

CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

O.A. NO. 290/2004

TUESDAY THIS THE 22nd DAY OF AUGUST, 2006

C O R A M

HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN
HON'BLE MR. GEORGE PARACKEN, JUDICIAL MEMBER

M.A. Khan S/o Basheer Khan
Welder Gr.III/Southern Railway
Karur R.S. & P.O
Tamil Nadu
residing at Railway Quarters No. 73
Karur District Tamil Nadu

Applicant

By Advocate Mr. TCG Swamy

Vs.

- 1 Union of India represented by the
General Manager, Southern Railway
Headquarters Office
Park Town PO
Chennai-3
- 2 The Chief Personnel Officer
Southern Railway
Head Quarters Office,
Park Town PO
Chennai-3
- 3 The Divisional Railway Manager
Southern Railway, Palghat Divisional
Palghat.
- 4 The Senior Divisional Engineer
Coordination, Southern Railway
Palakkad Division, Palakkad.
- 5 The Divisional Personnel Officer
Southern Railway, Palakkad Division
Palakkad.

Respondents

By Advocate Mrs Sumathi Dandapani.

ORDER


HON'BLE MRS. SATHI NAIR, VICE CHAIRMAN

The applicant herein joined the Palakkad Division of the Southern Railway initially as a Casual Labour Welder on 15.11.1982. He was granted temporary status w.e.f. 1.5.1984 in the scale of Rs. 196-232. The applicant was screened and empanelled for absorption as Skilled Welder in the scale of Rs. 950-1500 by Annexure A-2 memorandum and posted as a Welder Grade-III against a vacancy under the Permanent Way Inspector, Karur. (Annexure A-3). While he was continuing as a regular Welder in the above place, he was reverted to the post of Casual Labour Welder by memorandum dated 9.1.1996 (Annexure A-5). Aggrieved by this action and as his appeal was not responded to, he submitted a representation but continued in the same post. Meanwhile all the Casual Labour were regularised in 1997 against Group-D vacancies including those who were working in Group-C scale of pay. But the applicant's case was not considered by the respondents and he continued without any regularisation or absorption against the post of Welder. The applicant has contended that this total inaction on the part of the respondents in not regularising him and granting him consequential benefits from the date of creation of de-casualisation vacancy against which the applicant was absorbed in terms of Annexure A-3 was highly arbitrary and discriminatory.

2

2 The respondents have stated that there is no basis or justification for the applicant to make such claims. They have stated that the applicant has concealed the fact that he had challenged his reversion in O.A. 116/96 before this Tribunal along with one Shri K. P. Surendran seeking to allow them to continue as Welder Grade-III. The said OA was disposed of by judgment dated 2.12.1997 holding that reversion of the applicants was only due to want of vacancies and the applicants would be absorbed as Skilled Welders Grade-III as and when vacancies arise. It has also been pointed out that the applicant was screened and empanelled for regular absorption as Gangman in scale Rs. 775-1025 and posted under Permanent Way Inspector, Mangalore. However, he expressed his unwillingness to join as Gangman and chose to remain as Casual Labour (Welder) and he was retained as Casual Labour on condition that his services would be terminable when there is reduction in casual labour strength.

3 Regarding the applicant's regularisation in the post of Welder, the respondents have stated that the modalities for filling these posts under de-casualisation scheme have been spelt out in Chief Personnel Officer's letter dated 14.8.1991 and out of the 9 posts created in the Welder category the applicant was allotted under category -II and absorbed as Welder Grade-III. Another Skilled Casual Labour Welder Shri Vijayakumar filed O.A. 1076/1993 along with another Gangman. This O.A. was allowed by the Tribunal.



Consequently, two juniormost Welders namely the applicant and another K.P. Surendran were reverted to promote the applicants in the above mentioned O.A. in order to implement the directions of the Tribunal. The applicant had challenged the reversion in O.A. 116/96 which was upheld by this Tribunal holding that the reversion was only due to want of vacancy and as and when vacancies arise the applicants will be absorbed as Skilled Welders Grade-III. Therefore he was continued as Casual Labour Welder. The facts being so, the applicant can have no further grievances in the matter and he cannot urge the same facts in this O.A. Besides, there are only three Casual Labours including the applicant working in the Skilled Grade in the Division and all the three were screened and empanelled and posted as Gangman. However, they have not joined in the said regular posts. The representations stated to have been submitted by the applicant as Annexures A-6 to A-8 have not been received. The applicant can be considered for the post of Skilled Artisan Grade-III against the 25% quota available for Casual Labour who have worked in the Skilled cadre and no vacancy has arisen in that quota in which the applicant can be fitted against. Therefore, there is nothing arbitrary, discriminatory, contrary to law and unconstitutional in the act of the respondents as alleged by the applicant.

4 No rejoinder has been filed by the applicant. However, an M.A. has been filed producing orders at MA-1 to 3 which are Railway Board orders for regularisation of Casual Labours issued from time to

time.

5 We have heard the learned counsel on both sides. The learned counsel for the respondents stoutly denied that there has been any discrimination against the applicant and it was only his own action opting to continue as a Casual Labour not accepting the empanelment as a Gangman that has resulted in the present situation. Having chosen to continue as a Casual Labour in the alternate grade, he cannot accuse the respondents for apathy in granting him regularisation. The reply statement of the respondents is self explanatory and in view of the facts and circumstances stated therein the applicant's prayer for regularisation as Welder Grade-III has no merit and he has to wait for his turn in accordance with the modalities for recruitment for being selected under the 25% quota against vacancies as and when arise. He has been placed in such a situation by his own action. Confronted by the factual position as stated by the respondents, the counsel for the applicant submitted that the applicant is willing now to be regularised as a Group-D staff to which the learned counsel for the respondents reacted by stating that they have not received any such representation from him and since he had already declined a posting as a Gangman it is for him to submit a representation which could be then considered by the respondents. We also find from orders at Annexures MA 1-3 that it is the policy of the Railways to ensure regularisation of all the Casual Labour on roll as on 30.4.1996. However, the railways could not

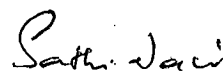
2

extend this benefit to the applicant as he had refused it at the relevant time. Now that the applicant has come forward with the submission that he is willing to be absorbed as a Gangman in Group-D, we are of the view that this OA can be disposed of with such a direction. Accordingly, the applicant is permitted to make a fresh representation seeking regularisation as a Group-D within one month from today. On receipt of such a representation the respondents shall consider the same and take a decision in accordance with the Railway Board's orders regarding regularisation of Casual Labour and communicate the decision to the applicant within a period of four months from the date of receipt of the representation. With these directions the O.A is disposed of. No costs.

Dated 22.8.2006.



GEORGDE PARAACKEN
JUDICIAL MEMBER



SATHI NAIR
VICE CHAIRMAN

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