

Central Administrative Tribunal, Principal Bench

O.A. No.2212 of 1999

New Delhi this the 23rd day of January, 2002

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)
 HON'BLE SHRI KULDIP SINGH, MEMBER (J)

- 1 All India Central PWD (MRM)
 Karamchari Sangathan,
 34-D, Sector-4, (DIZ)Area,
 Raja Bazar, New Delhi-110001
 through Shri D.B.Singh,
 & Sh. Shym Bahadur Thapa,
 Joint Secretaries.
2. Shri M.F.Siddique, Foreman
3. Shri Jitender Singh, Foreman
4. Shri Mohammad Siddique, Sr. Operator
5. Shri Bal Bahadur, Mechanic
6. Shri Mohammad Ali, Mechanic
7. Shri Shyam Lal Singh, Sr. Mechanic
8. Shri Nagendra Prashad Singh, Sr. Mechanic
9. Shri Habbu Chatri, Sr. Operator
10. Shri G. Chander Shekher, Mechanic
11. Shri Dinesh Prashad Singh, Mechanic
12. Shri Mom Bahadur, Mechanic
13. Shri Ram Jatan Singh, Sr. Operator
14. Shri Baldev Singh, Sr. Operator
15. Shri Lal Babu Singh, Sr. Operator.
16. Shri Nazeem Ansari, Mechanic
17. Shri Prem Kumar, Sr. Operator
18. Shri Prem Singh Ghale, Sr. Mechanic
19. Shri Budhi Ram Thapa, Mechanic
20. Shri Khem Bahadur, Mechanic

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21. Shri Shanker Sharma, Motor Lorry Driver
22. Shri Sher Bahadur, Motor Lorry Driver.
23. Shri Sadhu Singh, Road Roller Driver.
24. Shri Chander Prashad, Sr. Operator
25. Shri K.K. Khatri, Motor Lorry Driver
26. Shri Lal Singh, Motor Lorry Driver
27. Shri Shyam Bahadur Thapa, Motor Lorry Driver
28. Shri V. Chellapai, Welder
29. Shri Hari Prashad, Mechanic
30. Shri V.N. Thakur, Mechanic
31. Shri Shamsher Singh Gurang, Mechanic.
32. Shri Mohammad Ayub Khan, Mechanic
33. Shri Madan Lal Thakur, Mechanic
34. Shri Bachneswar Singh, Mechanic
35. Shri Umesh Jha, Mechanic
36. Shri R.Y. Pandey, Mechanic
37. Shri Shailandher Kumar, Mechanic
38. Shri Prem Bahadur, Mechanic
39. Shri Valli Mohd. Mechanic
40. Shri T.K. Rao, Sr. Mechanic
41. Shri Sher Bahadur, Motor Lorry Driver.
42. Shri Ambica Narain Singh, Foreman.
43. Shri Dukh Bhanjan Singh, Mechanic
44. Shri Lal Bahadur, Sr. Mechanic
45. Shri Mohd. Ali, Sr. Mechanic
46. Shri Devi Ram Paharia, Sr. Mechanic
47. Shri Ram Chander Bhagat, Sr. Operator

48. Shri Ram Lagan Choudhery, Mechanic
49. Shri Mohd. Feroz Khan, Khallasi
50. Shri Nakul Rai, Operator
51. Shri Krishan Bahadur, Motor Lorry Driver
52. Shri Ram Dev Singh, Motor Lorry Driver
53. Shri Man Bahadur, Operator
54. Shri Lallan Prasad, Road Roller Driver
55. Shri Mohd. Maqsood Khan, Road Roller Driver
56. Shri Ram Km. Sharma, Turner.
57. Shri Ash. Bahadur, Welder
58. Shri V. Janardan, Welder.
59. Shri. Abdul Munaf, Weldar.

Applicants No. 2 to 59 care of All India Central
PWD (MRM), Karamchari Sangathan,
34D, Sector 4 (DIZ) Area,
Raja Bazar, New Delhi-110001.

By Advocate: Shri Naresh Kaushik.

Applicants

versus

1. Union of India,
through its Secretary,
Ministry of Urban & Employment,
Nirman Bhavan, New Delhi-11
2. The Director General of Works
C.P.W.D., Nirman Bhavan, New Delhi-11
3. The Superintending Engineer;
(Store Circle) C.P.W.D.,
Netaji Nagar, New Delhi
4. The Director of Horticulture,
CPWD, Indraprastha Bhavan,
New Delhi-2

Respondents

By Advocate: Shri A.K. Bhardwaj.

