

48

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD BENCH

AT HYDERABAD

C.A.670/96.

Dt. of Decision : 20-8-98.

Sri. T.E. Shubhakar

..Applicant.

vs

1. The Union of India, rep. by its Secretary to the Min. of Railways, New Delhi.
2. The General Manager, SC Rly, Rail Nilayam, Sec'bad.
3. The Divisional Rly. Manager, SC Rly, Vijayawada.
4. The Sr.Divl.Signal and Telecommunications Engineer (Sr.DSTE) Construction, SC Rly, BZA Vijayawada.
5. The Asst. Personnel Officer (G&C) Divl. Rly. Manager's Office (Personnel Branch), SC Rly, Vijayawada.
6. The Sr.Divl. Personnel Officer, SC Rly, BZA Vijayawada. ..respondents.

Counsel for the applicant : Mr. G.V. Sekhar Babu

Counsel for the respondents : Mr. V. Rajeswara Rao, Adl. CGSC.

CORAM:

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

THE HON'BLE SHRI B.S.JAI PARAMESHWAR : MEMBER (JUDL.)

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ORDER

ORAL ORDER (PER HON'BLE SHRI R. RANGARAJAN : MEMBER (ADMN.)

None for the applicant. Heard Mr.V.Rajeswara Rao, learned counsel for the respondents. As this OA was filed in the year 1996, the OA is disposed of under Section 15(1) of the CAT (Procedure) Rules, 1987.

2. The applicant was engaged as Casual Labour Electrical Signal Maintainer on daily wages under R-4 in the year 1979. The applicant has been working eversince continuously and in the October, 1980 he received 1/30th rate as his total remuneration and his pay was fixed on 1/30th of the scale of pay. He was conferred upon temporary status w.e.f., January, 1984. The applicant ^scomplaints that in the year 1989, 1990, 1991 and 1992 there were recruitments for the post of ESM against the direct recruitment quota of 25%. He further adds even though he was possessing the necessary qualification he was not called even though his juniors were called.

3. The applicant is only a temporary status casual labour. Hence, considering him against the departmental quota may not arise. If he is aggrieved by the action of the respondents in not calling for him for the test against direct recruitment quota as per rule he should have challenged the same at that time itself. Hence, his complaint now is not valid.

4. In February, 1993 the applicant was called for screening for absorption as Khalasi in Group-D in the scale of pay of Rs.750-940/-. The applicant expressed his unwillingness by his letter dated 24-2-93 to be absorbed as Khalasi. The applicant was continued as temporary status ESM in the scale of pay of ESM. Another office order was issued on 16-11-95 once again for absorbing the applicant as Khalasi in Group-D in the

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scale of pay of Rs.750-940/- which is lower to the pay scale of skilled category post. The applicant submitted letter dated 1-12-95 (Annexure-3) to R-4 expressing his un-willingness to be absorbed as Khalasi in Group-D in the lower pay scale of Rs.750-940/- and requested for continuing him as Temporary status ESM. It is stated that no reply was given to his representation. He submitted another representation dated 14-12-95 (Annexure-4) to R-3. That also was not replied submits the applicant. By letter No.B/BG/CN/P.676/C/2 dated 14-12-95 (Annexure-5) R-4 relieved him and he is no more in the S&T Unit. The applicant submits that he has a long career without any complaints and hence posting him as a Group-D staff in which he never worked is illegal. He also submits that he should be absorbed in Group-C due to long length of his service in Group-D though in temporary status position.

5. Earlier the applicant filed OA.59/96 in respect of his grievance specified in this OA. An interim order was passed in that OA on 6-2-96 to the effect that the applicant ~~shall~~ ^{could} be continued as temporary status ESM in the present grade provided there ~~is~~ ^{was} work and need to continue him. The applicant submits that the respondents have not implemented that order till date. When the said OA came up for hearing on 3-4-96 the applicant sought to move three MAs for impleading the Union of India and to rely upon certain case laws and for a direction to pay salaries. But that OA itself was disposed of on 3-4-96 granting permission to the applicant to withdraw the said OA.59/96 and with a further permission to him to file a revised consolidated OA making necessary changes. Hence he has filed this OA.

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6. This OA is filed to set aside the impugned order No. B/P.564/V/Vol.V, dated 16-11-95 (Annexure-2) of R-5 whereby the applicant was screened and appointed as Khalasi in S&T department and also the order No. B/BG/CN/P.676/C/2 dated 14-12-95 (Annexure-5) whereby the applicant was relieved on 30-11-95 issued by R-4 and for a consequential direction to absorb the applicant permanently as ESM(Electrical and Signal Maintainer) in Group-C cadre with his present scale of pay.

7. An interim order was passed in this OA dt. 26-6-96. The operative portion of the interim order ~~is~~ reads as below:-

"As an interim measure, it is directed that the applicant shall be permitted to join and take up his duties as Khalasi in the scale of Rs.750-940/- in terms of Divisional Railway Manager's Officer Order No. S&T/59/1955 dt. 16-11-95 (Annexure A-2). The delay in responding to the said order on the part of the applicant is hereby condemned. This shall be without prejudice to his claim for absorption in Group-C with the benefit of continuity in that grade, which would be adjudicated later. The present order shall be subject to the outcome of this OA and future service benefits shall depend entirely on the orders we will pass in the said OA."

8. In the rejoinder it is stated by the applicant that ^{would be} "he had a legitimate expectation that he will be made as permanent ESM, but the said legitimate expectation was violated by the respondents and due to personal problems and suffering and ^{he} financial problems he could not join the Department as Khalasi".

