

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

O.A. No. 127/2001 198
T.A. No.

DATE OF DECISION 12.12.2003

Khushi Ram _____ Petitioner

Ms Anupama Parashar _____ Advocate for the Petitioner(s)

Versus

UCI and another _____ Respondent

Mr.S.S. Hassan _____ Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement ? *ye*
2. To be referred to the Reporter or not ? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement ? *ye*
4. Whether it needs to be circulated to other Benches of the Tribunal ? *ye*

A.K. Bhandari
(A.K. Bhandari)
Member (A)

J.K. Kaushik
(J.K. Kaushik)
Member(J)

**CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH; JAIPUR.**

Twelfth December two thousand three (12.12.2003)

O.A. No. 127/2001

The Hon'ble Mr. J.K. Kaushik, Judicial Member.

The Hon'ble Mr. A.K. Bhandari, Administrative Member.

Kushiram
S/o Shri Phool Kanwar,
R/o PWI office, Mandalgarh
Distt. Bhilwara (Raj)

: Applicant.

Ms Anupama Parashar : Counsel for the applicant.

versus

1. Union of India, through
General Manager,
Western Railway, Church Gate
Mumbai 20.
2. Divisional Railway Manger,
Western Railway,
Kota Junction,
Kota (Rajasthan)

: Respondents.

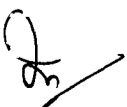
Mr. S.S. Hassan : Counsel for the respondents.

ORDER

Per Mr. J.K. Kaushik, Judicial Member.

Shri Kushi Pam has filed this O.A. claiming the following
reliefs:

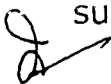
An order/direction/command/mandamus may kindly be
passed against the non-applicant to regularise the
applicant on the permanent post of Mate in Group 'C'
with all consequential benefits like: seniority, wages,
etc and accordingly he may be declared eligible and



entitled for further benefits like promotions etc. He may be regularised in service as Mate since the date of his initial appointment i.e. 05.02.77. That the non-applicant may kindly be directed to insert the name of the applicant in the impugned order Annex. A.1

2. The material facts relating to filing of this O.A are that the applicant was initially appointed as Mate, on 05.02.77 and he continues to work on the same. In service records his designation has been shown as P. Way Mate. He has been granted temporary status and has been paid in regular scales of pay. He has also passed the trade test for the post of Gang Mate and is said to have been promoted on the same post vide order dated 10.03.2000 (Annex. A.1). He also belongs to SC community.

3. It has been averred that he was given proper position on the post of Gangman and no formal order was served on him, but he still submitted an application on 04.10.1994 (Annexure A/5). He has also earned appreciation from the respondents. He further made an application for inserting his name in the seniority list of Mate. It has also been averred that the applicant has a right to be considered for regularization on permanent basis with all consequential benefits but the same has not be done by the respondents despite number of representations were made in that regard by the applicant. He possesses the requisite qualifications for the same. The grounds on which the applicant has made his claim are intermixed with the facts and it has been submitted that the applicant has been working on the post of



Mate over the last 20 years. Therefore, he is entitled for the reliefs in this O.A.

4. The respondents have resisted the claim of the applicant and have filed a detailed and exhaustive reply. It has been averred that the applicant was granted temporary status w.e.f. 01.01.1984 against the post of Mate (the words "against the post of Mate" have been deleted). The post of Mate has been said to be the promotional post of Keyman. There is no provision under the rules to regularize the applicant on a group 'C' post as such he cannot be regularized on the post of Mate. The grounds raised in the O.A. have generally been denied. No rejoinder has been filed on behalf of the applicant.

5. We have heard the learned counsel for the parties and have anxiously considered the submissions, pleadings and the records of this case. Both the learned counsel have reiterated their pleadings. There is no quarrel regarding the facts of the case. The admitted position of the case is that the applicant was initially engaged as Mate and continued on the post of Mate. The regularization order, which has been placed on record by the learned counsel for the applicant is dated 02.06.1994, which indicates that the applicant has been regularized on the post of Gangman. The learned counsel for the respondents has submitted that once the applicant has been regularized on the post of Gangman which is a group 'D' post, he cannot have any claim on the post of Mate and the O.A. is misconceived. He has also submitted that the applicant cannot be regularized from the

date of his initial appointment. He has also stressed the point of limitation and has submitted that the filing of the instant O.A. asking for regularization in a group 'C' post is an after thought exercise and in the absence of any specific rule for the regularization he cannot be regularized on the post of Mate.

