

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Dated this *Wednesday* the *12th* day of March, 2003

Coram: Hon'ble Mr. Govindan S. Tampi - Member (A)
Hon'ble Mr. K.V. Sachidanandan - Member (J)

O.A. 404 of 1999

R. Balakrishnan Nair,
aged about 44 years,
working as Fitter
O/o Senior Section Engineer DE (C)
Central Railway, Kurla.
(By Advocate Shri T.D. Ghaisas) - For the Applicant

Versus

1. Union of India,
through the General Manager,
Central Railway, Mumbai, CST.
2. Chief Personnel Officer,
Central Railway, Mumbai, CST.
3. Divisional Railway Manager,
Central Railway,
Mumbai CST - 400 001
4. Dy. Chief Electrical Engineer,
(TD/C), Central Railway,
Mumbai, CST - 400 001.
5. Shri Joseph D'Souza,
Fitter - I.
O/o The Dy. Chief Electrical
Engineer (TD) (Construction),
Central Railway, CST 400 001.
6. Shri Adya Prasad D. Singh,
Fitter II,
O/o Dy. Chief Electrical Engineer
(TD) (Const.), Central Railway,
Mumbai, CST - 400 001.
7. Shri M.S. Prasad,
Fitter II,
O/o Senior Section Engineer (C),
Central Railway, Kurla.
(By Advocate Shri V.D. Vadhavkar) - For Respondents 1-4
(None) - For Pvt. Respondents

O R D E R

By Hon'ble Mr. K.V. Sachidanandan - Member (J) -

The Applicant was initially engaged as a Casual Khalasi under the Permanent Way Inspector (PWI for short) Kurla at Sion w.e.f. 25.9.1979. He was discharged from the Railway service on


18.7.1980 and reengaged as a Casual Fitter under the Chief Traction Foreman (Construction) OE at Kurla w.e.f.23.7.1980. He has worked in that capacity from 23.7.1980 to 31.12.1984 and earned good experience in the category of Fitter and was brought on temporary status w.e.f. 1.1.1984. While working as such, on or about 1.1.1985, the Applicant had applied for the post of Welder a newly created post according to him, proposed by the respondents. As he was experienced he was posted as Monthly Rated Welder in the grade of Rs.950-1500/-(RPS). He was departmentally trade tested on 11.11.1987 and since 1.1.1985, he is working in the category of Welder. No consent in the change of the cadre from Fitter to Welder was sought from the Applicant. The change was done in the interest of the administration for non-availability of any person. The applicant was thereafter not considered for further promotion either in the post of Welder nor on the post of Fitter. The Respondents had only posted the applicant as Skilled Artisan in the Fitter Grade of Rs.950-1500/-vide their letter dated 30.4.1997. According to the Applicant persons junior to him in the same Depot, in the grade of Fitter (Rs.950-1500) were screened for Skilled Artisans (Fitter and Lineman) on 27.7.1988 and 30.3.1990 and absorbed against the permanent vacancies of Fitter Grade II in the scale of Rs.1200-1800 and still got next promotion in the higher grade of Fitter I (Rs.1320-2040) thereby totally neglecting the claim of the Applicant because he happened to be posted as Welder. Due to no fault of his, the Applicant had to suffer monetarily, physically and mentally. Exhibit-B filed by the Applicant is the

