

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.730/2001.

Friday, this the 3rd day of May, 2002.

Justice Birendra Dikshit, Vice-Chairman,
Smt.Shanta Shastry, Member (A).

1. N.G.Thomas,
MS/RB/II/238,
Room No.15,
Central Railway Quarters,
Bawab Chawl,
Vishnu Nagar P.O.,
Dombivili (W),
Dist. Thane.

2.Harishchandra Laxmi,
B.K. No.403/8B,
OT Section,
Nr. Post Office UNRI,
Ulhasnagar No.1.

3. N.T.Mathew,
Room No.1,1st floor,
Shri Krishan Apt.
Maratha Kosewadi,
Kalyan (E) - 421 306.

4. V.K.Kolte,
G/2, Om Shri Kripa Apt.,
Rambaug Lane No.4,
New Chicken Ghar,
Kalyan (W).

5. D.G.Kamthe,
MukomPost Nagothane,
Tal - PCN,
Dist. Raigad.

6. D.S.Barbhai,
L.I.G. 106,
Puraday High School,
Lonavala,
Hudco Colony.
(By Advocate Shri G.S.Walia)

...Applicants.

v.

1. Union of India, through
General Manager,
Central Railway, CST,
Mumbai - 400 001.

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2. Divisional Railway Manager,
Mumbai Division,
Central Railway,
DRM's Office,
Mumbai - 400 001.
(By Advocate Shri Suresh Kumar)

...Respondents.

: O R D E R (ORAL) :

Smt. Shanta Shastri, Member (A).

The applicants in this OA have prayed for being absorbed in Group 'C' posts with all consequential benefits like seniority, promotion, increments etc. The applicants have also prayed for interim orders to restrain the respondents from reverting them from the present Group 'C' post to Group 'D' post.

2. The applicants claim that they have been working continuously in the Artisan category i.e. substitutes for the last 15 to 20 years in Group 'C'. The applicants, further submit that the Railway Board vide their letter dt. 22.1.1996 had desired to know the number of Group 'C' employees engaged as substitutes engaged as substitutes for the purpose of regularisation of their services. Further, vide letter dt. 16.4.2001, the Respondents absorbed some of the skilled casual/substitute Artisans as Class - III employees similarly placed to the applicants. According to the applicants, they were absorbed as Linesman in Group 'C'. The applicants are also seeking the same relief as they too have been working in Group 'C' for a long time. The applicants further submit that in 1990 they were screened for appointments as Linesman in the scale of Rs.950-1500 vide letter dt. 16.4.1990 wherein the names of the applicants were included. Further, the Learned Counsel for the applicants states that the applicants' case is slightly

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different than that of casual labour, as the Group 'C' posts can be filled by two methods viz. 75% by direct recruitment and 25% by promotion from Group 'D'. Thus, there was nothing wrong in the applicants having been taken directly in Group 'C' and they are therefore, entitled to be absorbed in Group 'C' especially when they have passed the screening in 1990.

3. The applicants are apprehending that they may be reverted, though there is nothing to show on record that there was any such move on the part of the Respondents.

4. The Respondents submit that the applicants are Monthly Rated Casual Labours (for short, MRCL) in the construction organisation except for the applicant Nos. 3 and 4 who were engaged as MRCL. According to them, in the construction organisation various project works, as well as, other work charged type of work are carried out. There is no permanent staff and therefore they are not entitled to claim regularisation in the category in which they were engaged.

5. The respondents further submit that the application is barred by law of limitation as the alleged cause of action, if any, arose as far back as when the applicants had given their willingness to be regularly posted as Khalasis in Group 'D' posts. The applicants' have approached this Tribunal now in 2001. Therefore, the application deserves to be dismissed. The Respondents have given the details of the six applicants who were engaged between 1979 to 1984. The applicants have been granted temporary status, but they are not regular employees of the Railway Administration.

6. The Respondents explain that, it is true that persons
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working as skilled casual labours were screened by letter dt. 19.3.1990. The applicants had appeared for the said screening and the results were declared on 16.4.1990. The applicants were found suitable and were placed in the panel for absorption as Line-man in the grade of Rs.950-1500 on the Mumbai Division. In all 24 screened casual labours were found suitable. For want of vacancy, the applicants could not be absorbed then. The applicants can be considered only if any vacancies would arise in future. The respondents also submit that no person junior to the applicant in the selection held in 1990 has been absorbed. Moreover, mere selection does not give a right for appointment.

