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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH ::
AT HYDERABAD

O.A.No. 1016/91.

Date of Judgment: 9/3 Jan/92

1. B.Shankaraiah Applicants
2. P.Ramulu

Vs.

1. The Chief Administrative Officer
(Constrn.), S.C.Rly., Secunderabad.

2. The Divl. Rly. Manager,
S.C.Rly., Secunderabad.

3. The Divl. Engineer (Constrn)-II
S.C.Rly., Secunderabad.

4. The Chief Permanent Way Inspector
(Constrn), S.C.Rly., Sanathnagar,
Secunderabad.

5. The Depot Store Keeper (Constrn),
S.C.Rly., Lingampally Respondents

Counsel for the Applicants : Shri P.Krishna Reddy.

Counsel for the Respondents : Shri N. ~~Reddy~~ ^{V. Ramana}, SC for Rlys.

CORAM:

THE HON'BLE SHRI R. BALASUBRAMANIAN, MEMBER (A)

THE HON'BLE SHRI C.J. ROY, MEMBER (J)

I Judgment as per Hon'ble Shri R.Balasubramanian, Member(A) I

This application has been filed by Shri B.Shankaraiah & another under section 19 of the Administrative Tribunals Act, 1985 against the Chief Administrative Officer (Constrn), S.C.Rly., Secunderabad & 4 others. The prayer in this application is to declare the order No.YP/E/416/PCLS dated 9.8.91 illegal and to direct the respondents to regularise the services of the applicants in Group 'C' - w.e.f. 16.10.82 in the case of Applicant No.1 and w.e.f. 15.11.82 in the case of Applicant No.2.

2. Applicant No.1 joined as a Casual Gangman in the Construction Division. On the recommendation of the concerned authority, the Divl. Engineer (Constrn) issued a memorandum on 16.11.82 permitting payment of higher wages corresponding to the post of Stores Issuer. This is on a daily wage basis but at a higher rate than the rate applicable to

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Group 'D'. Similarly, Applicant No.2, who joined as a Casual Gangman in May, 1978, was also placed even though on a casual basis at a higher rate of payment by an order dated 18.2.83. While they have been performing these duties for about 9 years, by a notification dated 18.6.91 they were asked to appear before a Screening Committee for screening of casual labour against 33 $\frac{1}{3}$ quota against 3% Open Line vacancies. After selection they have been asked to report as Group 'D' staff while it was the expectation of the applicants that they would be regularised in Group 'C'. The applicants represented but to no avail. Hence this application.

3. The respondents have filed a counter affidavit and oppose the application. It is their case that the screening test to which the applicants were subjected was only for regularisation of casual staff to regular Group 'D' staff and that there is no provision in the rule for regularisation straightway in Group 'C' of such casual Group 'D' staff. The mere fact that they were paid at higher daily rates should not be taken to mean that they are entitled to absorption in Group 'C' straightway.

4. We have examined the case and heard the rival sides. The applicants have also filed additional material papers and ~~additional~~ written arguments after the case was heard
(i) The basic fact is that the applicants joined ^{the Railway} around the year 1978 only as Casual Labour in Group 'D'. Due to administrative exigencies the respondents asked them to perform the duties of Group 'C' on a casual basis from 1982 onwards. For this purpose the applicants have been remunerated at daily wages corresponding to the scale in Group 'C'. Later they had been given temporary status a in accordance with rules but this temporary status is on in the same Group 'D'. The next stage after the tempora status in Group 'D' is regularisation in Group 'D'.

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The applicants must be fully aware of these steps required under the rules.

(ii) The notification for the screening test does not indicate that the test is for regularisation in Group 'C'. It is for screening of casual labour against the $33\frac{1}{3}\%$ quota against Open Line vacancies. The apportionment of $66\frac{2}{3}\%$

and $33\frac{1}{3}\%$ for Open Line Staff and Casual Labour Project respectively in Group 'D', according to orders of the Board.

