

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

O.A.NO.733/99

Monday, this the 3rd day of March, 2003

Hon'ble Shri Govindan S. Tampi, Member (A)
Hon'ble Shri K.V. Sachidanandan, Member (J)

V.Vijaykumar
Aged about 43 years
Lineman
Under Sq.Section Engineer (C)
residing at R.B.II - Bldg. No.238
Room No.19,Bawan Chawl,
Thakurli (West), Dist. Thane.

..Applicant

(By Advocate: Shri T.D. Ghaisas)

Versus

1. Union of India
through the General Manager
Central Railway
Mumbai CST - 400 001
2. The Chief Personnel Officer
Central Railway
Mumbai CST - 400 001
3. Divisional Railway Manager
Central Railway
Mumbai CST 400001
4. Dy. Chief Electrical Engineer (C)
Central Railway
Dadar
5. Sr. Section Engineer (C)
Central Railway
OHE Kalyan
6. Sr. Section Engineer (C)
Central Railway
Thane

..Respondents

(By Advocate: Shri V.D.Vadhavkar)

O R D E R (ORAL)

Shri Govindan S. Tampi:

The reliefs sought for by the applicant in this
case are as below:-

"a) that this Hon'ble Tribunal will be pleased to
quash and set aside the purported impugned
actions of the Respondents.

b) that this Hon'ble Tribunal will be pleased to hold and declare that the respondents are not entitled in law to transfer and send the Applicant to any other unit/office/department on redering him surplus and if done so such an action is illegal, null, void and inoperative in law.

c) that this Hon'ble Tribunal will be pleased to issue appropriate orders to the Respondents directing them to issue the orders for permanent absorption of the Applicant in the category of Fitter from the date of his junior in the category of Fitter were absorbed with consequential benefits of promotions with arrears of pay and allowances from the date of his juniors promotions if any in the category of Fitter.

d) alternatively this Hon'ble Tribunal will be pleased to direct the Respondents to absorb the Applicant in the trade of Lineman forthwith with all consequential benefits.

e) for such other just and equitable relief/s and directions and such order as declared fit in the facts and circumstances should be granted in favour of the applicant; and

f) that the Respondents be directed to pay the Applicant the cost of this Application."

2. The applicant, who was initially engaged as casual Khalasi on 4.8.1980, became qualified for the post of Fitter and worked in the same capacity upto 29.3.1990. He had worked as casual labour for nearly 626 days with intermittent breaks and became eligible for absorption against permanent vacancies in class IV category. Since, 1985, he is working as MR Fitter in pay scale of Rs.950-1500/-. The applicant had also been trade tested in the category of Fitter. On 19.3.1990, the respondents had called for the list of casual labours together with the particulars for the various units with a view to arrange the screening of skilled casual Artisans working in Electrical Traction Distribution Department, including Construction Units in Bombay Division. At the end of this training, he was placed in Lineman category, rather than as MR Fitter and he has been continuing thereafter as Lineman, which was not his original choice. He has

still not been regularised though years have gone by. Learned counsel for applicant states that had the applicant been continued in the Fitter line, he would have got the benefit of his promotion, as some of his juniors had already got the promotion, whereas as a Lineman, his position in the panel is 21. While the person placed at No.1 in the list had got the benefit about nearly 10 years back, but he is still waiting for his promotion. Now, he is apprehending that on the basis of the fact that the Construction Unit is a temporary Unit, he is likely to be terminated from service and seeks the Tribunal's intervention in this regard.

3. Replying on behalf of the respondents, Shri V.D. Vadhavkar, learned counsel for respondents states that the applicant, who was appointed as casual labour on 4.8.1990, was granted temporary status w.e.f. 1.1.1984 but in the selection/screening on 16.4.1990, he was not found fit to be appointed as Fitter and was placed as Lineman. Learned counsel points out that the application is hit by limitation as the applicant if he is aggrieved by the fact that he has been placed in the panel for absorption as Lineman (OHE Group) in 1990 and not as a Fitter, he should have come up immediately thereafter and not in 1999 as he has done. He will have to await his turn in the trade for regularisation, subject to availability of vacancies.

4. We have carefully considered the rival contentions raised in this OA. The applicant is aggrieved that his not being selected into the Fitter grade where he was working and placing him as a Lineman and affected him considerably inasmuch as juniors, who were placed in the

Fitter line, have already got their promotions, and at the same time, his regularisation in the grade as Lineman was getting inordinate delay. On examination of the matter, we are convinced that the applicant cannot have any legitimate grievance on this aspect. If he had felt genuinely aggrieved about his being placed in the Lineman grade rather than in the Fitter grade, he should have come before the Tribunal in 1990 or 1991 itself, rather than waiting till 1999, as the respondents also have correctly pointed out. This part of the claim is hopelessly barred by limitation and OA cannot be maintained under the law. With regard to his prayer that his regularisation in the grade of Lineman should be ordered at the earliest, we find that he has been placed at Sl.No.19 in the select panel and only those upto Sl.No.16 have been regularised. It is true that while the first person in the panel has got regularisation in 1990 itself and the applicant is still waiting. However, the Tribunal cannot issue directions to the respondents to regularise the applicant over the heads of his seniors in the panel and also in the absence of vacancies. As the applicant has obtained the temporary status, there cannot be any apprehension of his services being dispensed with, but his regularisation will have to be only with reference to the availability of vacancies. The applicant also has not shown that any of the persons placed below him in the select list of Lineman have already been regularised. His claim would come only from such date. The only relief that can be granted at this juncture will be protection against the termination of his services by the respondents.

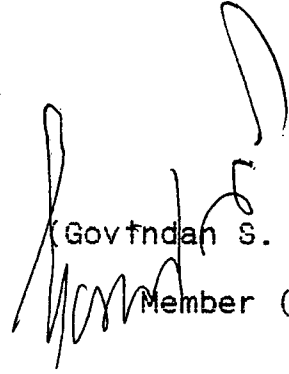
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5. In this view of the matter, the OA, having no merit, fails and is accordingly dismissed. However, before parting with this OA, we direct the respondents to ensure that the services of the applicant are not be terminated and his case be considered, keeping in mind the availability of vacancies and his related position of seniority, in preference over his juniors.



(K.V. Sachidanandan)
Member (J)

/sunil/



(Govindan S. Tampi)
Member (A)