

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO568/2001

This the 19th day of March, 2003.

Shri Madhukar P. Bhagwat ...Applicant
(Applicant by Shri G.S.Walia Advocate)

Versus

Union of India & Ors. ...Respondents
(Respondents by Shri S.C.Dhawan, Advocate)

CORAM:

HON'BLE Smt. Shanta Shastry, Member (A)
HON'BLE K.V. Sachidanandan, Member(J)

- (1) To be referred to the Reporter or not? ✓
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library. ✓

Shanta
(Smt. Shanta Shastry)
Member (A)

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

O.A.No.568/2001

Dated this 19th day of March, 2003

CORAM: HON'BLE SMT. SHANTA SHASTRY, MEMBER (A)
HON'BLE SHRI K.V.SACHIDANANDAN, MEMBER (J)

Madhukar P. Bhagwat
Working as welder under
Dy.C (E), Dadar,
Central Railway
Mumbai
Residing at Maratha Section 32,
Barrack No.1416
Kalyan Dist. Thane
(Applicant by Shri G.S.Walia, Advocate) ... Applicant

vs.

1. Union of India, through
General Manager
Central Railway,
Headquarters Office
Mumbai CST
Mumbai 400 001.
2. Divisional Railway Manager
Mumbai Division
Central Railway
DRM's Office
Mumbai CST
Mumbai 400 001. Respondents
(Respondents by Shri S.C. Dhawan, Advocate)

O R D E R (ORAL)

[Per: Smt. Shanta Shastri, Member (A)]

Applicant is aggrieved by the impugned action of the respondents in not absorbing him in Group 'C' post. He has, therefore, prayed to absorb him in a Group 'C' post. He has also sought any other relief and further orders as may be deemed fit, proper and necessary in the circumstances of the case.

2. The applicant submits that he was appointed in the Central Railway service as a Welder on 22.9.1982 in a substitute capacity. He was trade tested on 7.1.1989 and was found fit. He was further tested for the skilled grade post in the Scale of

Rs.950-1500 by way of regularisation, according to the applicant. He further submits that by order dated 31.3.1997, he was placed on the panel after proper screening as a Welder which is a skilled category Group 'C' post. However by order dated 27.4.1999, the applicant was sought to be posted in Group 'D' service in the Pay Scale of Rs.850-940/2550-3200. Before the order could be implemented the applicant approached this Tribunal and obtained the interim stay by way of restraining the respondents from disturbing the applicant from his present post in the Welder category, a Group 'C' post.

3. The contention of the applicant is that right from the initial stage he has been working in a Group 'C' post. In 1996, there were proposals of regularisation of those engaged as substitutes and some of the skilled casual/substitute artisans similarly placed as that of the applicant had been absorbed by letter dated 16.04.1990. According to the applicant, he ought to have been regularised in a Group 'C' post as he was working for such a long time in the said post. He submits that willingness to be absorbed in Group 'D' post was thrust upon him and on the threat of being removed from service, the said willingness was obtained by the respondents. Therefore, he had shown his willingness to be absorbed in Group 'D' post and he further states that he has not been reverted so far because there was sufficient work for him under the respondents.

4. The respondents have opposed the O.A. According to the respondents the applicant is a monthly rated casual labourer in construction organisation and he was regularised as a Khalasi in 1999 as per his own consent. There was no coercion or no threat. The applicant had been posted as Skilled Artisan purely

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on a temporary and adhoc basis which does not confer upon him any prescriptive right over any seniors, if any. The respondents have denied that the applicant was listed for regularisation in Group C. The applicant was screened and found suitable in Group D in the Scale of Rs.2550-3200 vide Office Order dated 27.4.1999 and was posted at Dy.Chief Electrical Engineer (Construction) OPRE, Dadar. The applicant had given his willingness in writing for regularisation in Group D category. However, he continues to work in the capacity of skilled artisan as Adhoc Welder in construction organisation according to the sanction of various types of work created from time to time. According to the respondents there cannot be any direct absorption in Group 'C' and rightly, therefore, the applicant has been regularised in Group 'D'. The respondents, have also referred to Railway Board's letter dated 9.4.1997 regarding regularisation of casual labourers working in Group 'C' Scales. According to this letter, all casual labourer may continue to be considered for absorption in Group D on the basis of the number of days put in as casual labourer in respective units. Casual labourer in Group 'C' scales are entitled for absorption as skilled artisans against 25% of the promotion quota as and when the turn comes, Group C is a promotion post.

