

(RESERVED ON 13.07.2018)

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

This the 30th day of July 2018.

ORIGINAL APPLICATION NO. 330/1461/2006

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).
HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

1. Sobh Nath, Son of Shri Ramjiawan, Aged about 44 years, R/o Village-Tiwari ka Purwa, District-Pratapgarh
.....Applicant.

VERSUS

1. Union of India through the General Manager, North Central Railway, Headquarters Office, Allahabad.
2. The General Manager, North Central Railway, Headquarters Office, Allahabad.
3. The Chief Administrative Officer/Construction, North Central Railway, Headquarters Office, Allahabad.
4. The Divisional Railway Manager, North Central Railway, D.R.M. Office, Allahabad.
5. The Deputy Chief Signal & Telecom Engineer/Construction, North Central Railway, D.R.M. Office, Allahabad.

.....Respondents

Advocate for the Applicant : Shri S. S. Sharma

Advocate for the Respondents : Shri A K Rai

ORDER
(Delivered by Hon'ble Mr. Gokul Chandra Pati, Member-A)

The present Original Application (in short OA) has been filed by the applicant under Section-19 of the Administrative Tribunals Act, 1985 seeking the following main reliefs:-

- "(a) That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to regularize the services of the Applicant on the post of Carpenter (Skilled Artisan) in grade of Rs. 3050-4590 at par with his junior Sri Mewa Lal w.e.f., 10.05.1985 with all consequential benefit being a similarly situated person.
- (b) That the Hon'ble Tribunal may graciously be pleased to direct the respondents to regularize the services of the applicant on the post of Carpenter in grade Rs. 3050-4590 w.e.f., 10.05.1985 within a period of 6 months as per judgement of Constitution Bench of Hon'ble Supreme Court in the case of Uma Devi & others.

- (c) *That the Hon'ble Tribunal may graciously be pleased to direct the Respondents to fix the lien of the applicant in Signal & Telecom Department of Allahabad Division on the post of Carpenter and his seniority may also be fixed w.e.f., 10.05.1985 on the post of Carpenter and he may be considered for further promotion at par with his junior in Allahabad Division.*
- (d) *That the Hon'ble Tribunal may graciously be pleased to award heavy cost in favour of the applicant.*
- (e) *That the Hon'ble Tribunal may graciously be pleased to pass any other order or direction as may deem fit and proper in the facts and circumstances of the case."*

2. The brief facts of the case as mentioned in the OA are that the applicant is working on the post of Carpenter (Skilled Artisan) in the grade of Rs. 3050-4590 with basic pay of Rs. 4590/- under the Senior Section Engineer/Signal-II/Construction, North Central Railway, Allahabad since 08.08.1983. The applicant was appointed on the post of Carpenter (Skilled Artisan) on 08.08.1983 on daily wages basis as 'Project Casual Labour' as the construction department needed additional manpower to manage the construction projects. But the project casual labours were not given any benefit as per the Railway rules and their issue came up for consideration of Hon'ble Apex Court in the case of **Indra Pal Yadav & others Vs. Union of India & others** and vide judgement dated 18.04.1985 (1986 SCC (L & S) 525) (Annexure No. A-2 to the OA), the Hon'ble Supreme Court directed the Railway Board to frame and submit a scheme for regularization and absorption of Project Casual Labour. The Railway Board submitted a scheme before the Hon'ble Supreme Court for regularization and absorption of Project Casual Labour vide letter dated 01.06.1984. The matter of inter-se seniority and absorption of Project Casual labour against came up before the larger Bench of Hon'ble Supreme Court in the same case of **Indra Pal Yadav & others Vs. Union of India & Ors** and vide order dated 11.08.1986 (Annexure No. A-3 to the OA), Railway Board was directed to prepare the seniority list of Project Casual Labour with

reference to each department in each division, category wise i.e., skilled, semi skilled and unskilled and further directed for absorption on the basis of length of service and in accordance with such list. In pursuance to the judgment, the services of the applicant was treated as Temporary on the post of Carpenter w.e.f., 08.08.1984 as per the judgement passed by the Hon'ble Supreme Court in the case of Indra Pal Yadav (supra) and he became entitled to benefits of service as Open Line Casual/Temporary Status Staff in all respect and his services are governed under Railway Rules, as applicable.

