

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH, BANGALORE

DATED THIS THE THIRD DAY OF DECEMBER, 1986.

Present: Hon'ble Shri Ch.Ramakrishna Rao Member(J)

Hon'ble Shri L.H.A.REGO Member(A)

APPLICATION Nos.598,1960 and 1961,
1603 and 1611 to 1613/86(F).

1.K.P.Irudayaraj,
C/o Mariay Susai,
No.20, V Cross, Narayana-
Pillai Street,
Bangalore - 1.

2.R.Devaraj,
R/a No.J.22/4,
Lakshminarayanapura,
III Cross, III Main Road,
Srirampuram Post,
Bangalore - 560 021.

3.A.Shakhar,
Working as Blacksmith,
Mechanical Department,
O/e the C & W.S.,
Byappenahalli,
Southern Railway,
Bangalore.

4.J.Prakash,
R/a 'Srikanteswara Nilaya '
No.44, Muniswara Temple Road,
J.B.Colony, Yeshwanthpur,
Bangalore - 22.

5.A.Manikyam,
C/o Shri K.Subba Rao & Sh.M.S.Anand Ramu, Advs.,
No.128, Cubbonpet Main Road,
Bangalore - 2.

6.N.muniraju,
C/o Shri K.Subba Rao & Sh.M.S.Anad Ramu, Advs.,
No.128, Cubbonpet Main Road,
Bangalore - 2.

7.P.N.Menoharan,
C/o Shri K.Subba Rao & Sh.M.S.Anand Ramu, Advs.,
No.128, Cubbonpet Main Road,
Bangalore - 2.

(Shri M.S.Anand Ramu, VS ... Advocates)

1.The Union of India,
represented by the Secretary,
Ministry of Railways,
"Rail Bhavan ",
New Delhi.

APPL

APPLICANTS.

42

6. The applicants state that they were deployed from the EDB to the MDB, against their will, and yet they have no objection, provided, they are given the same or equivalent job and pay-scale in the MDB.

7. The applicants refer to the Railway Board's letter dated 2.6.1981, dealing with the terms and conditions of service, relating to Casual Labour Artisans and to conferring temporary status on them, on completion of 120 days of service, with entitlement to regularisation. They have in particular, referred to clause(F)(vi) in the said letter of the Railway Board, pertaining to regularisation of casual labourers, engaged in work-charged establishment for long. Such labourers, according to them, can in terms of the aforesaid clause F(vi), be absorbed in regular vacancies in ^{skilled} ^{grade} skilled grade, within 25% of the vacancies reserved for departmental promotion, provided, they have successfully undergone the prescribed trade tests and there is a paucity of departmental candidates, since they were appointed in the skilled category and have been working continuously in that capacity for quite long, since 1981, they contend, that there should be no impediment to their being absorbed in the skilled category. In this context, they submit that the order passed by the 4th respondent on 7/13.3.1986 (Annexure-C), reducing their pay in the lower pay scale of Rs.196-232, as compared to the pay scale of Rs.260-400, in which they were initially placed, is illegal and unjustified and contrary to the instructions of the Railway Board, in their aforementioned letter dated 2.6.1981. As their representation to the concerned authorities had gone without heed, the applicants have approached this Tribunal for relief.

8. The learned Counsel for the applicants reiterated the above contentions in the course of his arguments. Shri Srirangaiah sought to rebut each one of them. The respondents are seen to have filed their statement of objections, only in respect of Application

SL

No.598 of 1986(F) in Set I of the applications and have furnished an unsigned copy thereof, in respect of Set III of the Applications. No statement of objections has been filed in respect of Application No.1603 of 1986(F).

9. Shri Srirangaiah, ^{as submitted} states, that nowhere, does the Office Order dated 2.5.1984 (Annexure-A), issued by the 4th respondent, state, that the applicants were selected for the skilled grade. According to him, they were actually promoted to this grade, from the date they obtained temporary status in the pay-scale of Rs.196-232. He submitted that, the applicants were inducted in the MDB. They were however redeployed from the EDB to the MDB, in administrative interest, as also to prevent their retrenchment, as they were found to be surplus in the former. Shri Srirangaiah averred, that the applicants were not actually empanelled for regular absorption as Khalasis, without which they could not be regarded as regular employees.

