

104

**Central Administrative Tribunal  
Principal Bench**

**OA No. 1449/2002**

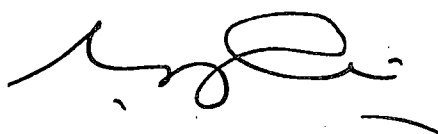
New Delhi, this the <sup>12<sup>th</sup></sup> day of March, 2007

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)**  
**Hon'ble Mr. V.K. Agnihotri, Member (A)**

1. Raghubir Singh,  
s/o Shri Khubi Ram,  
Trolleyman under Sr. Section,  
Engineer/Constn., Delhi Cantt.,  
CAO/Construction.
2. Hira Lal  
S/o Ishari Shah,  
Blacksmith under Sr. Section,  
Engineer/Constn., Delhi Cantt.,  
CAO/Construction.
3. Brahm Dev Mandal,  
s/o Dhautal Mandal,  
Gangman under Sr. Section,  
Engineer/Constn., Delhi Cantt.,  
CAO/Construction.
4. Ram Ujagar,  
S/o Ram Pyare,  
Gangman under Sr. Section,  
Engineer/Constn., Delhi Cantt.,  
CAO/Construction.
5. Ram Adhar,  
s/o Tilak Dhari,  
Gangman under Sr. Section,  
Engineer/Constn., Delhi Cantt.,  
CAO/Construction.



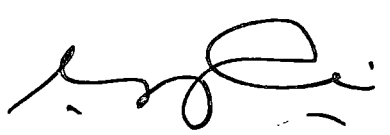
6. Girdhari,  
S/o Shri Bhulan,  
Chowkidar under Sr. Section  
Engineer/Constn., Delhi Cantt.,  
CAO/Const ruction.
7. Sompal,  
S/o Pyare Lal,  
Trolleyman  
-do-
8. Ram Naresh,  
S/o Gayadin,  
Gangman  
-do-
9. Ram Bahal,  
S/o Shri Ratan,  
Mate  
-do-
10. Sahdev,  
S/o Shri Soman,  
Gangman  
-do-
11. Shyam Dev,  
S/o Narain,  
Chowkidar  
-do-
12. Moti Lal,  
S/o r Ram Thari,  
Gangman  
-do-
13. Babu Khan,  
S/o Mohd. Ali,  
Blacksmith  
-do-



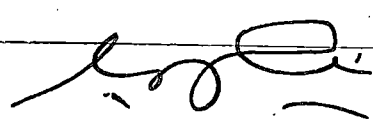
14. Dhanau,  
S/o Sukhu,  
Mate under Sr. Section  
Engineer/Constn., Delhi Cantt.,  
CAO/Const ruction.
15. Smt. Panchambai,  
W/o Dhanau,  
Gangman  
-do-
16. Rajinder,  
S/o Singheshwar,  
Khalasi,  
-do-
17. Nand Lal,  
S/o Bhagwan Din,  
Khalasi  
-do-
18. Smt. Rajeshwari,  
W/o Shri Nand Lal,  
D/o Shri Lalai,  
Gangman,  
-do-
19. Bansi,  
S/o Shri Ram Lal,  
Mate  
-do-
20. Smt. Sakura,  
W/o Shri Bansi,  
Gangman,  
-do-



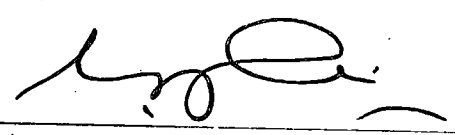
21. Ram Darsh,  
S/o Poojan,  
Gangman under Sr. Section  
Engineer/Constn., Delhi  
Sarai Rohilla,  
CAO/Constn.,
22. Shiv Kumar,  
S/o Jalim Prasad,  
Gangman  
-do-
23. Nand Lal  
S/o Shri Baldev  
Mate  
-do-
24. Shiv Kumar  
S/o Shri Sultan Singh  
Mate  
-do-
25. Kajod,  
S/o Shri Kena,  
Mate  
-do-
26. Narinder Kumar,  
S/o Sardari Lal  
Mate  
-do-
27. Surai Mani,  
S/o Shri Brahmdin,  
Mate  
-do-

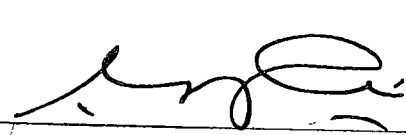


28. Gangabai,  
W/o Achhe Ram,  
Gangman under Sr. Section  
Engineer/Constn., Delhi  
Sarai Rohilla,  
CAO/Const.
29. Achhe Ram,  
S/o Raghbir,  
Khalasi,  
Delhi Main Station  
under Delhi Division.
30. Kailash Das,  
S/o Bauku Das,  
Khalasi  
-do-
31. Janak Rohit,  
S/o Shri Bauku Rohit,  
Khalasi,  
-do-
32. Musa Ram,  
S/o Sudan Ram,  
Mate, now Safaiwala,  
Delhi Main, Delhi  
Division.
33. Sumer,  
S/o Ganga Ram,  
Mate, now Safaiwala,  
Delhi Main, Delhi Division.
34. Seenatambi,  
S/o Alagan,  
Gangman  
-do-
35. R. Mogan,  
S/o Muniam,  
Gangman  
-do-

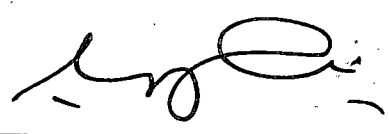


36. Narsingh Das,  
S/o Mahabir Das,  
Gangman, Delhi Main,  
Delhi Division.
37. Kalyan,  
S/o Ganga Ram,  
Gangman,  
-do-
38. Mani Ram,  
S/o Suman,  
Gangman,  
-do-
39. Chandradev Das,  
S/o Lila Das,  
Gangman,  
-do-
40. Devender,  
S/o Chhote Lal,  
Gangman  
-do-
41. Dhanneshwar,  
S/o Adhik Lal,  
Gangman,  
-do-
42. Mande Ram,  
S/o Shish Ram,  
Gangman,  
-do-
43. Ram Prasad,  
S/o Pokhai,  
Khalasi,  
Delhi Main.