6. We have considered the rival submissions made on behalf of both the parties. The admitted facts of the case are that the applicant was appointed on the post of Mate in the year 1977 and he was screened against the post of Gangman which is in group 'D' in the year 1994 and was posted in the Gang. It is indicated in his representation that despite the posting in the Gang he was asked to work on the post of Mate. The respondents have not denied the contention of the applicant that he is working on the post of Mate without any interruption. In this case two preliminary issues are involved. The first one is whether the employees who are working on a higher post for a considerable long time are entitled to their regularization of their services on the promotional post because they are working for a considerably long period and the second one is whether the employees are entitled to regularize their service in group 'C' post in the light of the circular issued by the Railway Board. The first question has been answered in the negative by the Hon'ble High Court of Rajasthan at Jodhpur in D.B. Civil Writ Petition No. 3235 etc. /2001 - **Kalu and Ors. vs. Union of India and Ors.** decided on 20th December 2002 wherein their Lordships have dealt with similar matter. Shri Kalu was a Mate. As regards the second question the same was decided in favour of the employee

after examining the provisions of the Rules and also the decisions of the Apex Court. We find it expedient to reproduce paragraph (8) to (13) of the said judgement which reads as under: -

"(8) Still next question survives because of the reason the petitioners are claiming benefit of their absorption/regularisation on the post in Group "C" as per the decisions taken by the Railway Administration for which the Railway Administration had issued necessary orders from time to time. It is also submitted that the judgment delivered in the case of **Union of India vs. Moti Lal** and another reported in 1996(33) ATC 304 is based upon the judgment delivered in the case of, **Ram Kumar** (AIR 1988 SC 390). In fact, *Ram Kumar's* case was again placed before the Supreme Court on moving Misc. Petition and it was overruled by judgment of the three Judges Bench of the Supreme Court, which is reported in **SLJ 1996(1) SC 116**. Therefore, according to the learned counsel for the petitioners, the decision of the Tribunal is contrary to the law laid down by the three Judges Bench of the Supreme Court and the Tribunal committed illegality in relying upon already overruled judgment. It will be relevant to mention here that Kumar's case was decided by the judgment dated 2.12.1987, which was considered by the Hon'ble Apex Court in the case of **Moti Lal** reported in AIR 1996 SC 3306 and the Hon'ble Supreme Court held that:

"Thus it is apparent that a daily wage or casual worker against a particular post when acquires a temporary status having worked against the said post for specified number of days does not acquire a right to be regularised against the said post. He can be considered for regularisation in accordance with the Rules and, therefore, so far as the post of Mate

under Railways is concerned, the same has to be filled up by a promotion from the post of Gangman and Keyman in Class IV subject to employees passing the trade test.

In this view of the matter the Tribunal was not justified in directing regularisation of the respondents as Mates."

Even after holding that the view of the Tribunal directing the Railway Authorities to absorb the respondents on regular post as Mates was not justified, the Hon'ble Apex Court even then refused to interfere with the order passed by the Tribunal by observing as under:-

"Even though on principle we are in agreement with the submissions of Mr. Goswami, learned Senior counsel appearing for Railway Administration but having taken into account the fact that the respondents were directly appointed as Mate though on casual basis and having continuing as such Mates for more than 22 to 25 years it will be wholly inequitable to require them to be regularised against the post of Gangman in Class IV. In the premises, as aforesaid, we decline to interfere with the ultimate conclusion of the Tribunal on equitable ground, in the facts and circumstances of the present case. The direction will not be treated as a precedent."

