

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH
CIRCUIT Sittings : BILASPUR

Original Application No.343 of 2002

Indore, this the 22nd day of July, 2004

Hon'ble Shri M.P.Singh - Vice Chairman
Hon'ble Shri Madan Mohan -Judicial Member

P.K.Chakraborty, aged 49 years,
son of P.C.Chakraborty, resident of
Qr.No.116/1, Railway Colony,
Durg (Chhattisgarh)

- APPLICANT

(By Advocate - Shri V.G.Tamaskar)

Versus

1. Union of India through Secretary,
Ministry of Railways, Rail Bhawan,
New Delhi.

2. Chief Engineer (Construction) South
Eastern Railway, Bilaspur (Chhattisgarh).

3. Deputy Chief Personnel Officer (Construction),
South Eastern Railway, Bhuwaneshwar (Orissa) - RESPONDENTS

(By Advocate - Shri M.N.Banerji)

O R D E R

By M.P.Singh, Vice Chairman -

By filing this Original Application, the applicant
has sought the following main reliefs-

"(i) ...quash Annexure-A-4 dated 9.8.2001 as being
void, illegal, arbitrary and opposed to law.

(ii) ...declare that the action of the respondents
in posting and absorbing the services of the
applicant in open line in the grade of Khalasi
is untenable in the eyes of law.

(iii) ...direct the respondents to post the applicant
on transfer for absorption to the Open Line in
the grade of Supervisory Mistry Grade II
(4000-6000) because of the service conditions
remaining unchanged except loss of seniority.

(iv) ...direct the respondents to grant consequential
benefits such as arrears of salary in the higher
scale of 4000-6000, pay fixation and proper
fixation of seniority in the grade of Supervisor
Mistry Grade II in Open Line.

(vi) ...declare that the applicant, by virtue of
having worked for more than sixteen(16) years
in the grade of supervisor Mistry(4000-6000)
after having been appointed by due process of
law, is entitled to permanent status/confirmation
as such and cannot be termed as temporary/
adhoc.

(vii) ...quash the impugned order dt.19.4.02(A+7) ..

2. The brief facts of the case are that the applicant
was initially appointed in the South Eastern Railway on
16.9.1980 as casual Painter under the Construction Department

Subsequently, he was granted regular pay scale of Rs.260-400 with effect from April.1981. He was conferred with temporary status w.e.f. 1.1.1983 with all admissible benefits. In 1986, a trade test for screening the inservice employees for promotion to the post of Supervisor Mistry Grade-II was conducted by the District Engineer (Construction) South Eastern Railway. The applicant successfully passed the trade test as a result of which he was promoted as Supervisor Mistry Grade-II(temporary status) w.e.f. 1.9.1986 in the pay scale of Rs.330-560. Subsequently, this pay scale of Rs.330-560 was revised to Rs.1200-1800 on the recommendations of the 4th CPC w.e.f.1.1.86; and on the recommendations of the 5th CPC it has been further revised to Rs.4000-6000 w.e.f. 1.1.1996. According to the applicant, he has been working all along in the Constuction Department. The respondents vide their letter dated 15.6.2001 (Annexure-A-2) invited options from willing Group 'C' and 'D' employees to go on transfer to Open Line in the South Eastern Railway as per their choice for permanent absorption by accepting bottom seniority in the present ^{grade 2} case. In pursuance of this, the applicant has submitted his option for absorption in the present grade of Supervisor Mistry Grade-II(Rs.4000-6000) by accepting the bottom seniority in the Open Line at Durg Station. In pursuance of this option given for absorption in the grade of Supervisor Mistry Grade-II, he was awaiting his permanent absorption in the Open Line. However, the respondents, all of a sudden, issued the impugned order dated 9.8.2001 whereby the applicant was transferred as Khalasi in the grade of Rs.2550-3200 (Annexure-A-4). Aggrieved by this, he filed a representation dated 7.9.2001 (Annexure-A-5) to respondent no.2 on the ground that he could not be absorbed in the grade of Khalasi, which is much lower post, as compared to the grade of ^{and post} Supervisor Mistry (Rs.4000-6000). Moreover, the grade of Khalasi was never held by the applicant in his entire service career. The aforesaid representation of the applicant has not yet been decided by the respondents and the applicant has not joined the post of Khalasi. The applicant has further stated that erroneously

the order dated 17.1.1998 (Annexure-R-1) was issued which on objection being raised, was modified by subsequent order dated 19.3.1998 (Annexure-A-6) restoring the temporary status of the applicant as Supervisor Mistry, till the selection is conducted. The learned counsel has contended that since the applicant was appointed by way of promotion to the scale of Rs.330-560 (pre-revised) after following the due process of law, i.e. prescribed trade test, the impugned order dated 19.4.2002, reverting the applicant to the scale of Rs.2550-3200 is arbitrary and illegal. Since the respondents have reverted him to a lower post in the Open Line, he has filed this O.A.

3. The respondents in their reply have stated that the staff declared surplus to the requirement have to be repatriated to their parent Divisions. The staff borne against 40% PCR post have to be adjusted in different Railways in the capacity in which they are regularised with bottom seniority. The applicant was regularised as Khalasi in the scale of Rs.2550-3200 only. He was promoted to Supervisor-II on adhoc basis, which is purely temporary and he has no prescriptive right to claim the facilities of his promotion either in Open Line or in Construction Division. The applicant along with several other staff has been absorbed in Open Line in his regular/substantive capacity.