seniority list showing the names of the Skilled staff with temporary status working under Deputy Chief Electrical Engineer (Construction), Bombay. In the said list the applicant's name appeared at serial no.4 and his designation was shown as Welder despite the fact that he belonged to Fitter Grade whereas his juniors in the trade of Fitter were shown at serial nos.12, 28 & 33. In 1994, the Respondent no.3 had prepared a list of all MRCL Artisans category-wise in which the Applicant has been shown in the category of Welder with the remark that he was appointed as Casual Fitter on 23.7.1980 and subsequently posted as Welder w.e.f. 1.1.1985 in the grade of Rs.950-1500 whereas persons junior to the Applicant have got further promotions in the category of Fitter in their turn. The Applicant lost his five years seniority in the Construction organisation from 1980 to 1985. His name was wrongly shown in the category of Welder with the remarks that he was appointed as Casual Fitter on 23.7.1980 and was subsequently posted Welder w.e.f. 1.1.1985 in the grade of Rs.950-1500/-. The Applicant preferred a representation on 29.6.1990 to Respondent no.3 explaining the position in detail. Screening test was conducted by the Respondent no.3 on 27.7.1988 and 30.3.1990 for screening of Skilled Artisans (Fitter Lineman). The applicant was not called for the said screening despite the fact that his name fell within the zone of consideration. The Applicant further submitted that the matter was agitated through the recognised Trade Union i.e. National Railway Mazdoor Union who had strongly recommended the case of the Applicant. Thereafter trade test was conducted on 15.1.1996 in which the

Applicant was found suitable and became eligible to have his name interpolated in the category of Fitter A. This was communicated vide Exhibit-I dated 25.1.1996. Again the Applicant preferred further representations dated 19.10.1996, 8.12.1997 followed by a reminder on 9.11.1998 pointing out that he should be treated at par with his juniors. No communication has been received by the Applicant so far. Aggrieved by the inaction on the part of the Respondents, the Applicant has approached this Tribunal by filing this OA seeking the following reliefs:-

- (a) This Hon'ble Tribunal will be pleased to hold and declare that the Applicant who was holding the post of Welder belongs to the category of Fitter, senior to Shri Joseph D'Souza, Shri Adya Prasad Singh and Shri M.S.Prasad.
- (b) That this Hon'ble Tribunal will be pleased to issue appropriate orders to the Respondents directing them to hold a preemptory Trade Test/s forthwith and to allow the Applicant to appear the said trade tests held for effecting his promotions to the higher grade posts in the Fitter category carrying pay scales higher than Rs.950-1500 (RPS) and to grant promotion if he declared successful in the aforesaid trade tests held from the date, just after promotions of Shri Joseph D'Souza, Shri Adya Prasad Singh and Shri M.S.Prasad i.e. held in 1988, 1990 & 1997 and interpolate the name of the Applicant above the other persons in all promotional grades viz.Fitter II and Fitter I.
- (c) That this Hon'ble Tribunal will be pleased to call for the records leading to issuance of letter dated 30.4.1997 and after examining its regularity, legality, propriety quash and set aside the same.
- (d) That this Hon'ble Tribunal will be pleased to issue order directing the Respondents to bestow on the Applicant. Who would be successful in the trade tests conducted in terms of prayer (b) above all the consequences benefits including arrears and allowances.

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- (e) That the Respondents be directed to pay to the Applicant the cost of this Application.
- (g) For such other just and equitable relief and direction and such order as deemed fit, in the facts and circumstances be granted in favour of the Applicant.

3. The Respondents have filed a detailed reply contending that on date he was a Casual Labourer and he is not a regular employee of the Railway administration and his promotion etc. is without any basis. The Applicant was initially appointed as a Casual Khalasi under PWI, Kurla, Civil Engineering Department. He was then appointed as Fitter in the Eletrical Construction deptment from 23.7.1980 to 11.11.1980 and was re-engaged from 12.11.1980. He was giveen temporary status w.e.f. 1.1.1984 as Fitter in the scale of Rs.260-400, Rs.950-1500, & Rs.3050-4590. The appointment is only casual and not a regular appointment. In 1987 the post of Welder Grade-III became available in the Electrical Construction Department and being a certificate holder in Welding, the Applicant opted and appeared for the Trade Test which was conducted in 1987 and was found suitable as MR Welder vide Trade Test Report dated 1.2.1988. The Applicant having accepted the post of Casual Welder, lost his identity as a Casual Fitter. He never complained on this score any time and even as OA, In October, 1989, the Divisional Railway Manager, CST received from Headquarters Office sanction for decasualisation for 89 posts in Group 'C' in the cadre of Lineman/Fitter. Vide letter dated 19.2.1990, screening of Skilled Casual Artisans working in "Electrical Traction Distribution including Construction units on the Bombay Division was arranged on and from 29.3.1990 to 31.3.1990. The Applicant not being on the roll

