

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.52/98

DATED: 27/1/2000

Nanga Singh, S/o Shri Poonam Singh, R/o Vill.Gudli, Post
Bear, Distt.Ajmer, presently working as Gangman, PWI,
Kishangarh, Western Railway.

...Applicant.

Vs.

1. Union of India through General Manager, Western Railway,
Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Divn,
Jaipur.
3. Assistant Engineer, Western Railway, Phulera Jn.

...Respondents.

Mr.C.B.Sharma - Counsel for the applicant

Mr.T.P.Sharma - Counsel for respondents.

CORAM:

Hon'ble Mr.S.K.Agarwal, Judicial Member

Hon'ble Mr.N.P.Nawani, Administrative Member

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

In this Original Application under Sec.19 of the
Administrative Tribunals Act, 1985, the applicant makes prayer:

(i) to quash the order dated 1.10.97 and order dated 20.1.98
which provide absorption of the applicant on Group-D post of
Gangman,

(ii) the respondents be directed to consider the absorption/
regularisation of the applicant on the post of Masen,

(iii) the respondents be further directed to protect the pay of
the applicant drawn by him prior to his regularisation on Group-D
post with all consequential benefits.

2. Facts of the case as stated by the applicant are that he
was initially appointed as casual Masen in Group-C at Phulera. He
was granted temporary status w.e.f. 1.1.84. Since then he is
discharging his duties in the grade Rs.950-1500. It is stated that
the applicant passed the trade test vide letter dated 14.11.86 and
seniority of the applicant was retained in Artisan category vide
letter dated 31.12.97. It is also stated that respondent No.2 has
issued orders dated 1.10.97 regularising the Project Casual Labours
of Jaipur Division and the applicant was relieved to join the new
place, he joined in pursuance of that order. It is stated that
respondent No.3 has issued orders dated 20.1.98 regularising the
applicant on the post of Gangman in the pay scale of Rs.775-1025
and did not allow the protection of pay. It is also stated that the
action of the respondents regularising the applicant on Group-D
post of Gangman is ex facie illegal, arbitrary and in violation of

the provisions of the Constitution of India. It is stated that Hon'ble Supreme Court of India has settled the controversy in Ram Kumar's case and allowed the protection of pay to the employees till he is promoted on Group-C post. Therefore, the applicant filed this C.A for the relief as mentioned above.

3. Counter was filed. It is stated that the applicant was not absorbed in category-C post because of nonavailability of the post. The applicant was screened by the Construction Division and he was recommended for regularisation in Group-D post and accordingly he was regularised on the post of Gangman in the pay scale Rs.775-1025 and was posted under the control of Asstt.Engineer, Phulera. It is also stated that Group-C post is promotion post and the applicant does not fulfil the eligibility criteria, therefore, he was rightly absorbed on Group-D post, the post of Gangman in the pay scale Rs.775-1025 and he cannot claim pay protection. Therefore, according to the respondents, this C.A is devoid of any merit and liable to be dismissed.

4. Heard the learned counsel for the applicant and perused the whole record. We have also perused the written submissions filed by the learned counsel for the respondents.

5. In Union of India & Ors Vs. 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 950-1500.

6. The learned counsel for the respondents submits that it is not possible to regularise the applicant in Group-C as regularisation of the applicant in Group-C will be de hors the rules.

7. We have given anxious consideration to the contentions of the learned counsel for the respondents.

8. In Union of India Vs. Bhishanbher Dutt, 1997 SCC (L&S) 418 it was held by the Supreme Court that appointment on regular basis is a condition precedent for regularisation and a person appointed as part-time employee de hors rules are not entitled to regularisation even though regularly working for long period.

9. In JLN University Jabalpur Vs. Balkishan Soni & Ors, 1997 SCC (L&S) 1119, it was held by the Supreme Court that employees employed in a sponsored project cannot be regularised although working for a long time.

10. In E.Rama Krishna & Ors Vs. State of Kerala, (1996) 10 SCC

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565, it was held by the Supreme Court that appointee de hors the rules are not entitled to regularisation even though they have officiated for long period of 14 years.

11. In view of the above legal position and facts and circumstances of this case, we are of the opinion that the order dated 1.10.97 and order dated 20.1.98 cannot be quashed as the applicant has been rightly screened against Group-D post, as the applicant was working as a monthly rated casual labour in the grade Rs.950-1500 before his absorption in Group-D post. It will be proper in the interest of justice that the respondents must protect his pay in view of the judgment in Ram Kumar Vs. UCI & Ors, 1988(1) SCC 306, Hon'ble the 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.

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

13. We, therefore, dispose of this O.A with the direction to the respondents to protect the pay of the applicant in view of the judgment of the Supreme Court in Ramkumar's case cited supra. This judgment shall not preclude the respondents to permit the applicant to work as casual MRCL in the pay scale of Rs.950-1500 (old) now it is revised, till he is promoted for Group-C post against 12½% quota of promotion.

14. No order as to costs.

(N.P. Newani) 27.1.2000

Member (A).

(S.K. Agarwal) 27/1/2000

Member (J).