

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH : JAIPUR

O.A. No. 251/2001

Date of Order : 19/11/2001

Padam Chand G., aged about 45 years, Caste Brahmin, S/o Shri Gopi Lal Ji, Resident of H.No. 472, Near Murgi Farm, Dadwara, Kota Jn.

... APPLICANT.

v e r s u s

1. Union of India through General Manager, Western Railway, Church Gate, Mumbai-20.

2. The Divisional Railway Manager, Western Rly. Kota Jn.

... RESPONDENTS.

Mr. Rajvir Sharma counsel for the applicant.
Mr. T.P. Sharma, 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)

By order dated 05.06.2001 (Annexure A-1), the respondents have regularised the applicant on the post of Gangman in the grade of Rs. 2610-3540. The applicant is aggrieved with this order on the ground that he should have been regularised on the post of Khallasi w.e.f. his initial date of appointment i.e. 19.07.1978. He seeks quashing of the impugned order dated 05.06.2001 with a direction to the respondents to regularise him as a Khallasi w.e.f. 19.06.1978 with all consequential benefits.

2. In narrating his facts, the applicant has started with a wrong statement stating that he was initially appointed on the



permanent post of Khallasi on 19.06.1978. In support of this he refers to the service card filed at Annexure A-2. This service card is nothing but a photocopy of the service card of the casual labour. Casual Labour is not appointed on a permanent post, but only against short time requirements on daily wages to start with. This statement of the applicant is a clear case of mis-representation of the facts.


3. As per the further facts given by him, the applicant has stated that he was screened on 2.06.1984 for regularisation and was found fit but he was not regularised because of a case under RFUP Act against him, while other persons junior to the applicant were regularised as Khallasi. The case of RFUP against him was decided by the Court of Competent Jurisdiction on 07.06.1999 and he was acquitted. After his acquittal, he submitted an application on 16.08.1999 with a request that he may be given regular appointment on the basis of screening held on 02.06.1984. Vide letter dated 27.07.2000, he was informed by the respondents that a major penalty DAR Case was pending against him and therefore he cannot be regularised. This DAR case, according to the applicant is related to unauthorised occupation of residential Auarter No. 62-LA. This matter was finally decided by order dated 21.02.2001 by which a penalty of withholding of increment for one year without future effect, was imposed upon him. Subsequently by the impugned order dated 05.05.2001, he has been regularised on the post of Gangman in the pay scale of Rs. 2610-3540 and posted under FWI, Maheedpur Road Station. Flea of the applicant is that he was never

screened on the post of Gangman and he was all along working to the post of Khallasi. Thus, the respondents could not have regularised him on the post of Gangman. The applicant submits that the action of the respondents is apparently illegal, arbitrary and malafide because non-applicant have no right to change the designation of the applicant and change his category without his consent. He has worked on this post for more than 22 years and thus acquired a right on the post of Khallasi and not of Gangman. Other employees, who were appointed as Khallasi and screened along with him have been regularised on the post of Khallasi (in Carriage and Wagon department), but he has been treated differently.

4. While agreeing with the basic facts as stated by the applicant except that he was initially engaged as a casual labour and not on the permanent post, the respondents have denied the contention of the applicant that by regularising him as a Gangman, he has been de-categorised scale on the post of the Gangman in the pay scale of Rs. 2610-3540, which is higher than the scale of Khallasi which is Rs. 2550-3200. Respondents have submitted that the casual labours were screened for regularisation against Group-D post and they are regularised only against available vacancies. When the case of the applicant came up for regularisation, vacancies in the cadre of Khallasi were not available and he was, therefore, regularised on the post of Gangman under FWI, Maheedpur Road Station.

5. We have carefully gone through the averments of the applicant and reply of the respondents as also the contents of the rejoinder filed by the applicant. We also heard the learned counsel for the parties. The learned counsel for the applicant has submitted written submissions on his behalf which have also been gone through by us carefully. Primarily, in these written submissions the learned counsel has opposed the contention of the respondents that there was no vacancy of Thalasi at the time the applicant was regularised in Group-D as Gangman. It has been stated that one Shri Prem Singh had also been screened alongwith the applicant, who was also involved in a case under RFUP Act. He was also exonerated and has been regularised only as a Thalasi by order dated 3.7.2001. Further, one Shri Abrar Hussain, Senior Cleaner, after being cleared from a case under RFUP Act was promoted as Helper Thalasi by order dated 20.2.2001. Obviously, a resultant vacancy of Thalasi became available after promotion of Shri Abrar Hussain as Helper Thalasi. In this view, the learned counsel contended that the ground taken by the respondents that there was no vacancy to accommodate the applicant as Thalasi is belied. However, for the view we have taken that it is for the department to decide as to in which department a particular casual labour will be absorbed and whether a vacancy, even if available, is required to be filled up or not, the cases referred to by the applicant do not help advance his claim. No rule has been shown to us by the learned counsel which would indicate that the applicant had a legal right to be absorbed only as a Thalasi and in no other Group-D post. It is apparent that the entire effort of the applicant is directed towards avoiding working as a Gangman.

6. We have not been able to discern from the averments in the OA as also from any documents brought on record that a casual labour who has worked over long years in a particular type of work or in a particular departments acquires a legal right to be regularised



only in that department. He can justifiably aspire to be regularised in Group-D, but to say that he cannot be regularised against a vacancy of any other department has no foundation. The applicant has been regularised as a Gangman in the Engineering Department even though he had put in long years of service as casual labour in Carriage and Wagon Department. If the Carriage and Wagon Department has no vacancy, the only result would be that applicant would have to continue only as a casual labour without being regularised. We wonder whether the applicant would have chosen this option. If the department does not have a vacancy or no requirement to fill up the vacancy even if it exists, no casual labour can thrust himself on that department for regularisation. It is left to the Competent Authority to decide as to which post the service of the casual labour on regularisation can be utilised. There is no scope for the Tribunal/Courts to interfere in such matters.

7. We, therefore, dismiss this OA as having no merits. No order as to costs.


(A.P.NAGRATH)

Adm. Member


(S.K.AGAPWAL)

Judl. Member