10. Shri Srirangaiah submitted, that the skilled grade of Rs.260-400 was awarded to the applicants, against the work-charged establishment in the EDB, which was however withdrawn on their deployment to their parent MDB, where such work-charged facility was not available and they were restored to the original grade viz., Rs.196-232, according to their turn. In this regard, he referred to the rules for absorption prescribed in the Manual, which he said clearly laid down, that casual labourers/substitutes, are not entitled ^{due to} for regular absorption in the permanent establishment, unless they are appointed by the Staff Selection Board to Class IV posts. However, such workers on regular scale of pay, in the event of their serving in semi-skilled/ skilled grades would be given the benefit of increment, while fixing their pay

LB

^{in the}
in skilled grade, taking into account their service as casual labour in higher or equivalent grades, in accordance with the instructions contained in Letter dated 5.11.1976 of the Railway Board.

11. Shri Srirangaiah indicated, that this benefit was granted to the applicants by refixing their pay in the scale of Rs.196-232 as Substitute Khalasis, according to the order passed by the 4th respondent on 7/13.3.1986(Annexure-C) and that only the first applicant, in Application No.598 of 1986, had represented thereon, in writing, on 20.3.1986 to the DME/SBC. He stated, that before this application could be considered by the concerned authorities, the applicants hurriedly approached this Tribunal for redress. He explained, that refixation of their pay in the grade of Rs.196-232, under the Office Order dated 7/13.3.1986 of the 4th respondent(Annexure-C) took some time, as a fairly large number of redeployed employees, were involved, inclusive of the applicants and the service record of some of them was not readily available.

12. According to Sri Srirangaiah, due to inadvertence, the applicants as well as others, were paid the same salary, which they drew prior to their redeployment from the EDB to the MDB. The respondents, had therefore by the above Order dated 7/13.3.1986(Annexure-C), to recover this over-payment from the applicants and others similarly placed, and this was to be done in easy instalments. Sri Srirangaiah averred, that the applicants cannot take undue advantage of this inadvertent error and that no provision of the Constitution was violated on account of this recovery.

13. Sri Srirangaiah emphasised, that the applicants were not directly recruited as Skilled Artisans, in the pay scale of

dal
—

2. A question has now been raised by some of the Railway Administrations whether the scale of pay as applicable to the skilled artisans can be given to casual labour employed in skilled categories when they attain temporary status. The Department of Railways have considered the matter. They have now decided that where casual labour are engaged in skilled categories, the relevant scale for purpose of determining their wages in terms of the extant instructions as cited above will be that applicable to skilled artisans viz. Rs. 260-400 (R.S.). Thus, on attaining temporary status (in terms of extant orders), they should be paid in the scale of Rs. 260-400 (R.S.). Similarly in the case of project casual labour engaged in skilled categories who have completed 180 days of continuous service, consolidated wages (for purpose of the instructions contained in this Department's letter No. E(NG)II/82/LG-5/4 dated 6th June 1983) would mean the minimum of the scale of Rs. 260-400 (R.S.) plus D.A. thereon.

3. Payment in or with reference to this scale will, however, be admissible in individual case only from the date an individual casual labour employed in a skilled category has passed the prescribed trade test if the same happens to be later than the date of attaining temporary status or date of completion of 180 days of continuous employment, as the case may be."

19. We have examined carefully, the pleadings of both sides, as also the material placed before us. Rules 2511 and 2512 of the Manual are pertinent in this case. Rule 2511 explicitly states, that casual labour who acquire temporary status, will not be brought on to the permanent establishment, unless they are ^elected, through a regular Selection Board, ^{ld as for} ₁ for Class IV staff. Rule/(ii) ibid reads as under:

"(ii) Casual labour engaged in work-charged establishments of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories, due to non-availability of departmental candidates and continue to work as casual employees for a long period, shall straightaway be absorbed in regular vacancies in skilled grades provided they have passed the requisite test to the extent of 25% of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories.

ld

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."

20. From the foregoing, the following parameters emerge, in regard to absorption of casual labour in regular vacancies:

- i) Casual labour who acquire temporary status will not be eligible to be brought on to the permanent establishment, unless they are selected through a regular Selection Board for Class IV staff.
- ii) Casual labour in work-charged establishments who get promoted to semi-skilled, skilled and highly skilled categories, owing to dearth of departmental candidates and continue to work as casual employees for long, shall be straight-away absorbed in regular vacancies in skilled grades (provided, they have passed the requisite test) upto 25% of the vacancies earmarked for departmental promotion, from the unskilled and semi-skilled categories.