(iii) According to Rule 174 of the Indian Railway Establishment Manual Vol. I 1988 Edition, for recruitment to the posts of Clerks in Group 'C' the apportionment is $66\frac{2}{3}\%$ by direct recruitment and $33\frac{1}{3}\%$ by selection of Group 'D' staff. The applicants who are sufficiently educated should be aware that if they want promotion to clerical cadre it should be only against the $33\frac{1}{3}\%$ quota after regularisation in the specified Group 'D'.

(iv) It is averred by the respondents that in the screening test the nature of test was such as applicable to Group 'D' category only and not for Group 'C' category and the applicants had undergone these tests like carrying loads etc.

In view of the above, the contention of the applicants that they were under the impression that they would be straightway appointed as Clerks is not acceptable. If this is acceded to, then it would violate the statutory rules and it would affect the regular Group 'D' staff for whom $33\frac{1}{3}\%$ quota is meant.

5. The applicants have pointed out that in 4 cases the respondents have appointed casual labour in Group 'D' straightway to Group 'C'. The cases referred to by them are those of S/Shri Shyam Sunderlal, S.Kantha Rao, Loviah and Mohd. Khaja Mohinuddin. For this information, they depend on letter No.P(E)535/Con/Clerks dated 14.4.88 issued by the Chief Personnel Officer. We have seen

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the letter. The subject is regularisation of ad-hoc Clerks - Construction and Open Line Units/Divisions - S.C.Railway. The letter relates to some of the Class IV staff belonging to the category of Gangmen/Khalasis/Lascars/Watchmen during the years 1972 and 1977 who were asked to perform as Clerks on an ad-hoc basis. A decision was taken to regularise such ad-hoc Clerks as regular Clerks. The notable features of this decision contained in the letter dated 14.4.88 are:

- (a) It relates to persons who were working as regular Gangmen, Khalasis etc., unlike the applicants who are only casual.
- (b) It relates to the period when such ad-hoc arrangements were being performed during the years 1972 and 1977 whereas the applicants are performing such duties only from 1982 onwards.
- (c) Moreover, such regularisation was to be done as a one time dispensation against both the departmental and direct recruitment quotas and that too to the extent vacancies were available.

It is clear from the above, that this order of 14.4.88 does not in any manner cover the applicants before us. Moreover, the respondents have submitted a note from which it is seen that out of the 4 names mentioned by the applicants S/Shri Shyam Sunderlal, S.Kantha Rao, Loviah and Mohd. Khaja Mohinuddin are regular Group 'D' staff unlike the applicants who are only casual Group 'D' staff. However, the case of Sh. Mohd. Khaja Mohinuddin appears to be an exception as a special and as a one time exception referred to in the 14.4.88 letter applicants. The respondents cannot make this a ground and derive support from this isolated case. Even if the decision is erroneous, such an erroneous decision cannot give any benefit to the applicants as held by a Full Bench of this Tribunal in the case of C.Seetharamaiah & others Vs. Accountant General, Andhra Pradesh & others I,(1988) 7 ATC 507 I, Relying on the judgment of the Hon'ble Supreme Court in the case of State of Orissa Vs. Durga Charan Das I AIR 1966 SC 1547 I.

we, therefore, feel that the applicants cannot build their case on this isolated case, ~~even if it is erroneous~~. It is, however, in accordance with the decision contained in the letter of 14.4.88.

6. In the written arguments submitted, the applicants have drawn our attention to the judgment of the Hon'ble Supreme Court in the case of Bhagwati Prasad Vs. Delhi State Mineral Development Corporation (AIR 1990 SC 371). In the case before the Hon'ble Supreme Court, the applicants were working as daily rated workers for about 3 years and they were not regularised on the ground that they did not possess the requisite educational qualifications. In that context the Hon'ble Supreme Court observed:

"The initial minimum educational qualification prescribed for the different posts is undoubtedly a factor to be reckoned with, but it is so at the time of the initial entry into the service. Once the appointments were made as daily rated workers and they were allowed to work for a considerable length of time, it would be hard and harsh to deny them the confirmation in the respective posts on the ground that they lack the prescribed educational qualifications. In our view, three years' experience, ignoring artificial break in service for short period/periods created by the respondent in the circumstances, would be sufficient for confirmation."

