
(2014) 05 MP CK 0135
In the Madhya Pradesh High Court
Case No : W.P. 4499/2009 (s)

Chhotelal

APPELLANT

Vs

Union of India

RESPONDENT

Date of Decision : 06-05-2014

Acts Referred:

Citation : (2014) 05 MP CK 0135

Hon'ble Judges : S.K. Gangele, J;B.D. Rathi, J

Bench : Division Bench

Advocate : Jitendra Sharma, Advocate for the Appellant; Anand Bhardwaj,
Advocate for respondent No. 2, Advocate for the Respondent

Final Decision : Allowed

Judgement

1. They are heard.
2. This writ petition has been filed by the petitioner against the order dated 25th November, 2008 passed by the Central Administrative Tribunal, Circuit Camp, Gwalior in Original Application No. 342/2006 (Annexure P/1).
3. Petitioner was engaged as temporary status mason under Chief Inspector of Works (Construction) at Mathura on 25/9/1985. He was posted as mason in the contraction organisation against a newly created work charged post of mason in the pay scale of Rs. 3050-4590, vide order dated 17/12/1997, filed as Annexure A/3 before the Tribunal. Subsequently he was posted vide order dated 22/4/2006 as Khalasi a Group "D" post. He challenged the aforesaid order before the Tribunal on the ground that he was eligible to be regularised on the post of mason and his posting as Khalasi, a Group "D" post was illegal.
4. The respondents denied the claim of the petitioner. They pleaded that the respondent was engaged as temporary status mason. Thereafter, he was regularised in Group "D" post vide order dated 01/7/1996 as Khalasi and he was granted benefit of Assured Career Progression Scheme (ACPS), hence, the petitioner was not eligible to be regularised on the post of mason.

5. The Tribunal accepted the pleadings of the respondents and rejected the claim of the petitioner on the ground that the petitioner was already regularised as Khalasi in open line in 1996 and he was also granted the benefit of ACPS, hence, the petitioner's claim for regularisation as mason was not proper.

6. Undisputed facts of the case are that the petitioner was engaged as temporary status mason under Chief Inspector of Works (Construction) Mathura on 25/9/1985. Petitioner claimed that in accordance with the order Annexure A/3 dated 17/12/1997 passed by the Deputy Chief Engineer (C), Gwalior he was posted as mason in the pay scale of Rs. 3050-4590 and continued to work on the aforesaid post and he was also getting the pay scale of the aforesaid post. Thereafter, vide order dated 22/4/2006 he was posted as Khalasi, in Group "D" post which was illegal.

7. The respondents in their return admitted the fact that the petitioner continued to work as mason and he had been receiving the pay of mason in the pay scale of Rs. 3050-4590 and worked on the post in contraction organisation upto 19/4/2006. Thereafter, he was relieved by the organisation to join at parent department vide order dated 20/4/2006 and was posted as Khalasi. After the petitioner was regularised as Khalasi as mentioned by the respondents in their return, there was no question of posting the petitioner as mason and paying him the pay in the pay scale of Rs. 3050-4590 for a period of ten years.

8. Apart from this, in the order dated 17/12/1997 (Annexure A/3) it is mentioned that seniority of the petitioner shall be maintained under Engineering Department and a consolidated order of regularisation would be passed. Thereafter, the petitioner was allowed to work as mason and he was also paid the pay scale of mason, i.e. 3050-4590. From the date of engagement, the petitioner had been working as mason. He was paid regular pay scale for a period of ten years. This fact is admitted by the respondents themselves in the return. In such circumstances, contention of the respondents that the petitioner was regularised on the post of Khalasi is not true and could not be accepted. The Tribunal committed an error in accepting the pleadings of the Department to the effect that the petitioner was regularised as Khalasi in the year 1996 ignoring the fact that the petitioner worked as mason upto 19/4/2006 and he was getting the salary of the mason containing pay scale of Rs. 3050-4590. In this view of the matter, the impugned order passed by the Tribunal is contrary to law.

9. Consequently, this writ petition is allowed. Impugned order dated 25th November, 2008 passed by the Tribunal in OA No. 342/2006 (Annexure P/1) and the order dated 22/4/2006 passed by the respondents impugned before the Tribunal as Annexure A/1 are hereby quashed. It is ordered that the petitioner be treated as mason and he would be eligible to get benefits of the post and other benefits available to him.

10. No order as to costs.