

CENTRAL ADMINISTRATIVE TRIBUNAL

ORDER

CENTRAL ADMINISTRATIVE TRIBUNAL
MADRAS BENCH

Friday, the 27th day of March, 1987

PRESENT

Shri S.P. Mukerjee - Administrative Member
and
Shri G. Sreedharan Nair - Judicial Member

Transferred Application No.98 of 1987
(Original Petition No.4017 of 1983 of Kerala High Court)

N.M. Sahadevan - Applicant

-Vs-

Union of India represented by the General Manager, Southern Railway, Madras and two others - Respondents

M/s K. Rama Kumar Sateesh Chandran - Counsel for Applicants

Shri M.C. Cherian - Counsel for Respondents

ORDER

(Order pronounced by Shri S.P. Mukerjee, Administrative Member)

The petitioner Shri N.M. Sahadevan who is working as a Fitter in the Southern Railway moved the High Court of Kerala through his Writ Petition dated 14.5.1983 under Article 226 of the Constitution of India praying that the impugned order dated 6.5.83

(exhibit P7) calling upon him to join as Gangman in the scale of Rs.200-250 without protecting his salary in the scale of Rs.260-400 as Artisan should be quashed and the respondents be directed to absorb him in the scale of Rs.260-400 as Highly Skilled Artisan. The petition stood transferred to the Tribunal under Section 29 of the Administrative Tribunals Act, 1985. The brief facts of the case can be narrated as follows.

2. The petitioner was engaged as a Casual Labourer w.e.f. 9.10.1966 doing skilled work on daily wages. As admitted by the respondents, on completion of six months of continuous service, he was granted temporary status w.e.f. 21.7.1970 in accordance with the Chapter 25 of the Indian Railway Establishment Manual (hereinafter referred to as 'the Manual'). As he was doing the work of the Fitter, he was given the authorised scale of Rs.110-180 (Revised scale of Rs.260-400) instead of the scale of Rs.70-85 (revised to Rs.196-232 or Rs.200-250). According to the petitioner, in accordance with para 2512 of the Manual, as a casual labourer engaged in skilled work for a long period he is entitled to direct absorption

in a regular vacancy in the skilled grade.
According to the respondents as a casual labourer, after scrutiny, selection and empanelment, he can be absorbed only as Gangman in Class IV service and accordingly in the empanelment ^{process} conducted in 1980 his name was included in the panel and he was posted to work as regular Gangman in the scale of Rs.200-250. However, the petitioner did not carry out the posting order but desired that even as a Gangman his pay in the scale of Rs.260-400 should be protected. The respondents did not accept the representation on the plea that the pay scale of Rs.260-400 of a Fitter is in the Class III category and the casual labourers who are working as Fitters and other skilled categories have first to be appointed as Gangman then as Fitter Labourer in class IV post and thereafter considered for promotion ^{to} the Class III category of Fitter. The respondents have not accepted the plea of the petitioner that he can be directly appointed in the skilled category in accordance with para 2512 of the Manual and they averred that he cannot be appointed as a direct recruit as he does not satisfy the conditions of educational qualifications prescribed in the Apprentices Act.

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3. We have heard the arguments of the learned counsel for both the parties and gone through the documents carefully. Para 2512^(u) of the Manual reads as follows.

"ii) Casual labour engaged in workcharged establishments of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of departmental candidates and continue to work as casual employees for a long period, shall straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories in workcharged establishments after qualifying in the trade test".

A bare reading of the above makes it abundantly clear that there is no bar to a casual employee working for a long period like ^{the} petitioner in the skilled category, to be directly promoted and absorbed in the skilled grades after passing the requisite test. The absorption, however, is possible only against the 25% of vacancies reserved for departmental promotion. The contention of the respondents that the petitioner does not qualify educationally under the Apprentices Act is not applicable to the promotion quota but to the vacancies to be filled up in the direct recruitment quota vide exhibit R-1(B) attached to

their counteraffidavit dated 31.7.1983. The respondents in their additional counter affidavit dated 26.5.1984 dismissed the claim of the petitioner for direct absorption as regular Fitter by arguing that "there is not even a single post of regular Fitter available in the Engineering Department at Palghat Division". They have also quoted at exhibit R-I(C) a letter of the Railway Board dated 8.6.1981 which is more or less a verbatim copy of para 2512(ii) of the Manual which we have quoted above. The respondents' stand that there is no direct absorption in Class III skilled category of a casual labourer is negatived by the example of Shri V.K. Krishna Kurup cited by the petitioner at exhibit P-5 which is an order dated 29.11.75 appointing him after scrutiny, as a casual labourer, to the regular scale of Rs.70-85 and absorbing him in the grade of Plumber in the scale of Rs.260-400 w.e.f. 22.11.1975. He did not have to go through the Class IV grades ^{say} as Plumber ^{like Fitter labourer} ~~labourer~~ etc., as the respondents ^{have} required the petitioner to do. The instance of Shri Kurup has been feebly explained by the respondents by stating that he was working as "substitute Plumber" and not as a casual labourer and that "he was given posting as regular considering