3. It is further stated in the OA that although the applicant was given temporary status w.e.f., 08.08.1984 and was adjusted in pay scale of Rs. 260-400 (revised to Rs. 3050-4590), with all the rights and benefits of Temporary Railway Employee. It is stated that despite specific provisions in Para 2007 (3) of the IREM, the case of the applicant has not been considered by the respondents for regularization/absorption on the post of Carpenter Grade Rs. 3050-4590 till this date. The services of the applicant should have been regularized on the post of Carpenter as per judgement of Hon'ble Supreme Court in the case of Indra Pal Yadav (supra), but the respondents regularized the services of the applicant as S & T Khalasi in Group ' D' post in Signal & Telecom Department of Allahabad Division as per screening held by Allahabad Division in the year 1997. It is further stated that the applicant has never worked on the post of S & T Khalasi since his appointment was against the post of Carpenter w.e.f. 08.08.1983 and he was working as a Carpenter, even after his regularization as Khalasi in the year 1997.

4. In the meantime, some of the staff working on Skilled Artisan post in Signal & Telecom, Construction Department of Northern Railway in Allahabad Division filed OA No. 1791 of 1996 and 1792 of 1996 before the Principal Bench of this tribunal and vide order dated 01.03.2000 (Annexure No. A-9 to the OA), the OAs were allowed and the respondents were directed to organize the screening of the applicants for skilled categories instead of Class IV posts (unskilled) and regularize them as such in case the applicants are found suitable within a period of 6 months. The DRM, Allahabad complied with the said order and accordingly regularized the services of the applicants of the aforesaid OAs in different post of Skilled Artisan category in the grade of Rs. 3050-4590 vide letter dated 09.02.2001 (Annexure No. A-11 to the OA) after conducting their trade test on 30.01.2001. It is submitted in the OA that one Sri Mewa Lal, who was working on the post of Carpenter in the same department as the applicant has been regularized on the post of Carpenter in the grade of Rs. 3050-4590 by the respondents vide order of the respondents dated 22.03.2006 w.e.f., 10.05.1985 (Annexure A-12). It is also stated in para 4.38 of the OA that Sri Mewa Lal is junior to the applicant as the date of temporary status of Sri Mewa Lal is from 07.07.1984 whereas the date of temporary status of the applicant is 08.08.1983. Further, the panel position of Group 'D' Staff of S & T Department of Allahabad Division as issued in the year 1997, Sri Mewa Lal is shown at Serial No. 78 whereas the panel position of the applicant is at Serial No. 75. It is also submitted that the applicant was initially and directly appointed as Carpenter (Skilled Category) whereas Sri Mewa Lal was initially appointed as Khalasi and thereafter he was promoted as Carpenter on ad-hoc basis. The applicant submitted representations to the respondent no. 5 vide letters dated 08.04.2006 and 30.09.2006 (Annexure No. A-16 and A-17 to the OA)

requesting for regularization of his services at par with Sri Mewa Lal w.e.f., 10.06.1985 as he is junior to the applicant w.e.f, 10.06.1985.

5. The respondents filed Counter Reply in which it is stated that the applicant was initially engaged as casual labour on daily wage basis on 14.03.1978 vide casual labour card no. 08289 dated 11.04.1978 and as such he is not entitled to be regularized under the provisions of para 2007 (3) of IREM Volume-II on the post of the Carpenter (Skilled Artisan) in grade of Rs. 3050-4590/-, particularly in the circumstances when there is no regular sanctioned strength of skilled grade Rs. 3050-4590 in the Construction Organization. However, as already stated that on the basis of geographical jurisdiction of Allahabad Division, a joint screening of casual labour of open line, construction organization and railway electrification was conducted on 21.04.1992 as a result of which, the name of the applicant was placed on the provisional panel of Group 'D' (Khalasi) Gr. Rs. 2550-3200 (RPS) in the S & T Department and his seniority was fixed in Khalasi Gr. Rs. 2550-3200 at Sl. No. 266 in S & T department vide letter no. 752-E. Engg/S & T/Signal Khalasi/Seniority List/98 dated 05.10.1998 and as and when his turn comes according to seniority, the applicant will be considered for promotion subject to suitability. Regarding the averment in the OA that Sri Mewa Lal being junior to the applicant has been regularized as a Carpenter, it is stated in para 23-25 of the Counter Reply that Sri Mewa Lal was working as Carpenter and he was regularized by the division as per orders of this Tribunal in OA No. 1792/1998. The contention that Sri Mewa Lal is junior to the applicant has been denied in para 25 of the Counter Reply which also stated that both were empanelled after screening as S & T Khalasi in the year 1997. It is further stated in the

counter that the actions taken by the respondents are in conformity with various rules.