O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

The applicants had filed this OA whereby they had assailed order dated 23.10.1998 and 21.9.1999 whereby the benefit of quasi permanency status/service given to the applicants was sought to be withdrawn by the respondents. It is alleged that the same is contrary to the settlement between the workers as well as against the directions given by the Hon'ble Supreme Court as per their judgment in Civil Writ Petition Nos. 5140-48 in case entitled as Mahendra Raj Marg Karamchari Union and Others etc. Vs. Union of India & Others and they have prayed for the quashing of the same.

2. The facts in brief are that this applicant No.1 which is a Karamchari Sangathan had raised various dispute with regard to their service conditions and benefit of regularisation etc. A settlement was arrived at between the applicants and the respondents on the other hand vide Annexure A-2.

3. It was stipulated in the settlement that the services rendered in the Nepal would be counted for all purposes except for placing them in the existing panel of workmen working in India and they were to be treated as fresh entrants for safeguarding the interests of those workmen who were already working in India. The settlement was approved by Hon'ble Supreme Court as per their judgment dated 24.3.1995 Annexure 3 wherein it was also observed that all benefits except the seniority could be made applicable to the applicants.



4. Consequent thereto these workmen were declared quasi permanent by order dated 19.6.95 along with office orders dated 25.5.1994 and 21.10.1994 which are annexed as Annexure-4. Subsequently in the year 1999 the respondents withdrew the quasi permanency status accorded vide Annexure-4 by their circular dated 21.9.1999 on the ground that since past services rendered by the applicants in Nepal cannot be counted for seniority, so quasi permanent status cannot be granted and if so granted it could affect the seniority of the workers since confirmation and quasi permanency cannot be separated from the fixation of seniority of the workers and the department had also taken a plea that these MRM workers who were subsequently absorbed in CPWD in India their past services should not have been counted for declaring them as quasi permanent as per settlement dated 9.6.83 as it affects the seniority.

5. This OA was contested by the respondents who pleaded that they had withdrawn the status of quasi permanency in accordance with the settlement arrived at on 9.6.83 which is also in accordance with the Supreme Court's judgment.

6. The OA was heard and was decided vide order dated 12.5.2000. The operative portion of the order is reproduced hereinbelow:-

"9. In the light of the above discussion, we are unable to accept the contentions of the applicants and find that the impugned orders resulted in undoing the effect of erroneously accorded quasi permanent status by

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the order dated 25.4.1994 and order dated 21.10.1994. We are not in a position to find fault with the impugned orders (Annexure-I) of the respondents. The respondents have agreed that in view of the fact that the applicant 2 to 59 were treated as new entrants they would certainly be accorded quasi permanent status after completion of three years from the date of their fresh entry under the rules. This assertion of the respondents is acceptable to the court as well.

10. The other benefits such as pensionary benefits etc. would continue to be available to the applicants as per the settlement and aforesaid orders of the Hon'ble Supreme Court.

11. Having regard to the above discussions and reasons, the OA is dismissed. There will be no order as to costs".

7. This was challenged before the Hon'ble High Court in a Writ Petition No.6911/2000 filed by the applicants entitled as All India CPWD (MRM) Karamchari Sangathan (Regd.) Vs. Union of India and Others. The Hon'ble High Court observed that though the Tribunal had dismissed the OA holding that declaring quasi permanency status did not come within the purview of the settlement dated 9.6.83 and the Supreme Court's judgment but it further observed that "it (CAT), however, failed to deal with their contention that the impugned order recalling first order dated 21.10.1994 was violative of principles of natural justice and their rights". He further observed that "all that primarily remained to be seen was whether respondent could recall their earlier order dated 21.10.1998 (21.10.1994) in the manner in which they had done and whether they were required to observe the procedure established by law before passing such an order, be that in the light of the settlement dated 9.6.83 or judgment of the Hon'ble Supreme Court or for that matter OM dated 9.8.88". This is how the case has

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come up before us.

8. We have heard Shri Naresh Kaushik for the applicant and Shri A.K. Bhardwaj appearing for the respondents.

9. The learned counsel for the applicant submitted that the Tribunal while disposing of the OA had noted clause 7 of the final settlement in its order and then came to the conclusion that quasi permanent status was not in the purview of settlement. The counsel for the applicant further submitted that the benefits being given to the workers from this settlement which has also been approved by the Hon'ble Supreme Court show that those workers were not allowed seniority but their past services was allowed to be counted for other admissible purposes including pensionary benefits provided they surrender their retrenchment compensation and it was also submitted that the past services could be counted for all practical purposes like promotion to the higher posts. The counsel for the applicant further submitted that if the past services are to be counted for all other benefits, then except for the seniority all other benefits included even the status of quasi permanency because the status of quasi permanency entailed certain more benefits to the applicants such as in the matter of leave, in the matter of pension and in the matter of retiral benefits etc., but if the status of quasi permanency are withdrawn, then the petitioners are to suffer a lot as they would be deprived of various

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benefits.

