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Original Application No. 104/91

Transfer Application No.

Date of Decision : 21-4-95

T.K.Rajendran

Petitioner

Mr. K. B. Talreja

Advocate for the
Petitioners

Versus

Union of India & Ors.

Respondents

Mr. S. C. Dhawan

Advocate for the
respondents

C O R A M :

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

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

- (1) To be referred to the Reporter or not ?

- (2) Whether it needs to be circulated to other Benches of the Tribunal?

(M.R.KOLHATKAR)
Member (A)

M

(11)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

O.A.104/91

T.K.Rajendran

.. Applicant

-versus-

Union of India & Ors.

.. Respondents

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

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

Appearances:

1. Mr.K.B.Talreja,
Counsel for the
Applicant.
2. Mr.S.C.Dhawan
Counsel for the
respondents.

JUDGMENT:

(Per M.R.Kolhatkar, Member(A))

Date: 21-4-95

In this O.A. under Administrative Tribunals Act, the grievance of the applicant is that although he had worked for a long time in the artisan category he has been regularised only as a Khalasi^{and} although some of his juniors have been regularised in the artisan category. The relief claimed by the applicant is to pay increments in the grade of Rs.950-1500 from 1-1-1990 which have been denied to him and to pay arrears along with interest and also to assign seniority over the juniors. The facts of the case are as below:

2. Applicant was appointed as casual labourer under Divisional Electrical Engineer w.e.f. 25-6-1980. He was promoted as Fitter w.e.f. 19-8-1982 and was fixed in the grade of Rs.950-1500 consequent on the restructuring of the grades w.e.f. 1-1-84. He underwent trade test on 3-7-89 and was declared successful on

28-9-89. He was declared medically fit for B1 as Fitter on 9-3-1984.

3. In spite of the above position, on 29-11-89 the applicant was called in the office of the Divisional Railway Manager and was verbally told that there were no vacancies for the skilled posts viz. Fitter/Lineman etc. and if he desired to be regularised, the administration will regularise him as a Khalasi with the assurance that his pay and other benefits will be protected. At page 10 Annexure A-1 is the letter dated 30-11-1989 which states that the applicant was screened and found suitable for appointment as Khalasi in the grade of Rs.750-940 and paid Rs.822/- in the above grade. The applicant points out that as a result of this order he has suffered a loss of pay from Rs.1110/- which he would get in the original grade as against Rs.846/- he would get as on 1-1-91. But more importantly, the applicant contends that vide Annexure-5 letter dated 19-11-1989 from the Divisional Office Central Railway which refers to the sanction for 89 skilled posts of Lineman in the pay scale of Rs.950-1500 referring to the sanction of CPO dt. 20-10-89 there is the list of 84 skilled casual labourers who were found suitable for absorption as Lineman after screening, and this list includes at Sr.73, Shri V.K.Vijayan, who is junior to him. According to the applicant the action of the respondents in calling him in the office and persuading him to accept regularisation as Kahalsi on 29-11-89 when the administration

was already aware regarding sanction of 89 posts of Lineman w.e.f. 20-10-89 was mala fide. Moreover the absorption of a junior Shri Vijayan as Lineman whereas the applicant himself was absorbed only as a Khalasi is discriminatory. The applicant in this connection has relied on the decision of this Tribunal in O.A.227/90 in the case of A. Shanmugham vs. U.O.I. decided on 7-10-91.

4. The respondents have opposed the O.A. According to them it is true that the applicant was working as a casual labourer w.e.f. 19-8-82 upto 30-11-89 but he was working in the construction organisation which is of a temporary nature and likely to be abolished. The applicant was aware of this position. The applicant was offered a post of Khalasi against regular vacancy in 1988 which he declined. In 1989 the applicant was once again offered a post of Khalasi on regular basis which he accepted. He cannot now go back on his decision. He^{is} therefore required to accept the consequences of this decision also, which is that some of his colleagues who chose to remain casual and waited were able to get absorbed as Fitters in the skilled grade. According to the respondents the Railway Board decision for decasualisation of 89 posts of casual labour already working at that time was conveyed to the office of the DRM only after the applicant had already accepted the post against regular vacancy as a Khalasi. No mala fide are therefore involved. It is only ^{such} skilled casual artisans ~~as~~ were

working as on 21-12-89^{who} were entitled to be screened and posted against the regular post of Lineman. The applicant cannot now therefore make a grievance of his not having been selected. Any loss of pay is entirely consequential to this basic fact. The respondents rely in support of their case on the decision of this Tribunal in O.A. No.121/91, A.R.Chauhan vs. U.O.I. & Ors. decided on 10-3-94.

5. We have considered the rival contentions and the case law relied ^{on} by them. So far as the case of A. Shanmugham is concerned it was a Division Bench case and decided earlier. In that case the facts were similar. The applicant was appointed as Casual Labourer on 16-4-1979. He was promoted as Casual Linesman on 19-9-1982 and was appointed as Linesman after the trade test which was held on 24-9-1987. However, subsequently there was a screening for the post of Linesman which the applicant appears to have attended. He was thereafter reverted as Khalasi on 11-3-1988. It was this reversion order which was challenged by the applicant. The respondents had taken the stand that the applicant was specifically asked about his willingness to be absorbed in the regular post of Khalasi and he gave in writing about his willingness and therefore he is not entitled to be absorbed on the higher scale of Artisan. The Tribunal held that may be because the applicant has been absorbed on the lower scale which an employee will accept in order to get security in service that alone will not be a reason for depriving a person from being regularised against a higher post on which he has already

worked for atleast five years. It appears to us therefore that the case of the applicant is similar to that of A. Shanmugham and therefore the ratio of A. Shanmugham's case squarely applies to the case of the applicant. There is ^{the} additional factor that in the present case the applicant also alleges discrimination whereas this factor was absent in the case of A. Shanmugham.

