

E.S.C
IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH
AT HYDERABAD

D.A. 545/91.

Dt. of Decision : 26-8-94.

C.K. Gopalan

.. Applicant.

vs

1. Union of India rep. by
General Manager,
SC Rly, Rail Nilayam,
Secunderabad.

2. Divisional Engineer Constructions (CRS),
SC Rly, @ Tirupati. .. Respondents.

Counsel for the Applicant : Mr. D. SRINIVAS

Counsel for the Respondents: Mr. V. BHIMANNA, Addl.CGSC.

CORAM:

THE HON'BLE SHRI JUSTICE V. NEELADRI RAO : VICE CHAIRMAN

THE HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

35

O.A.No.545/91.

Date: 26.8.1994

JUDGMENT

I as per Hon'ble Sri R.Rangarajan, Member(Administrative) X

Heard Sri D.Srinivas, learned Counsel for the applicant and Sri V.Bhimanna, learned Standing Counsel for Railways.

2. The applicant herein was appointed as ELR/Mopla Khalasi on 3.2.1975 in Kazipet unit of South Central Railway. He was then transferred to the office of the Divisional Engineer (Construction)/BDCR on 19.9.1980. It is stated by the applicant that while he ^{was} ~~is~~ working so, he was promoted as Rivetter Skilled Grade-I on 19.4.1982. He was later transferred along with some other employees to the office of the Sr.Divisional Engineer(Construction) (CRS), Tirupathy by order dt. 27.6.1984(Annexure-I). He was brought on temporary status from 1.1.1984 ^{and later} with retrospective effect from 1.1.1981, ~~as~~ can be seen from Annexure-IV of material papers. It is submitted by the applicant that though he was shown as Rivetter Skilled Gr.I, his pay was not fixed in the scale of Rs.380-560 but he alleges that his pay was wrongly fixed in the grade of Rs.260-400 i.e. Skilled Rivetter Gr.III. He made several representations for fixing his pay correctly with effect from 18.4.1982 i.e. the date on which he was reported to have been promoted to that grade as Rivetter Skilled Gr.I, in the grade of Rs.380-560. ~~These~~ ^{representations} were reported to have been submitted immediately after he was brought on temporary status. His representations are filed at Annexure-VI and XI as material papers. He was replied by the impugned order dt. 5.3.1991 after a long lapse of time by R-2 stating that the applicant was promoted from Mopla Khalasi to Rivetter in the scale of Rs.260-400 with effect from

...3/-

A

17/2

456

19.12.1981 at Rs.17-76 per day and that the applicant was not promoted as Rivetter Skilled Gr.I. The impugned order is at Annexure-XIII of material papers. The applicant has filed this O.A. challenging the above said impugned order and prayed for the following reliefs:-

- (i) for a declaration that non-fixation of his pay in the grade of Rs.380-560 with effect from 18.4.1982 in the grade of Rivetter Skilled Gr.I is illegal, arbitrary, and violative of Articles 14, 16 & 21 of the Constitution of India.
- (ii) for a direction to the respondents to fix his pay in the scale of Rs.380-560 with effect from 18.4.1982 with all consequential benefits.
- (iii) for a direction to re-fix his pay as per the scales prescribed by the IV Pay Commission in the grade of Rs.1320-2040.
- (iv) for a direction to the respondents to pay arrears of salary and other emoluments consequent to the above.

3. In the reply affidavit, the respondents state that the applicant was promoted as Rivetter Skilled on 27.6.1984 and was given consolidated pay which is equivalent to the scale of Rs.260-400. The respondents further state that he was paid wages only as Rivetter Grade-III @ Rs.17-46 ps. per day i.e. 1/30th in the scale ~~scale~~ of Rs.260-400 with effect from 19.12.1981. It is submitted that the applicant was transferred to the Sr.Divisional Engineer (C), CRS, Tirupathi in the same grade. He was given temporary status as per rules. They further state that the normal channel of promotion is from skilled in the scale of Rs.260-400 to Skilled Grade-II in the scale of Rs.1200-1800 and from Skilled Grade-II to Skilled Grade-I in the scale of Rs.1320-2040. As the applicant was ~~in the grade of~~ Rivitter on

57

1/30th of the scale of Rs.260-400 i.e. Skilled Grade-III, he cannot claim the status of regular Skilled Grade-I under any circumstances. An employee can get promotion to a particular grade only if he is in the next below grade on regular basis. As the applicant was only in the grade of Rs.260-400 (Rs.950-1500 RSRP) as a Casual Labour Artisan he cannot jump to the grade of Rs.1320-2040(RSRP) skipping his seniors in the regular grade.

4. The only point that arises for consideration in this OA is whether the applicant could have been promoted and posted as Skilled Grade-I in the grade of Rs.380-560 (Rs.1320-2040 RSRP) regularly as he had attained temporary status as Casual Skilled Grade-III Artisan only from 1.1.1981.

5. Mopla Khalasis are employed normally to perform heavy work especially in the Bridge organisations of Railways where dismantling, ~~refection~~ work and lifting of heavy materials is involved. Mopla Khalasis can be appointed on casual basis as unskilled and they can also be engaged as Casual Skilled Artisan Grade-III, II and I. But such promotion, or engagement of such Casual Labourers, either unskilled or any of the skilled categories depend on their fitness to perform the duties prescribed for such posts and availability of provisions in the estimate. Even if a Casual Artisan in the grade of Skilled Gr.II or Skilled Gr.I are engaged because of his fitness to perform such duties and availability of necessary funds in the appropriate estimates, he cannot claim to have been recruited and to have post regularly in that grade without following/recruitment ^{the} rules.