21. Let us examine whether the applicants fulfil the above pre-requisites. Our scrutiny reveals the following:

- i) The applicants acquired temporary status as evidenced by Annexure-A.
- ii) The respondents aver, that they were not empanelled for permanent absorption in Class IV by the Staff Selection Board, while they were working in the EDB. They are also not similarly empanelled by the same Board on redeployment to MDB.
- iii) According to the respondents, the applicants had to be redeployed from the work-charged establishment in EDB to MDB, on administrative grounds after a spell of about 4 to 4½ years, as they were found to be surplus in EDB.
- iv) MDB had no work-charged establishment as in the case of EDB.
- v) The applicants had passed the requisite trade test, to qualify for the skilled grade in which they were engaged in EDB, on work-charged establishment.
- vi) They were given the pay scale of Rs.260-400 in the skilled grade, while they were working in EDB as above, for a period of about 4 to 4½ years.
- vii) They could not be absorbed in regular vacancies in skilled grades in EDB, for want of posts, on account of which, they had to be redeployed to MDB.

12

viii) There is no work-charged establishment in the MDB, where they can be given a pay scale of Rs.260-400 in the skilled grade.

22. It is evident from the above, that the applicants could not be absorbed in the skilled grade in Class IV, for want of regular vacancies and on account of their not being empanelled by the Staff Selection Board for the purpose. Consequently, their pay on redeployment to MDB, has been determined by the respondents in the pay scale of Rs.196-232, on the basis of the instructions of the Railway Board, in their Letter dated 5.11.1976 (Annexure-I to Set I of the Applications). Thus, the pay of the applicants as fixed by the 4th respondent, according to Annexure-C (which is the impugned order) in the pay scale of Rs.196-232, on their redeployment to MDB, in our view, is in order. The extract from the Letter dated 19.12.1985, referred to by the Counsel for the applicants (vide para 18 supra) does not come to the aid of the applicants, as they have been paid salary in the pay scale of Rs.260-400, for the period they rendered service in the skilled grade, in the work-charged establishment of the EDB. What is sought to be recovered from them on account of ^{the} overpayment, is the higher pay, paid to them in the pay scale of Rs.260-400, for the skilled grade, to which they were not entitled, on their redeployment to MDB. The respondents admit, that this was an inadvertent error but have directed, that the overpayment be recovered from the applicants in easy instalments.

23. The applicants are therefore liable to fail in view of the above facts. We would however observe, that the respondents ensure, that the applicants are considered for absorption in regular vacancies in skilled grades, with the utmost expedition, after completing the required procedural formalities, as the applicants are seen to have fulfilled most of the prerequisites, and are awaiting regular absorption since long.

12

and 20.3.1981 respectively. On completion of continuous service of four months, they were deemed to have acquired temporary status and were brought on the pay-scale of Rs.260-400 in the skilled grade, with effect from 22.4.1981, 20.11.1981 and 20.7.1981 respectively, as is seen from Annexure-A. They were brought on the above pay scale of Rs.260-400/ in the skilled grade, subject to ^{the} condition that they had passed ^{the} prescribed trade test, in the category of posts in which they were engaged.

Set II. Application No.1603/1986(F):

The applicant was appointed as a Casual Labour Artisan in SBC, of the Southern Railway. He was deemed to have acquired temporary status, after continuous service of four months and was therefore brought on the pay scale of Rs.260-400, in the skilled grade, with effect from 20.6.1981, as is seen from Annexure-A subject to the condition, that he had passed the prescribed trade test, in the category of post in which he was engaged.

Set III. Applications Nos.1611 to 1613 /1986(F)

Applicants 1 to 3 in this case, were similarly appointed as Casual Labour Artisans, in SBC of the Southern Railway. They were brought on the pay scale of Rs.260-400 in the skilled grade, with effect from 20.11.1981, 20.5.1981 and 22.10.1981 respectively, having been deemed to have acquired temporary status, after continuous service of four months- vide Annexure-A, subject to the condition, that they had passed the prescribed trade test, in the category of posts in which they were engaged.

3. The applicants in all the above 3 sets of applications state, that they have successfully completed the prescribed trade test. They were initially engaged in the Engineering Department/ Branch of SBC(EDB, for short), but were subsequently transferred to the Mechanical Department/Branch of SBC(MDB, for short), in

Ad

accordance with the instructions dated 13.5.1985 of the 4th respondent(Annexure-B). The applicants aver, that their transfer from EDB to MDB, was not justified. On 7/13.3.1986 (Annexure-C) the 4th respondent fixed the pay of the applicants(among others, who were re-deployed to MDB) in the pay-scale of Rs.196-232, with effect from the date they joined in the MDB, with a note at the end, that over-payments made already to the employees, would be recovered from their salary in easy instalments.