6. So far as A.R. Chauhan's case was concerned it was also a similar case with the difference that the applicant had opted for the post of Khalasi in January '88 whereas the panel for regular artisan was finalised only in October, 1988. There was a gap of eight months between the regularisation and publication of a panel of skilled artisans. In that case no question of discrimination had also arisen because the Tribunal found that in the panel published on 26-10-88 none of the juniors were posted in Group 'C' category. The Tribunal in A.R. Chauhan's case distinguished A. Shanmugham's case on the ground that in A. Shanmugham's case there was reversion inflicted i.e. to say the applicant was reverted from regular artisan post to regular Khalasi post. As pointed out by us such a reading of Shanmugam's case is not correct. ^{so called} In Shanmugam's case the reversion was from a casual artisan post to the regular Khalasi post and the case was exactly similar.

7. The applicant's counsel also relied on the judgment of Jodhpur Bench of this Tribunal in O.A. 359/89 in which respondents were ordered to pay the applicant therein

the pay as casual typist instead of casual labour. According to us it is not necessary for us to take recourse to this case since the category is different whereas Shanmugam's case appears to cover the O.A. squarely.

We, therefore, consider that we are bound to follow the ratio of Shanmugam's case which was a division bench^{case} decided earlier also a DB case but a later one than A.R.Chauhan^{case} which we have already observed above is distinguishable on facts namely the absence of discrimination and a misreading of Shanmugam.

8. We therefore hold that the applicant is bound to succeed when the applicant had worked for about seven years as a casual artisan as against five years in Shanmugam's case and when the applicant had already undergone a trade test and when as on 30-11-89, the date on which the applicant was regularised as Khalasi, the regular posts of Fitter/Linesman were available for applicant being absorbed as a Fitter/Linesman w.e.f. 20-10-89, it was highly unjust and therefore illegal for the respondents to have absorbed the applicant as a Khalasi in a lower ~~pay~~ scale. We are of the view that the applicant is entitled to be considered for absorption as Linesman in the skilled artisan category after being subjected to a process of screening which the respondents should arrange. Subject to screening the respondents ~~should~~ absorb the applicant in the skilled artisan category as a Fitter/Linesman etc. The applicant should also be given benefit of his seniority

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and should also be given consequential
benefit of notional fixation of pay.
There will be no order as to costs.

M.R. KOLHATKAR

(M.R. KOLHATKAR)
Member (A)

B.S. HEGDE

(B.S. HEGDE)
Member (J)

M

18

dt 24.4.95
Order/Judgement despatched
to Applicant/Respondent (s)
~~24.4.95~~

C.P.No. 41/96
hired honler
on 14.6.96

25/3

Dated 14.6.96 (12)

Done for the parties.
Issue notice to the respondents
to file reply to C.P.
Adjourned to 2.8.96.

MLN

MR Kothkar
(M.R. Kothkar)
M(A)
(B.S. Hegde)
m(S)

ds

Notices issued to
Applicant/Respondents on
20/6/96
25/6/96

Per Tribunal Date: 25/6/96
Applicant in person by Mr. Talreja
Advocate / Respondent by Mr. Shaver
Council. By consent of the parties
The matter adjourned to 25/10/96
for order C.P. 41/96
Dy. Registrar

25/10/96 PT

Abblard by Mr. Talreja
Revised by Mr. S.C. Shaver
By consent, adj. to 20/12/96
for order C.P. 41/96

CO

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IN THE COURT OF THE
JUDGE, CIVIL
AT
MUMBAI

Dated: 20.12.1996 (42)

Heard Shri K.B.Talreja, counsel for the applicant and Shri S.C.Dhawan, counsel for the respondents.

The applicant has filed C.P. 41/96 stating that the Tribunal has ~~directed~~ vide its order dt. 21.4.1995 directed the Respondents to absorb the applicant as Linesman in the skilled artisan category after being subjected to a process of screening which the respondents should arrange. Subject to screening the respondents should ~~arrange~~ absorb the applicant in the skilled artisan category as a Fitter/ Linesman etc. The applicant should also be given benefit of his seniority and should also be given consequential benefit of notional fixation of pay.

The respondents in their reply to the C.P. have stated that he has been granted seniority, consequential benefits, arrears of Rs. 444/- has been ~~paid~~ and seniority has been fixed in between Sl.No.14 and 15 of the seniority list of Linesman Gr.III. Hence the direction given by the Tribunal is duly complied with.

In the circumstances, nothing survives. Contempt Petition is accordingly discharged.

✓ B/0
CPD

M.R. Kolhatkar

(M.R.KOLHATKAR)
MEMBER(A)

B.S. Hegde

(B.S.HEGDE)
MEMBER(J).

B.

order/judgment despatched
to ~~respondent(s)~~
on 28/1/97
Yali
29/1