casual worker.

4. In the additional reply statement, the respondents have stated that, Chief Personnel Officer, Madras vide letter No. P(S) 536/1/Divisions Vol.II dated 22.6.01 had given instructions for filling up the vacancies in direct Recruitment (DR) and Limited Departmental Competitive Examination (LDCE) quotas in the category of skilled artisans in Engineering department by absorbing erstwhile casual labour artisan staff of Engineering department with at least 2 years service in the skilled grade who got absorbed to regular Group D post in unskilled grades. Accordingly notification dated 1/2.4.02 was issued calling volunteers for the post of Skilled Artisans in different categories. There were 6 volunteers who have been granted temporary status in the skilled grade and served as casual labour with temporary status in skilled grade for more than 2 years and thus fulfilled the eligibility criteria laid down to be considered for the post of skilled Artisan Grade III. They were trade tested and having passed the trade test, were posted as skilled Artisan Grade III. The applicant did not volunteer in response to notification dated 1/2.4.02. In this connection it is to be pointed out that, since the applicant has not served as casual labour with temporary status in skilled grade for 2 years, he is not eligible for the post. A spate of O.As. O.A. Nos. 460/04, 482/04, 490/04, 572/04 and 258/05 were filed before the Hon'ble Tribunal claiming promotion as



skilled Artisans in terms of notification dated 1/2.4.02. The above O.As. were dismissed by this Hon'ble Tribunal vide order dated 20.3.06.

5. Arguments were heard and original documents produced by the respondents perused. That the applicant was posted as bricklayer contained in Annexure A-5 order dated 27-02-1989 stood cancelled, vide Annexure R-2 order dated 06.03.1989. The entire service records and the correspondence portion of the records have also been thoroughly gone through. There has been no reference to the alleged fact that the applicant had functioned as bricklayer. All along he had been Gangman or Sr. Gangman and not skilled worker or mason or bricklayer. In his leave application dated 04-12-1987 the applicant himself had written his designation as "CPC Mazdoor". The medical certificate issued by the Asst. Divisional Medical Officer, Cannanore as of 22-12-1987 also reflects the designation of the applicant only as "CPC Mazdoor". IOW letter dated 21.05.1988 addressed to DPO, through ASM, CAN, also shows the designation as CPC Mazdoor. Order dated 6-8-1988 shows that the applicant was sent for trade test for the post of Bricklayer. Order dated 14-11-1988 shows that he had qualified in the Trade Test but not given any berth in the said post of bricklayer. As of 21-12-1988 the applicant was considered for absorption as regular Gangman in the scale of Rs 775 – 1025. Medical certificate dated 23-03-1989 shows the applicant only as "G. Man". Order dated 06-03-1989 cancelling the posting as

[Handwritten signature/initials over the last sentence]

skilled labour of the applicant (bricklayer) had been duly forwarded by order dated 8-3-1989 to CPWI/QLD by IOW/CAN. Relieving of the applicant as of 08.03.1989 from the post of Bricklayer is available in the records, vide order dated 09-03-1989. And subsequently, the applicant had all through been shown as only Gangman or Sr. Gangman, as the case may be.

6. The service book also shows the increments etc., having been given to the applicant only in his capacity as Gangman or Sr. Gangman. As such, the applicant could not make out a case that his services were utilized as Bricklayer. If at all, the same was for a limited period, as stated above from 27-02-1989 to 8-3-1989. If he had been authorized to function in the said capacity for any other period, the same should be construed to have been on the basis of orders of any other authority not competent to post the applicant as Bricklayer.

7. In view of the above, there is no merit in the case and the OA is therefore, dismissed. No costs.

(Dated, the 23rd April, 2007)



Dr. KBS RAJAN
JUDICIAL MEMBER

.1.

**CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH**

O.A.NO.233/2006

Thursday this, the 29 th day of October, 2009

CORAM:

**HON'BLE SRI GEORGE PARACKEN, MEMBER(J)
HON'BLE SRI K.GEORGE JOSEPH, MEMBER(A)**

**K.C.Chami, Staff No.32,Bricklayer,
Southern Railway, Quilandi,Kozhikode District.** .. Applicant

(By Advocate Sri P.Chandrasekhar)

vs

1. **The Union of India, represented by
Secretary to Government of India,
Ministry of Railways, New Delhi.**
2. **Southern Railway, represented by its General Manager,
Chennai.**
3. **The Senior Divisional Personnel Officer,
Southern Railway, Palakkad.** .. Respondents

(By Advocate Ms. Simla for Mr. P.Haridas)

The application having been heard on 15.10.09 , the Tribunal on
delivered the following:-

ORDER

Hon'ble Sri K.George Joseph,Administrative Member:

This application is remitted to the Tribunal for fresh consideration in accordance with law by the Hon'ble High Court of Kerala vide judgment dated 6.2.09. The brief facts of the case are under:-

2. The applicant was engaged as a casual labourer working as a Bricklayer under the Railways on 26.1.1978. He was given temporary status on 21.8.80. He worked as a skilled labourer upto 20.2.89. He was appointed as Gangman which is a Group-D

post on 21.1.89, but he continued to be engaged as Bricklayer without the pay scale of Bricklayer. He cleared the test for skilled worker Bricklayer in the Group-C post and was appointed so on 27.2.1989. On realizing that he was not eligible to be appointed as Bricklayer as he has already joined the Group-D post of Gangman, his appointment as Bricklayer was cancelled by order dated 6.3.89. The order appointing as Bricklayer on 27.2.89 and the order cancelling the same on 6.3.89 were not served on the applicant. The applicant even now working as Bricklayer is denied the pay scale of Bricklayer. He therefore, filed this O.A. for a direction to the respondents to absorb him as Bricklayer and pay him the pay and allowances due to him as Bricklayer for the period during which he has worked as Bricklayer and to grant him all consequential monetary and other benefits. The Tribunal dismissed the O.A. as there was no material on record to show that the applicant ever worked as Bricklayer and therefore his application could not be allowed. The Hon'ble High Court observed in the order dated 6.2.98 in W.P.(C) No.22664/07 as under:-

“5. From the facts mentioned above, it is common case that he was eligible to be absorbed as Bricklayer, but for his absorption as Group 'D' Gangman on 29.1.1989. Normally, if an employee opts to join a post by absorption or promotion through one channel and when his turn for promotion or absorption through another channel also comes, he is given liberty to opt the channel which is favourable to him, by virtue of his lien in the lower post. This concept, familiar in all services, if applicable to the Railways also, we feel that joining the post of Gangman and working in that post for about one month should not defeat the claim of the applicant to join the post of skilled worker (Bricklayer). But, since there are not pleadings or materials to decide the point, we feel that the Original Application should be remitted to the C.A.T. for fresh consideration of the above point.”

3. Accordingly the application is being reheard.
4. The applicant submits that though he had been designated as Gangman he was doing the work of Bricklayer at Quilandi. The applicant had submitted a petition dated 25.7.93 to the second respondent requesting that he should be given the pay scale of Bricklayer. Even now he is working as Bricklayer and is denied the pay

scale of Bricklayer. Annexure A7 and Annexure A8 are repair slips dated 22.8.03 and 27.8.03 respectively issued by the Superintending Engineer, Southern Railway, Calicut which show the applicant as Bricklayer.

5. The submission of the respondents is that though the applicant was eligible to be appointed as Bricklayer he became ineligible to be considered for absorption as Bricklayer on being appointed as Group-D Gangman. Earlier this Tribunal had dismissed the O.A. as the applicant could not make out a case that his services were utilized as Bricklayer based on his service book, medical certificate and leave application.

6. The contention of the applicant in the newly included sub-para 9 of para 4 of the amended O.A. in regard to maintenance of lien is to be examined. The respondents have submitted that in terms of para 103(28) of Indian Railways Establishment Code, Vol.I, 1985 Edition, the contention of the applicant in regard to maintenance of lien is without any basis. The relevant extract is reproduced as under:-

"Lien means the title of a Railway Servant to hold on regular basis either immediately or on the termination of a period or periods of absence, a post, including a tenure post, to which he has been appointed on regular basis and on which he is not on probation."

