

UNION OF INDIA AND ANR.

A

v.

MOTI LAL AND ORS.

FEBRUARY 15, 1996

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

B

*Service Law :*

*Railway—Class III post—Appointment of casual Mate—Regularisation of—Orders by the central Administrative Tribunal—On appeal, held : it is not permissible to appoint a person directly as a mate and it is only a promotional post from Class IV of Gangman and Keyman—Respondents did not acquire a right for regularisation as Mates on their mere continuance as casual Mate for a considerable period—Conferment of temporary status as Mate ipso facto does not entitle the person concerned for regular absorption as Mate—However it will be inequitable to require the respondents after 22 to 25 years of service to be regularised against class IV posts—Hence on equitable grounds the ultimate conclusions of the Tribunal not interfered with.*

C

D

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 3619-24 of 1996.

E

From the Judgment and Order dated 29.1.94 of the Central Administrative Tribunal, Allahabad in O.A.S. Nos. 874, 1606, 1788/92, 1029, 1030-31 of 1993.

N.N. Goswami, A.K. Srivastava, Arvind Kr. Sharma, for the Appellants.

F

S.K. Dhaon, Shyam Sunder Sharma, Anis Suhrawardy, Mrs. Shamama Anis and Zalli Ahmed Khan for the Respondents.

The following Order of the Court was delivered :

G

Delay condoned.

Leave granted.

These appeals by the Union of India are directed against the orders passed by the Central Administrative Tribunal, Allahabad directing the

H

A Railways authorities to absorb the respondents on regular basis as Mates.

B The respondents approached the Central Administrative Tribunal, Allahabad challenging the orders dated 18.2.93 and 11.6.93 passed by the Deputy Chief Engineer (Construction) Northern Railway regularising the respondents in the post of Gangman in the grade of Rs. 775 to Rs. 1025 in class IV. It was alleged by the respondents that they had been directly appointed as casual Mate in class III post in Northern Railway and after continuously working for more than 120 days they acquired temporary status as mates. It was also averred that before conferring temporary status on them they were required to pass the trade test and in pursuance to the directions of the Supreme Court in *Ram Kumar's* case (Writ Petition Nos. 15863-15906 of 1984 disposed of on 2nd December 1987) they were conferred to temporary status as mates and a seniority list had been drawn up. While they were so continuing, the two impugned orders emanated regularising them against the post of Gangman in class IV. accordingly they prayed before the Tribunal that the Railway Authorities should be directed to regularise them against the post of Mates. The appellants - Railway Authorities took the stand before the Tribunal that the post of Mate is a promotional post and can be filled on regular basis only by considering the employees from lower grade of Gangman/keyman/senior keyman. They did not dispute the fact that the respondents were granted temporary status against the post of Mates but contended that since the Gangman can only be promoted on regular basis to the post of Mate subject to his fitness and qualification the Authorities have regularised the respondents by the impugned order in the lowest post of Gangman. The Tribunal on consideration of the respective stand of the parties came to the conclusion that since the respondents have worked all these year as Mate right from the inception it would not be appropriate to regularise them against the lower post as Gangman and accordingly directed that they be regularised against the post of Mate. It is this order of the Tribunal which is being assailed in these appeals.

G Mr. Goswami, learned senior counsel appearing for the Union of India and other Railway Authorities contended that the conferment of the temporary status on a casual employee does not *ipso facto* entitle him to be regularised to the said post and, therefore, merely because the respondents were given temporary status against the post of Mates the Tribunal H erred in law in directing their regularisation as Mates. He further con-

tended that under the Rules in railways a person has to be appointed in the lowest of Gangman and from the said post the next promotional post is keyman and then senior keyman which are the posts in class IV and thereafter those of the senior keyman who are found suitable for promotion to the post of Mate after holding a trade test, are promoted to the post of 'Mate' in class III. This being the normal procedure of promotion it would be wholly inequitable and contrary to Rules to regularise the respondents as Mates. It was not disputed, however, that the respondents on account of dearth of people had been appointed as Mates and continued as such for all these year and also had been conferred with the temporary status against the post of Mate and a seniority list had also been drawn up. But according to him such appointment of the respondents as Mates is contrary to Rules and, therefore, such continuance does not confer a right of regularisation against the said post.

Mr. Goswami further contended that the respondents' pay, what they were drawing as Mates has been fully protected and, as such, there has been no illegality with the orders issued by the Railway Authorities regularising the respondents as Gangman.

The learned counsel appearing for the respondents, on the other hand, contended that there is no bar for direct appointment as Mate and infact the respondents having been appointed as Mates and their services having been utilised by the Railway Authorities for more than 20 years and they having been given temporary status it is not permissible for the Railway authorities to regularise them as Gangman. Consequently, the Tribunal was justified in issuing the impugned directions.

In view of the rival stand and the parties two questions really arise for our consideration;

1. Is it permissible under Rules to appoint a person directly as mate in Class III and if not, then whether the factually continuance of the person as a Mate for a considerable period entitles him to be regularised as a Mate?

2. Conferment of a temporary status as a Mate whether *ipso facto* entitles a person to be regularised as a Mate and not as a Gangman?

So far as the first question is concerned, on examining the relevant

- A provisions of the Rules as well as the Administrative instructions issued by the Railway authorities we are of the considered opinion that it is not permissible to appoint a person directly as a Mate and it is only a promotional post from class IV post of Gangman and Keyman. These Gangman and keyman can be promoted to the post of Mate in Class III subject to their suitability and efficiency being tested through Trade test.
- B It is no doubt true that these respondents under certain circumstances had been appointed directly as casual Mates and they continued as such and further by virtue of their continuance they acquired temporary status but that by itself does not entitle them to be regularised as Mate since that would be contrary to the rules in force. In our considered opinion the
- C respondents did not acquire a right for regularisation as Mates from mere fact of their continuance as casual Mate for a considerable period.

So far as the second question is concerned, we are also of the considered opinion that conferment of the temporary status as Mate *ipso facto* does not entitle the person concerned for regular absorption as Mate.

D It the case of *Ram Kumar v. Union of India*, (Writ Petition Nos. 15863-15906 of 1984 disposed of on 2nd December 1987) this Court has held that an employee on daily wage basis under the Railway acquires number of days in service and with the acquisition of said status such employees are entitled to :

- E (1) Termination of service and period of notice (subject to the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.
- F (3) Compensatory and local allowances.
- (4) Medical attendance.
- (5) Leave rules.
- G (6) Provident Fund and terminal gratuity.
- (7) Allotment of railway accommodation and recovery of rent
- (8) Railway passes.
- H (9) Advances.

(10) Any other benefit specifically authorised by the Ministry of Railways. A

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 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. B

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

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. D E

The appeals are accordingly dismissed. But there will be no order as to costs.

G.N.

Appeal dismissed.