4. The applicants submitted a representation thereon, on 20.3.1986(Annexure-D, in the case of Sets I and II and Annexure-D to F in the case of Set III of the applications) to the Divisional Mechanical Engineer, Southern Railway(DME, for short) but to no avail. The applicants state, that the aforesaid order dated 7/13.3.1986(Annexure-C) of the 4th respondent, has resulted in their demotion by two grades and arbitrary recovery of over-payment of salary from th ~~they~~ from as long back as 1981, causing them no little financial hardship. According to them, having worked as Skilled Artisans, they cannot be paid lower emoluments than prescribed for this category of post, as otherwise, this would be violative of Articles 14, 16, 21 and 23 of the Constitution.

5. The applicants refer to the relevant provisions of the Indian Railway Establishment Manual(Manual, for short), in regard to their recruitment and allied matters. They contend, that as they were brought on the pay-scale of Rs.260-400 prescribed for Skilled Artisans, they are entitled to this pay scale with effect from the dates shown against their names according to Annexure-A. They further submit, that they are entitled to temporary status, as also ^{by to} ~~for~~ permanent absorption in this post, ^{by} ~~by~~ passing the prescribed trade test and were working therein for nearly 5 years.

Wishes of their

del

17. Shri Srirangaiah pointed out, that the applicants were working in the EDB as casual labourers in the skilled grade, prior to their redeployment as casual labour Khalasis, to MDB, on account of which, they were neither discriminated against nor the principles of natural justice or Articles 14 and 16 of the Constitution were violated. The applicants were not empanelled for permanent absorption, while serving in the EDB and are yet to be empanelled on their redeployment to the MDB. Sri Srirangaiah stated, that they have merely attained temporary status, thus rendering them eligible for empanelment, for absorption in regular vacancies in the MDB, which is dependant on various factors such as : length of service, suitability, availability of posts etc. He maintained, that redeployment of the applicants to the MDB and their fixation of pay, was not contrary to instructions contained in Chapter XXV of the Manual, in regard to absorption of casual labour in regular vacancies.

18. Counsel for the applicants, invited our attention to the following extract, from Letter dated 20.12.1985 addressed by the Railway Board, New Delhi, to the General Managers, All India Railways, in regard to the scale of pay applicable to skilled casual labour, to substantiate the claim of the applicants for the higher scale of pay of Rs.260-400 in the skilled grade. We reproduce the same below:

" Attention is invited to the provisions in para 2511 of I.R.E.M., which lay down inter alia that on attaining temporary status, casual labour on the open line, will be entitled to payment in regular scale of pay. Casual labour engaged on projects (also known as project casual labour) are also entitled to temporary status, in accordance with the orders applicable to them. Such labour are given consolidated wages, at the minimum of the scale of pay, when they complete 180 days of continuous employment.

Ld

Rs.260-400 but were engaged as casual labourers, on daily wage and on completion of 4 months of continuous service, were conferred temporary status and granted the monthly scale of pay of Rs.260-400 in the skilled grade, namely, that of Artisans. They were neither absorbed as Skilled Artisans nor were they selected as such, by a duly constituted Staff Selection Board. He said, that the applicants were not compelled to go from the EDB to the MDB. He denied the averment of the applicants, that they had submitted that they would go to the MDB, provided, they were given the same or equivalent job and identical scale of pay.

14. Sri Srirangaiah clarified, that the redeployed substitutes such as the applicants, would be eventually regularly absorbed in the Department/Branch, to which they are redeployed. The applicants who are Substitute Carriage and Wagon Khalasis in the MDB, would be eligible for absorption as Regular Carriage and Wagon Khalasis in the MDB(to which they are redeployed) by empanelment, according to the procedure prescribed. Sri Srirangaiah stated emphatically, that the applicants did not protest, when they were redeployed from the EDB to the MDB. He said, that on the contrary, the applicants in Set I of the Applications (Annexure II to IV) had in writing, expressed on 22.9.1986, that they were willing to take the bottom seniority, amongst the Substitutes in the Electrical/Mechanical Department/Branch.

15. The applicants who along with others, were working as Casual Labour Substitutes in the EDB, were redeployed to the MDB as Substitute Carriage and Wagon Khalasis by the 4th respondent, by his order dated 22.5.1985 (Annexure-V in Set I of the applications).