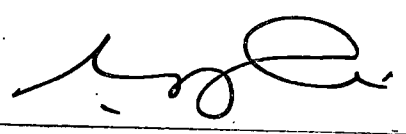
44. Rameshwar Mandal,  
S/o Baij Nath Mandal,  
Khalasi, New Delhi  
Station, Under Delhi  
Division.
45. Bhuveshwar,  
S/o Jhingan Sah,  
Khalasi,  
-do-
46. Mahesh Prasad,  
S/o Sarju,  
Khalasi,  
-do-
47. Ram Kirpal,  
S/o Chillar,  
Khalasi, Central Rly.  
Hospital, New Delhi.
48. Sahdev Mandal,  
S/o Badri Mandal,  
Gangman,  
under P.W.I./N.R.
49. Sahdev, Kamti,  
S/o Saudagar Kamti,  
Gangman under A.E.N.,  
Asstt. Engineer, Delhi  
BKK Division.
50. Samaru,  
S/o Shri Lalu,  
Gangman,  
D.R.M., Delhi.
51. Pandev,  
S/o Shri Ram Sahai,  
Khalasi under WACC, New  
Delhi Station, Delhi Division.
- 

- 52. Surendra,  
S/o Shri Baij Nath,  
Chowkidar under Dy. Chief  
Engineer/Constn.
- 53. Bhagirath,  
S/o Shri Vishan Dev,  
Trolleyman, PWI/Const.  
Delhi Sarai Rohilla,
- 54. Asgar,  
S/o Shri Gulzar,  
Safaiwala,  
Delhi Main.
- 55. Lavkush Singh,  
S/o Avadhesh,  
Gangman under Assistant  
Engineer, Delhi Main under  
Bikaner Division.
- 56. Kailash Chandra,  
S/o Shri Jakhu,  
Khalasi, Electric Work-  
shop, Daya Basti,  
G.M. N. Rly.
- 57. Budhu Das,  
S/o Shri Ram Sarup Das,  
Gangman under Sr. Section  
Engineer/Constn., Delhi  
Sarai Rohilla.
- 58. Ram Kishore,  
S/o Shri Satish,  
Khalasi, Sr. Section Engineer  
(Electricity), Coach, Hazrat  
Nizamuddin, Delhi Division.

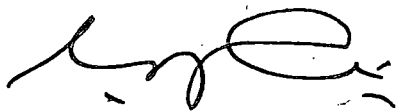




59. Punnuswamy,  
S/o Munnuswamy,  
Mate under Sr. Section  
Engineer/Construction,  
N.R. Delhi Sarai Rohilla.
60. Bhagwati Prasad,  
S/o Shri Nanku,  
Khalasi,  
-do-
61. Than Singh,  
S/o Shri Singa Ram,  
S.S. Khalasi under Sr.  
Section Engineer/Construction,  
N. Rly., Sarai Rohilla.
62. R.M. Tiwari,  
S/o Shri Hinchoti Ram Tiwari,  
Mate  
-do-
63. Ram Singh,  
S/o Shri Narain,  
Gangman,  
-do-
64. Bhagwat,  
S/o Shri Chhotan,  
Gangman,  
-do-
65. Chander Singh,  
S/o Shri Brahm Singh,  
Khalasi,  
-do-
66. Pawan,  
S/o Shri Markandey,  
Gangman  
-do-

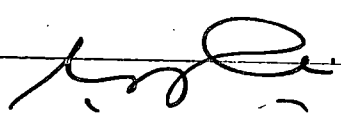


67. Chokhe Lal,  
S/o Shri Jagannath,  
Gangman,  
-do-
68. Jageshwar,  
S/o Shri Naurangi,  
Safaiwala, Sarai Rohilla,  
Station, Delhi B.K.D.
69. Ram Shakal,  
S/o Shri Poojan,  
Gangman under Sr. Section  
Engineer/Construction,  
Delhi Division under  
D.S.E., New Delhi.
70. Chhote Lal,  
S/o Shri Ram Pher,  
Trolleyman/Gangman, presently  
trolleyman under P.W.I., DSEN, Delhi.
71. Niranjana,  
S/o Shri Lachhman,  
Gangman, now Trolleyman,  
D.S.E. II, New Delhi.
72. Bate Krishna,  
S/o Hari Sevak,  
Gangman under PWI/  
Construction, now Mate  
under D.S.E. II, New Delhi.
73. Brij Lal,  
S/o Sher Singh,  
Gangman under PWI/PKD,  
Presently working as  
Trolleyman under  
D.S.E. II, New Delhi.



74. Shiv Darshan,  
S/o Shri Nathu,  
Store Khalasi under  
Shahdara/Construction, Now  
Gateman under P.S.I.,  
D.S.E.II, Delhi Division.
75. Prakash Chand,  
S/o Shri Biptu Ram,  
Survey Khalasi, K. Gate/  
Construction, Now Gateman  
under P.W.I., D.S.E.II,  
Delhi Division, New Delhi.
76. Kallu,  
S/o Shri Bhikha,  
Appointed as Gangman at TKD/  
Construction now working as  
Gateman under D.S.E.II, Delhi  
Division, New Delhi.
77. Nanku Ram,  
S/o Ram Pher,  
Appointed as Gangman at  
TKD/Construction. Now  
working as Gateman under  
D.S.E. II, Delhi Division,  
New Delhi.
78. Ram Abhilakh,  
S/o Shri Chauthi,  
Appointed as Gangman in  
TKD/Construction. Now working  
as Keyman at D.S.E.II, Delhi  
Division, New Delhi.
79. Ram Lal,  
S/o Ram Prasad,  
Appointed as Gangman at  
TKD/Const. Presently working  
as Gangman under D.S.E.II,  
Delhi Division, New Delhi.
- [Handwritten signature]*

80. Sukhi Ram,  
S/o Shri Bindha,  
Appointed as Gangman at  
TKD/Construction, Now  
working as Gangman under  
D.S.E.II, Delhi Division.
81. Rameshwar,  
S/o Manbodh,  
Appointed as Gangman at  
TKD/Construction.  
Presently working as Gangman  
under D.S.E.II, Delhi Division,  
New Delhi.
82. Ram Sarup,  
S/o Lala,  
Appointed as Gangman and  
presently working as Gangman,  
under D.S.E.II, Delhi  
Division, New Delhi.
83. Maya Ram,  
S/o Teji,  
Appointed as Gangman, Tilak  
Bridge, Now working as  
Gangman under D.S.E.II,  
Delhi Division.
84. Lalit Prasad,  
S/o Mahadev,  
Appointed as Gangman in  
Delhi Division, Shakurbasti,  
now working as Gangman under  
D.S.E.II, Delhi Division.
85. Rajinder,  
S/o Harihar,  
Appointed as Khalasi at  
Shahdara Const. Presently  
working as Gangman under  
D.S.E.II, Delhi Division.