9. The main point for consideration in this OA is ESM whether a temporary status casual Khalasi can be regularised as a permanent ESM in the Railways.

10. The skilled post of ESM is filled by promotion as well as by direct recruitment. 25% of the posts are earmarked for direct recruitment as per the ^a extent rules of the railways. The promotional quota is to be filled by the employees from the ^{regular} lower category working as Khalasi or in the semi-skilled posts.

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The applicant is neither a regular semi-skilled official nor a regular Group-D employee. He has rejected the offer of appointment as regular Khalasi. Having done so, he cannot expect to get promoted against the promotional quota.

11. But no doubt, the applicant can appear for the selection against the posts earmarked for filling up by the direct recruitment as and when the notification is issued for direct recruitment of ESM in the skilled category. He can keep a watch and then respond to the notification for appointment as ESM when the notification is issued. He cannot aspire to get regularised in any other manner as ESM. But he has a right to be absorbed as regular Group-D as that is the basic post for appointment in railways and that is being done by way of regularising the casual employees whether he is a casual employee in Group-D or a casual employee in skilled category. The applicant has been rightly given the regularisation of Group-D on the basis of his number of days of service as casual employee; but for reasons extracted above he refused the posting as Group-D. Hence, he has to wait for absorption as ESM against the direct recruitment quota as and when such a notification is issued for filling up the direct recruitment quota.

12. The applicant had stated that in the year 1989, 1990, 1991 and 1992 he was not called for selection against 25% quota. This point has already been answered by us earlier. Hence, there is no need to further elaborate on that point. The applicant has not quoted any ^{vacant} notification calling for volunteer for filling up against the direct recruitment quota of 25% ~~against~~ against which he was not considered even though he applied for the same. Hence, he has to wait and apply in accordance with the rules. Even though an interim direction was given in the earlier CA.59/96 to continue him as Casual ESM in the grade provided there is work and need to continue him it appears he has been retrenched. Probably, there may not be any vacancy at

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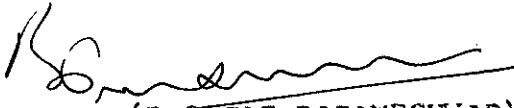
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that time. But, it appears that the applicant left the job on his own when he was relieved and posted as regular Group-D official. If there is any violation of the instructions of this Tribunal he could have suitably challenged the same. But we do not see any proper challenge in this connection.

13. In view of the above discussion, the only course left to the applicant is to apply for a regular posting of ESM as and when notification for direct recruitment is issued by the railways. If the applicant applies for the same, the respondents have to consider that application in accordance with the rules. But even now if the applicant requests for absorbing him in Group-D post, a sympathetic consideration should be given by the respondents in view of the fact that the applicant had worked in a casual basis for a long time. If such a request is received the same should not be rejected on mere technical grounds. The respondents should also engage him in future if there is necessity to engage casual ESM for performing some work. For this the applicant should be in touch with the respondent organisation. Also the respondents should give him preference in engagement as casual ESM over the juniors who are retrenched or from freshers from the open market. As fresh recruitment of casual labour is prohibited ⁱⁿ the railways, the question of appointment ^{of} freshers as casual ESM may not arise. But, it may be possible that juniors to him may be engaged as casual ESM leaving out the applicant. Such errors should be avoided by the respondents and the applicant should be given preference.

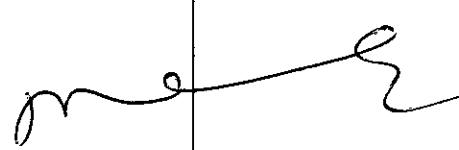
14. With the above direction the CA is disposed of.

No costs.


(B.S.JAI PARAMESHWAR)
MEMBER(JUDL.)

20.8.98

Dated : The 20th August, 1998.
Dictated in the Open Court)


(R. RANGARAJAN)
MEMBER(ADMN.)

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DA.670/96

Copy to:-

1. The Secretary to the Min. of Railways, New Delhi.
2. The General Manager, South Central Railway, Rail Nilayam, Secunderabad.
3. The Divisional Railway Manager, South Central Railway, Vijayawada.
4. The Sr. Divl.Signal and Telecommunications Engineer (Sr.DSTE) Construction, South Central Railway, BZA Vijayawada.
5. The Asst. Personnel Officer (G&C), Divl.Rly, Manager's Office (Personnel Branch), SC Rly, Vijayawada.
6. The Sr.Divl.Personnel Officer, South Central Railway, BZA, Vijayawada.
7. One copy to Mr.G.V.Sekkar Babu, Advocate, CAT., Hyd.
8. One copy to Mr. V.Rajeswara Rao, Addl.CGSC., CAT., Hyd.
9. One copy to D.R.(A), CAT., Hyd.
10. One duplicate copy.

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II COURT

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COMPARED BY

APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH HYDERABAD

THE HON'BLE SHRI R. RANGARAJAN : M(A)

AND

THE HON'BLE SHRI B.S. JAI PARAMESHWAR :
M(J)

DATED: 20/8/98

ORDER/JUDGMENT

~~M.A/R.A/C.P.HB~~

in
C.A.NO. 670/98

ADMITTED AND INTERIM DIRECTIONS
ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

DISMISSED FOR DEFAULT

ORDERED/REJECTED

NO ORDER AS TO COSTS

YLKR

केन्द्रीय प्रशासनिक अधिकारण
Central Administrative Tribunal
प्रेषण / DESPATCH

-7 SEP 1998

HYDERABAD BENCH