6. The applicant has filed rejoinder affidavit reiterating the facts stated in the OA. In reply to the averment in the Counter Reply that the applicant was appointed as a Casual Labour from 14.3.1978, it is stated that the applicant was appointed directly as Carpenter on 08.08.1983 and even while working as Gangman w.e.f., 14.03.1978, his services were utilized as a Carpenter. In reply to para 25 of the Counter Reply, it is stated that Sri Mewa Lal was applicant's junior and he was regularized on the post of Carpenter Grade III Rs. 3050-4590/- and the applicant, being senior is entitled to same benefit.

7. Shri S.S. Sharma, learned counsel for the applicant besides reiterating the contentions in the pleadings, stressed on the fact that one Sri Mewa Lal who is junior to the applicant has been regularized on the post of the Carpenter under skilled category, where as the applicant has been regularized as a Khalasi in lower pay scale and the claim of the applicant in this OA is to have the same benefit allowed to his junior Sri Mewa Lal. He has submitted a written note on facts of the case and enclosing the following judgments:-

- (i) Indra Pal Yadav & others Vs UOI & Ors (1985-SCC (L&S) 526, according to which similarly situated persons are to be regularized without to the Court.
- (ii) Ram Kumar & Others Vs UOI & Ors – AISJ-IV_1996 (1)-116: Supreme Court – in this case, it was held that the Railway Casual Labours working in ' C ' category for 5 years be screened in ' C ' category and regularized.
- (iii) Ashwani Kumar & Others Vs State of Bihar & others 1995 SCC (L&S) 2677 – in this case it was held that the parties who failed to approach the court cannot be ignored. So all affected persons, whether parties or not, to be included for grant of relief.
- (iv) State of Karnataka & Ors vs C. Lalitha (2006) 2 SCC-747.

8. Shri C.K. Rai proxy counsel for the respondents' counsel requested for adjournment which was rejected since the OA was filed in 2006 and is listed on Board. However, the respondents' counsel was allowed to file written arguments by 20.07.2018. But no written arguments has been filed by respondents' counsel by 20.07.2018.

9. We have considered the submissions and also perused the pleadings and documents available on record. The relevant questions to be considered by us are whether the contention that Sri Mewa Lal is junior to the applicant is correct based on the materials on record and whether the applicant is entitled for the benefit provided under para 2007(3) of the IREM.

10. Regarding the applicant's claim of seniority vis-a-vis Sri Mewa Lal, the para 4.38 of the OA states following reasons:-

- Date of temporary status of Sri Mewa Lal is 07.07.1984 whereas the date for temporary status of the applicant is 08.08.1983.
- In the panel for Group D post of S & T department of Allahabad division (Annexure A-13 to the OA), Sri Mewa Lal was in serial no. 78 whereas the applicant's serial no. is 75.
- Applicant was initially appointed as Carpenter (skilled category) whereas Sri Mewa Lal was initially appointed as Khalasi and thereafter he was promoted as carpenter on ad-hoc basis.

11. Regarding the dates for declaration of temporary status, no documents or order has been furnished by the applicant or by the respondents. In absence of these, we rely on the facts as mentioned in the pleadings. In para 4.5 of the OA, it is mentioned that the applicant was treated as Temporary on the post of Carpenter w.e.f. 08.08.1984. In para 4.38 of the OA, the date of temporary status of the applicant has been

mentioned to be 08.08.1983. On the otherhand, in para 6 of the Counter Reply it is stated as under:-

".....In reply thereto it is submitted that the applicant was appointed as Casual Labour on daily wage basis w.e.f. 14.03.1978 and was issued Casual Labour Card No. 08289 dated 11.04.1979. He was granted temporary status as Semi Skilled in grade Rs. 210-290 w.e.f. 02.08.1984 vide SSTE/SPL/ALD's notice no. Sig/WS/CL Regularization dated 30.12.1986....."