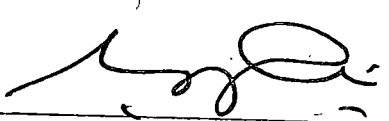
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86. MaheshPrasad,  
S/o Sukh Nandan,  
Appointed as Gangman/Const.  
At TKD/Delhi. Presently  
Working as Gangman under  
D.S. E.II, Delhi Division,
87. Ram Ratan,  
S/o Shri Jhari,  
Appointed as Gangman and now  
Working as Gangman under  
D.S. E.II, Delhi Division.
88. Sunder,  
S/o Shri Akloo,  
Appointed as Gangman  
At TKD Const./Delhi. Presently  
Working as Gangman under  
D.S. E.II, Delhi Division,
89. Pooran Lal  
S/o Heit Ram,  
Appointed as Khalasi at  
Jawan Wala Sahar (H.P.),  
Construction. Presently  
Working as Gangman under  
D.S.EII, Delhi Division.
90. Ram Baran,  
s/o Krishna Nand  
Appointed as Khalasi under  
IOW/Construction, Shahdara,  
Presently working as Gangman  
Under Sr. Section Engineer/  
Maintenance, D.S.E.II,  
Delhi Division.



91. Shree Nath,  
S/o Chaturri,  
Appointed as Chaukidar, Survey-I,  
K. Gate. Presently working as  
Gateman under Sr. Section  
Engineer(PWI), D.S.E.II,  
Delhi Division.
92. Badri Prasad,  
S/o Panna Lal,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Presently working as Gangman,  
under D.S.E.II, Delhi Division.
93. Mani Ram,  
S/o Shri Barh,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Presently working as Gangman  
under D.S.E.II, Delhi Division.
94. Asha Ram,  
S/o Sukai,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Now presently working as  
Gangman at D.S.E.II,  
Delhi Division.
95. Baddu,  
S/o Prasadi,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Presently working as Gangman  
at D.S.E.II, Delhi Division.

96. Makrand,  
S/o Shri Bhabhut;  
Appointed as Gangman at  
Tilak Bridge/Const ruction.  
Presently working as Gangman,  
at D.S.E.II, Delhi Division.
97. Sube Lal,  
S/o Bhallu,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Presently working as Gangman  
at D.S.E.II, Delhi Division.
98. Bisheshar,  
S/o Manbodh,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Presently working as Gateman  
under D.S.E.II, Delhi Division.
99. Ram Raj,  
S/o Gaya Prasad,  
Appointed as Gangman at  
Tughlakabad/Const ruction.  
Presently working as Gateman  
at D.S.E.II, Delhi Division.
100. Ram Kumar,  
S/o Ram Chander,  
Appointed as Khalasi at  
Shahdara/Const ruction/I.O.W.  
Presently working as Gateman  
under D.S.E.II, Delhi Division.
101. Janaki,  
S/o Jageshwar,  
Appointed as Gangman at  
Tughlakabad/Const./PWI., N. Sly.  
Presently working as Gangman  
under D.S.E.II, Delhi Division.



102. Sita Ram,  
S/o Ram Gajodhar,  
Appointed as Gangman at  
Kannur, PWI/Construction  
Division. Presently working  
as Gangman at D.S.E. II,  
Delhi Division.

103. Shri Ram,  
S/o Tidi,  
Appointed as Gangman at  
Tughlakabad/Construction.  
Presently working as  
Gangman under D.S.E.II,  
Delhi Division.

104. Shri Ram Raj,  
S/o Shri Ram Laut,  
Appointed as Gangman at  
Tugh-lakabad/Construction.  
Presently working as  
Keyman under D.S.E.II,  
Delhi Division,  
NEW DELHI.

105. Mohan Das,  
S/o Shri Budhu,  
Working as Assistant  
Driver (Diesel Engine),  
Under DM-II, Shakoor Basti,  
Northern Railway,  
Delhi Division.

.. Applicants

(By Advocate: Shri S.N. Shukla)

..17.





**-VERSUS-**

1. Union of India through  
the General Manager,  
Northern Railway,  
Baroda House, New Delhi.
2. The Chief Administrative Officer  
Construction, Northern Railway,  
Kashmere Gate, Delhi.
3. The Divisional Railway Manager,  
Northern Railway, Delhi Division,  
State Entry Road, New Delhi.
4. The Divisional Railway Manager,  
Northern Railway,  
Bikaner Division,  
JODHPUR (Rajasthan) ...Respondents

(By Advocate Shri R.L. Dhawan)

**ORDER**

**By Mr. V.K. Agnihotri, Member (A):**

This case has been referred to this D.B. by an order of a Single Bench dated 28.04.2005. In this OA the applicants have sought the following reliefs:

“(i) To direct the respondents to pay the arrears of salary in scale rate with usual allowances after expiry of 4 months continuous service till the applicants were actually granted temporary status as indicated in Annexure-A and fix the pay the applicants and revise the pay in accordance with the Revision of Pay Rules framed from time to time on the basis of the recommendations of Pay Commission and directed by the High Court of Delhi, Central Government, Labour Court and this Hon’ble Court in the orders passed by them and annexed with this application.



(ii) To grant any other and further relief which this Hon'ble Tribunal deems fit and proper under the circumstances of the case".

2. The bare facts of the case are that applicants, 105 in number, were appointed as casual labourers by the respondents between the period 1970 and 1982. They were accorded temporary/permanent status between 1979 and 1984. They had sought grant of temporary status retrospectively in terms of the order of the Railway Board dated 12.07.1973 (Annexure A-1, Colly.), which was denied to them. Hence the OA.

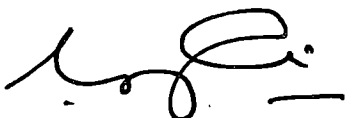
3. The applicants have stated that a large number of Railway employees have been paid arrears of pay and consequential benefits, including those persons who got similar relief in OA 371/2001, OA 996/2001, CW No.5247/97, OA 2943/2003 *et al* but the same benefit has been denied to the applicants arbitrarily. They have also relied on Railway Board's letter dated 12.7.1973 to state that period for grant of temporary status was fixed as 4 months, instead of 6 months, as stipulated under para 2001 of IREM; therefore, after applicants had completed 4 months, they were entitled to get temporary status and authorized scale of pay (scale rate).

