

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

Date of Order : 19/11/2001

O.A No. 396/1995

Nihal Singh s/o Shri Arjun Ram Ji, aged around 36 years, resident of BE-16, Double Storey, Vidyadhar Nagar, Jaipur. Presently working as A.C. Operator, in the office of G.M.T.D., Jaipur.

... APPLICANT.

v e r s u s

1. Union of India through Secretary, M/o Communication, Department of Telecommunication, Sanchay Bhawan, New Delhi.
2. General Manager, Telecommunication District, M.I. Road, Jaipur-10.

... RESPONDENTS.

Mr. P. P. Mathur, counsel for the applicant.
Mr. Vijay Singh, Proxy counsel for
Mr. Bhanwar Tyagi, counsel for the respondents.

CORAM

Hon'ble Mr. S. K. Agarwal, Judicial Member.
Hon'ble Mr. A. P. Nagrath, Administrative Member.

: O R D E R :

(per Hon'ble Mr. A. P. Nagrath)

The applicant has challenged the order dated 22.08.1995 (Annexure A-1), by which he has been regularised as Regular Mandir in Group-D. His claim is that he has a right to be regularised on the post of Air Conditioning Operator (A.C. Operator, for short) / Air Conditioning Mechanic (A.C. Mechanic, for short) in the pay scale of Rs. 975-1660.

2. The facts, as stated by the applicant in brief, are that he was initially appointed as a Casual Labour on daily wages on



the post of A.C. Operator on 12.08.1983 and has been continuously holding the post except for certain artificial breaks and at the time of filing of the application he was getting a consolidated salary of Rs. 2758.50/- . He has stated that he possess requisite qualification for the post of A.C. Operator and that departmental authorities have put him to work only as A.C. Operator all along. In support of this contention he has filed certificate dated 24.03.1984 issued by the Assistant Engineer, Electrical sub-division, Tilak Marg, Jaipur and another certificate dated 07.01.1989. He has termed the action of the respondents of regularising him as Masdoor as erroneous, on the ground that the pay scale of Masdoor is only Rs. 750-940 (RF), while he all along worked as A.C. Operator / A.C. Mechanic and is entitled to be regularised only on that post i.e. in Group-'C'.

3. The respondents have opposed the prayer of the applicant by stating that the applicant has never held any regular post of A.C. Operator, as no such post exists in the Unit in which he has been working. The respondents admit that, services of the applicant have been utilised as Skilled Casual Labour ^{but} state that he had never occupied any regular post of A.C. Operator.

4. The short controversy to be adjudicated is whether the applicant is entitled to be regularised on the post of A.C. Operator in Group-C. Regularisation of Casual Labour either in Group-D or in Group-C can only be as per rules of the department or any scheme framed for the purpose. The applicant



has not been able to bring on record any Departmental Rules which provides for regularisation of a Skilled Casual Labour only in Group-C. Learned counsel, on his behalf, Vehemently argued that the applicant had worked over long years as A.C. Operator and thus there is a presumption that a post of A.C. Operator existed. The respondents have emphatically denied existence of any post of A.C. Operator in the unit where applicant is working. We are of the consideral view that there cannot be a presumption of availability of a post as this is a matter of fact. No documents has been produced to establish that a post of A.C. Operator existed in the unit in which the applicant was working. We, of course find that in a number of communications, the applicant has been shown to be working as A.C. Operator on daily wages, while respondents deny this but they do accept that he was working as a Skilled Casual Labour. We do not find plea of the respondents acceptable that the applicant was never appointed as A.C. Operator. All the official documents have been referring to the applicant only as A.C. Operator. Be that as it if may, it is immaterial whether the applicant was called A.C. Operator or only a Skilled Macdoor. The fact remains that he is either a A.C. Operator or he was a casual skilled worker. Even though, the applicant has worked in Group-C scale as casual basis for a long time, this does not create any right in his favour for regularisation in Group-C only. As held by Delhi High Court in the case of Municipal Corporation of Delhi Vs. Gauri Chankar and Others (Delhi) 2000(3) SLJ, merely because a casual labour has worked for long years, no presumption of existence of a permanent post can flow.



5. In 1990 SCC (L&S) 586, Satyanarayan Sharma and Others vs. N.M.D.C. Ltd. and Others, Hon'ble the Supreme Court held that where there is no vacancy there can be no regularisation.

