

Central Administrative Tribunal
Principal Bench

O.A.No.2394/2001

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Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 12th day of March, 2003

Shri Brij Kishore and other 54
applicants
All working under Deputy Chief Signal
and Telecommunication
Engineer (MW/M) DRM Office
IIInd Floor, Exchange
Building, State Entry Road
New Delhi. Applicants
(As per memo of parties mentioned
in OA)

(By Advocate: Sh. S.K.Gupta)

Vs.

1. Union of India through
The Secretary
Railway Board
Rail Bhawan, Rafi Marg
New Delhi.
2. General Manager
Northern Railway
Baroda House
New Delhi.
3. Chief Signal & Telecommunication Engineer
Baroda House
New Delhi - 110 001.
4. Deputy Chief Signal & Telecommunication
Engineer(MW)M, D.R.M. Office, IIInd Floor
Exchange Building, State Entry Road
New Delhi. Respondents

(By Advocate: Sh. R.L.Dhawan)

O R D E R

By Shri Shanker Raju, M(J):

Applicants, 55 in number, have impugned
respondents' order dated 29.5.2001 whereby
respondents, in response to a legal notice, have
stated that applicants have already been regularised,
there is no question of according temporary status and
payment of 1/30th of the scale having been paid to the
them, ^W and there is no question of its repayment.
Applicants have sought quashment of the impugned order

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with directions to accord them temporary status from the date of initial engagement till regularisation with all consequential benefits.

2. Applicants, who had been engaged from time to time between 1971 and 1976 have been regularised on different grades in the year 1980. Initially they had been engaged in Delhi-Firozepur Microwave Link which was commissioned on 1.7.1975. By a decision taken in PNM Meeting, General Manager has decided to grant temporary status to casual labourers after completion of 120 days along with arrears.

3. As per Railway Board's letter dated 12.7.1973 period of maximum service of six months has been modified to four months for accord of temporary status and it has been decided that casual labourers other than those employed on projects should be treated as temporary after expiry of four months.

4. As per the letter addressed by Divisional Railway Manager, Jodhpur Division, the required eligibility for grant of temporary status was the continuous service of 180 days.

5. By a communication dated 31.1.2000, regarding implementation of PNM's decision, and as the Delhi-Firozpur Microwave Link has been taken over on 1.5.1980 from Construction Organisation, verification has been ordered and process was initiated for ^uponement ~~of~~ temporary status of casual labour and the applicants' legal notice was responded to by a letter issued in May, 2001 whereby it is stated that

regarding grant of temporary status of 55 staff of Microwave Organisation, the payment of differences are being sent for necessary action.

6. As the request of applicants has been turned down through the impugned order, the present OA has been instituted.

7. Shri S.K.Gupta, learned counsel for applicants stated that the impugned order is arbitrary and discriminatory whereas the applicants' have been engaged from 1970 onwards and have been regularised at later point of time and applicants having been completed more than 180 days prior to 1973 as well as 120 after 1973, and moreover the Delhi-Firozepur Microwave Link was an open line project and not a fixed term project, they are entitled to be accorded temporary status on completion of 120 days which has been decided in PNM Meeting and is in consonance with Board's letter dated 12.7.1973 but the rights and privileges available for casual labourers, in pursuance of temporary status, cannot be denied to them.

8. Shri S.K.Gupta further stated that as applicants are yet to be paid to the 1/30th of the scale, and the earlier period rendered on casual basis, half of that period is to be reckoned for the purpose of qualifying service of pension, and as the relief claimed is for pay and allowances and counting of service, the same is a recurring cause of action and does not attract limitation. As regards the payment, as according to the respondents, the payment

had been disbursed, it is contended that the payment would have been entered in the personal record of applicants as provided in Railway Board's letter dated 15.6.1992. Lastly, it is contended that in the event, the payment has not been disbursed to applicants, the same may be verified by respondents and needful may be done.