31 The respondents have stated that one Shri M.A.Rahman, Erector, who was working in the scale of Rs.4000-6000 has clearly added a few lines for his unwillingness to accept the Grade 'D' category. If the applicant was unwilling to accept Grade 'D' category, he should have given similar option. Rather, the applicant in his offer of option has accepted the terms and conditions for absorption in Grade-D category. According to the respondents, no employee is having any claim on the adhoc promotion because this may be discontinued at any time without prior notice/intimation. However, the representation of the applicant dated 7.9.2001 is pending for consideration and before any decision could be taken, the applicant has

filed this O.A.. The respondents have further contended that "even in continuation in construction organisation the applicant must be reverted to his regular status if at all he is not willing to be absorbed in open line S.E.Rly, Bilaspur Division on closer of the section and reduction of cadre."

3.2 It is further submitted by the respondents that though the applicant "was appointed in Gr.-C as Painter in casual capacity, he was screened and regularised as Khalasi in Gr-D in scale Rs.2550-3200 with his full consent and signature in the offer of appointment. Hence his claim to be absorbed in Gr.-'C' in existing casual capacity and not in Gr.-'D' is not acceptable. However during fixations he will be eligible for the incremental benefit for the years of service rendered since temporary status.".

4. We have heard the learned counsel for both the parties. The learned counsel for the applicant has submitted that the applicant has worked all along for 16 years in Group-C post in the Construction Division of the S.E.Rly. He has also been given option for his absorption in Open Line accepting bottom seniority in Group-C^{post} only. He, therefore, cannot be considered for absorption in Group-D post of Khalasi- the post which was never held by him.

5. On the other hand the learned counsel for the respondents has stated that the applicant was working in Group-C post in Construction Division only in temporary capacity. He has given option for his absorption in Open Line. He has been considered for absorption against Group-D post for which he has given his acceptance. Accordingly, he has been appointed in Class-IV category post vide order dated 17.1.1998 (Copy annexed with the respondents' reply). He, therefore, cannot at this stage turn round and claim absorption in Open Line in a Group-C post.

6. We have given careful consideration to the arguments of both the learned counsel.

7. The question for consideration is whether the applicant is required to be absorbed in Group-D post with bottom seniority when he has opted for absorption against the circular issued by the respondents for absorption of Group-C and Group-D employees. The learned counsel for the applicant has relied upon various decisions of the Hon'ble Supreme Court which we find are not relevant to the issue involved in the present case. The learned counsel for the respondents has also relied upon the Full Bench decisions of this Tribunal in the cases of Aslam Khan Vs. Union of India and others, 1997-2001 A.T.Full Bench Judgments 157, and Ram Lubhaya and others etc.,etc. Vs. Union of India & others, 1997-2001 A.T.Full Bench Judgments 152.

8. We find that vide Memorandum No.PB/CON-RES/60%/PCR dated 31.12.1997/2.1.1998 the applicant was absorbed against 60% Permanent Construction Reserve Posts in Group-D category. The applicant has also accepted the terms and conditions for absorption in Group-D as mentioned in his appointment order dated 17.1.1998. This position has been further clarified by the Office Order No.29/98 dated 19.3.1998 issued by the Office of the Chief Engineer(Constrn.)Bilaspur. In the said letter dated 19.3.1998(Annexure-A-6) it has been stated that "with the approval of the competent authority, the following staff who have been regularised against PCR cadre in Group'D' vide CE/BSP's Memorandum No.B/CONS-RES/60%/PCR dated 31.12.97/ 2.1.1998 are allowed to continue to officiate at the same post and status on Adhoc(Temporary) against the PCT Cadre/Status till the selection is conducted. The continuation in existing scale/status is purely a temporary measure". This makes the position very clear that the applicant has already accepted the terms of appointment in Group-D post and has been temporarily permitted to work in Group-C post against PCR vacancies. In view of this, there was no further need for again inviting option from the applicant vide order dated 15.6.2001 (Annexure-A-2) and reverting him vide order dated

19.4.2002 (Annexure-A-7). Accordingly, the orders dated 9.8.2001 (Annexure-A-4) and 19.4.2002 (Annexure-A-7) are quashed and set aside.

9. Before we may part, it is observed that the respondents themselves have stated in their reply that the applicant has already made a representation on 7.9.2001 which is pending consideration and before any decision could be taken, the applicant has filed this OA. In this view of the matter, we direct the respondents to consider the aforesaid representation dated 7.9.2001 of the applicant within a period of two months from the date of communication of this order and communicate the same to the applicant promptly.

10. In the result, the OA is disposed of with the above directions. No costs.

(Madan Mohan)
Judicial Member

(M.P.Singh)
Vice Chairman

rkv.

पृष्ठांकन सं. ओ/न्या..... जबलपुर, दि.....
प्रतिलिपि अवगेहित:—
(1) सहिव, उच्च न्यायालय, बार एसोसिएशन, जबलपुर
(2) आवेदक श्री/श्रीमती/वडु के काउंसल
(3) प्रत्यर्थी श्री/श्रीमती/वडु के काउंसल
(4) कंसपना, ठेप.अ., जबलपुर न्यायालय
सूचना एवं आवश्यक कार्यवाही हेतु

9-8-04
लेता उप रजिस्ट्रार

Issued
on 9.8.04
by BB