7. The Respondents have also denied that the applicants were forced to give their willingness to be absorbed in Group 'D'.

8. The Respondents are relying on the Judgment of the Supreme Court in the case of Union of India Vs. Motilal and Ors. (1996 SCC (L&S) 613), as well as, the Judgment of the Full Bench of Jaipur in Aslam Khan Vs. UOI & Ors. In the case of Motilal, the Apex Court held that Casual Labours should be absorbed first in Group 'D' and only thereafter considered for promotion to Group 'C'. It was also held 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 at Jaipur also decided similar issue and held that a Casual Labour directly engaged in Group 'C' post which is a promotional post on casual basis and who has been subsequently granted temporary status is not entitled to be regularised in

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Group 'C' post directly. He would be liable to be regularised in the feeder cadre in Group 'D' post only. However, the Full Bench held that the pay of such Casual Labours which they drew in Group 'C' post would be liable to be protected.

9. After the Judgment in the case of Motilal (Supra) the Railway Board also issued a circular on 9.4.1997 prescribing that all Casual Labours/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications, may be given a chance to appear in examinations conducted by Railway Recruitment Board or the Railways for posts as per their suitability and qualification without any age bar. Notwithstanding (i) above, such of the casual labour in Group C scales as are presently entitled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such and Notwithstanding the above two provisions all Casual Labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective units. Further, in para 2007 (3) of the Indian Railway Establishment Manual (1989) it has been provided that Casual Labour engaged in work charged establishment of certain departments who get promoted to semi-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 straight away be absorbed in regular vacancies in skilled grade provided they have passed the requisite trade test to the extent of 25% of the vacancies reserved for departmental promotion from the un-skilled and semi-skilled categories. These orders would also

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apply to the Casual Labours who are recruited directly in the skilled category in the work charged establishment after qualifying in the trade test. Thus, the Railway Board's Circular dt. 9.4.1997 has settled the position as far as absorption of the casual labours is concerned and the same has been confirmed by the Full Bench of this Tribunal at Jaipur. Learned Counsel for the Respondents has also relied on a Judgment of this Tribunal in OA No.1165/96 which was decided only recently on 17.4.2001 wherein the issue was identical as in the present case. In this Judgment also there is a reference to some Casual Labours selected by orders dt. 16.4.1990 who were absorbed in Group 'C'. The Respondents have already clarified that it is true that some of those who were empanelled vide letter dt. 17.4.1990 were absorbed, but that was as a one-time measure. Besides, no persons junior to the applicant in that panel was absorbed in Group 'C'. For want of vacancies the applicants' could not be absorbed at that time. The selection was of 1990, the applicants cannot come now and agitate about that selection after 11 years. As already pointed out mere temporary status by itself does not given any appointment right or regularisation. Be that as it may, as the law in regard to the casual labours working in Group 'C' has been crystalised in the Judgments of the Supreme Court in Motilal's case (supra), as well as, in the subsequent circulars issued by Railway Board on 9.4.1997, it is clear now that no casual labour in Group 'C' can be promoted directly to Group 'C' unless he is first absorbed in Group 'D' and regularised. In view of this we have to hold that the present applicants have rightly been screened for absorption in Group 'D'. They cannot be promoted directly to Group 'C'.

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The applicants, therefore, shall be entitled only to be continued in Group 'C' as per circular dt. 9.4.1997 of the Respondents. They can also avail a chance to appear in the examination conducted by the Railway Recruitment Board or the Railways for the posts as per their suitability and qualifications without any age-bar. They shall also be considered for absorption against the 25% quota as per vacancies and their seniority.

10. In the result, we cannot grant any relief as claimed by the applicants to be absorbed in Group 'C' directly. However, their case shall be governed by the circular of 9.4.1997 as already observed above. The OA, is disposed of accordingly. In terms of the Full Bench Judgment (Jaipur) in Aslam Khan (supra) the applicants shall be entitled to protection of their pay in the post in which they are presently working subject to the condition that they are regularised in Group 'D' first. No costs.

Shanta S

(SHANTA SHASTRY)
MEMBER (A)

B. Dikshit

(BIRENDRA DIKSHIT)
VICE-CHAIRMAN

B.

Sh. S.
W.S.
Pr. S.

21/5/02
Order/Judgement despatched
to Applicant, respondent (s)
22/6/02
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