

④

CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

Original Application No: 121/91

Transfer Application No:

DATE OF DECISION 10-3-94

Shri A.R. Chauhan Petitioner

Shri R.S. More A. Talreja with Advocate for the Petitioners
per KM Nitane

Versus

Union of India & Others. Respondent

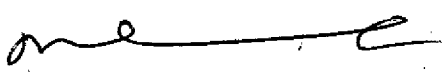
Shri S.C. Dhawan Advocate for the Respondent(s)

CORAM:

The Hon'ble Shri Justice M.S. Deshpande, Vice-Chairman

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

1. ~~whether Reporters of local papers may be allowed to see the Judgement ?~~
2. To be referred to the Reporter or not ? *m*
3. ~~whether their Lordships wish to see the fair copy of the Judgement ?~~
4. Whether it needs to be circulated to other Benches of the Tribunal ? *m*


(R. Rangarajan)
Member(A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH

9

O.A. No. 121/91

Shri A.R.Chauhan

...

Applicant

vs

Union of India & others

...

Respondents.

Coram: Hon'ble Shri Justice M.S.Deshpande, Vice-Chairman
Hon'ble Shri R.Rangarajan, Member(A)

Appearance:

Shri R.S.More counsel
for the applicant

Shri S.C.Dhawan counsel
for the respondents.

Dated: 10.3.94

Judgement:

(Per: Hon'ble Shri R.Rangarajan, Member(A))

The facts of the case are as follows.

The applicant is presently working as a regular Khalasi in Group 'D' service in the Electrical Branch of the Central Railway. Initially, he was appointed as a Casual labour on and from 4.4.79 under TESS(C) Kalyan. From 19.9.81 he worked as Fitter under TFOE(C) Kalyan. From 19.9.81 he worked as Fitter under TFOE(C) Kalyan, till 18.4.83. Thereafter he worked as Lineman Under DBRP, Kalyan with effect from 19.4.83 to 28.1.88. Thus it can be seen that he worked as Artisan in group 'C' from 19.9.81 to 28.1.88. He was taken as regular Khalasi in group 'D' post under decasualisation programme with effect from 29.1.88. The applicant alleges that he is eligible for consideration for the post of regular Artisan, Fitter in group 'C' post against the 89 decasualised posts of fitters sanctioned by the Railway Board and communicated by the Chief Personal Officer Central Railway as per his letter No.HPB/225/3/R/Decasualisation dated 20.10.89 (page 18). He also alleges that he has not been granted increment in the grade of 950-1500 (RPS) Group C post) but was given increment

(16)

only in the grade of grup 'D' cadre after his regular absorbtion. He further alleges that his erstwhile juniors in the cadre of casual artisan have been regularised in Artisan Group 'C' grade and he was left out. Theough he had represented against the above he has not received any reply so far.

2. This OA has been filed for a direction to pass orders to pay him the increment in the grade of 950-1500 (RPS) from 29.1.88 till date and pay the arrears along with interest at 12% and for a further direction to assign him the seniority in the cadre of fitter over his juniors who had been promoted over looking his calim for promotion.

3. The main contention of the applicant is that he should have been considered for promotion as group 'C' Artisan against the decasualised posts numbering 89 sanction^{ed} against decasualisation process in terms of letter quoted above and should have fitted against one of those posts as group 'C' Artisan as his erstwhile juniors in the cadre of casual labour Artisan were promoted and posted as Artisan against decasualised vacancy. As he had continued over 8 years as casual labour Artisan group 'C' he should have been given increment in that grade only and not in the grade of group 'D' Khalasi.

4. The respondents submits that he had been regularised as regular group 'D' Khalasi with effect from 29.1.88 on his own ^{volition} ~~volition~~ as he has given his willingness, to be screened for posting to the post of regular Khalasi as per his letter dated 27.1.88 (Exibit A). The respondents also submit that none of his erstwhile juniors who were working as casual Artisan in

D

group 'C' have been posted in regular group 'C' cadre prior to his joining as regular Khalasi on 29.1.88. As he has become regular group 'D' Khalasi from 29.1.88 he has to look forward to his promotion in that cadre only and cannot compare his case with the other casual labour Artisan who are still continuing as suchgor regularly posted as artisan after 29.1.88. He has no claim to be considered for posting as regular group 'C' post against decasualisation post which are sanctioned after 29.1.88 i.e. after he had become regular Khalasi.

5. The short point to be considered here is whether his prayer for drawing increments in the cadre of group 'C' post after 29.1.88 is in order or not and whether he has any claim to be considered for the post of group 'C' Artisan against the decasualised posts or other post earmarked for regularising group 'C' casual labour Artisan against those posts.