his representation". It is as if ^{more} a representation had done the trick. It may be noted that whereas Shri Kurup was regularised as a Casual labourer in the scale of Rs.70-85 (revised 196-232 or Rs.200-250), the petitioner was working as a Fitter Casual labourer was given the authorised pay scale of Rs.110-180 (revised Rs.260-400).

4. The respondents have not clearly explained why the provisions of para 2512(ii) of the Manual have not been applied to the petitioner's case, even though they reiterated the same provisions in exhibit R-1(C) of their counteraffidavit referred to above. During the course of the arguments the learned counsel for the petitioner brought to our notice the Southern Railways' circular No.J/P.407/IX/Eng/25% DR dated 30.1.1986 which seems to indicate that ^{or long last} ~~finally~~ the respondents have woken up to the aforesaid provisions of the Manual and the averments made by them in their counter-affidavit in 1983 and ^{could not but be} ~~were~~ devoid of the enlightenment communicated in their above mentioned circular of 30.1.1986. We are tempted to quote the first few pertinent paras of this circular as follows.

"In terms of the standing orders of Casual Labourers of Engineering Branch regardless of whether they are unskilled, semi-skilled or skilled, are required to be empanelled as gangman in scale Rs.200-250 and posted to gangs.

There is also a provision in the rules that casual labourers/substituted working in skilled grade (and drawing wages as applicable to the skilled grade viz. Rs.260-400 or above) can be considered for direct entry into posts of skilled artisans of the relevant trade to the extent of 25% of the vacancies arising in that grade/trade.

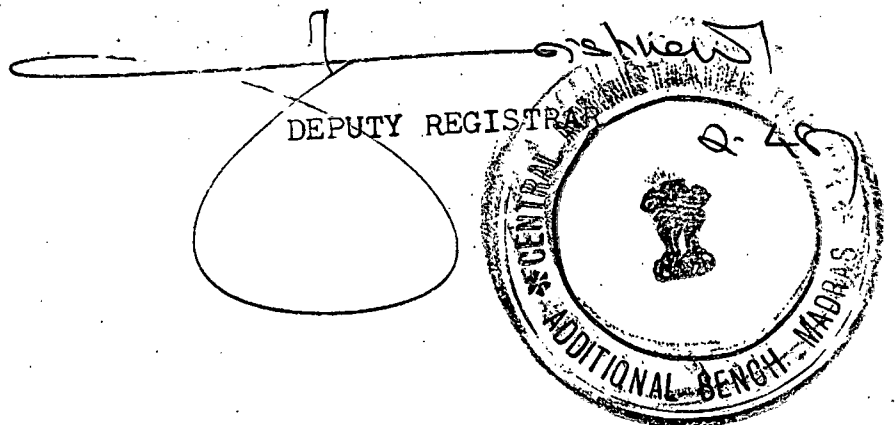
The procedure of earmarking 25% of posts in the skilled grade has not been followed on this division in recent years. It has, therefore, been decided to review the matter and to the extent of 25% of vacancies that arose after 1.4.1983, it is proposed to consider staff who have worked in the skilled grade in units coming within the empanelling units of various sub-divisions on this division. This will be applicable to :-

- i) Casual Labourer/Substitutes of skilled grade who have already been empanelled and posted as gangman and carried out such postings;
- ii) Casual labourer/Substitute of the skilled grade who have been empanelled and posted as gangman but not yet carried out the posting;
- iii) Casual labourers of the skilled grades of Constn. project coming within the jurisdiction of various sub-divisions who have not been in service as on 1.4.1983 but have left service subsequent to that "...."

The above will show that the respondents have virtually conceded the claim of the petitioner in as much as they have allowed casual labourers "who have been empanelled and posted as Gangman but not yet carried out the postings" ^{or} ~~the~~ ^{the} ~~casual labourers who have~~ like petitioner, to be eligible for being considered for direct entry as skilled artisan in the scale of Rs.260-400 or above. In the context of the above said circular it will be futile to labour ~~for~~ ^{the} the justification of the claim of the petitioner any further.