4. Applicants have further submitted that there are no Project Casual Labours in Railways as they are made to work from place to



place, where work is available, within the geographical jurisdiction of the Railway zone. All the applicants were transferred within geographical zone of Northern Railway. Some of them have been absorbed Division-wise, but till date they have not been paid the arrears of pay.

5. Respondents have opposed this OA. They have submitted that this OA is barred by jurisdiction as well as limitation. They have also stated OA is bad for non-joinder of necessary parties. For example, in the case of applicant No.47, it has been indicated in the OA that he has been working as Khalasi in the Central Railway Hospital, New Delhi. Medical Director, Northern Railway, Central Hospital New Delhi, under whom applicant No.47 claims to be working, is thus a necessary party but has not been impleaded in the OA. Likewise in case of applicant No.68 and some other applicants, who claim to be presently working in the Bikaner Division of the North Western Railway, Divisional Railway Manager, Bikaner Division, North Western Railway is a necessary party but has not been impleaded in the OA. In case of Applicant No. 56, who claims to be presently working as Khalasi in Electrical Workshop Daya Basti, Delhi, Workshop Engineer, Northern Railway, Electrical Workshop, Daya Basti, Delhi is a necessary party, but has not been impleaded in the OA.



6. The respondents have further stated that 33 applicants (Annexure R-I) were initially engaged as Project Casual Labour in 1974, 1977, 1978, 1979 and 1981 and applicant nos. 48, 49 and 55 were engaged in Construction Organisation as Project Casual Labour in 1977 and 1980, respectively.

7. The respondents have averred that the claim for grant of temporary status to the Project Casual Labour was approved by Hon'ble Supreme Court in the case of **Inder Pal Yadav v. Union of India & Ors.**, 1985 (2) AISLJ (SC) 58. Accordingly, Railway Board issued letter dated 11.09.1986 (Annexure R-II), which was applicable to Project Casual Labour. It stipulated as follows:

"(a) These orders will cover:

(i) Casual labour on projects who are in service as on 1.1.1981 and

(ii) Casual labour on projects who though not in service in Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.

(b) The decision should be implemented in a phased manner according to the schedule given below:

Length of service i.e. Continuous Employment	Date from which may be treated as temporary (temporary status)
(1) Those who have completed five years of service as on 1.1.1981	1.1. 1981



(ii) Those who have completed three years but less than five years of service as on 1.1.1981	1.1.1981
(iii) Those who have completed 360 days but less than three years of service on 1.1.1981	1.1.1983
(iv) Those who completed 360 days after 1.1.1981	1.1.1984 or the date on which 360 days are completed whichever is later

All the applicants were accordingly granted temporary status in accordance with the aforesaid scheme as approved by Hon'ble Supreme Court of India.

8. As far as Railway Board's letter dated 12.07.1973 is concerned, respondents have stated that is applicable to Open Line Casual Labour only and is not applicable to the applicants. They have further explained that judgment dated 16.02.2001 given in OA No.371/2001 pertains to Open Line Casual Labour, and is, therefore, not applicable to applicants. Similarly, in CW No. 136/1985, decided on 13.07.1988 (**Union of India v. Presiding Officer, Central Government Labour Court & Anr.**), the issue was whether Labour Court had jurisdiction under Section 33-C(2) of the Industrial Disputes Act, 1947 to entertain the application of the workmen claiming difference of wages on the ground that they



were performing the same work as was done by regular employees. The issue of jurisdiction of CAT was not even dealt with by the Hon'ble High Court of Delhi in that case, as such applicants cannot take advantage of that judgment.

9. They have further referred to para 2001 (i) (b) of Indian Railway Establishment Manual (IREM, for short) (Vol. II) to show that Project Casual Labour are engaged on Railways for execution of railway projects, such as new lines, doubling conversion, construction of buildings, tracks renewals, Route Relay Interlocking Railway Electrification, setting up of new units, etc. Casual Labour of Projects, who have put in 180 days of continuous employment on works of the same type, are entitled for 1/30<sup>th</sup> of the minimum of their proper scale of pay + DA and are granted Temporary Status on completion of 360 days continuous service as Project Casual Labour. The respondents have, therefore, prayed that the OA may be dismissed as the respondents have already been given the benefit to the applicants in terms of scheme as approved by Hon'ble Supreme Court.

10. The respondents have further relied on the orders of this Tribunal in OA No. 2394/2001 (**Brij Kishore and Ors v. Union of India & Ors.**), decided on 12.03.2003 and O.A. No. 2898/2003 (**Govind Singh and Ors. v. Union of India & Ors.**), decided on 23.08.2004, as in both the OAs, it has been held that this Court

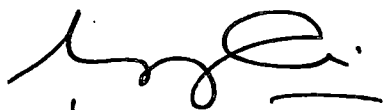


has no jurisdiction to take cognizance of a cause of action which had arisen more than 3 years prior to establishment of CAT on 01.11.1985, i.e. before 01.11.1982, as per Section 21 (2) of the Administrative Tribunals Act, 1985.

11. In their rejoinder, the applicants have reiterated and elaborated on their averments made in the main application. They have also rebutted the objections taken by the respondents on the grounds of jurisdiction and limitation.

12. When the matter was heard by the Single Bench earlier, after examining the relevant provisions of the Administrative Tribunal Act, 1985, the Hon'ble Single Member made the following observations while seeking orders of the Hon'ble Chairman to refer the case to D.B.:

"14. As far as the question of jurisdiction is concerned, it is seen that different views have been taken by different benches. Some of the O.As have been dismissed being barred by jurisdiction while some have been disposed of. Such an approach is neither in the interest of litigant nor in the interest of institution itself as it creates uncertainty in the minds of department and they also do not know which judgment should be followed. There must be uniformity and consistency in judicial decisions otherwise people start losing faith in judicial system. Even otherwise judicial discipline also requires that a view expressed earlier by a co-ordinate bench should be followed and if subsequent bench does not agree with the views expressed by earlier bench, the matter should be referred to a larger bench so that matter may be settled once and for all.