10. Counsel for the applicants further submitted that they had filed a review petition before approaching the Hon'ble High Court and had explained about the benefits which are enjoyed by the employees who enjoys the benefits of quasi permanency and the employee who is treated as a fresh entrant cannot avail those benefits.

11. The counsel for the applicant then referred to the Hon'ble Supreme Court's judgment and submitted that the Hon'ble Supreme Court had also observed as under:-

" We have also independently examined the terms and conditions of the settlement. Only condition which would have effect on the continuity of the service is in paragraph 7(vii) thereof. It states that the workers who accept the post offered in India will be treated as fresh entrants and their past service will not count for seniority. However, their past service will not count for seniority. However, their past service will count for other admissible purposes including pensionary benefits provided they surrender their retrenchment compensation. Their past service in Nepal will be counted as past experience for promotion or appointment for higher posts. The period of break in service on their joining the MRM Project PHR EWR Projects will be regularised".

12. Relying upon the above observation of the Hon'ble Supreme Court. The learned counsel for the applicants submitted that the past services rendered in Nepal by the applicants was to be counted for all practical purposes except for seniority. Past services could also be counted for promotion/appointment to the higher posts provided the same has been rendered on regular basis (without break) then it can definitely be

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considered for grant of quasi permanent status which had, in fact, been granted earlier by the respondents and now the respondents cannot deny the same on the plea that since concept of seniority is interrelated to grant of quasi permanent status they cannot withdraw this status particularly when the applicants are not claiming seniority vis-a-vis workers who are already working under the CPWD in India so the counsel for the applicant submitted that withdrawal of status of quasi permanency is illegal, arbitrary and the impugned order should be quashed.

13. Opposing this Shri Bhardwaj appearing for the respondents submitted that the grant of quasi permanency status to the workers is interlinked with seniority because unless an employee has rendered a particular number of years of service that employee cannot be granted the status of quasi permanency and since as per the settlement those MRM project employees were to be treated as fresh entrants so they had to render service for require number of years for acquiring quasi permanent status and since those employees who were to be treated as fresh entrants so they cannot be conferred with quasi permanent status.

14. To our mind the department is taking a very rigid view of the settlement arrived at between the workers on the one hand and the Government of India on the other hand. Since paragraph 7.7 of the settlement clearly says that their past services rendered by the

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applicants can count for "other admissible purposes" including pensionary benefits etc. and they have been allowed even continuance of service because the period of break in service was also directed to be ignored and the workers to be regularised in service on their joining the MRM projects and will be regularised, so in a way the settlement had accepted the continuity of service. Break in service was also regularised though vis-a-vis their Indian counter-parts who are already working, thus these workers who had gone from MRM had to be treated as a separate block and were denied only seniority over the existing Indian workers but denial of seniority did not take away their other rights when particularly the period of break in service were also to be regularised as per their agreement.

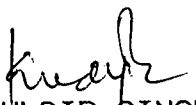
15. Now the question arises whether at all on the date of joining the CPWD in India after the settlement if they are to be treated as temporary/adhoc employees then they will definitely suffer for their other benefits such as pensionary benefits like leave entitlement etc. and if they are to be treated as quasi permanent on the basis of length of service which they had rendered in Nepal then the benefits with regard to these aspects will be ameliorated. The settlement had only denied the benefits of seniority and had kept the other benefits intact and if the applicants are not entitled for status of quasi permanent, then they will definitely suffer in enjoyment of the benefits granted by way of this settlement because their past services had to be allowed to be counted for

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"all other admissible purposes".

16. So in view of this situation we are of the considered view that the applicants are entitled to all the benefits to which even employees of a quasi permanent status was entitled to except for the seniority because in this settlement the applicants had agreed to surrender their right with regard to their seniority vis-a-vis their counter-parts who are already working in India, as such the department should not have raked up the issue of interlinking of seniority with the concept of quasi permanency again because it is a special case where the benefits of quasi permanency has been granted except seniority, so these applicants can be treated as a separate class and they should be granted all the benefits of quasi permanency with regard to leave, pension etc. and the benefit of seniority can be restricted as the applicants had agreed vide settlement dated 9.6.83 for joining at the bottom seniority and this agreement had already been approved by the Hon'ble Supreme Court in its judgment so we do not find any reason to withdraw those benefits just for the technical plea taken by the department.

17. The OA is allowed. The applicants are held to be entitled to all the benefits as if they are enjoying the status of quasi permanency at the relevant time. However, they are not entitled at all to claim seniority over their Indian counter-parts. In view of this, the impugned orders are quashed and set aside. No order as to costs.


(KULDIP SINGH)
MEMBER(JUDL)


(V.K. MAJOTRA)
MEMBER (A)

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