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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH
AT HYDERABAD

OA.18/97

dt.18-1-1999

Between

Sk. Hussain : Applicant

and

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

2. Divisional Rly. Manager
(Personnel)
SC Rly., Vijayawada

3. Chief Project Manager (Personnel)
Rly. Electrification
Vijayawada

4. General Manager
Central Organisation
Railway Electrification
Allahabad

: Respondents

Counsel for the applicant GV Sekhar Babu
Advocate

Counsel for the respondents N.R. Devaraj
SC for Railways

Coram

Hon. Mr. R. Rangarajan, Member (Admn.)

Hon. Mr. B.S. Jai Parameshwar, Member (Judl.)

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Order

Oral order (per Hon. Mr. R. Rangarajan, Member (Admn.)

None for the applicant. Sri N.R. Devaraj for the respondents.

1. The applicant in this OA was initially engaged as Casual Labour Mason in the Railway Electrification Project, Vijayawada. He was granted temporary status from 1-1-1984. The applicant was screened and empanelled for absorption in Group-D post as Gangman in Civil Engineering Department, Bejjwada Division. Respondent-4 instructed that the said applicant should be relieved on or before 31-12-1996 from RE/BZA to BZA Division for regularly posting him as Group-D Gangman. Earlier it was also intimated to RE Organization to relieve the Casual Labours to BZA Division ^{for} absorption as the applicant had not been relieved so far, by letter No.E.292/DSRE/3080/ Screening/Vol.II dated 27-8-96 (Annex.VII to the OA).

The contention of the applicant that he is already in the higher scale of Rs.950-1500 as Group-C employee and hence posting him as Group-D in the scale of Rs.775-1025 is arbitrary, illegal and contrary to the rules of the Railways embodied in the IREM.

2. This OA is filed for setting aside the orders in No.E.292/KSRE/3080/Screening/Vol.II dated 27.8.96 and 27.12.1996 and for a consequential direction to the respondents to continue the applicant in his present post of Mason.

3. An interim order was passed in this OA on 8-01-1997. The interim order reads as follows :

"Heard Mr. G.V.Sekhar Babu for the applicant.

It is claimed by the learned counsel for the applicant that as on today the applicant continues to work

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in the post of mason. Subject to that being correct fact, respondents are directed not to disengage him from that post until further orders. At the same time, it is left open to the applicant to join as Gangman in BZA, even now, pursuant to the impugned order, if it is still open to him to do so. However, such joining will be without prejudice to his rights and contentions in the OA and subject to such further orders as may be passed in the OA."

4. When we asked the learned counsel for the respondents to find out whether the applicant had joined as Regular Group-D Gangman in BZA Division, the learned counsel expressed his inability to find out the information.

5. A reply has been filed in this OA. Respondents in their reply submit that he was only a Casual Labour Mason and attained temporary status in that capacity. Hence, paras 1512 and 1516 in Chapter XV of IREM Vol.I (1989) ^{are} ~~is~~ not applicable to him as he was not engaged as substitute. He is a Project Casual Labour and after granting temporary status ^{he continues} he was allowed (as contained in paras 2001(i)(b), 2002, 2003, 2004, 2005, 2006, and 2007(i)(ii) in Chapter XX of IREM Vol.II (1990) (enclosed as Annex.III to the Reply). In terms of the provisions contained in para 1501(i) of IREM Vol.I (1989) Casual Labours including Casual Labour with temporary status is not a Temporary Railway Servant. This rule is enclosed as Annexure-IV. But they are entitled for certain privileges as applicable to Temporary Railway servants such as Privilege passes, increments etc. in terms of para 2005(a) of IREM, Vol.II (1990) (enclosed as Annex.V) and also half the Casual Labour service from the date of attaining temporary status for calculating qualifying service for pensionary benefits on their eventual absorption ~~in~~ in regular employment under the same para of IREM.

6. The respondents also submitted that a Skilled Artisan Gr.II in Group-C post is to be filled in accordance with para-1591(i)(ii)(iii) of IREM, Vol.I (1989) (Annex.VIII). As per that instruction a Casual Artisan can aspire to be absorbed regularly in Group-C Skilled Artisan Grade-C post against 25% quota earmarked for Direct recruits. A notification was issued for employment of Artisan staff in TRD Department, Secunderabad Division of SC Railways by letter dated 15/16-12-1993 (Annex.II to OA). Thirty four Casual Labour Artisans including those working as Casual Masons applied for absorption as Artisans, but the applicant did not respond to that notification for absorption as Artisan. The 34 Casual Labour Artisans who had responded were screened on 16-2-1994 and 15 of them including one Casual Labour Mason who was found suitable were empanelled for absorption as Artisans on relief from RE Project in Secunderabad Division. The applicant cannot be asked to be posted as Regular Artisan against the Promotee quota, and 25% to be appointed from the serving Semi-skilled and unskilled staff, but he has right to be absorbed as Group-D employee after his fitness decided on the basis of screening. The applicant having posted after screening as Group-D employee should join as Group-D and he cannot insist for posting against Skilled post except against Direct recruitment post earmarked. The applicant did not join when he was posted as Group-D in BZA Division. Hence, the applicant has got no grievance. The OA is liable to be dismissed.