(9) In Moti Lal's case which was decided on 15.2.1996, only earlier decision of Ram Kumar's case was considered which was decided by two Judges Bench of the Supreme Court on 2nd December 1987 and subsequent three Hon'ble Judges decision of the Supreme Court given in the same case was not brought to the notice of the Supreme Court. It appears that in above same Ram Kumar's case, which was decided on 2nd December 1987 by the Bench of two Hon'ble a Civil Misc. Petition was filed which, was decided by the larger bench of Supreme Court, consisting of three Bench Judges. In this subsequent larger Bench judgment, reported (in 1996 (1) S. L. J. 116 (S.C.),

Hon'ble Supreme Court, directed the Railway Administration to give effect to the Railway Board's instructions which were issued on 20th January 1985 for regularisation of the services of the employees against Class III Post. It will be just and proper to quote the relevant portion from the said decision, which is as under:-

"Mr. Goburdhan relying upon the Board's instructions issued on 20 January 1985 says that these people have already worked for more than five years and have become entitled for regularisation in class III posts. If that be so, we call upon the Railway administration to give effect to the Board's instructions referred to above and considered claim of 12 persons named below for regularisation as against Class III posts subject to their satisfying the requirements laid down in the Board instructions."

(emphasis supplied)

The question of entitlement of pension of the employees, ^{WFO} also considered by the Supreme Court and in last, it is ordered:-

"The decision is beneficial to the employees and we direct that the board's decision may be implemented."

(10) A bare perusal of the above judgements referred above (*Moti Lal's and Aslam's*) cases and the judgment of the Division Bench of this Court, **Durbeen Singh vs Union of India** reported in 2001 (3) WLC 808; it is clear that in above cases, subsequent larger Bench's judgment delivered in *Ram Kumar's* case was not brought to the notice of courts. The subsequent judgment delivered in *Ram Kumar's* case, though was considered by the Division Bench of Delhi High Court in C.W. No. 4121/97 **Union of India vs Lekh Raj and others** decided 18th May 2002 but the Division Bench of the Delhi High Court proceeded on wrong presumption that *Ram Kumar's* case was distinguished by the Supreme Court in *Moti Lal's* case. In

fact only earlier judgment of *Ram Kumar's* case which was decided on 2.12.1987 (Writ petition Nos. 15863-15906 of 1984) was considered and not the larger Bench decision. This Court is bound by the larger Bench decision of the Hon'ble Supreme Court. It is nobody's case that the circulars have not been issued by competent authority and it is nobody's case that circulars are not binding upon the Railway Administration. The Railway Administration was fully aware of the Decision of the Supreme Court delivered in *Ram Kumar's* case still issued the various Circulars including the circulars of the year 11/15.2.1991, 13.2.97, and circular dated 9.4.1997, making Provision for straight way absorption in skill grade posts. It is relevant to quote para 2007 IPEM Vol-II, issued by the Railway Administration: -

'3. Casual labour engage in work charged establishment of certain Departments who get promoted to semi- skilled and highly skilled categories due to non-availability of regular departmental candidates and continued to work as casual employees for long period, can straightaway be absorbed in regular vacancies in skill grades provided they have passed the requisite trade test, to the extent of 25 % of the vacancies reserved for departmental promotion from the unskilled and semi-skilled categories. These orders also apply to casual labour who are recruited directly in the skilled categories in work charged establishment after qualifying in the trade test.'

(11) In replies filed by the respondents, though large number of judgments referred and even quoted but nothing has been said with respect to the explicit plea based on the subsequent larger Bench decision delivered in *Ram Kumar's* case. As per the reply filed by the respondent, the services of the petitioner's cannot regularised either because of the reason that some of the petitioner's services have already been regularised in their

parent cadre or that in view of the Supreme Court's decision given in *Moti Lal's* case and in view of the larger Bench decision^{of} the Tribunal, petitioners can not seek absorption for regularisation on the post in Group "C". It is admitted case of the respondents that, petitioner's cases were never considered for absorption or regularisation of their services in the light of various circulars which were issued from time to time and in pursuance of which circulars, the Railway Administration itself has regularised services of the employees on the higher post for which the petitioner has placed on record few orders passed by the Railway Administration. Even nothing has been said to explain why the circulars were issued if are not intended for implementation? Nothing has been said to explain why the circulars were issued, if the Railway administration was of the opinion that services of the employees cannot be regularised in view of the judgments of the Supreme Court? It has also not been explained whether the circulars are issued to redress the difficulties of the employees in the light of the observations of the Apex Court in earlier judgment of *Ram Kumar's* case wherein Hon'ble Apex Court observed:-

"for over 10 years, litigations of this type have been coming to the court. About three years back, this court directed a scheme for absorption in *Yadav's* case (1985) (2) SCC 648 which had been framed and is operative. Casual labour seems to be the requirement of the Railway Administration and cannot be avoided. The Railway establishment manual has made provisions for their protection but implementation is not effective. Several instructions issued by the Railway Board and the Northern Railway headquarters were placed before us to show that the administration is anxious to take appropriate steps to remove the difficulties faced by the casual labour but there is perhaps slackness in enforcing them. We hope and trust that such an unfortunate situation will not arise again and in the event any

such allegations coming to the court, obviously the administration will have to be *blamed*."