9. On the other hand, respondents' counsel Shri R.L.Dhawan, denied the contentions and by resorting to Section 21(2) of the Administrative Tribunals Act, 1985 it is contended that whereas the relief claimed is for on the basis of Circular of 1973, and grant of temporary status on completion of 120 days which had arisen in the year 1971 to 1976, this Court has no jurisdiction to take cognisance of the grievance of applicants.

10. Moreover, it is stated that in so far as the grant of temporary status, on completion of continuance of working of 120 days, is concerned, the same does not apply to a project casual labourers as Construction Organisation as well as Microwave are in open line, the instructions of Railway Board would not have any application.

11. In so far as the difference of wages is concerned, it is contended that as the issue relates to the year 1976, the same is not a continuous cause of action, and by demonstrating from the record, regarding the working of applicants figured in Annexure A-2, it is stated that once, S/Shri Sagar Singh, Hari Nath, Jata Shanker Chote Lal, etc. had

working in Microwave Organisation which is a project in Construction Organisation, and it is only after the Microwave was taken by open line they had been rightly accorded regularisation and there is no question of temporary status after 1.1.1981 in the light of the decision of Apex Court in Inder Pal Yadav v. Union of India & Others, SLJ 1985(2) SC 58.

12. In so far as the counting of service of project for pensionary benefits as qualifying service is concerned, referring to the decision of Apex Court in Union of India v. K.G.Radhakrishna, SCSLJ 1998(2) SC 20, it is contended that service of a project casual labour prior to accord of temporary status cannot be counted for pension. However, it is stated that applicants have already paid 1/30th of minimum of the scale and temporary status cannot be accorded as they have been regularised the claim of applicants is not well founded. He refers to Board's letter dated 29.5.2001 at Annexure R-5 to contend that it has been certified that all the staff has been given 1/30th of the minimum of the pay scale on completion of 180 days. In this background, it is stated that there is no question of grant of temporary status before 1.1.1981. As Delhi-Firozepur Microwave Link was commissioned on 1.7.1975 and was taken over by open line on 1.5.1980, it has been decided to grant temporary status from 1.1.1981, it cannot be preponed, de hors the Rules.

13. In rejoinder, Shri S.K.Gupta, contended that for project casual labour on completion of 120 days 1/30th of the minimum scale is to be accorded and

as the matter was still under consideration even in June, 2000, in the light of the Constitutional Bench of the Apex Court in L. Chandra Kumar's case supra being a court of first instance this Tribunal can even go into the disputed question of facts. On the other hand, the learned counsel for respondents by referring to the decision of Apex Court in B.R.Meena v. State of Rajasthan, 1997 SCC (L&S) 797 contended that disputed question of facts and law cannot be gone into in a judicial review.

14. 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 regularisation 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.

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15. Moreover, from the perusal of the service record all the applicants who had been working either in Microwave or Construction projects, and applicants have never been working before regularisation in open line, and as per the Railway Board's Circular dated 12.7.1973 which stipulates accord of temporary status on expiry of four years continuance employment to the casual labourers, has no application in the instant case.

16. Moreover, in 1980, when the Microwave project has been taken over by the open line, the applicants have been regularised. Even according to Inder Pal Yadav's case supra and as per the formulation of Scheme for accord of temporary status by the respondents there is no question of grant of casual labour temporary status before 1.1.1981 those who have completed five years as on 1.1.1981. Accordingly, the claim of applicants for accord of temporary status is unfounded and is liable to be rejected.

17. In so far as accord of 1/30th 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 1/30th of scale according to the applicants is to be substantiated as per Railway Board's letter dated

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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 regularise 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 taken ^{"u"} ~~cognizance~~. If the applicants through representation raise their grievance, in case they are not accorded the benefit of 1/30th of the minimum pay scale and particularly those who have been regularised after 1980, the same shall be gone into by respondents and ~~be disposed of~~ ^{"u"} through a reasoned and detailed speaking order. OA is bereft of merit and is accordingly dismissed. No costs.


(Shanker Raju)
Member (J)

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