In reply to the above plea taken in para 6 of the Counter Reply, the applicant in para 6 of the Rejoinder states as under:-

".....It is submitted that regularization of the Applicant in Group 'D' post as mentioned in the para has got no relevancy in the matter of regularization of the Applicant on the post of Carpenter....."

12. The applicant reiterates his claim to be regularized as a Carpenter in view of various judgments and provisions in Indian Railway Establishment Manual as mentioned in para 6 of the Rejoinder, which does not have anything to contradict the averments of the respondents that the applicant was granted temporary status as semi skilled pay scale w.e.f. 02.08.1984, which is accepted by us to be correct. The respondents have not stated anything about the date when Sri Mewa Lal was granted temporary status, but the plea in para 4.38 of the OA that Sri Mewa Lal was regularized w.e.f 07.07.1984 has not been denied specifically. Considering this date of grant of temporary status for Sri Mewa Lal and the applicant to be 07.07.1984 and 02.08.1984 respectively, it cannot be said that the applicant is senior to Sri Mewa Lal.

13. Regarding the panel of screening test for Group D at Annexure A-13, it is seen that the document is unreliable for the purpose of inter se seniority, since the entries against serial no. 78 contain two dates under the column for date of initial appointment i.e. 08.12.76 and 07.07.84 with

overwriting and against serial no. 75 for the applicant the dates mentioned are 14.03.78 and 08.08.83 with remarks that “....as reengaged after a gap of more than 02 years on 08.08.83” and it is not mentioned in the list at Annexure A-13 if it is in order of seniority. Further, above entries show that initial appointment date for Sri Mewa Lal is 08.12.76 compared to 14.03.78 for the applicant. Hence, this document does not prove that the applicant is senior to Sri Mewa Lal.

14. The last ground taken in para 4.38 of the OA to prove the applicant's seniority vis-à-vis Sri Mewa Lal, is that applicant was initially appointed as Carpenter, whereas Sri Mewa Lal was initially appointed as Khalasi and thereafter he was promoted as carpenter on ad-hoc basis. In absence of any document to substantiate these contentions, it is difficult to say that the applicant is senior to Sri Mewa Lal on this ground.

15. Therefore, in absence of any other evidence furnished by the applicant to prove that he is senior to Sri Mewa Lal, we cannot accept the reasons/grounds mentioned in the OA in support of the plea that the applicant is senior to Sri Mewa Lal. We also notice the following contentions in para 25 of the Counter Reply:-

“.....It is totally wrong to say that Sri Mewa Lal is junior to the applicant.....”

In reply to the above averment in the Counter, there is no denial by the applicant, duly supported by evidence and the Rejoinder simply reiterates the contentions in para 4.38 of the OA. As discussed in para 10-14 of this order, the contentions in para 4.38 of the OA are not at all acceptable. Further, in para 24 of the Counter Reply, it is stated that Sri Mewa Lal's lien has not been fixed against the post of Carpenter Grade-III in pay scale of Rs. 3050-4590/- and his seniority is not being maintained against the

post of Carpenter Gr. III. But the post on which Sri Mewa Lal has been regularized has not been mentioned by the respondents. **In view of the above, the claim that the applicant is senior to Sri Mewa Lal is not substantiated based on materials available on record and the main question framed in para 9 is answered accordingly.**

16. The applicant has also cited the para 2007(3) of the IREM to argue that since he was appointed directly under skilled category on the post of rpara 4.22 of the OA), he is entitled for the benefit of said para 2007 (3). Respondents have denied these averments in para 14 of the Counter Reply, stating that since the applicant was initially engaged as a casual labour on daily wage basis on 14.03.1978, he is not entitled for regularization on the post of Carpenter as skilled category as per the para 2007 (3) and there is no regular sanctioned strength of skilled grade in Construction department. In the Rejoinder, the applicant has not furnished any evidence to contradict these averments and to prove that he was indeed appointed directly under skilled category as Carpenter as claimed in para 4.22 of the OA or he is getting salary applicable for skilled artisan, except for referring to the Annexure No. 1 of the Counter Rely, which is the Casual Labour card of the applicant. This card does not have anything to show that the applicant was engaged or appointed as skilled artisan as a Carpenter. In the OA, no evidence or document has been furnished to substantiate the claim that the applicant was appointed as a carpenter w.e.f. 08.08.1983. Copy of the order granting him temporary status with effect from August, 1984 and copy of the salary slips have not been furnished by the applicant in support of the averment that he is working as Carpenter from the date of his joining. In para 6 of the Rejoinder, the applicant states that he is directly engaged as Carpenter

and is now working as Carpenter in pay scale of Rs. 3050-4590 under the respondent no. 5, although no evidence to substantiate such averments has been furnished. The para 2007(3) of the IREM states as under:-

