

THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JAIPUR BENCH, JAIPUR  
ORDER SHEET

12

APPLICATION NO.: \_\_\_\_\_

Applicant(s)

Respondent (s)

Advocate for Applicant (s)

Advocate for Respondent (s)

NOTES OF THE REGISTRY

ORDERS OF THE TRIBUNAL


OA No.352/2005.


11.10.2007.

Mr. Rajveer Sharma counsel for the applicant.  
Mr. Anupam Agarwal counsel for the respondents.

Arguments heard.

Order reserved.

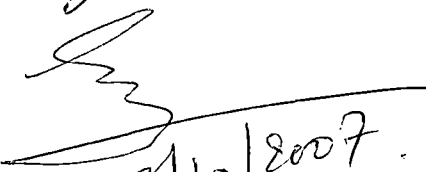
  
(J. P. SHUKLA)  
ADMINISTRATIVE MEMBER

  
(M. L. CHAUHAN)  
JUDICIAL MEMBER

23/10/2007

P.C./

order pronounced today in the  
open court by the aforesaid  
Bench

  
28/10/2007

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
JAIPUR BENCH

Jaipur, this the ~~23<sup>rd</sup>~~ day of October, 2007

ORIGINAL APPLICATION No.352/2005

CORAM:

HON'BLE MR.M.L.CHAUHAN, JUDICIAL MEMBER  
HON'BLE MR.J.P.SHUKLA, ADMINISTRATIVE MEMBER

Khetru s/o Shri Chandramani (since deceased) through his legal heirs-

1/1 Smt. Ambika w/o Shri Khetru aged 43 years

1/2 Upendra s/o Late Khetru, aged 17 years, minor through his mother and natural guardian Smt. Ambika.

Both residents of 40-E, Railway Workshop Colony, Kota Junction, Kota.

1/3 Sudha w/o Shri Ribhkho, aged about 40 years d/o late Shri Khetru, r/o near Railway Station, Junagarh, Gujrat.

1/4 Sindhu w/o Shri Shyam, d/o Late Ketru, aged 34 years, r/o Bunglow No. 247, Hajari Bagh, Ajmer.

1/5 Baby w/o Naresh d/o Late Khetru, aged about 30 years, r/o Charamgarh, District Commandi village Koyar Pradar, Orisa.

.. Applicants

(By Advocate: Shri Rajveer Sharma)

Versus

1. Union of India  
through General Manager,  
West Central Railway,  
Jabalpur
2. Divisional Railway Manager,  
West Central Railway,  
Kota Division,  
Kota.

3. Assistant Engineer (Construction) Store,  
West Central Railway,  
Jaipur

.. Respondents

(By Advocate: Mr. Anupam Agarwal)

O R D E R

Per M.L.Chauhan, Member (J)

The applicant has filed this OA thereby praying for the following reliefs:-

- a) By an appropriate order or direction your Lordships may be pleased to accept and allow the OA as prayed and be further pleased to quash and set aside the impugned order dated 29.11.97 (Ann.A1) and whole proceedings so far it relates to the applicant in this respect including the impugned order may be quashed and set aside.
- b) By an appropriate order and direction the respondents may be directed to regularize and promote the applicant on the permanent post of Mate in Group-C in substantive capacity since the date of his juniors have been promoted/regularized or from any appropriate date which this Hon'ble Tribunal may think with all consequential benefits and seniority in Group-C w.e.f. 8.6.1973.
- c) Any other relief which this Hon'ble Tribunal may deem fit and proper be also passed in favour of the appellant.
- d) Cost of the OA may be awarded to the applicant."

2. Briefly stated, facts of the case are that the applicant was initially engaged as Casual Labour in the year 1973. His services were regularized against Group-D post of Gangman vide order dated 29.11.1997 (Ann.A1). The grievance of the applicant in this OA is that since he has been working as Mate in the Group-C

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post since 1973, he is entitled for regularization w.e.f. 8.6.1973 when persons junior to him have been regularized. Thus, he has prayed for regularization from the very inception when he was engaged as Casual Labour w.e.f. 8.6.1973. In support of his contention, the applicant has pleaded that he fulfilled the requisite qualification which is meant for appointment as Mate. It is further pleaded that persons junior to him have been regularized as Mate, though they were also compelled to work as Gangman, but eventually they have been regularized as Mate whereas case of the applicant has not been considered. As such, action of the respondents is arbitrary, discriminatory and against Article 14 and 16 of the Constitution. The applicant has further pleaded that order of his regularization as Gangman against Group-D post vide order dated 29.11.1997 (Ann.A1) was made available to him in the year 2005, as such, the OA is within limitation.

