

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO.: 175/00

Suresh Kashinath Mehandare

(By Advocate Shri K.B. Talreja)


VERSUS

Union of India & another.

(By Advocate Shri V.D. Vadharkar)

CORAM : Hon'ble Shri Justice R.R.K.Trivedi- Vice Chairman
Hon'ble Shri Shankar Prasad - Member (A)

- (i) To be referred to the Reporter or not ?
(ii) Whether it needs to be circulated to other Benches of the Tribunal ?
(iii) Library ?
- } no


(Shankar Prasad)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Coram: Hon'ble Mr. Justice R.R.K. Trivedi - Vice Chairman
Hon'ble Mr. Shankar Prasad - Member (A)

Dated this the 9th day of July, 2003

O.A.175 of 2000

Suresh Kashinath Mehandare,
Helper Khalasi
under AEE (G), Kalyan,
R/o R.S. Road,
Near Vaidya Vakhar Thakur Building,
Ground Floor, Thane (West).
(By Advocate Shri K.B. Talreja)

- Applicant

Versus

1. Union of India
through the General Manager,
Central Railway, Mumbai, CST.
2. The Divisional Railway Manager,
Central Railway, Mumbai, CST.
(By Advocate Shri V.D. Vadhavkar) - Respondents

O R D E R

By Hon'ble Mr. Shankar Prasad, Member (A) -

Aggrieved by the order dated 8.1.1999 posting him as Khalasi Helper under SSE (M) Kalyan, the applicant has preferred the OA. As a result of this order both his pay scales and pay ^{being} drawn have been reduced. The applicant has sought for the following reliefs -

(i) The Hon'ble Tribunal may kindly be pleased to direct the Respondents to fix correct pay of the applicant, by protecting his pay/grade/status and seniority in the new cadre.

(ii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to absorb him against any of the suitable Group 'C' posts, instead of Group 'D' posts as this amounts to reversion, by following the rules of absorption of surplus staff.

(iii) This Hon'ble Tribunal may kindly be pleased to direct the respondents to pay him the difference in wages, which he was drawing and which he is being paid along with arrears and interest thereon. *Sh*

....2/-

(iv) Any other relief/reliefs as this Hon'ble Tribunal may deem fit and appropriate considering the circumstances of the case.

2. The case of applicant in brief is that he was appointed as a Casual Carpenter w.e.f. 29.9.1981 after getting training from ITI. He was conferred temporary status. He also passed the trade test which was conducted on 15.5.1991 for regularisation as Carpenter. When he was found surplus he was posted as Khalasi Helper leading to reduction in pay scale as well as gross pay. The rules relating to re-deployment of surplus staff have not been followed. A lawyer's notice was served. When no response was received the present OA has been filed.

3. The case of respondents in brief is that the applicant was engaged as Casual Labour Carpenter on 27.9.1981 under Electric Foreman, Matunga. His engagement was subsequently approved by General Manager vide order dated 27.7.1989. He was conferred temporary status w.e.f. 1.1.1984 vide order dated 27.9.1986. The appointment of applicant was in the Construction Department under control of DEE (Dadar). All Casual Labourers in the Construction department have to be absorbed in the Open Line. The screening test was conducted on 18.7.1988 and the applicant was empanelled on 22.11.1990 for Gr.'D' in the scale of Rs.750-940/-. The applicant had given a consent for it. he was posted in regular capacity vide letter dated 16.4.1991. The applicant, however, continued to work under Deputy Chief Electrical Engineer (Construction) Dadar. When the work shrank in the Construction Wing he was relieved to join in the OSM group in

which his lien was maintained. He is not a surplus employee in the sense the word is used in Rule 603 of the Indian Railway Establishment Manual. Apart from facts the application is time barred and ^{is bad} for not joining the Construction Wing.

4. The applicant has filed a rejoinder stating that the document said to contain his consent is not applicable in law for the reasons stated. Secondly as he had been appointed as a Group 'C' employee and has worked for very long period he should have been regularised as such. He has quoted a number of Railway Board Circular in this regard.

5. A plain reading of Rule 602 and 603 of the Indian Railway Establishment Manual indicates that they are applicable to retrenched/surplus staff of other department of Central Government who have been re-employed in Railways.

6. It was strenuously argued by the learned lawyer on behalf of the applicant that he was working in Matunga Workshop and was entitled to be absorbed there. Annexure-A-3 to the OA is his pay slip statement which shows his Headquarters at Dadar and department as O5. Annexure-4 is another pay slip statement at Kalyan showing his department as O5. Even the trade test result (Annexure-3) shows him as Khalasi under ELECT.(Construction). Even his identity card shows him as Carpenter in General services Department of DEE (C) GS. Thus this argument has to be rejected. *As*

7. It is well established that employees working in Construction department in Railways have to be absorbed i.e. granted lien in Open Line. It is well settled that a Casual Labour employee working in Group 'C' has no right to be absorbed in Group 'C'.

The Apex Court in Union of India & another Vs. Moti Lal & others, 1996 SCC (L&S) 613 has held -

" Thus it is apparent that a daily wage or casual worker against a particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularisation in accordance with rules."

The Full Bench in the case of Aslam Khan Vs. Union of Indian & others, (1997-2001) A.T.F.B.J.157 - has held as follows

"A person directly engaged on Group-C post (Promotional) on casual basis and has been subsequently granted temporary status would not be entitled to be regularised on Group-C post directly but would be liable to be regularised in the feeder cadre in Group-D post only. His pay which he drew in the Group-C post, will however be liable to be protected."

8. Rule 2007 (3) of the Indian Railway Establishment Manual provides as follows-

"2007. Employment of Casual Labour in Skilled categories


(3) Casual labour engaged in work charged establishment of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of regular departmental candidates and continue to work as casual employees for a long period, can straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite

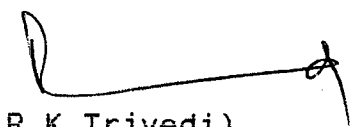
trade test, to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories in work charged establishments after qualifying in the trade test."

✓ No case has been made out that applicant is an artisan or that he is entitled for absorption in GRC as per this rule. We are expressing no opinion.

9. ✓ Thus the claim of the applicant is not sustainable. We, however, note that Aslam Khan (supra) has propounded the principle of pay protection. It was contended that this does not apply to the present case. As the applicant has been posted^{ed} to Open Line in 1999, it fully applies.

10. Under the circumstances the applicant is entitled to pay protection in the lower scale. the pay should be fixed from the date of his taking over² in January, 1999 while the actual benefits will be restricted to one year from the date of filing of the OA. The exercise be completed within three months from the date of receipt of copy of this order. No costs.


(Shankar Prasad)
Member (A)



(R.R.K. Trivedi)
Vice Chairman

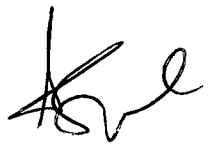
Dated: 28.4.2004 (8)


Applicant by Shri K.B. Talreja.
Respondents by Shri V.D. Vadhaekar.

The learned counsel for the respondents mentions that after dismissal of the SLP by the Hon'ble Supreme Court on 5.4.2004, the Railway authorities have decided to implement the order of CAT/High Court. Necessary instructions have been issued to the concerned authority on 21.4.2001 and preparation of due and drawn statement has already commenced.

In view of the C.P. stands disposed of. Notice issued to the contemnors are discharged.


(S. G. Deshmukh)
M(J)


(A. K. Agarwal)
VC


26/4/04
Order Issued
on 27/5/04
K. 