

(BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH)

(10)

O.A.471/90

Kishan Chimaji

... Applicant

V/s.

Union of India & 2 Ors.

... Respondents.

CORAM: Hon'ble Shri B.S.Hegde, Member (J).

Hon'ble Shri M.R.Kolhatkar, Member (A).

APPEARANCE :

Shri D.V.Gangal, Counsel
for Applicant.

Shri S.C.Dhawan, Counsel
for Respondents.

JUDGEMENT :

DATED : 25-9-95

X Per Shri B.S.Hegde, Member (J) X

Heard the argument of Shri Gangal for
Applicant and Shri Dhawan for respondents and
perused the pleadings.

The only prayer made by the applicant in
this OA is to hold and declare that the applicant
should ~~be~~ straightaway be absorbed in regular
vacancies as Driller/Fitter/Black-Smith from the
date Juniors mentioned in this application are so
promoted and all consequential benefits be granted
as per rules, and the impugned order

th
He has challenged in this OA, Annexure-A
which reads as follows:-

" With reference to above, let this
office know, whether Shri Kisan Chimaji
it has been relieved to PWI. M.LNL and
if not he should be relieved immediately
under advise to this office as there is
a Class IV Permanent Post."

vide order dt. 23.5.90.

2. The contention of the applicant is that
initially he was appointed as a Khalasi on 3.5.79
as Project Casual Labour on Construction Line,

Lenawala. Since 1981, applicant has been working as driller on adhoc basis without having trade test. However, the contention of the applicant is that since he has been allowed to work as driller since 1981 till date, he should be regularised in that post. The other contention of the applicant is that his juniors have been allowed to have trade test and screening but the applicant was not allowed to do so. In this connection, the applicant has neither furnished any seniority list nor any appointment order stating that he has been regularly appointed as driller.

3. The respondents in their reply denied various contentions of the applicant and conceded since he has been working in the Construction Line as Project Casual Labour, he was allowed to work as driller on adhoc basis without any trade test. The applicant applied for the Class-IV post and attended the screening held at Lonavala, where he was working. Since he was declared passed by the Screening Committee, his name was put in the panel for absorption as Class-IV employees as and when a permanent vacancy exist on the Open Line as per his serial number on panel.

4. He was working as driller at Gulbarga, since there is no more work left at Gulbarga, they have asked his option whether he is inclined to work in open line on permanent vacancy. Accordingly, he had applied for class-IV test in open line for which he attended the screening at Lonavala and he was found successful. Therefore, the respondents only issued the order to relieve the applicant for the permanent class-IV vacancies for which he had applied and he was selected. Since the applicant

has been working as driller on adhoc basis and at present there is no work at Gulbarga, the respondents are left with no other alternative but to give an option to apply for post in open line which he did. The contention of the applicant is that posts of drillers/fitters/Black-smith are interchangeable has been denied by respondents. (12)

5. The Learned Counsel for respondents submitted, the applicant had not filed any rejoinder denying the statement made by the respondents in their reply. In that view of matter, the reply of the respondents is deemed to have been admitted by the applicant viz. that he had opted to work in open line permanent job and further that the posts of driller/fitter/black-smith are not interchangeable. It is an admitted fact, that the applicant has been working as driller and his seniority will be considered in that category, not in any other category. All the categories are different, different seniority is being maintained and it is an established fact that the posts are not interchangeable. Admittedly, the applicant has not passed any trade test for any of the skilled category either in 1981 or later. Unless there is a vacancy for driller, the question of allowing him to appear for trade test does not arise. He has to be trade tested only in the category for which he is working. Counsel for respondents produced a copy of trade syllabus to show that each category is different, therefore, the contention of the applicant that the posts are interchangeable is not correct.

6. In this connection, both the Counsel rely upon the Railway Board Manual, Rule No.2512 which reads as follows:-

"2512. Absorption of Casual Labour in regular vacancies.

i. Casual labour who acquire temporary status a result of having worked on

other than projects for more than 6 months or who have worked for more than 6 months, shall be considered for regular employment without having to go through Employment Exchanges. (13)
Other Casual Labour who have not completed 6 months, will, ofcourse, be required to get themselves registered in the relevant exchanges before they are considered by the Selection Boards. They will have a prior claim over outsiders. In order to ensure this, the names of all casual labour, wherever employed, should be entered in the registers maintained by Divisions or Districts or by any other convenient unit of recruitment strictly in the order of their taking up casual appointment at the initial stage, and for the purposes of empanelment for regular class-IV posts, they should, as far as possible, be selected in the order maintained in the aforesaid registers. While showing preference to casual labour over other outsiders in the matter of recruitment to regular class-IV establishment, due consideration and weightage should be given to the knowledge and experience gained by them, other conditions being equal, total length of service as casual labour, either continuous or in broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out.

iii) ii) Casual Labour engaged in worksharged 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

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 workcharged establishments after qualifying in the trade test."

The Learned Counsel for applicant specially relied upon rule 2512, clause ii that since he has been working in the post of driller, skilled worker, he should be considered in that clause and make him regular in that post. Whereas, the Learned Counsel for Respondent submitted that clause-ii could be applied provided the applicant is promoted in accordance with the rules. In other words, he has to come within 25% of vacancies of those reserved for departmental promotion.

7. The panel is prepared after screening, therefore, the contention of the applicant that the panel was prepared secretly is fully denied and it is not based on records. In this connection, the Learned Counsel for applicant relied upon the Division Bench decision of Ernakulam Bench in 1991, E. Appukutty and others v/s. Union of India and Others [(1991) 18 Administrative Tribunals Cases 193] wherein it is held that

• " Those semi-skilled casual labourers who are unwilling to be posted as gangman against regular vacancies should be retained as casual labourers with temporary status in the existing categories and considered for the direct entry in the skilled category against the promotion quota. Till absorption, the applicants will be at liberty to continue in the existing scales in the skilled/semi-skilled category or join as regular gangman without prejudice to their being considered

for regular absorption in the skilled/semi-skilled category. This will be subject to the risk of their services in the skilled/semi-skilled category being terminated, if the work ceases before their absorption."

Relying upon the aforesaid judgement, he submitted the present case is fully covered by this decision. During the course of hearing, when we asked the Counsel for Applicant whether he would be satisfied with similar direction as was given in Appukutty's case, the answer was in the affirmative. The Counsel for the respondents did not have any objection to the same.

8. On perusal of the various circulars issued by the department, we are satisfied that nature and type of work between various skilled categories such as driller/fitter/blacksmith cannot be treated as one and the same.

9. For the reasons stated above, we hereby direct that since the applicant is not willing to be posted as class-IV employee in open line, applicant should be retained as casual worker with temporary status in the existing semi-skilled category of driller and considered for direct entry in the semi-skilled category against the promotion quota according to his chance in due course. This will be, however, subject to the risk of his service in the skilled/semi-skilled category being terminated in accordance with law if the work ceases before his absorption as semi-skilled driller. There will be no order as to costs.

MR Kolhatkar

(M.R. KOLHATKAR)
MEMBER (A)

(B.S. HEGDE)
MEMBER (J)