It is quite clear that lien can be maintained only on a post held on regular basis. The applicant was only a casual labourer prior to absorption in the regular post of Gangman. Therefore he has no lien on any post prior to the said absorption.

7. The respondents have denied the claim of the applicant that he was all along engaged as Bricklayer. However Annexures A7 and A8 show his designation as Bricklayer as on 22.8.03 and 27.8.03. These Annexures are not directly challenged by the respondents. As a casual labourer the applicant was eligible to become a Gangman or a Bricklayer. Absorption as Gangman came first and it is only natural that the first regular posting in Group-D as Gangman offered is taken by the applicant. When his turn came for being appointed as a Bricklayer after passing the trade test, order was issued appointing him as Bricklayer, but the said order was

cancelled on realizing that as he was already appointed as Gangman he was ineligible to appointed as Bricklayer. At this point of time it would have been better if he were given a choice to remain as a Gangman or to accept the post of Bricklayer as he was working as Gangman only for a month or so. The applicant who started his career as a casual labourer with hardly any education cannot be expected to take a well informed decision all by himself as to which career path he should travel. As a model employer the Railways should have gone beyond the rule which made a Gangman ineligible to be appointed as Bricklayer, should have explained the two career paths available to him and helped him to make a well informed choice rather than leaving it all to himself. This should be seen in the background of the trade test for Bricklayer that the applicant was made to go through by the respondents.

8. Although the service book and other records may show the applicant as Gangman but it is quite possible that the respondents might have used him as Bricklayer. Joining the post of Gangman and working in that post for about just one month might not have come in the way of the respondents in using the applicant as Bricklayer in spite of various records showing him as a Gangman.

9. There is a rule which for administrative convenience prohibits consideration of a Gangman irrespective of his being qualified or not, from being considered for appointment to the post of Bricklayer. There is no rule which prohibits the use of a Gangman as a Bricklayer when he is qualified as a Bricklayer. In the exigencies of administration, an employee may be deployed to do a job which is beyond the charter of duties assigned to the post which he holds substantively. There is nothing wrong with such arrangement which normally is a short term arrangement. It becomes unusual if it becomes a permanent arrangement. If a person who is eligible to be appointed as a Bricklayer but for his previous appointment as Gangman in which capacity he worked for just about a month is made to work without proper record as Bricklayer for rest of his career, then it is quite unusual and arbitrary. Besides it becomes quite unjust and unfair if he is not paid what are his dues as a Bricklayer for want of record as Bricklayer or for the reason that the available records show him as Gangman only. It is not the rule of law; it is an abuse of law inasmuch as a rule is made to discriminate and exploit a low paid, not so well-informed employee

mercilessly.

10. It is the duty and responsibility of the respondents to satisfy themselves going beyond the service book and other records, whether such is the case; if it is so, then to ensure that justice is done to the applicant. The applicant submits that he worked as Gangman only for about a month and rest of his service after being appointed as Gangman he is working as Bricklayer. As his service book and some other records show him as Gangman his working as a Bricklayer since his appointment as Gangman, can be verified in the following manner:

Get from the applicant a list of sites where he worked as Bricklayer since March, 1989. Select a few sites at random for physical verification. Check with those who made him to work as Bricklayer as also with those who worked with him as to the veracity of the submission made by the applicant. The entire exercise should be done in the presence of the applicant. Exhibits 7 and 8 will come handy to start this exercise. It is a matter of conscience for those who took the work of a Bricklayer from the applicant to state the truth. The respondents, in the interest of justice, should take the suggested course of action in all sincerity.

11. In view of the above, the O.A. is partly allowed. The respondents are directed to verify whether the applicant worked as Bricklayer even when service book and some other records show him as Gangman and if it is found that he really worked as Bricklayer even after becoming officially Gangman, then to take appropriate consequential actions to give him justice within a period of six months from the date of receipt of a copy of this order. No order as to costs.



(K. George Joseph)
Member(A)



(George Paracken)
Membr(J)

/njj/