

Nalawade

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2183 OF 2006

1. Union of India,
through Divisional General Manager,
Central Railway Mumbai CST,
Mumbai-I.
2. Divisional Railway Engineer (Central),
DRM Office, Central Railway,
Mumbai V.T. Mumbai I.
3. Permanent Way Inspector,
Central Railway,
Panvel-410 206.
4. The Assistant Engineer(M),
Central Railway,
Panvel- 410 206.

...Petitioners.

Versus

Shri. Balkrishana Balram Patil.
Post Chikle, Tal. Panvel,
District Raigad.

...Respondent.

.....

Mr. Suresh Kumar for the Petitioner.
Ms. Ranjana Todankar for the Respondent.

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CORAM : R.M. BORDE AND
A.S. GADKARI, JJ.
DATE : 9th February, 2017

PC: (Per A.S.Gadkari, J.)

1. The petitioners have challenged the order dated
17.11.2005 in Original Application No.448 of 2004 passed by

the Central Administrative Tribunal, Bombay Bench at Mumbai. By the said order the Tribunal has directed the petitioners to protect the pay of the respondent and to regularize his services in Group "D" and it is held that the respondent is entitled to difference of pay after fixing/protecting his pay.

2. Heard Shri. Suresh Kumar, learned counsel for the petitioners and Ms. Ranjana Todankar, learned counsel for the respondent and also perused the record.

3. The respondent was initially appointed as Casual Labour (Gangman) on 23.7.1980 with the petitioners. The respondent obtained the Motor Driver Licence in the year 1982. His superiors used to direct him to do the job of motor driver. The respondent was given temporarily status of motor driver in the year 1984 with effect from 1.1.1985 in the construction department and his pay was fixed in the scale of 950-1500. In the year 1989, his services were regularized in the post of Jr. Gangman in the pay scale of Rs.750-950 amounting to reversion of the respondent in lower post. The respondent therefore, filed Original Application No.258 of 1994 before the Central Administrative Tribunal, Mumbai seeking directions to the petitioners to appoint the respondent as Motor Vehicle

Driver on permanent basis and to pay him admissible pay scale to the said post. The Central Administrative Tribunal, Mumbai by its order dated 24.6.1999 directed the petitioners to avail the services of the respondent as a driver and he should be allowed to draw the pay scale of motor driver as 950-1500 for that period and permissible under the relevant scale. It is further directed by the Tribunal that the respondent be appointed in a vacancy which would be available for filling the said post.

4. It further appears from the record that, in the month of July, 2000, the petitioners appointed one Shri. Prabhakar Narayan to the post of motor driver by neglecting the claim of the respondent and therefore, the respondent preferred Original Application No. 448 of 2004 before the Central Administrative Tribunal, Bombay Bench at Mumbai for directing the petitioners to give the respondent status of the motor driver in permanent nature, to regularize his services in that post and to give difference in the said pay scale calculating his salary as driver, during the period he was made to work as driver. The learned Members of the Tribunal by its order dated 17.11.2005 was pleased to allow the said original application. The said order is impugned herein.

5. The record clearly reveals that, there is no dispute

about the applicant's appointment as Casual Labour (Gangman) in the year 1980. It further clearly appears from the record that the applicant was having driving licence and the petitioner Nos. 2 to 4 also utilized his services as Casual Motor Driver and he was granted temporary status of motor driver in the year 1984 with effect from 1.1.1985. By an order dated 24.6.1999 passed in Original Application No.258 of 1994 the Tribunal had specifically and categorically directed that as and when the vacancy arises the case of the applicant be considered and the petitioners were directed to take decision to fill it accordingly. It further appears that the respondent's pay as motor driver was not protected and he was regularized in the post of Gangman and his case was not considered for the post of motor driver despite the directions of the Tribunal. The respondent has been regularized in Group "D" post as a Jr. Gangman in the year 1985 instead of regularizing him in the post of motor driver. It is brought to the notice of this Court by the learned counsel for the respondent that, despite there being an order of the Tribunal dated 24.6.1999 one person by name Shri. Prabhakar. Narayan came to be appointed by neglecting the claim of the respondent. It is further pointed out that, even as of today, the respondent works as a motor driver with the petitioners. In view

of the same, the respondent's pay which he was drawing in Group- "C" post when he was regularized in "D" post in 1989 is required to be protected. It further appears to us that though the petitioners are utilizing the services of the respondent as a motor driver they have not paid him the pay scale as was required to pay under the law i.e. pay scale of Rs.950-1500. The learned members of the Tribunal have taken into consideration these various aspects of the matter and have passed the impugned order dated 17.11.2005.

6. We have minutely perused the impugned order passed by the Central Administrative Tribunal and after taking over all view of the matter, we are of the considered opinion that the Tribunal has not committed any error in passing the order dated 17.11.2005. We find no perversity in the impugned order. We therefore, dismiss the petition.

7. The petition is accordingly dismissed.

8. Rule granted by order dated 5.2.2007 is discharged.

9. No order as to costs.

(A.S.GADKARI, J.)

(R.M. BORDE, J.)