

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this Wednesday the 17th day of April, 2002

Coram: Hon'ble Mr.B.N.Bahadur - Member (A)
Hon'ble Mr.S.L.Jain - Member (J)

O.A.1165 of 1996

1. A.B.More
 2. K.Venkatesan
 3. D.G.Pawar
 4. A.K.Bhadange
- (All applicants are working
as Khalasis in Central Railways
in Central Railways, Bombay Division)- Applicant
(By Advocate Shri G.S.Walia)

Versus

1. Union of India
through the General Manager,
Central Railway, Mumbai,
C.S.T., Mumbai.
2. Divisional Railway Manager,
Bombay Division,
Central Railways, Headquarters Office,
Mumbai, C.S.T., Mumbai.
(By Advocate Shri S.C.Dhawan)

ORAL ORDER

By Hon'ble Mr.B.N.Bahadur - Member (A) -

The applicants in this case were appointed in Group 'C', on casual basis, and are aggrieved in the fact that they have been regularised only in Group 'D' post. They come up to the Tribunal seeking a relief for a direction to the respondents to absorb them in Group 'D' posts. Facts are provided - for instance, it is stated that in the case of first applicant A.B.More, he was recruited as Casual Wireman/Welder in May, 1987. It is applicant's contention that Casual Labourers in Railways really speaking are appointed in Group 'D' service only. It is averred that all other applicants are also appointed in Group 'D' service, the stand taken that some other persons who were appointed as Group 'C' employees were engaged as substitutes have been regularised in Group 'C'. Details are provided in the OA in regard to appointment dates etc. Reference is also drawn to the

the letter of 16.4.1990 where certain Casual Labourers were absorbed as Linesman i.e. in Group 'C' posts.

2. The respondents have filed a written statement of reply where the claims of the applicant are resisted, certain legal points raised, and details regarding the facts provided. The main defence of the respondents is that there is no provision for appointment of Casual Labourers in Group 'C' posts and that the applicants are not Substitutes, but were appointed purely as Casual Labourers in the Project. Differences between the Substitutes and other Casual Labourers are detailed out and the circumstances leading to one time regularisation with reference to letter dated 16.4.1990 are also described. At that time, it is argued that there was no post of Wireman or Welder and hence the applicant could not be absorbed. In the absence of special sanction from Railway Board the applicants could be absorbed only as Khalasis which has been done. It has been pointed out that the applicants have agreed to absorption in Group 'D' without demur and cannot raise objections at a later stage.

3. The learned counsel for the applicant has depended on the case decided by this Tribunal on 21.4.1995 in OA 104/91 (T.K.Rajendran Vs. Union of India & others). The learned counsel for the respondents on the other hand while basing his main claim on the ratio decided in the matter of Union of India.



Vs. Motilal and others, (1996 SCC (L&S) 613) has also provided us with copy of other judgments in OAs decided by this Tribunal, mainly based on the aforesaid Motilal's case. Another case law referred to is in the matter of Aslam Khan Vs. Union of India, decided by Full Bench on 30.10.2000 (A.T.Full Bench Judgments 1997 - 2001 page 157). We have carefully perused the papers in the case and have considered the arguments raised by learned counsel on both sides namely Shri G.S.Walia for the applicant and Shri S.C.Dhawan for the respondents. We have also perused the case law.

4. At the outset, we find that the basic law has been decided in the case of Motilal (supra) by the Apex Court. The issue that has been decided in Motilal's case is that a Daily Wage or Casual worker, even if he has acquired a temporary status, does not acquire a right to be regularised against the said post. The Full Bench of this Tribunal has also decided similar issue in the matter of Aslam Khan (supra). However, we shall consider, point by point, the arguments raised by the learned counsel for the applicant to assess whether there is any special reason like discrimination etc. raised by the applicant which will entitle him to the relief sought in the facts and circumstances of the case.

5. The first point raised by the learned counsel for the applicant related to discrimination; it was stated that certain persons as per details available at pages 10 and 11 of the OA were regularised. We have carefully seen these orders dated



...4/-

16.4.1990 and find that this is because of the special one time provision that was taken up by the Indian Railways, and that it had authority of the Railway Board. This point is covered in detail in the written statement of the respondents, above and we are convinced that the explanation provided by the respondents is fully justified. It is also pointed out that there was no post of Wireman or Welder at this stage. Hence the plea of discrimination fails in the facts and circumstances of the cases and the explanation provided by Respondents.

6. The second contention raised on behalf of the Applicants was that it is wrong to state that Applicants, willingly and without demur accepted the Group 'D' service. It was contended that they were faced with Hobsons choice of the alternative only to leave service. This cannot be a ground which could provide a right at this stage for the applicant to take the assertion as if the job was accepted by them by coercion, especially in the background of the decision in the case of Motilal (supra). It would not be necessary to discuss the point in any further detail, to conclude that this argument does not hold water. It was also asserted on behalf of the applicant that the very order of appointment of the applicants contains an implied assurance of regularisation in Group 'C' service. We have carefully perused the order, and the stand on this count taken by the Railways and are in no way convinced that any such assurance was even implied in the letter of appointment. In fact, it is clear in the appointment order (page 8), that the appointment is a recruitment

12/5

of Casual Wireman. There is no assurance implied or specific. This plea of assurance also therefore fails. It is also pointed out that by applicants' learned counsel that a large number of years i.e. 13 years have been wasted and that this point also deserves consideration. We are afraid that the length of service as casual employment also cannot come to the rescue of the applicant in providing relief through judicial determination.

7. At the end, it was argued by the learned counsel for the applicant that at least protection of pay should be made available with reference to the decision in Aslam Khan's case (supra). The respondents had opposed this on the ground that there was no pleadings and cited well known case law to the effect relief not pleaded cannot be provided. Under the circumstances, it would not be possible for us to provide for any sort of protection of pay or emoluments etc. Suffice to say that this is also a case which is covered fully by the ratio decided in the matter of Motilal by the Hon'ble Supreme Court and none of the arguments taken up on behalf of the applicant are sustainable.

8. In the consequence, the relief in the case cannot be provided. The OA is dismissed without any order as to costs.

S.L. Jain
(S.L. Jain)
Member(J)

B.N. Bahadur
(B.N. Bahadur)
Member (A)

mb

Order made on 21/5/92
By Appellate Judge (S)
ON 21/5/92