This decision is not applicable in this case because what is sought to be done now by the respondents is just regularisation in the same group ^{in which} ~~where~~ the applicants were all the time working in a casual capacity. No such obstacle like educational qualification etc., has ~~been raised~~. What the applicants want now is to take advantage of the casual services rendered by them ^{against} ~~to~~ Group 'C' ^{posts and} to be regularised using this as a short-cut to the statutory recruitment rule and at the cost of other eligible regular Group 'D' staff. In this case no hardship has been caused to them because they have been regularised in Group 'D' itself in their own turn. What ~~what~~ has been thwarted by the respondents is their attempt to take advantage of their casual service ⁱⁿ ~~post~~ Group 'C' ^{age} to make a regular entry into that group

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in violation of the recruitment rule. We do not want to permit this.

7. Under these circumstances, we dismiss the application with no order as to costs.

R.B.S. Subramanian
(R.Balasubramanian)
Member(A).

C.J. Roy
(C.J.Roy)
Member(J).

Dated 9th January, 1992.

Deputy Registrar (Judl)

To

1. The Chief Administrative Officer, (Constrn)
S.C.Rly, Secunderabad.
2. The Divisional Railway Manager, S.C.Rly, Secunderabad.
3. The Divisional Engineer (Constrn)-II S.C.Rly, Secunderabad.
4. The Chief Permanent Way Inspector (Constrn)
S.C.Rly, Sanathnagar, Secunderabad.
5. The Depot Store Keeper (Constrn),
S.C.Rly. Lingampally.
6. One copy to Mr.P.Krishna Reddy, Advocate, CAT.Hyd.
7. One copy to Mr.N. ~~Devaraj~~ ^{V. Ramana} SC for Rlys, CAT.Hyd.
8. One spare copy.
9. Copy - to All Reporters as per standard list of CAT.Hyd.
10. Copy to D.R.(J)

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PLANO

TYPED BY

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR.

V.C

AND

THE HON'BLE MR.

M(J)

AND

THE HON'BLE MR. R. BALASUBRAMANTAN : M(A)

AND

THE HON'BLE MR. C. J. Roy

M(J)

DATED: 9 - 1 - 1991 ✓

CONDEB/ JUDGMENT:

M.A./R.A./C.A. No.

in

O.A. No. 1016/91 ✓

T.A. No.

(W.P. No.)

Admitted and Interim directions
Issued.

Allowd.

Disposed of with directions.

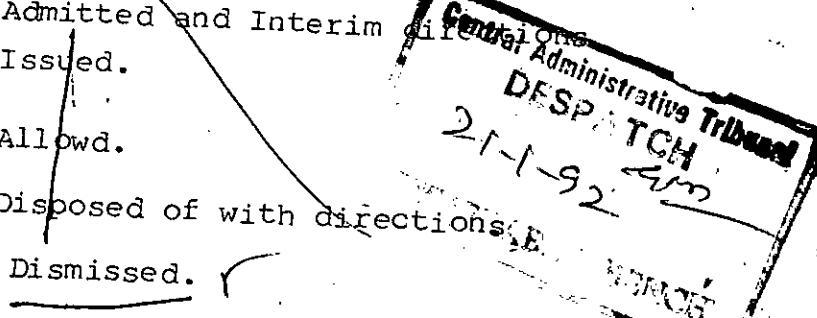
Dismissed. ✓

Dismissed as withdrawn.

Dismissed for Default.

M.A/Ordered/Rejected

No order as to costs.



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