15. Following are the judgments in which different views have been expressed. In O.A. No. 2394/01, decided on 12.3.2003 in the case of **Brij Kishore & Ors. Vs. Union of India and Ors.** (Page 238), this court had observed as follows:

"I have carefully considered the rival contentions of the parties and perused the material on record. Through this OA, in fact, applicants seek temporary status on completion of 120 days of respective service from the date of their initial engagement and also claim after completion of 180 days. 1/30 of the minimum pay scale plus DA. In this furtherance, applicants also seek counting of 50% of the service of temporary status towards qualifying service for the purpose of pension. In fact, all the applicants were initially engaged from the year 1971 to 1976 and completed 120 days in the same year, their claim for accord of temporary status and counting 50% of service till their regularization in 1980, cannot be countenanced both on merit and limitation as well as this Court has no jurisdiction to take cognizance of a cause of action of which had arisen three years prior to establishment of Central Administrative Tribunal, i.e., 1.11.1985 as per Section 21 (2) of Central Administrative Tribunals Act, 1985".

Yet in the operative portion, certain directions were given which for ready reference read as under:

"In so far as accord of 1/30<sup>th</sup> of the minimum of the scale plus DA on completion of 180 days of service is concerned although as per the decision in PNM meeting dated 5.5.1994 all the staff have already been given minimum of the scale plus DA on completion of 180 days, the same has already been disbursed to the staff and difference of arrears has already been paid, the question of

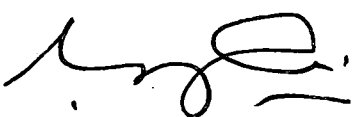




payment of 1/30<sup>th</sup> of scale according to the applicants is to be substantiated as per Railway Board's letter dated 15.6.1992 where it is stated that it has to be ensured from various documents that the casual labour had actually worked and while passing payment of arrears the entry is to be made. Whereas the respondents stand is that the applicants have already been working on projects there is no question of grant of temporary status and also no payment of arrears, but in case of staff regularize only after 1980 temporary status already been granted and the payments have already been disbursed. The aforesaid is a disputed question of fact, which cannot be gone into in a judicial review as held by the Apex Court in **B.R.Meena's** case (supra) but the fact that this is Court of first instance and having regard to the decision of **L.Chandra Kumar's** case, although the claim of applicants for grant of temporary status cannot be countenanced, and taking cognizance of. If the applicants through representation raise their grievance, in case they are not accorded the benefit of 1/30<sup>th</sup> of the minimum pay scale and particularly those who have been regularized after 1980, the same shall be gone into by respondents and be disposed of through a reasoned and detailed speaking order. OA is bereft of merit and is accordingly dismissed. No costs".

16. In O.A. No. 2898/03, decided on 23.8.2004 in the case of **Govind Singh & Ors. Vs. Union of India & Ors.** (page 246), another bench in similar circumstances had taken the following views:

"5. Obviously this Court has no jurisdiction over the present matter whose cause of action arose prior to 1.11.1982, i.e., more than three years prior to establishment of the Central



Administrative Tribunal. In this view of the matter it is not necessary to dwell upon the merits of the case. It is further observed that the issue of jurisdiction in the case of **Brij Nath** (supra) was not at all considered by the Court. As such, claims of the applicants placing reliance on that judgment cannot be entertained in this forum.

6. Accordingly, this OA is dismissed as not maintainable on the ground of jurisdiction”.

17. However, in subsequent judgment given in O.A. No. 2623/03, **Shri Sita Ram Prasad and Ors. Vs. Union of India**, decided on 25.10.2004, though respondents had relied on second judgment, as referred to above, in the case of **Govind Singh** (supra) but the Tribunal observed as follows:

“4. I have carefully considered the rival contentions of the parties. It is trite law that the decision of the Tribunal, which does not give cognizance of the decision of the Hon'ble High Court, is per incuriam and is not a precedent to follow. I find that in OA 2253/2004 decided on 21.9.2004 in the matter of **Shri Mahtab Singh and others Vs. Union of India and others**, a direction had been issued on the basis of the decision of the High Court in the case of **Ram Prasad and others Vs. Shri Ganpati Sharma and Anr.** decided on 27.10.1999 to the respondents therein to consider the claim of the applicants therein for accord of arrears. Since the decision of the High Court has been taken cognizance while deciding the aforesaid OA, I follow the same”.

Tribunal on the contrary relied on judgment given by Hon'ble High Court on 27.10.1999 in the case of **Ram Prasad & Ors. Vs. Shri Ganpati Sharma & anr.** and directed the respondents to consider grant of arrears in case applicants are able to furnish the material record of their working as labourers.



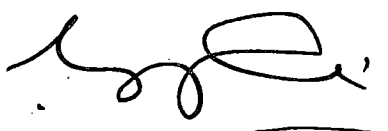
18. In other words, judgment of **Govind Singh** was held to be per incuriam as it had not taken into consideration the judgment of **Ram Prasad** (supra) given by Hon'ble High Court. My attention was drawn to **Ram Prasad's** case (supra) but on perusal of same it is found that the judgment of **Ram Prasad** (supra) has no relevance as far as the question of jurisdiction in CAT is concerned. In fact, in **Ram Prasad's** case (supra), the petitioners therein had challenged the order passed by Central Government Labour Court which was allowed by Hon'ble High Court because some other cases filed by individuals were allowed by the labour court while petitioners claim was dismissed. It was in these circumstances that the order passed by labour court was quashed and some directions were given by the Hon'ble High Court.

19. Interestingly neither the judgment of Hon'ble High Court was with reference to Central Administrative Tribunal nor the issue of jurisdiction was discussed therein. Therefore, it is not understood how the judgment given in **Govind Singh's** case (supra) could be declared as per incuriam.

20. Since I am dealing with the present case in single bench and both the judgments as referred to above have been placed before me by the respective counsel, I am of the opinion that the confusion must be settled by putting the matter before a Division Bench because if different views are expressed by different single benches apart from showing inconsistency, it also creates uncertainty in the mind of officers as to which judgment should be followed.