16. According to Sri Srirangaiah, the Letter dated 2.6.1981 of the Railway Board, referred to by the applicants, merely states

12

that casual labour employed in skilled categories in work-charged establishment and continuing to work for long, are to be absorbed in regular vacancies in skilled grades (provided, they have passed the required test) within 25% of the vacancies reserved, for departmental promotion, from among unskilled and semi-skilled categories. The applicants were redeployed from the EDB to the MDB, as they were surplus in the former. There was ^{no} work-charged establishment in the MDB. Sri Srirangaiah submitted^{ed} that the impugned order dated 7/13.3.1986, passed by the 4th respondent (Annexure-C), was neither an order of reversion nor did it entail reduction of pay, but was strictly in accordance with the instructions contained in Letter dated 5.11.1976, issued by the Railway board, (the relevant excerpt of which, relating to fixation of pay of casual labourers on their absorption in a regular Class IV post is at Annexure-I, to Set I of the applications) and was therefore legal and valid. Sri Srirangaiah stated, that this had not resulted in serious civil consequence to the applicants. An excerpt of the above letter dated 5.11.1976, in so far as it is relevant to the present case, is reproduced below for ease of reference:

"39. FIXATION OF PAY OF CASUAL LABOURERS ON
THEIR ABSORPTION IN A REGULAR CLASS IV
POST.

BOARD's
Letter No.
E(MG)11.76
CL/79, dated
5th November
1975.

The pay of Casual Labourer with temporary status, when absorbed in regular Class IV posts, will 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 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."

26

REGISTERED

CENTRAL ADMINISTRATIVE TRIBUNAL
BANGALORE BENCH
@@@@@@@@@@@@@@@@

Commercial Complex(BDA),
Indiranagar,
Bangalore - 560 038

Dated : 12-1-88

CONTEMPT OF COURT APPLICATION NOS 2 to 8 /88()
IN APPLICATION NOS. 598,1960,1961,1603 & 1611 to 1613/86(F)

W.P. NO _____/

Applicants

Shri K.P. Irudayaraj & 6 ors V/s

Respondent

The Divisional Personnel Officer,
Southern Rly, Bangalore

To

1. Shri K.P. Irudayaraj
20, Vth Cross
Narayanapillai Street
Bangalore - 560 001
2. Shri R. Devaraj
J-22/4, Lakshminarayanapura
III Cross, III Main Road
Srirampura Post
Bangalore - 560 021

4. Shri J. Prakash
5. Shri A. Manickyam
6. Shri N. Muniraju
7. Shri P.N. Manoharan
(Sl Nos. 4 to 7 - 'Srikanteswara Nilaya'
No. 44, Munaswara Temple Road,
J.B. Colony, Yeshwanthpur
Bangalore - 560 022)

3. Shri A. Shekhar
Blacksmith
Mechanical Department
Office of the C & W.S., Southern Railway, Byappanahalli, Bangalore
Subject: SENDING COPIES OF ORDER PASSED BY THE BENCH
8. Shri M.S. Anandaramu
Advocate
128, Cubbonpet Main Road, Bangalore - 2

Please find enclosed herewith the copy of ORDER/STAY/
~~INTERIM ORDER~~ passed by this Tribunal in the above said
application on 7-1-88.

[Signature]
DEPUTY REGISTRAR
~~SECTION OFFICER~~
(JUDICIAL)

Encl : as above

**In the Central Administrative
Tribunal Bangalore Bench,
Bangalore**

ORDER SHEET

Contempt of Court Application No. **2580** of 1988

Applicant

K.P. Sundaraj & Co.

Advocate for Applicant

H. K. Subba Rao.

In A.Nos. 598, 1960 & 11,
1603, 1611 & 1613 (F)

Respondent

Pitchiraj Divl. Personnel
Officer, 8. P.H.S. Bldg - 25.
Advocate for Respondent

Sh. M. Sreeharshaiah

Date	Office Notes	Orders of Tribunal
------	--------------	--------------------

(KSP)VC/PS(MXA).
JANUARY 7, 1988.

Order

Applicant by Sri M.S. Ananda Ramu.

Sri Ananda Ramu prays for permission to withdraw these applications with liberty reserved to challenge the order dated 9-12-1987 (Annexure-B) by fresh applications under Section 19 of the Administrative Tribunals Act, 1985. Permission sought for is granted. Applications for contempt are, therefore, dropped.

[Signature]
VICE-CHAIRMAN

[Signature]
MEMBER(A)

7/1/88

- True COPY -



[Signature]
DEPUTY REGISTRAR
CENTRAL ADMINISTRATIVE TRIBUNAL
ADDITIONAL BENCH
BANGALORE