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

Hence, the applicant will be eligible for the benefit under para 2007(3), if it is proved that he is working as a skilled category worker as a Carpenter for a long period. Whether the applicant has been allowed the pay scale of a skilled artisan or Carpenter in Construction department and if so, since when he is getting such pay scale would be relevant to substantiate the claim. The respondents have also not provided anything about the pay scale being allowed to the applicant in Construction department. **In absence of any proof regarding the work being performed and/or the pay scale being enjoyed by the applicant and since when he is getting such pay scale, his eligibility for the benefit under para 2007(3) of the IREM cannot be allowed as prayed for in this OA.** It is, however, noted that as mentioned in para 6 of the Counter Reply, the applicant was granted temporary status as semi-skilled since 02.08.1984. But it is not clear from the pleadings whether the applicant was regularized subsequent to 02.08.1984 on semi skilled post or unskilled post.

17. Regarding the judgments cited by the learned counsel for the applicant, it is seen that as per the judgment of Hon'ble Apex Court in the case of Indra Pal Yadav (supra), the Railway Board have issued order dated 11.9.1986 (Annexure A-4) providing for grant of temporary status to Project casual labour and maintenance of department-wise seniority list for subsequent absorption against the vacancy in compliance to the order dated 1.8.1986 (Annexure A-3). In the pleadings of the applicant, it is stated that his case for regularization as skilled category was not considered, while allowing the same benefit to his junior Sri Mewa Lal. As discussed in para 15 of this order, we cannot accept the applicant's claim that Sri Mewa Lal is junior to him. There is no evidence that any of the Railway Board circulars have been violated by the respondents while dealing with the applicant's case. Most of the cases cited by the learned counsel for the applicant are on treating all similarly situated persons. The cited cases have no application in the instant OA as no case of an employee junior to the applicant where different decision has been taken by the respondents has been furnished by the applicant.

18. The case of Ram Kumar (supra) cited by learned counsel for the applicant, relates to the issue of regularization of Class III railway employees who were regularized against Class IV post and salary they would be paid on regularization. It was held that such employees would be allowed Class III pay till they are regularized in Class III posts as per the rules, if they were getting Class III pay scale before such regularization. There is no direction that such employees must be regularized on Class III posts. Hence, this case is not of any help to the applicant.

19. We have also noted a Full Bench Judgment of this Tribunal in the case of ***Aslam Khan vs. Union of India Ors.*** reported in ***(1997-2001) AT Full Bench Judgment 157*** on a question as to whether a person engaged directly on Group 'C' post, which is a promotional post, who has subsequently acquired temporary status on Group 'C' post would be entitled for regularization on Group 'C' post directly, it has been held as under:-

"8. On a consideration of this rules as also the administrative instructions, the Supreme Court has found that a daily wager or a casual worker against a particular post, who acquires a temporary status having worked against the said post for a specified number of days does not acquire a right to be regularized against the said post; he can only be considered for regularization in accordance with rules i.e. he can be considered for regularization only to Group-D post.

9. In the result, we answer the reference as under:

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 regularised on Group-C post directly but would be liable to be regularised in the feeder cadre in Group-D post only. His pay which he drew in the Group-C post, will however be liable to protected."

Hence, there is no merit for the applicant's claim for regularization directly to Group 'C' post.

20. In view of the facts and circumstances as discussed above and following the ratio of the Full Bench Judgment of this Tribunal in the case of Aslam Khan (supra), we are of the considered view that the applicant is not entitled to be regularized in the post of Carpenter which is a Group 'C' promotional post. Hence, we are unable to accept the reliefs prayed for by the applicant in this OA, which is liable to be dismissed. Accordingly, the OA is dismissed. There is no order as to costs.

(RAKESH SAGAR JAIN)
MEMBER-J

(GOKUL CHANDRA PATI)
MEMBER-A