21. At this juncture, it would be relevant to quote some of the observations made by Hon'ble Supreme Court on the point of judicial discipline. In **K. Ajit Babu & Ors. Vs. Union of India & Ors.** reported in 1997 SCC (L&S) 1520, it was held as under:

“ Consistency, certainty and uniformity in the field of judicial decisions are the benefits arising out of the “ Doctrine of Precedent”. The precedent sets a pattern upon which a future conduct may be



based. One of the basic principles of administration of justice is that the cases should be decided alike. Thus the doctrine of precedent is applicable to the Central Administrative Tribunal also. Whenever an application under Section 19 of the Act is filed and the question involved in the said application stands concluded by some earlier decision of the Tribunal, the Tribunal necessarily has to take into account the judgment rendered in the earlier case, as a precedent and decide the application accordingly. The Tribunal may either agree with the view taken in the earlier judgement or it may dissent. If it dissents, then the matter can be referred to a larger Bench/Full Bench".

22. Similarly, in the case of **Arnit Das Vs. State of Bihar** reported in 2000 (5) SCC 488, Hon'ble Supreme Court held as under:

"Rule of sub silentio. When a particular point of law is not consciously determined by the court, that does not form part of ratio decidendi and is not binding".

23. In the recent judgment given by Hon'ble Supreme Court in the case of **Collector of Central Excise, Calcutta Vs. M/s Alnoori Tobacco Products and Anr.** reported in 2004 (6) Scale 232, it has been held as follows:

"Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judges interpret statutes, they do not interpret judgments. They interpret words



of statutes; their words are not to be interpreted as statutes.

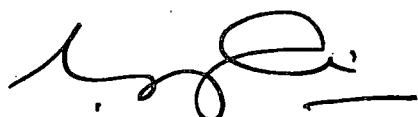
Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper”.

24. In view of the above discussion, I am of the opinion that this case needs to be referred to Division Bench so that the point of jurisdiction in case of casual labour claiming temporary status with effect from the dates which are prior to three years from the date this Tribunal came into existence and consequential benefits therefrom may be decided once and for all by an authoritative decision.”

13. The matter has accordingly been placed before this DB.

14. During the oral arguments Shri S.N. Shukla, learned counsel for the applicants, emphatically stated that the applicants were not Project Casual Labourer. He, therefore, sought the implementation of the Railway Board instructions dated 12.07.1973 for grant of temporary status to the applicants. In this context, he invited attention to the judgment of the Hon'ble Delhi High Court in **Union of India v. Presiding Officer, Central Government Labour Courts & Anr.**, 1989 (2) AISLJ 74 wherein it was held as follows:-

“9. It is clear from the Railway Boards' first letter dated 12<sup>th</sup> July, 1973 set out above that the Government accepted some recommendations of the Railway Labour Tribunal, 1969, and decided, inter alia, that “casual labour other than those employed on Projects” should be treated as temporary after the expiry of four months of continuous



employment. The second circular dated 21<sup>st</sup> March, 1974 refers to the first and directs the administration to ensure that "Casual labours" who have been continuously employed for a period of four months must be brought on to the authorized scale of pay. The last circular dated 12<sup>th</sup> June, 1974 deals with Casual Labour employed on 'projects' and provides, inter alia, that they should also be paid the scale rate if the same is higher than the local rate.

10. Thereafter on 19<sup>th</sup> July, 1974, CSTE (Con) issued a circular and directed the CSTE at various places to pay all casual labour employed on Railway projects 1/30<sup>th</sup> of the minimum of the revised scales plus dearness allowances of the corresponding permanent category. Thereafter CSTE (Con) issued another circular dated 30<sup>th</sup> August/3<sup>rd</sup> September, 1974 and stated therein as follows:

"In continuation to this office letter of even number dated 19-7-74 this is to intimate that in consultation with Dy. F.A. & C.A.O. (C) Kashmere Gate, Delhi, it has been decided that all the works under CSTE (C) shall be deemed as PROJECTS."

The Labour Court was of the view that this deeming order was issued unfairly with a view to escape financial liabilities in regard to casual labour working under CSTE (Con) and such a deeming provision could not be made without recourse to facts.

x x x

20. The second submission of learned counsel for the petitioner is also not tenable. The argument that the declaration by the CSTE (Con) "that all works under CSTE (C) shall be deemed as Projects" is based on facts is apparently wrong. If it were based on an examination of facts, then where was the necessity of using a deeming clause. Factually CSTE (Con) is a



(124)

permanent establishment and every work under it is not a Project. Work was admittedly being going on since 1969 and no time limit has been specified. The workman had admittedly no fixed work and place and worked at different places under CSTE (Con) Delhi. Existing work and unplanned and unenvisaged work cannot be a project. The finding of the Labour Court that the deeming provision had been used unfairly to deny the workman financial benefits to which he was entitled by virtue of the Railway Board's decision is not unreasonable and is supported by the decision in *L. Robert D. Souza's* case (supra). While construing the Railway Establishment Manual, rule 2501 (b) (ii)-Labour on Projects, Justice Desai speaking for the court observed:

"Rule 2501(b)(i) clearly provides that even where staff is paid from contingencies, they would acquire the status of temporary railway servant after expiry of six months of continuous employment. But reliance was placed on Rule 2501 (b) (ii) which provides that labour on projects irrespective of duration, except those transferred from other temporary or permanent employment would be treated as casual labour. In order to bring the case within the ambit of this provision it must be shown that for 20 years appellant was employed on projects. Every construction work does not imply project. Project is correlated to planned projects in which the workman is treated as work-charged. The letter dated September 5, 1966, is by the Executive Engineer, Ernakulam, and he refers to the staff as belonging to construction unit. It will be doing violence to language to treat the construction unit as project. Expression 'project' is very well known in a planned development. Therefore, the assertion that the appellant was working on the project is belied by two facts: (i) that contrary to the provision in Rule 2501 that persons belonging to



casual labour category cannot be transferred, the appellant was transferred on innumerable occasions as evidenced by orders Ext. P1 dated January 24, 1962, and Ext. P-2 dated August 25, 1964, and the transfer was in the office of the Executive Engineer (Construction); (ii) there is absolutely no reference to project in the letter, but the department is described as construction unit. If he became surplus on completion of project there was no necessity to absorb him. But, the letter dated September 5, 1966, enquires from other executive engineers, not attached to projects, whether the surplus staff, including appellant, could be absorbed by them. This shows that the staff concerned had acquired a status higher than casual labour, say temporary railway servant. And again construction unit is a regular unit all over the Indian Railways. It is a permanent unit and cannot be equated project. Therefore, the averment of the Railway administration that the appellant was working on project cannot be accepted. He belonged to the construction unit. He was transferred fairly often and he worked continuously for 20 years and when he questioned the bona fides of his transfer he had to be retransferred and paid wages for the period he did not report for duty at the place where he was transferred. Cumulative effect of these facts completely belie the suggestion that the appellant worked on project. Having rendered continuous uninterrupted service for over six months, he acquired the status of a temporary railway servant long before the termination of his service and, therefore, his service could not have been terminated under R.2505."

x

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x

24. Consequently, the Railway Ministry framed a scheme and circulated the same. The matter





was set down for examining the fairness and justness of the scheme. The court considered the scheme and felt that it certainly was an improvement on the situation through not wholly satisfactory. With the variation that it would be applicable to casual labour employed on projects who were in service on 1-1-1981 (and not 1-1-1984 as proposed), the Supreme Court as a "preliminary step towards realization of the ideal enshrined in Articles 41 and 42" put their stamp of approval on the scheme.