6. We have heard the learned counsels for both sides and also perused the records.

7. It is not in dispute that the applicant worked as a casual labour Artisan in group 'C' post from 19.1.81 to 28.1.88. It is also not in dispute that he was regularised in group 'D' post under the scheme of decasualisation from 29.1.88. It cannot be said that he was regularised in group 'D' post with effect from 29.1.88 under the scheme of decasualisation against his wish. Exhibit 'A' clearly indicates that he was willing to be screened for regularisation against group 'D' post under the decasualisation scheme for absorption as group 'D' employee. If he was not willing to be considered for regularisation in the group 'D' post there is no need for him to give a consent letter

1

dated 27.1.88. A regular group 'D' employee has got better service conditions compared to group 'C' casual labour Artisan. This appears to have been weighed with him in giving his consent letter dated 27.1.88 (Annex. A) for regularisation in group 'D' post. Having come to regular Group 'D' service his request to pay him in the pay scales applicable to group 'C' Artisan is not at all tenable and he is eligible only to be paid in the regular group 'D' scale from 29.1.88^{and is} also eligible to draw his increment in that scale thereafter. Hence this contention of not paying him in the pay scale of regular Artisan post and granting him increment in that scale fails.

8. The ^{second} ~~first~~ contention is that he was entitled to be promoted as group 'C' Artisan as his erstwhile junior casual labour Artisan were absorbed as group 'C' Artisan. The learned counsel for the applicant quoted number of cases of casual labour Artisan who were regularised in group 'C' Artisan cadre, over looking applicant's claim. It was also submitted that he was not even considered for promotion though many of his juniors were considered.

9. The applicant is eligible to be considered for regularisation in group 'C' post of Artisan for which his juniors were considered prior to 29.1.88 by which date he was regularised as group 'D' employee. The applicant's case is that there were number of casual labour artisan staff who were ^{his} juniors who are absorbed as regular Artisan prior to 29.1.88 whose names are given in para 4 (i) of the application. The learned counsel for the respondents submit that they were all promoted as regular group 'C' Artisan only

1

after the applicant was regularised in group 'D' post on 29.1.88 and hence he has no right to claim for regularisation against group 'C' post even if his erstwhile juniors in Artisan cadre of group 'C' were regularised as such as he does not belong to the cadre of casual labour group 'C' after 29.1.88. The applicant's counsel also agree that the applicant has right to be considered for absorption in regular group 'C' Artisan post, only if his juniors in casual labour Artisan Category were considered and absorbed as regular group 'C' Artisan post before 29.1.88. We had directed respondent No.2 to examine the records and submit to us regarding the factual verification whether any of the juniors to the applicant was considered and promoted as regular Artisan in Group 'C' prior to the date of 29.1.88 when the applicant was regularly posted in Group 'D' service. A statement dated 7-3-94 on behalf of the above mentioned respondent was produced before us wherein it has been unambiguously stated that none of the applicant's juniors in the erstwhile seniority of casual artisan were considered and posted as a regular artisan in Group 'C' before the crucial date of 29.1.88. In the selection which were conducted in 1984, 85 none of his juniors were considered. In the panel published on 26.10.88 also none of his juniors were posted in Group 'C' artisan cadre. Pursuant to the decasualisation, ~~as a~~ selection was held in 1990 and the panel was published on 16.4.90, i.e. much later than 29.1.88 when the applicant was posted in regular Group 'D' service. Only in this selection persons named in para 4(i) and 4(j) of the application were all empanelled ^{answer to} ~~there~~ the ~~the~~ applicant cannot nurse any grievance because by then he was in

D

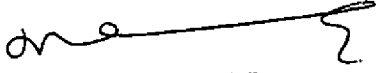
regular Group 'D' service on his own motion . In view of the above we are satisfied that none of his juniors in the erstwhile category of casual artisan were posted in regular Group 'C' artisan category in preference to the applicant before 29.1.88. No documents were also produced by the applicant to show that he was regularly posted in Artisan category.


10. Applicant relied ~~on~~^{on} the judgement of this Tribunal dated 7-10-91 in O.A. No. 327/90 to support his contention that even now when he was regularly posted in Group 'D' service he can be considered for posting in regular Group 'C' Artisan cadre because of his long service as artisan in casual capacity. The above said decision was pursued by us. Applicant in that O.A. was actually promoted to skilled artisan cadre but was reverted to Group 'D' service because of which the respondents in that O.A. were directed to consider the case of the applicant for posting in regular artisan grade. The applicant herein was never posted in regular artisan category before his absorbtion in regular Group 'D' cadre. In view of this ^{Care & the} the applicant in ~~this~~ present O.A. can be easily differentiated from the ^{Care & the} applicant in O.A. No. 327/90. The applicant's counsel also relied on the judgement of Jodhpur Bench of this Tribunal dated 19.8.81 in O.A. No. 359/89 to state that the respondents therein was ordered to pay the applicants therein, the pay as casual typist instead of casual labour. Applicants in that O.A. were performing the duties of casual typist though they were paid ~~as at~~ the Casual labour rates. But in this case the applicant was paid at the rate applicable to the casual artisan while he was in casual service and never paid at the casual labour rates. Hence this citation also does not help the applicant.