6. Written arguments have also been filed on behalf of the applicant. The main thrust of the arguments herein is that there is already a scheme operating for regularisation of casual labour in Group-C. Learned counsel for the applicant had referred to the said scheme at the time of arguments and with the written submissions he has filed the relevant orders dated 16.07.1990, issued by the Department of Personnel and Training. Learned counsel contended that as per this scheme, the applicant was entitled to be regularised in Group-C. He submitted that the cut off date of 31.03.1985 will also not come in the way in the case of the applicant as had happened in two cases of Shri Hari Sharma and Vinod Mathur whose OA No.402/95 for similar relief was rejected by this Bench by order dated 09.08.2001. Since, the applicant had been appointed in 1983, this cut off date will not be a bar in the present case. In the written arguments reference has also been made to the orders passed by Hon'ble the Supreme Court in the case of V.M.Chandra v. Union of India, 1999 (4) SCC 62, by which the petitioner had been ordered to be absorbed in Skilled Artisan grade (Group-C). As per the learned counsel, applicant's case is similar and thus he has a legal right to be absorbed only in Group-C.

7. We proceed to discuss these two main grounds on which the case of the applicant has been built by the learned counsel on his behalf. We have perused CM of the DOPT dated 16.07.1990. For this purpose, Para 2 and Para 8 are relevant and the same are reproduced below:-

"Para 2. The matter has been considered and it has been



decided that casual workers, who have been engaged for performing duties of Group 'C' posts, may, as a one time measure, be allowed age relaxation to the extent of period of service rendered as casual worker in a Central Government Ministry/Department or its attached/subordinate offices to enable them to appear along with other candidates, in the regular examination conducted by the Staff Selection Commission for recruitment to Group 'C' posts. The relaxation in the upper age limit on the above lines will be subject to the following conditions:-

- i) The casual worker must be in employment in a Government office on the date of issue of these instructions.
- ii) He/She must have completed 340 days (205 days in offices observing 5 days a week) of service in the immediately two preceding calender years.
- iii) He/She must be educationally qualified for the post for which appointment is sought.

Para 8. Casual workers employed against other Group 'C' posts for which recruitment is not done on a centralised basis, either by SSC or otherwise, shall also be given age relaxation, as a one time measure, for the purpose of their regularisation against Group 'C' posts subject to fulfilment of conditions mentioned in Para 2 above. These casual employees will also have to compete successfully in the examination/selection test prescribed for the post. Wherever condition for sponsorship through employment exchange is prescribed for recruitment to such posts, this will not be insisted upon in case of casual worker already engaged against

the post."

8. A careful reading of this would show that first of all this was supposed to be One time measure only and this order only provides age relaxation to the extent of service referred as casual labour and permits such casual labour working in Group-C scales to appear alongwith other outside candidates when a recruitment to Group-C post is conducted. There is no mention anywhere of automatic regularisation of such employees against even recruitment quota of Group-C posts. In Para 8, it has been specifically stated that these casual employees will have to compete successfully in the examination/selection test prescribed for the post. It is not the case of the applicant that any such recruitment has been held in which he has not been allowed to appear. This CM of DOPT does not give any help to the case of the applicant who is seeking regularisation against Group-C vacancies. Of course, we have already stated earlier that even no vacancy of AC Operator/AC Mechanic exists, as per the respondents.

9. Regarding the case of V.M.Chandra, from the reading of the orders of the Apex Court it is clear that these orders are only in the context of the specific case where the Railway apparently made a reference to Railway Board as to how the casual labour working as Technical Mates were to be regularised and the Board communicated their approval for considering the casual labour Technical Mates in skilled grade against 25% direct recruitment quota alongwith serving casual labour artisans. Since the Railway had resorted to engaging Technical Mates (though no such standard designation of any post exists), they obviously had a difficulty of regulating their absorption, which resulted in this reference to Railway Board and Railway Board's approval thereon. Hon'ble the Supreme Court have held in that case that having decided to consider absorption of Technical

AB

Mates in skilled grades alongwith serving casual labour Artisan, the applicant who was also a Technical Mate could not have been denied the same benefit. It is, thus, clear that the facts of that case are clearly distinguishable from the case before us.

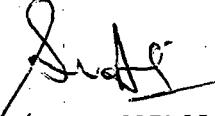
10. Full bench of the Central Administrative Tribunal in CA No. 57/1996, Aslam Khan v. Union of India and ors. decided on 30.10.2000, held that a person directly engaged on Group-C (promotional post) on casual basis and has been granted temporary status, would not be entitled to regularisation in Group-C post directly but only in Group-D.

11. In view of this settled legal position, we do not find any merit in the claim of the applicant. He cannot claim to be regularised only as A.C.Operator, merely because he had worked as such over a number of years. Action of the respondents of regularising him in Group-D post calls for no interference.

12. We, therefore, dismiss this CA as having no merits. No order as to costs.


(A.P. MAGRATH)

Adm. Member


(S.K. AGARWAL)

Judl. Member