5. Accordingly, we allow the petition and quash the impugned order of 6.5.83 with the direction to the respondents that the petitioner should be considered for direct entry in the scale of Rs.260-400 in accordance with the circular of 30.1.86 mentioned above. The petitioner will be at liberty to continue in the scale of Rs.260-400 or join as a Gangman in the scale of Rs.200-250 without prejudice to his being considered for regular absorption in the scale of Rs.260-400 in accordance with the aforesaid circular. The petitioner, if he ^{chooses} ~~continues~~ to stay as a Fitter in the scale of Rs.260-400 will be entitled to continue in that pay scale as a Fitter in accordance with his temporary status and other rights ^{liabilities} and benefits accruing to him in accordance with relevant rules and instructions. The case of the petitioner in accordance with the Circular of 30.1.86 should be considered within a period of three months. The petition is disposed of on the above lines and there will be no order as to costs.

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CENTRAL ADMINISTRATIVE TRIBUNAL
ERNAKULAM BENCH

DATE OF DECISION: 19-1-1990

P R E S E N T

HON'BLE MR.N.V.KRISHNAN - ADMINISTRATIVE MEMBER

AND

HON'BLE MR.A.V.HARIDASAN - JUDICIAL MEMBER

ORIGINAL APPLICATION NO.325/89

K.C.Mohammed - Applicant

Versus

1. Union of India rep.
by the General Manager,
Southern Railway,
Madras.
 2. The Divisional Personnel
Officer,
Southern Railway,
Trivandrum.
 3. Executive Engineer,
Construction,
Southern Railway,
Trichur.
 4. Inspector of Works/III,
Construction,
Southern Railway,
Trichur. - Respondents
- Mr.K.Ramakumar - Counsel for applicant
- Smt.Sumathi Dandapani - Counsel for respondents

O R D E R

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

In this application the applicant who is
working as a Khalasi in the skilled category and
in the pay scale of Rs.950-1500 has challenged
Annexure-B order of the respondents appointing

...2/-

him as Gangman in the lower pay scale and praying that the above order may be quashed and that the respondents may be directed to allow the applicant to continue in the grade in which he is presently working. The facts of the case is stated as follows.

2. The applicant recruited as a skilled Khalasi in the scale Rs.950-1500 was granted temporary status from 1983 onwards. The Railway Board has issued circulars in relation to absorption of Casual Labourers in skilled or semi-skilled categories in regular employment. In the circulars it had been declared that as far as practicable they should be absorbed in the permanent post, in any other skilled or semi-skilled categories. On the basis of the above circular this Tribunal has in TA 98/87 directed that, an employee in the skilled category should not be compelled to work in the lower pay scale even in the event of absorption in a permanent post. In a recent circular dated 18.5.1987 of the Railway Board at Annexure-A the position has been made further clear. But contrary to this by the impugned order at Annexure-B the applicant has been appointed as a Gangman in a lower pay scale on a permanent basis. The applicant being aggrieved by this order has filed this application praying that the impugned order may be quashed

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...3/-

and that he may be allowed to continue in the grade in which he is presently working.

3. The respondents have filed a counter affidavit. It has been conceded that the applicant was recruited as semi-skilled Khalasi. It is also conceded that in terms of paragraph 2512 of the Indian Railway Establishment Manual, Casual Labourers recruited directly in the skilled categories are eligible to be absorbed ⁱⁿ regular vacancies in skilled grades provided they have passed requisite test to the extent of 25% of the vacancies reserved for departmental promotions from the unskilled and semi-skilled categories. But it is contended that this fitment is done after selection subject to the eligibility, priority and availability of posts. It has been further contended that as there is no post of Mopla Khalasi under AEN/OL/ERS sub division (even in entire Trivandrum Division) it is not possible to absorb him as Mopla Khalasi and that was why he was empanelled as a Gangman. It is further made clear that if the applicant is not willing to be absorbed as Gangman in lower grade of Rs.775-1025 in Group 'D' service he can continue as Mopla Khalasi (temporary status) till the project work ceases, if he makes an application containing the clause:

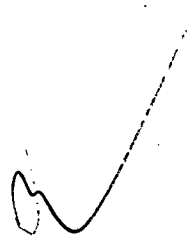
"Subject to myself seeking the risk of retrenchment in the event of closure of Project Work in the meanwhile."

The respondents have stated that as there is no merit in the application, the same has to be dismissed.