25. As some retrenched workmen had not knocked "at the doors of the court of justice", presumably because of the heavy expenditure involved, the Supreme Court directed that if "they are otherwise similarly situated they are entitled to similar treatment". The Court directed that the scheme be implemented and "a list of project casual labour with reference to each division of each railway" be made and they be absorbed taking the longest service into consideration. No discussion or argument pertaining to the abovementioned declaration "that all the works under CSTE(C) shall be deemed as project" was dealt with in the said judgment.

26. *Dakshin Railway Employees Union, Trivandrum Division v. General Manager, Southern Railway and others*, AIR 1987 (SC) 1153, the Supreme Court observed in its order dated 23<sup>rd</sup> February, 1987 that it had given certain directions in *Inderpal Yadav's* case (supra) modifying the scheme prepared by the Railway Administration for the purpose of absorbing retrenched railway casual labour. Since the petitioners in *Dakshin Railway Employees Union's* case (supra) claimed that they were entitled to the modified scheme, the court directed them to submit their claim to the administration.

x

x

x

28. None of these cases dealt with the validity of the declaration deeming all construction



137

works to be projects. Therefore, even if a workman has got some advantages as a result of *Inderpal Yadav* and *Ram Kumar's* case, it does not mean that he is precluded from challenging on the facts and circumstances that he is not a project worker and is entitled to temporary status after 120 days as a casual labour. The right to be treated at par with persons who were before the Supreme Court cannot stop the workman from contending that he was not a "project casual labour" and consequently became a temporary servant at the conclusion of 120 days in view of the various circulars of the Railway Board. It would, therefore, appear to us that the last contention of learned counsel for the petitioner has also to be rejected."

Thus the main plank of the arguments of the learned counsel for the applicants was that benefit of the judgment of the Hon'ble Supreme Court in the case **Inder Pal Yadav & Ors. v. Union of India & Ors.**, does not imply that the applicants can be denied the benefit of the Railway Board Circular dated 12.07.1973.

15. Learned counsel for the applicants also invited attention to the decision of the Hon'ble Supreme Court in the case of **Union of India & Ors. v. Basant Lal & Ors.**, 1992 (1) AISLJ 190 wherein the Railway authorities were directed to pay back wages to the applicants equal to the temporary status employees upon completion of 120 days.

16. On the issue of delay and laches, learned counsel for the applicants stated that the delay was on the part of the respondents in the implementation of their order and not on the part of the



applicants. In any case, in matters relating to pay and allowances, learned counsel argued, there is a continuous cause of action as ruled by the Hon'ble Supreme Court in several cases. Moreover, benefit provided to one set of persons in such matters cannot be denied to other similarly placed persons [**K.C. Sharma & Ors. v. Union of India & Ors.**, 1998 (1) AISLJ 54].

17. Shri R.L. Dhawan, learned counsel for the respondents opened his arguments by addressing the Bench on the twin issues of jurisdiction and limitation. He invited attention to Section 21 (2) (a) of the Central Administrative Tribunal Act, 1985 (CAT Act, for short), which reads as follows:-

"21. Limitation.-

x x x

(2) Notwithstanding anything contained in sub-section (1), where-

(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"

He, therefore, argued that this Tribunal has no jurisdiction in respect of matters, the cause of action relating to which arose prior to 01.11.1982. In the present case, the applicants are seeking relief in terms of Railway Board's letter dated 12.07.1973 and hence, this



Tribunal cannot entertain the present OA. In this context, he cited an order of this Tribunal in the case of **V.K. Mehra v. The Secretary, Ministry of Information & Broadcasting, New Delhi**, ATR 1986 (CAT) 203 wherein it was held as follows:

“3...Though the present petition is filed within six months of the constitution of the Tribunal in respect of an order made prior to 1.11.1985 as contemplated by sub-section (3) of Section 21, since it relates to a grievance arising out of an order dated 22.5.1981, a date more than 3 years immediately preceding the constitution of the Tribunal, this Tribunal has no jurisdiction, power or authority to entertain the petition...”

He also cited the decisions of this Tribunal in the following orders with the same ratio:

- (i) **Kedar Nath Dua v. Union of India & Ors.** (OA No. 2847/2003 decided on 03.10.2005); and
- (ii) **Shri Azad Singh v. Shri R. R. Jaruhara & Ors.** (CP No. 392/2004 in OA No. 1076/2004 decided on 28.11.2005).

He also drew attention to the orders of this Tribunal in the following cases, cited in the earlier Single Bench order of this Tribunal in the present case:

- (i) **Brij Kishore & Ors. v. Union of India & Ors.** (supra); and
- (ii) **Govind Singh & Ors. v. Union of India & Ors.** (supra).



18. On the issue of delay and laches on the part of the applicants in agitating the matter, learned counsel cited the judgment of the Hon'ble Supreme Court in **Bhoop Singh v. Union of India & Ors.**, JT 1992 (3) SC 322 wherein it was held that a Government servant, who has legitimate claim to approach the court for the relief he seeks, should do it within a reasonable period assuming no fixed period of limitation applies. This is necessary to avoid dislocating the administrative set-up after it has been functioning on a certain basis for years. He also cited the judgment of the Hon'ble Supreme Court in the case of **State of Karnataka & Ors. v. S.M. Kotrayya & Ors.**, 1996 SCC (L&S) 1488 wherein it was held that belated applications, immediately after coming to know that similar claim has been granted by the Tribunal, was not a proper explanation to justify condonation of delay. He also cited the following judgments of the Hon'ble Supreme Court to argue that in the absence of an application for condonation of delay, limitation is applied:-

- (i) **Secretary to Government of India & Ors. v. Shivram Mahadu Gaikwad**, 1995 Supp (3) SCC 231,
- (ii) **Ramesh Chand Sharma etc. v. Udham Singh Kamal & Ors. etc.**, 2000 SCC (L&S) 55.