5. The respondents have cited the judgement of the Hon'ble Supreme Court in the case of *UOI Vs. Motilal & Ors.* 1996 (SCC) L & S 613 wherein the Hon'ble Supreme Court held that there cannot be any direct absorption in Group 'C' post. The initial regularisation has to be in Group D post only.

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5. The learned counsel for the applicant has drawn our attention to the Full Bench judgement of the Jaipur Bench of this Tribunal in *Aslam Khan vs. UOI 1997-2001 AT Full Bench Judgements 157* on the following issue "whether the person directly engaged in Group C post which is a promotion post on casual basis and has been subsequently granted temporary status would be entitled to be regularised on Group C post directly or whether such person requires to be regularised in the feeder cadre in Group D post by providing pay protection of Group C posts. The Full Bench held that 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. Therefore, the learned counsel for the applicant submits that the same relief may be granted as given by the Full Bench i.e his pay may be protected if he cannot be absorbed in Group C posts as prayed for by him.

6. The learned counsel has also referred to another judgement of this Tribunal in OA 730/2001 decided on 3.5.2002 in the matter of *N.G. Thomas and 5 Others vs. Union of India & Ors.* where in para 10 it was directed that while the applicants cannot be absorbed in Group C directly their case shall be governed by the Circular of 9.4.1997. Referring to the Full Bench judgement in *Aslam Khan (Supra)* it was also added that the applicants shall be entitled to protection of their pay in the post in which they were presently working subject to the condition that they would be regularised in Group D post.

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7. The learned counsel for the respondents at this stage, oppose granting of any relief in regard to pay protection on the ground that the cause of action has not at all arisen in the case of the applicant nor is there any plea taken by the applicant in the O.A. to that effect. The applicant is still continuing to work in the Group C post of Welder and he is drawing higher Pay Scale of Group C post. Therefore, no cause has arisen for him to demand pay protection at this stage. The learned counsel has produced copy of judgement of this Tribunal in OA. No.1165 of 1996 wherein the Tribunal refused to grant the relief of protection of pay or emoluments on the ground that there had been no pleadings and in the absence of any pleadings no relief could be granted. The Tribunal had taken note of the Full Bench judgement in the case of *Aslam Khan* (supra). The learned counsel, therefore, argued that in the present case also it was premature to grant any relief regarding pay protection.

8. Further our attention has been drawn to a letter dated 5.11.1976 which has been enclosed by the respondents. This letter clarifies that pay of casual labourers with temporary status when absorbed in regular Class IV posts will be fixed as follows:

(i) those who have hitherto been drawing pay in identical grades, will have their pay fixed with reference to the last pay drawn and

(ii) those who have been working in semi skilled and skilled grades but are absorbed in regular Class IV unskilled grades will have their pay fixed by granting increments in the unskilled grade with reference to their earlier service as casual labourer in higher or equivalent grades.

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The learned counsel for the respondents, therefore, submits that this letter could be taken into consideration.

9. We have heard learned counsel for the applicant as well as the respondents and have perused the Full Bench as well as the other judgements produced in the Court. In our considered view, in view of the Supreme Court's judgement in the case of *UOI Vs. Motilal & others (supra)* it is now well established that no casual labourer can be directly absorbed in a Group C post. He has to be regularised in a Group D post first. Therefore, the relief prayed for by the applicant for absorption in Group C post cannot be granted. The same is rejected. However, the applicant's case has to be governed by the letter dated 9.4.1997 of the Railway Administration. Further, the Full Bench of this Tribunal has dealt at length with this issue in the judgement in *Aslam Khan's case (supra)*. We are bound to follow the judgement of the Full Bench. Although the learned counsel for the respondents has raised an objection that it is premature and the applicant has not taken any plea in regard to protection of his pay, the learned counsel for the applicant has pointed out that he has already been granted Interim Relief in regard to letter dated 27.4.1999 whereby he was sought to be appointed in a Group D Scale thus reducing his pay. It is true that there is no specific plea regarding pay protection. However the applicant has prayed for any other relief in the prayer clause. Having been absorbed in Group D it is a consequential thing that the applicants pay would be reduced and since Interim Relief has also been granted, going by the judgement of the Full Bench, in our

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considered view, the applicant is entitled to pay protection, in case he is actually reverted. Regarding letter dated 5.11.1976 in regard to Class IV posts, clarifies how to govern the pay of such casual labourers. However, we are bound by the Full Bench judgement of Aslam Khan's case (supra) of a later date and accordingly, the applicant shall be entitled to protection of his pay in the post in which he is presently working. The O.A. is disposed of accordingly. No costs.



(K.V. Sachidanandan)

Member (J)



(Smt. Shanta Shastri)

Member (A)

sj*