7. A number of similar OAs had already been disposed of by this Tribunal. One such order is enclosed to the reply.

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OA.344/97 decided on 24-3-1997 (page 61 to the reply) is a similar case. There also the applicant ^{were} posted in regular Group-D post, ^{but} requested ^{them} for posting ^{them} as a Regular Artisan post. That OA was disposed of rejecting the request of the applicants but giving liberty to the applicants therein to apply against Group-C against 25% quota of Direct recruitment if available whenever any notification to that effect is issued and directing the respondents to consider the case of the applicants therein if they apply as directed above. But a direction was also given to the respondents not to force the applicants therein to join Group-D post in pursuance of the impugned order therein posting the applicants ^{therein} in Group-D post. ^{Further} It was indicated in the judgement that the applicants therein if they do not join as Group-D staff, ^{if} ^{they} ^{stand} the risk of being retrenched ^{from} the work-charged ^{where} post of Artisan in which they ^{were} working in the RE Project ^{if there were} ^{are} made surplus or there ^{was} ^{is} no necessity to operate those posts in work-charged RE organisation.

8. In the Railways the status of a Temporary status Casual ^{Railway} Labour and a Temporary ^{Employee} employee are different. A Temporary status Casual Labour cannot compare himself with that of the Temporary Railway employee in certain aspects. One such aspect is in regard to appointment of Casual Labour Temporary status Artisan staff regularly instead of absorbing them as Group-D staff. Rules provide for a Temporary status Artisan staff to be appointed against a Group-D post on the basis of the number of days Service he had put in as a Temporary status Artisan staff. Rules do not provide for such Artisans to be posted as regular employees under Group-C against promotee quota. They can compete with others against Direct Recruitment quota.

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9. In the present case, the applicant is a Temporary status CL Mason. Hence, he has a right for consideration and appointment as Regular Group-D Gangman in the Railways in accordance with the seniority. He has right to be considered for absorption against 25% Direct recruitment quota as Group-C staff. He has no right for consideration against Promotee quota for being posted as a Regular Artisan staff.

10. The respondents state that the applicant had not responded when notification was issued for Direct Recruitment 25% quota. Having failed to do so he cannot demand for absorption as Regular Group-C staff against Promotee quota. The respondents have rightly screened him for absorption as in Group-D as Gangman in BZA Division. The applicant is at liberty to accept that regular posting as Group-D and respond to the notification whenever issued for direct recruitment in Artisan category. If he is not willing to join as a Regular Group-D staff the respondents cannot force him to join as Group-D regular employee, but the applicant stands the risk of being retrenched in case ^{his} work-charge post in which he is engaged as Casual Labour temporary status CL Mason expires. Hence, the direction given in OA.344/97 will squarely hold good in this OA also.

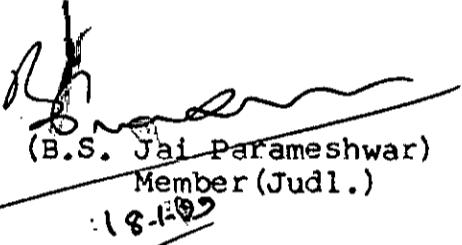
11. Hence, the following direction is given :
The applicant if so advised may give ^{his} unwillingness to join as Gangman in the scale of Rs.775-1025 in BZA Division of SC Railway if he has ^{not} already joined as Regular Gangman. If such a letter is received within a fortnight from the date of receipt of copy of this order, then the respondents should not force him to join that post in pursuance of the impugned posting order posting him as Regular Group-D Gangman in BZA Division. The applicant should be continued in RE

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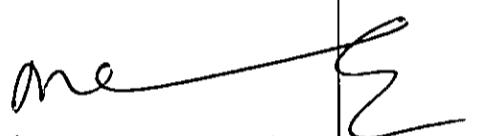
..6.

Organisation in casual capacity in the present post in which he is working, but he stands the risk of being retrenched if the work-charged post is made surplus or there is no necessity to operate that post in the RE Organization. The applicant if so advised may apply against Group-C post against 25% quota of Direct Recruitment if available whenever any notification to that effect is issued in future. If such an application is received in pursuance of the notification issued by the respondents then the applicant should also be considered along with others in accordance with law.

12. The OA is ordered accordingly. No costs.


(B.S. Jai Parameshwar)
Member (Judl.)

18-1-99


(R. Rangarajan)
Member (Admn.)

Dated : January 18, 99
Dictated in Open Court

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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH : HYDERABAD.

THE HON'BLE MR. JUSTICE O.H. NASIR :
VICE CHAIRMAN

THE HON'BLE MR. H. RAJENDRA PRASAD :
MEMBER (A)

THE HON'BLE MR. R. RANGARAJAN :
MEMBER (A)

THE HON'BLE MR. B. S. JAI PARAMESWAR :
MEMBER (J)

DATED: 18/1/99

ORDER/JUDGMENT

M.A./R.A./C.P.NO.

In

O.A. NO. 18/97

ADMITTED AND INTERIM DIRECTIONS ISSUED

ALLOWED

DISPOSED OF WITH DIRECTIONS

DISMISSED

DISMISSED AS WITHDRAWN

ORDERED/REJECTED

NO ORDER AS TO COSTS

SRR

केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
प्रेषण / DESPATCH

28 JAN 1999

हैदराबाद न्यायपीठ
HYDERABAD BENCH