He further stated that the Hon'ble Supreme Court has held that delay deprives the person of the remedy available in law [**Ratam Chandra Sammanta & Ors. v. The Union of India & Ors.**, JT 1993 (3) SC 418].



19. Arguing on the merits of the case, the learned counsel for the respondents stated that the applicants clearly belong to the Project Casual Labour and temporary status was given to them in terms of the order of the Hon'ble Supreme Court in the case of **Inder Pal Yadav & Ors. v. Union of India & Ors.** (supra). The dates of regularization of the applicants shown in Annexure A-4 (pg. 64-74) exactly match with the dates prescribed for regularization of Project Casual Labour in Railway Board's letter dated 11.09.1986 (supra). On the other hand, the Circular dated 12.07.1973 (Annexure A-1) is applicable to Open Line Casual Labour and not to the applicants. Judgments cited by the applicants have no bearing on the case and they have failed to establish that they were Open Line Casual Labour. In this context, he cited the judgment of the Hon'ble Supreme Court in the case of **Bharat Ram Meena v. Rajasthan High Court at Jodhpur & Ors.**, 1997 SCC (L&S) 797 to argue that courts cannot intervene in disputed questions of facts. He further cited the judgment of the Hon'ble Supreme Court in **Union of India & Ors. v. K.G. Radhakrishana Panickar & Ors.**, 1998 (5) SCC 111 to argue that it was not incumbent upon the respondents to grant temporary status to Project Casual Labour from the same date as was granted to Open Line Casual Labour.

20. Learned counsel for the respondents further stated that granting of temporary status to casual labour is not instantaneous,

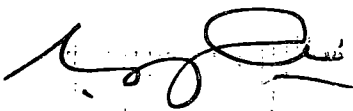


as it takes some time to complete all the formalities and procedures. He pointed out that this fact was appreciated in the judgment of the Hon'ble Supreme Court in **Union of India & Ors. v. Rabia Bikaner etc.**, JT 1997 (6) SC 95.

21. Learned counsel for the respondents further argued that the applicants were seeking relief in relation to their service records pertaining to a period more than 30 years ago. In terms of Railway Board Circular No. 831E/218(Rly) dated 16.07.1962, the records relating to Muster Rolls are preserved only for 5 years. As a matter of fact, in a particular case relating to an order of this Tribunal, the respondents had expressed this difficulty relating to absence of records in processing the claims of the applicants (CP No. 107/2005 in OA No. 998/2003 decided on 30.08.2005/23.03.2005). It would, therefore, be next to impossible to process the claim of the applicants herein too.

22. We have heard the learned counsel for the parties at length and perused the material on record.

23. From the material produced before us, we have reasons to believe that the applicants were granted temporary status in terms of the judgment of the Hon'ble Supreme Court in **Inder Pal Yadav & Ors. v. Union of India & Ors.** (supra). The facts of the judgement of the Hon'ble Supreme Court in the case of **Union of India v.**



**Presiding Officer, Central Government Labour Court & Anr.,** cited by the applicants, are different since firstly, in that case the applicants' services were terminated; secondly, it related to a specific situation in a particular Organization, viz. Chief Signal and Telecommunication Engineering (Construction), Northern Railway, thirdly, the applicants in that case were declared 'deemed' Project Casual Labour. No such categorical averment has been made on behalf of the applicants. Finally, as pointed out by the respondents, it related to issue of jurisdiction of Labour Court U/S 33-C(2) of I.D. Act, 1947. Similarly, the facts of the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. v. Basant Lal & Ors.** (supra) are also different insofar as in that case too the services of the applicants had been terminated. In the present case, however, the applicants have been given temporary status. Moreover, the issue of applicability of the Railway Board's order dated 12.07.1973 to Project Casual Labour was not considered by the Hon'ble Supreme Court in that case.

24. We also find merit in the arguments advanced by the respondents relating to the issue of limitation in terms of Section 21 (2) of the CAT Act as well as delay and laches in the claim agitated by the applicants. In this context, we would like to cite the following ruling of this Tribunal in a related case titled **Francis**





**Singh v. Union of India & Ors.** (OA No. 328/2005 decided on 06.03.2007):

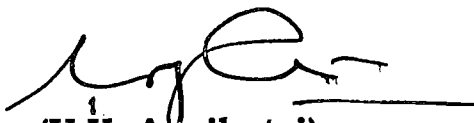
"7. We are also satisfied that the administration is justified in contending that the application is not maintainable for two reasons. The application is barred by limitation under Section 21 (2) of the Administrative Tribunals Act, 1985 as well as the laches which are there as the claims are agitated, after decades. Section 21 (2) prescribes a statutory bar, from agitating claims, which is beyond three years from the date of Administrative Tribunals Act had come into force. Therefore, any claims before the year 1981 automatically required to be rejected, because of want of jurisdiction to entertain such grievances. The standing counsel is also justified in submitting that even otherwise, there is laches, on the part of the applicant. Particular reference was made to a decision reported in 1993 (3) SC 1418 (R.C. Samantha Vs. Union of India). Long delay, which is unexplained, disentitles an adjudication. The application lacks merit and it is to be construed as not maintainable. It is dismissed with no order as to costs."

25. Taking the totality of facts and circumstances of the case into consideration, we come to the conclusion that the applicants have failed to establish their rightful claim for grant of benefit of the Railway Board's Circular dated 12.07.1973 (supra) to them. We further find that the applicants, having got the benefit of the judgment of the Hon'ble Supreme Court in the case of **Inder Pal Yadav v. Union of India & Ors.** (supra), which relates to Project Casual Labour, are now changing track to obtain the benefit of the



Railway Board's letter dated 12.07.1973, which pertains to Open Line Casual labour. This conduct of the applicants reminds us of <sup>the</sup> adage: running with the hare as well as hunting with the hound. The case of the applicants is also hit by delay and laches.

26. In the result, the OA is devoid of merit and is, therefore, dismissed. There will be no order as to costs.

  
(V.K. Agnihotri)  
Member (A)

  
(M. Ramachandran)  
Vice Chairman (J)

/na/