(emphasis supplied)

(12) It is unfortunate that despite above observation of the Apex Court, made in the year 1987, and more than 14 years have passed, the litigation has not come to end. It is true that in view of the decisions referred about the employee cannot claim regularisation merely because they were holding the post for a long period but there appears to be no bar in framing any policy to absorb the employees after considering the difficulties of the employees. Framing of policy for absorption of the existing employees working for very long period is not unknown in service jurisprudence. Allegations of Arbitrariness and choose and pickup in the matter of regularisation of services of the employees can be avoided of by properly framed scheme. There appears to be no justification for the Railway Administration in not complying with their own circulars, which were issued to give benefit to the employees. In recent judgment, **Gujarat Agriculture University vs Rathod Lbhu Bechar & Others** reported in AIR 2001 SC 706, Hon'ble Supreme Court, not only upheld the claim for regularisation of the employees who completed more than 10 years of continuous service with minimum of 240 days in each calendar years by ordering relaxation in eligibility clause on the ground that "those working for a period of 10 or more years without any complaint is, by itself a sufficient requisite qualification". The Hon'ble Supreme Court after considering the scheme framed for absorption of the employees, held that "The Court is cautious in exercising its discretion. On the one hand it has to keep the interest of the workers alive and on the other to see that employer does not become spineless for the lack of funds eroding the very workers interest". Hon'ble

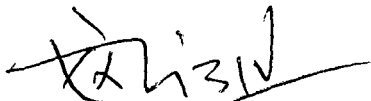
Supreme Court further held that "financial viability is no ground to its disentitle claim of workman" as absorption in phased manner itself is a mechanism which takes care of financial difficulties of the employee also. Therefore, even when the employees cannot claim regularisation of their services on a post only on the basis of their long working on the post on which they have not been regularly appointed, can certainly claim and take benefit of the scheme framed by their employer and the employer after framing scheme for absorption of the employees can not deny the benefit of the scheme to the employees.

(13) Therefore, in view of the subsequent judgment of the larger Bench of the Supreme Court given in *Ram Kumar's* case reported in 1996 (1) S. L. J 116 (S C), writ petitions filed by the petitioners deserve to be allowed, hence allowed. The impugned judgments of the Tribunal rejecting the claim of the petitioners for regularisation of their services in Group "C" are set aside. It is held that as per the circulars dated 11/15.2.1991, 13.2.1997 and 9.4.1997, the petitioners are entitled to be considered for regularisation of their services in Group "C" posts. It is further made clear that any order of regularisation of the petitioner's services on lower post i.e., in Group "D", if passed after issuance of above referred circulars by the Railway Administration, will not come in way of the petitioners for consideration of their case for regularisation in accordance with the circulars referred above. The respondents are directed to consider the cases of each individual petitioner, on merits strictly in accordance with circulars mentioned above, and if the petitioners are found entitled for the relief, it may be accorded to them as early as possible. No order as to the costs."

of

7. Now, advertent again to the facts of this case and applying the aforesaid proposition of law we find that the controversy involved in the instant case ^{is} squarely covered on all fours and we have absolutely no hesitation in following the same; rather we are bound to follow the same.

8. The upshot of the aforesaid discussion is that the Original Application has merits and substance and the same stands allowed. The respondents are directed to consider the case of the applicant for regularisation on the post of Mate in Group C in the light of the aforesaid observation of Rajasthan High Court in their lordships' judgement in Kalu's case supra within a period of four months from the date of receipt of a copy of this order. The parties are left to bear their own costs.


(A.K.Bhandari)
Administrative Member


(J.K.Kaushik)
Judicial Member

jsv