6. As per Recruitment Rules, there is no direct recruitment provided for in the Grade of Skilled Gr.II and I Rivetter. A small percentage of 20% ~~or so~~ is only provided for direct recruitment in the category of Skilled Gr.III Rivetter. Hence, there can be no direct recruitment even for Casual Labour Artisans in a regular capacity against Skilled Grade-II and III Rivetter category. Percentage earmarked for direct recruitment in the Skilled Gr.III Rivetter category can be utilised for absorption of Casual Labour artisans. Recruitment Rules for Skilled in Grade-III Artisans prescribes promotion from regular Khalasis in that seniority unit and certain percentage fixed for direct recruitment ~~for~~ fresh blood. This direct recruitment limited ~~is~~ to the extent of 20% of the total vacancies to be filled. ~~at expectation~~ The applicant relies on the various letters issued such as Annexures-I, II and III of material papers, wherein it is stated that he is Rivetter Skilled Grade-I. But, in all those letters, it is seen that he was given a fixed consolidated pay of Rs.719-50 ps. From the above, it cannot be stated that he was appointed as Rivetter Skilled Grade-I. It is possible that he would have been asked to discharge the duties of Skilled Grade Rivetter Gr.I because of his experience and availability of funds in the estimates. Such Casual appointments as Skilled Artisan will not vest on him any right to be posted to that grade on regular basis ~~xxxxxx~~ ignoring the seniority of ~~his~~ seniors in that seniority unit. His promotion to Skilled Artisan has to be given following the recruitment rules and not in an arbitrary manner, or disregard of rules. It is very unfortunate that the Annexures quoted above show that the applicant is Skilled Rivetter Grade-I without indicating his scale of pay.



issued by the incompetent officials Such irregular orders / will not give him the benefit of placing him in regular capacity as Skilled Grade-I.

from the OA and the reply

7. It is not clear / whether he was appointed as Mopla Khalasi in the year 1975 in Skilled or Unskilled category. No letter has been produced before us showing his initial appointment. However, it is admitted that he was given the temporary status of Mopla Khalasis with effect from 1.1.1981 and was given a consolidated pay of Rs.719-50 ps. i.e. 1/30th of pay in the scale of Rs.260-400 in the grade of Skilled Grade-III. Thereafter, he was engaged as Casual Labour Artisan in the higher grade. As there are number of Khalasis in the regular cadre, he cannot even claim the post of Skilled Grade-III Rivetter on regular basis if he is not selected regularly ~~x~~ against the 20% quota earmarked for direct recruitment. Unskilled staff in the seniority unit have to be promoted to Skilled Grade as per recruitment rules and only ~~20% is~~ earmarked for direct recruitment. The applicant can aspire to become Skilled Grade-III Rivetter only against 20% quota of vacancies earmarked for filling up by direct recruitment.

8. As the applicant was given temporary status with effect from 1.1.1981 as Skilled Grade-III, he can be considered for absorption against Skilled vacancies under direct recruitment quota. As he had worked for considerable period as Skilled Rivetter in various grades, ~~which~~ it is just and proper to absorb him against Direct Recruitment quota in the Skilled Grade-III as per his turn ~~with~~ his immediate junior in the seniority list is posted as Skilled Gr.III Rivetter. He has to be considered and given further promotion on that basis provided he fulfils the other necessary conditions for promotion such as suitability etc. As the applicant is representing his case right from the time when he was given temporary status for fixing his pay in the higher grade of

(60)

Skilled Rivetter, there are no laches on his part in representing his case in time and hence he has to be given the full arrears of pay and allowances on his promotion to higher Skilled Grade as indicated above. Under the above circumstances, the following directions are given to the respondents:-

The applicant should be considered for regular absorption in the post of Skilled Grade-III Rivetter in the scale of Rs.260-400 (Rs.950-1500 RSRP) against earmarked 20% direct recruitment quota from the date when his immediate junior in the seniority list was absorbed in that grade. He should be given further promotions to higher grades in the Skilled Category on the basis of his position in the integrated seniority list of Skilled Gr.III subject to the condition that he is found suitable otherwise for such promotion. He is entitled for full arrears of pay and allowances, if any, on his absorption as Skilled Gr.III Rivetter and further promotions on that basis.

8. The OA is ordered accordingly. No costs.

[Signature]

(R.Rangarajan)
Member (Admn.)

[Signature]
(V.Neeladri Rao)
Vice Chairman

Dated 26 th August, 1994.

[Signature] 31/8/94
Deputy Registrar (J)CC

Grh.

To

1. The General Manager, Union of India, S.C.Rly, Railnilayam, Secunderabad.
2. The Divisional Engineer Constructions (CRS) S.C.Rly, Tirupathi.
3. One copy to Mr.D.Srinivas, Advocate, CAT.Hyd.
4. One copy to Mr.V.Bhimanna, SC for Rlys, CAT.Hyd.
5. One copy to Library, CAT.Hyd.
6. One copy to D.R.(J)CAT.Hyd.
7. Copy to all Reporters as per standard list of CAT.Hyd.
8. One spare copy.

pvm

[Signature]
31/8/94