4. When the matter has come up for argument the counsel on either side submitted that identical case TA 98/87 has been disposed of by this Tribunal and this case also may be disposed of in the same line. In the counter affidavit itself it has been stated that if the applicant is not willing to be absorbed as Gangman in lower grade that is Rs.775-1025 in Group 'D' service he can continue as Mopla Khalasi (temporary status) till the project work ceases undertaking the risk of being retrenched in the event of the closure of the project.

5. In TA 98/87 it has been held that the applicant would be at liberty to continue in the scale of Rs. 260-400 or join as a Gangman in the scale of Rs.200-250 without prejudice. He should be considered for regular absorption in the scale of Rs.260-400 in accordance with the Circular dated 8.1.1986 of the Southern Railways No.J/P/407/IX/Eng/25% DR dated 10.1.1986. As the counsel on either side agreed that this application also may be disposed of on the above lines, we allow the application and quash the Annexure-B order dated 21.4.1989 with a direction to the respondents that the applicant should be considered for direct entry

...5/-



as a Khalasi in the skilled grade. in accordance with the circular dated 30.1.1986. The applicant would be at liberty to continue in the scale of Rs.950-1500 or to join as Gangman in the scale Rs.775-1025 without prejudice to his being considered for regular absorption in the scale of Rs.950-1500 in accordance with the above circular. If the applicant ^{chooses} just to stay as Khalasi in the scale Rs.950-1500 he would be entitled to continue in that scale as Khalasi with temporary status and other rights and liabilities accruing to him in accordance with the rules and instructions. ~~The case of the appli-~~

~~ant in accordance with the circular of 30.1.1986 should be considered within a period of three months.~~

6. There will be no order as to costs.

(A.V.HARIDASAN)
JUDICIAL MEMBER

(N.V.KRISHNAN)
ADMINISTRATIVE MEMBER

19-1-1990

Deleted
as per order
on RA 10/90
dtd 28/3/90
M
27/3/90
3/3/90

CENTRAL ADMINISTRATIVE TRIBUNAL:ERNAKULAM BENCH

Date of decision: 30-3-1990

Present

Hon^{ble} Shri NV Krishnan, Administrative Member
and

Hon^{ble} Shri AV Haridasan, Judicial Member

RA 40/90 IN OA 325/89

- | | |
|---|------------------------------------|
| 1. Union of India rep. by the
General Manager, Southern Railway
Madras. | } Applicants/
Respondents in OA |
| 2. The Divisional Personnel Officer,
Southern Railway, Trivandrum. | |
| 3. The Executive Engineer (Constn.)
Southern Railway, Trichur. | |
| 4. The Inspector of Works/III,
Construction, Southern Railway,
Trichur. | |

Vs.

KC Mohamed, IDW/III/Construction,
Southern Railway, Trichur.

: Respondent/
Applicant in OA

ORDER

Shri AV Haridasan, Judicial Member.

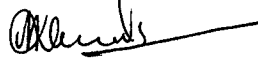
This application has been filed for review of
the order passed by us in OA 325/89 on 19.1.1990.


As the counsel on either side submitted that ^{had} this ~~OA~~ ^{OA 325/89} case could be disposed of in the same manner as TA 98/87 of the Madras Bench of the Tribunal was disposed of, we allow ^{ed} ~~th~~ ^{ed} application and direct that the applicant would be at liberty to continue as Mopla Khalasi in the scale of Rs 950-1500 till such time as they get a chance to be absorbed regularly in that cadre with

the rights and liabilities arising out of that. ~~In while~~ ^{passing} ~~making~~ that order we also made a direction that the case of the applicant in accordance with the circular of 31.1.86 should be considered within a period of 3 months. This direction was made by us because there was a similar direction in the order in TA 98/87 which the counsel on either side had agreed ^{could be} ~~to~~ followed. Now the learned counsel for the review applicant has submitted that as vacancies sufficient to accommodate the original applicant in the skilled grade would not arise within a period of 3 months, there is a practical difficulty in considering the case of the applicant in accordance with the directions contained in the circular dated 31.1.86 within a period of 3 months and therefore, the last sentence of our order dated 19.1.90 passed in the original application fixing the time limit may be deleted.

2 We have heard the learned counsel for the respondents for the review application. He also agrees that the request made by the review applicant is legitimate. Therefore, we allow this application and delete the last sentence in paragraph-5 of our order dated 19.1.90 in OA 325/89. The amendment resulting from this order has been carried out by us now with copies of the amended order to the parties concerned.

3 There will be no order as to costs.


(AV Haridasan)
Judicial Member
30.3.90


(NV Krishnan)
Administrative Member
30.3.90