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as Fitter or Lineman at the relevant time was not eligible for being screened for the said decasualised posts of Lineman/Fitter. Staff regularly appointed secured further promotion depending on cadre and vacancy position. Applicant was however screened for Group 'D' category vide letter dated 31.3.1997. Realising that there are no chance of getting regular appointment as Welder the Applicant represented for being considered as a Fitter. The Electrical Construction Department therefore considered his case and asked him to appear on 15.1.1996 for the post of Fitter Grade-III on ad-hoc basis. As on date there is no sanction for regular appointment of Monthly Rated Artisans and as such he is not being considered for regular appointment. With a view to decasualise regular appointments, Applicant and 27 others were called for screening for regularisation in Group 'D'. As a result of screening, Applicants and 21 others have been placed on panel dated 31.3.1997. As stated above, the Applicant was avoiding to get himself regularised in Group 'D' having not been regularised in Group 'D' he could not get seniority in Group 'D' and further promotion as per rules.

4. The Applicant first accepted casual appointment in Group 'D' in Civil Engineering Department but did not pursue this and accepted casual appointment in Skilled category in Electrical Construction Department as a Fitter. It is erroneous to term this change as one 'In the Interest of the Administration'. If the applicant was not interested in carrying on on the post of Welder, he should not have appeared for the Welder's Trade Test.

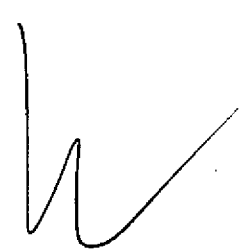
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A person cannot be forced to appear in the trade test. It was his conscious decision thinking that chances of regular appointment are bleak or perhaps no chance of regularisation as a Welder he has again re-appeared for Trade Test for the post of Fitter and has accepted casual appointment as Fitter. The Applicant was selected after screening for regular appointment in Group 'D' but he is avoiding and prefers to continue as Casual (MR) Artisan. Thus the case of the Applicant is misconceived and OA is belated by over eight years and hopelessly time barred.

5. The Applicant has filed rejoinder reiterating his points in the OA. He further averred that at the instructions of the Railway and the Court decisions being followed while dealing with this case, the manner in which it ought to have been, the Applicant would not have remained stagnated in the same grade and capacity for nearly 14 years and further emphasised in the pleadings that the Applicant was posted as Welder in the interest of the administration.

6. We have heard Shri T.D. Ghaisas learned counsel for the Applicant and Shri V.D.Vadhavkar, learned counsel for Respondents 1 to 4. We have also gone through the pleadings and the materials placed on record. The Applicant has also placed reliance on the decisions in the case of Jacob Vs. Kerela Water Authority, AIR 1970 SC 2228, P.M. Augustin Vs. Union of India, (1994) 27 ATC 500, Chief Conservator of Forests Vs. J.M. Kondhare, 1996 (1) CVR 56. Inder Pal Yadav contended that continued long

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service had to be regularised and permanent engagement can straightaway be presumed. Citing the decision of Inderpal Yadav's case, ^{ld. Counsel} he has argued that similarly situated persons are entitled to regularisation. The learned counsel for the Respondents on the other hand stressed the point that this OA is hopelessly barred by time and casual labourer has no right for claiming regularisation and anticipated for promotion thereof.