3. Notice of this application was given to the respondent. The respondents have categorically stated that the present OA is barred by limitation as provided under the Administrative Tribunals Act, 1985. It is further pleaded that the applicant was aware about his regularization against Group-D post of Gangman since the time of issuance of the order Ann.A1. He had availed the fruit of the same. The fact

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regarding his regularization has also been recorded in his service record and his fixation was also made accordingly. It is pleaded that the applicant never protested against the same within limitation and further that the applicant has failed to prefer an application for condonation of delay. As such, the OA is required to be rejected on the ground of limitation.

On merits, it has been stated that the applicant was never appointed as Mate on regular basis and he failed to submit any order and the manner of his appointment. The respondents have further stated that there is no method of direct recruitment on the post of Mate and it is wrong to say that the applicant was discharging duties of Mate and he was shown as Gangman in the record. It is further pleaded that the applicant has submitted this fact without substantiating the same and he should be asked to prove this aspect of the matter. According to the respondents, the applicant was appointed as Casual Labour on 8.6.1973 in the office of Construction Inspector (C), Ramganj Mandi and on completion of 360 days of casual service he was granted temporary status by order dated 5.9.85 and was posted as Khallasi, pay scale Rs. 196-232 (R). The respondents have further pleaded that the applicant cannot obtain any benefit from circular dated 9.4.97 (Ann.A3) which deals with regularization of Casual Labour working in Group 'C'

scales. As regards the contention of the applicant that the persons mentioned in Para 4.4 were appointed after the applicant and they have been regularized as Mate, the respondents have specifically pleaded that the applicant has failed to enclose any list or their appointment orders to show that they were appointed subsequent to the applicant or were working with him and had been regularized as Mate. The applicant was screened in Group-D after being declared surplus in construction division and on repatriation to the division he was posted as Gangman i.e. on his substantive post in the division. The respondents have also enclosed copy of the order of posting so issued as Ann.R3. Thus, according to the respondents, the applicant is not entitled to any relief.

4. The applicant has not filed rejoinder to the reply filed by the respondents, as such, the averments made by the respondents in the reply remained uncontroverted.

5. We have heard the learned counsel for the parties and gone through the material placed on record.

6. According to us, the present OA is wholly misconceived and deserves to be rejected for more than one reason. As can be seen from the pleadings made in the OA and the prayer clause as reproduced above, the

applicant is claiming his regularization against the Group-C post of Mate w.e.f. 8.6.73. As per own showing of the applicant he was regularized against Group-D post vide order dated 19.11.97 (Ann.A1). The present OA has been filed on 28.7.2005 without any application for condonation of delay. However, it has been pleaded that the present application is within limitation as copy of the order dated 29.11.97, whereby he was regularized in Group-D post, was made available to him only on 20.6.2005. Such a contention of the applicant cannot be accepted in view of the provisions contained in Section 21 of the Administrative Tribunals Act. At this stage, it will be relevant to reproduce Section 21 of the Administrative Tribunals Act, 1985, which thus reads:-

21. Limitation.- (1) A Tribunal shall not admit an application,-
- (a) in a case where a final order such as is mentioned in clause (a) of sub-section (2) of Section 20 has been made in connection with the grievance unless the application is made, within one year from the date on which such final order has been made.
  - (b) In a case where an appeal or representation such as is mentioned in Clause (b) of sub-section (2) of Section 20 has been made and a period of six months had expired thereafter without such final order having been made, within one year from the date of expiry of the said period of six months.
- (2) Notwithstanding anything contained in sub-section (1), where-

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- (a) the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates; and
- (b) no proceedings for the redressal of such grievance had been commenced before the said date before any High Court,

the application shall be entertained by the Tribunal if it is made within the period referred to in Clause (a) or, as the case may be, Clause (b), of sub-section (1) or within a period of six months from the said date, whichever ever period expires later.

(3) Notwithstanding anything contained in sub-section (1) or sub-section (2), an application may be admitted after the period of one year specified in Clause (a) or Clause (b) of sub-section (1) or, as the case may be, the period of six months specified in sub-section (2), if the applicant satisfies the Tribunal that he had sufficient cause for not making the application within such period."