D

15

11. In view of the above we find that no injustice was meted out to the applicant and his case was dealt with in accordance with rule. Hence we see no merit in this O.A. and is liable only to be dismissed. Accordingly we do so.
No costs.


(R. Rangarajan)
Member(A)


(M.S. Deshpande)
Vice-Chairman

k

(16)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6
PRESCOT ROAD, BOMBAY 1

REVIEW PETITION NO. 78 OF 1994

in

O.A.No. 121/91

A.R. Chavan

..Applicant

V/s

Union of India & Ors.

..Respondents

Coram: Hon.Shri Justice M.S.Deshpande, Vice Chairman
Hon.Shri R. Rangarajan, Member(A)

TRIBUNALS ORDER:(By Circulation)
[Per: R. Rangarajan, Member(A)]

Dated: 1.9.1994

1. O.A. No. 121/91 was decided on 10.3.1994 rejecting the prayer of the applicant for his promotion as Fitter and assigning him seniority in the cadre of Fitter over his juniors. This Review Petition has been filed for the review of the above decision in the above said O.A.

2. The main contention as can be seen from the Review Application is that the applicant in this Review Application has worked as Fitter and hence he is entitled for the same relief as given to the applicant in O.A.No.327/90 decided on 7.10.1991.

3. We have perused the judgment in OA NO.121/91 dated 10.3.1994. It has been clearly indicated in para 9 of the judgment that the applicant in this review petition has worked only as Casual Labourer Artisan upto 29.1.1988 from 19.9.1981. We have indicated very clearly in the above said para that 'no documents were produced by the applicant to show that he was regularly posted in Artisan category'. In all his representations enclosed as Annexures to the main O.A. No.121/91, the applicant had never stated that he worked as regular artisan in Group C category as Fitter. From all his representations, it can be clearly inferred that he had worked only as Casual Labourer Artisan, till he was regularly posted in Group D service on 29.1.1988.

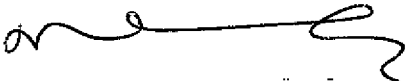
D

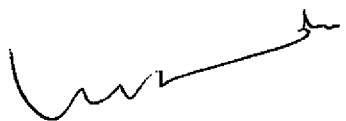
Hence he cannot claim promotion to Group C category against the quota earmarked for direct recruitment from casual labour artisan group after 29.1.1988, even if his juniors in the casual labour artisan category are posted against the direct recruitment quota after that date.

4. The case of the applicant in OA No.327/90 was differentiated because the applicant therein was regularly posted to Skilled Artisan cadre and thereafter reverted to Group D service because of which the respondents in that O.A. were directed to consider the case of the applicant in that O.A. for posting him in regular artisan cadre. Even in the review application, it has been clearly stated that Shri Shanmugan, applicant in OA NO.327/90 passed the Trade Test on 10.11.1987 i.e., while he was working as a Skilled Worker between the period 19.9.1982 to 11.3.1988, whereas in the case of review applicant no date of passing of the trade test has been indicated during the period he worked as Casual Labour Artisan Skilled Category from 19.1.1981 to 28.1.1988. Hence it can be safely concluded that the applicant in OA NO. 327/90 was regularly promoted to artisan category after passing the necessary trade test and was reverted to Group 'D' thereafter, whereas the applicant in this R.P. was never promoted to regular artisan category at any time. Hence, the case of the applicant in OA No. 327/90 can easily be differentiated from the case of the applicant in this R.P.

5. The statement dated 7.3.1994 submitted on behalf of the respondents has been unambiguously stated that none of the applicants junior to the erstwhile seniority of casual artisan were considered and posted as regular artisan in Group 'C' before the crucial dated of 29.1.1988. This factor has never been controverted by the applicant.

6. In view of what is stated above, we see no error apparent on the face of the judgment dated 10.3.1994 in O.A.No. 121 of 1991. Hence this R.P. merits no consideration and is therefore dismissed. No costs.


(R. Rangarajan)
Member(A)


(M. S. Deshpande)
Vice Chairman