7. We have carefully considered the contentions of the learned counsel raised in the OA. The Applicant is aggrieved that he is not being selected at par with his juniors in the Fitter line who have already received their promotions and he was not regularised either in the grade of Lineman or Fitter. On examination of the matter, we are convinced that the Applicant cannot have a legitimate grievance of this aspect. If aggrieved about his not being considered for regularisation which according to him should have been done in 1988 when his legitimate junior J.D'Souza on post of Fitter Grade I & II, he should have approached this Tribunal at that point of time, rather than waiting till 1999. Therefore, we are of the view that the Respondents have correctly pointed out this aspect. This part of the claim is hopelessly barred by time and the OA cannot be maintained on that count.

8. Admittedly, the Applicant was appointed in casual capacity as a Fitter in Electrical Construction Department from 23.7.1980 to 11.11.1980 and was re-engaged from 12.11.1980. He was given

temporary status w.e.f. 1.1.1984 as Fitter. The Applicant opted for the post of Casual Fitter hoping that he will have better prospects in the employment avenues and regularisation will become very speedy. He was taking a calculated risk and gave up the post of Welder and joined the ~~post~~ post of Fitter. The change in the category and making himself available for the trade test will show that it is in his own interest that he has undergone and accepted this change of action for which no one can be blamed. There is some force in the contention of the Respondent that the applicant was not interested in the Welding trade. He need not have appeared because a test cannot be forced on an employee. It was a conscious decision taken by the Applicant perhaps thinking that the chances of regular appointment are bleak or perhaps no chance of regularisation as a Welder he has again reappeared for Trade Test for the post of Fitter and has accepted casual appointment as Fitter. It is but natural that during the internum period, the Applicant's juniors would have been absorbed, promoted and opted higher grade in the employment avenues which cannot be found to be faulted. The fact remains that the applicant is an employee who has not been regularised in Group 'D' category unless he is regularly posted in Group 'D'. The question of loss of seniority from 1980 to 1988 does not arise. His alleged juniors were appointed with him initially and have since been granted promoted. This is a natural phenomenon for the reason that he has withdrawn from the line of prospects.

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Apart from that it has come out that he is now come to avoiding any Group 'D' post and unless he is regularised, he will not be entitled for seniority and other promotions as per the rules. On perusal of the records, we are convinced that as on date the Applicant is not a regular employee and is only a Monthly Rated Casual Artisan.


8. We have perused the decisions cited by the Applicant in his rejoinder. On close scrutiny of the same we found that none of the decisions are applicable in this case since the Applicant has not been regularised since he is not a Group 'D' employee. He is only a Daily Rated Casual Labourer. The fact that he has been in such a position for the last 13 to 14 years will not be of any help for wavering mind of opting it and gave up the same to his choice will come for his rescue.

9. Our attention is drawn to the decision of the Hon'ble Supreme Court in the case of Union of India & another Vs. Moti Lal and others, (1996 (1) ATJ 625). The respondents (employees therein) were appointed as Casual Mates and continued as such for more than 20 years, the Hon'ble Supreme Court held that he has no right on mere continuance as casual labourer for considerable period. The said decision also emphasises the point that temporary status employee have worked on the said post for specified number of days does not equate the right to be regularised against the said post. He can be considered for regularisation in accordance with the rules.

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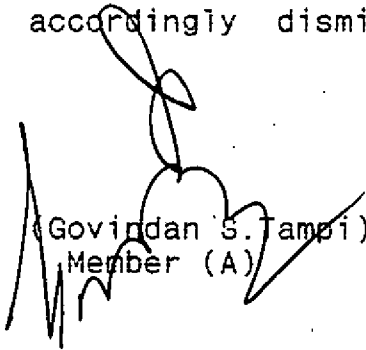


10. Laying down the dictum in the aforesaid decision of the Hon'ble Supreme Court in the case of Moti Lal (supra), we are of the view that the Applicant is not entitled for any relief claimed for. The OA having no merit is accordingly dismissed with no order as to costs.



(K.V. Sachidanandan)
Member (J)

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(Govindan S. Tampi)
Member (A)