

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

* * *

Date of Decision: 7.2.2000

OA 426/97

Palniswamy, TS Mate (Jamadar) under IOW (C) BG CON. Ajmer, Western Railway.

... Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Dy.Chief Engineer (C), Western Railway, Ajmer.
3. Dvl.Railway Manager, Western Railway, Jaipur Dn.,Jaipur.

... Respondents

CORAM:

HON'BLE MR.S.K.AGARWAL, JUDL MEMBER

HON'BLE MR.N.P.NAWANI, ADM MEMBER

For the Applicant ... Mr.C.B.Sharma

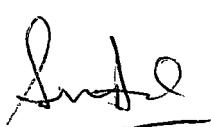
For the Respondents ... Mr.Anupam Agarwal, proxy counsel for
Mr.Manish Bhandari

O R D E R

PER HON'BLE MR.S.K.AGARWAL, JUDL MEMBER

In this OA filed u/s 19 of the Administrative Tribunals Act, the applicant makes prayer; i) to direct the respondents to consider the applicant for absorption/regularisation on the post of Mate (Jamadar) in Group-C as per para 2007 of the Indian Railway Establishment Manual Vol.II read with para 159 of IREM Vol.I 1989 Edition and to allow all consequential benefits, ii) the respondents may be directed to protect the pay of the applicant on his transfer to parent division with all consequential benefits.

2. The facts of this case, as stated by the applicant, are that initially the applicant was appointed as casual Mate in Group-C post on 25.6.77 in Bhavnagar Division. Temporary status was also conferred upon the applicant. Since then the applicant is discharging his duties in the grade of Rs.950-1500 as Group-C employee. It is stated that the applicant is eligible for regularisation on the post of Mate as per provisions given in the Indian Railway Establishment Manual. It is also stated that the respondents have issued the orders to regularise the applicant on Group-D post but did not allow the protection of pay to the applicant. It is



further stated that action of the respondents in regularising the applicant on Group-D post of Gangman is *ex facie* illegal, arbitrary and in violation of Articles 14 and 16 of the Constitution of India and Hon'ble the Supreme Court has settled the controversy in Ram Kumar's case and allowed the protection of pay to the employee till he is promoted on Group-C post. Therefore, the applicant filed this OA for the relief as mentioned above.

3. Counter was filed. It is stated by the respondents that the applicant is not entitled to any regularisation on Group-C post because of non-availability of the post and non-applicability of the rules. The applicant was screened for Group-D post and accordingly he was regularised on a Group-D post. Therefore, in view of the rules and regulations applicable to the applicant, he was rightly absorbed on a Group-D post and, therefore, he cannot claim pay protection.

4. Heard the learned counsel for the parties and also perused the whole records.

5. In *Union of India and others v. Motilal & Ors.* (1996) 33 ATC 304, it was held by Hon'ble the Supreme Court that persons appointed directly as casual Mates although continue as such for a considerable period and thereby acquiring temporary status are not *ipso facto* entitled to regularisation. In view of the above legal position, the applicant in this case is not at all entitled for regularisation in Group-C in the grade Rs.950-1500 (RP).

6. The learned counsel for the respondents submits that if it is *not* possible to regularise the applicant on any Group-C post then he is entitled to protection of pay as per the decision of the Hon'ble Supreme Court. The learned counsel for the respondents on the other hand submits that ~~if~~ it is not possible to regularise the applicant on any Group-C post, ~~as~~ regularisation of the applicant on any Group-C post will be de-horse the rules. Therefore, the applicant is also not entitled to protection of pay.

7. We have given anxious consideration to the rival contentions of both the parties and also perused the whole records.

8. In *Ram Kumar v. Union of India and others*, 1988 (1) SCC 306, the Hon'ble Supreme Court held as under :-



- "i) Railway casual labour working in 'C' category may be screened and regularised in Group-D category but their pay and allowances be protected upto their promotion in 'C' category.
- ii) Railway casual labour working in 'C' category for 5 years may be screened in 'C' category and regularised.
- iii) Railway casual labour attaining temporary status entitled to pensionary benefits."

On perusal of the judgement, as referred above, we are of the opinion that the applicant is entitled to the protection of pay as mentioned above.

8. We, therefore, dispose of this OA with the direction to the respondents to protect the pay of the applicant in view of the judgement of the Supreme Court in Ram Kumar's case cited supra. This judgement shall not preclude the respondents to permit the applicant to work as casual Mate in the pay scale of Rs.950-1500 (old), ^{as} now it is revised, till he is promoted for Group-C post against the promotion quota. No order as to costs.



(N.P. NAWANI)

MEMBER (A)



(S.K. AGARWAL)

MEMBER (J)