Thus from reading of sub-section (1) of Section 27 of the Administrative Tribunals Act, it is evident that the present application is time barred and the applicant has not shown any sufficient cause for condonation of delay.

Now, the fact remains that the applicant was regularized against Group-D post of Gangman vide order dated 29.11.97 and he has accepted this position and making representation in the year 2005 will not extend the period of limitation. As such according to us, the applicant is not entitled to any relief.

Further, the applicant is seeking relief against some so called junior persons whose services have been regularized as Mate, but the applicant has neither challenged validity of those orders nor he has impleaded the so called junior persons as party in this OA. The grievance of the applicant against these persons will certainly affect rights of the so called junior persons and other persons who have been appointed in Group-C category during this long period of more than 3 decades. Even on this ground, the applicant cannot be granted any relief.

That apart, the law on the point of regularization has been set at rest by the Hon'ble Apex Court in number of decisions relying upon the Constitution Bench decision of the Apex Court in the case of State of Karnataka Vs. Uma Devi (3), 2006 SCC (L&S) 753. At this stage, it will be useful to quote some of the decisions of the Apex Court based on the decision of the Constitution Bench decision in the case of Uma Devi (supra). In Post Master General, Kotkata and ors. vs. Tutu Das (Dutta), (2007) 2 SCC (L&S) 179, the Apex Court has held that even if some of persons have been illegally and improperly granted regularization, the same does not create an entitlement to regularization on ground of equal treatment under Article 14 of the Constitution. It was

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further held that on completion of 240 days continuous service in a year as a criterion may be relevant under Section 25-F of Industrial Disputes Act, but the same cannot be formed basis and would not be relevant for regularization of service. The Apex Court has further observed that what was permissible at a given point of time keeping in view the decisions of the Apex Court which had then been operating in the field, does no longer hold good. Undisputedly, the situation has completely changed in view of a large number of decisions rendered by the Supreme Court in the last 15 year or so. It was felt that no appointment should be made contrary to the statutory provisions governing recruitment or the rules framed in that behalf under a statute or Article 309 proviso of the Constitution. The equality clause contained in Article 14 and 16 of the Constitution must be given primacy. No policy decision can be taken in terms of Article 77 or Article 162 of the Constitution which would run contrary to the constitutional or statutory schemes. Thus, according to the Apex Court, no regularization is permissible even if appointments have been made in contravention of the statutory rules. Further, the Apex Court in the case of Indian Drugs and Pharmaceuticals Ltd. Vs. Workmen, Indian Drugs and Pharmaceuticals Ltd. (2007) 1 SCC (L&S) 270 has held that regularization cannot be mode of appointment. The rules of recruitment cannot be relaxed and the Court

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or Tribunal cannot direct regularization of temporary appointees dehors the rules, nor can it direct continuation of service of a temporary employee (whether called a casual, ad hoc or daily rated employee) or payment of regular salaries to them. It is further observed that creation and abolition of posts and regularization are purely executive functions.

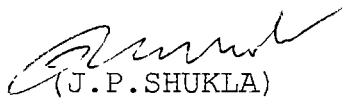
Further, the matter on the point of regularization is no longer res-integra. It has been held by the Full Bench at Jaipur of this Tribunal in the case of Aslam Khan vs. Union of India and ors. decided on 30.10.2000 (reported in 2001(2) ATJ page 1) that a person directly engaged on Group-C post (Promotional) on casual basis and has been subsequently granted temporary status would not be entitled to be regularized on Group-C post directly, but would be liable to be regularized in the feeder cadre in Group-D post only.

Thus, in view of what has been stated above, we are of the view that this application is hopelessly time barred and thus, deserves to be dismissed on the ground of limitation and also in view of the law laid down by the Hon'ble Apex Court as referred to above. The case of the applicant cannot be considered being against the mandate of Article 14 and 16 of the Constitution. Further, we see no infirmity in the action of the respondents whereby the applicant,

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working as Casual Labour was regularized in Group-D post, in terms of decision rendered by the Full Bench in the case of Aslam Khan (supra).

7. Thus, viewing the matter from any angle, the present OA is bereft of merit, which is accordingly dismissed. No costs.



(J.P. SHUKLA)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

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