

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O. A. NO. 2618/1999

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New Delhi this the 17th day of August, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

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

1. Shri Inderaj Singh S/o Sh. Hardev
2. Shri Shiv Nath S/o Sh. Banwari Lal
3. Shri Ramayan Yadav S/o Sh. Bachi Yadav
4. Shri Anil Kumar Singh S/o Sh. Digvijay Pal Singh
5. Shri Satbir Singh S/o Shri Ram
6. Shri Ramjas Ram S/o Sh. Manni Ram
7. Shri Surinder Singh S/o Sh. Kohri Singh
8. Shri Lal Chand S/o Sh. Sant Ram
9. Shri Jagdish Pal S/o Sh. Jagan Nath
10. Shri Mahipal Singh S/o Sh. Ram Swaroop
11. Shri Sajjan Singh S/o Sh. Babu Singh
12. Shri Rakesh Kumar S/o Sh. Banwari Lal

(All the above applicants are working as
Electric Fitter (Technician) Car Shed
Ghaziabad. Applicants

(By Shri K.K. Patel, Advocate)

vs.

1. Union of India
Through General Manager
Northern Railway
Headquarter Office: Baroda House
New Delhi.
2. Divisional Railway Manager
New Delhi Rly. Station
State Entry Road
New Delhi.
3. Senior Electrical Engineer
EMU Car Shed
Ghaziabad.
4. Chief Administrative Officer (Construction)
Kashmere Gate
Delhi. ... Respondents

(By Shri R. L. Dhawan, Advocate)

14.
OA-2618/99

(8)

08-08-2000

Present - Shri K. K. Patel, counsel
for applicant.
Shri R. L. Sharan, counsel
for respondent.

Adjourned to 17-08-2000.

B-0

Mr
C.O.CI

17/8/00

Not advised
Please file complete

OA Reo been allowed by aDB 9
Hansha the chairman & Hansha. VIC majorra, m/s

By order
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Shri V.K. Majotra, Member (A):-

The applicants have joined the Railways in construction division as casual labours during 1978-83. They were granted temporary status as Gestetner Operator/Storeman/Khallasai/Gangman etc. Thereafter, the respondents held screening of the applicants on 5.1.1995, the results whereof were declared in March 1996 and the applicants were regularised. The respondents framed a policy to accommodate about 500 casual labours who were willing to be engaged as casual labour in Group 'D' in the grade of Rs.750-940 against permanent vacancies in Delhi Division in Tughlakabad Diesel Shed; EMU Car shed, Ghaziabad; Diesel Shed, Shakurbasti and Electrification, TRD between Badli and Panipat. Only such employees who had the educational qualification of Matriculation and above, preferably ITI were to be considered. It was emphasised that the casual labours working in Group 'C' could also give their willingness for consideration against the Group 'D' permanent posts on Delhi Division and were to be allowed protection of pay in grade of Rs.750-940. The ratio of the Construction Division under the Scheme was 60% as per Railway Board's instructions. According to the applicants, they gave their willingness. They were shortlisted by the competent authority. The respondents vide order dated 17.1.1995 gave a letter to the casual labours who had given willingness for absorption. The Chief Construction Administrator is alleged to have spared casual labours who were juniors than the applicants in violation of the instructions of the Railway Board. Thereafter respondent No.2 issued letter dated 15.2.1996 and directed that the

applicants who were working in different construction organisations should be spared to join at EMU Car Shed, Ghaziabad against newly created posts. Copies of letters dated 17.1.1995 etc. are at Annexure - 2 collectively. Since the applicants though senior were not spared by the construction authority to join against newly created posts, they made representation dated 16.12.1998 at Annexure —3. However, the respondents did not issue a seniority list till date. Consequently the applicants' juniors who had been spared earlier to join Group 'D' against permanent posts in Delhi Division were promoted as Grade-II Fitter earlier than the applicants who became Fitters on 20.5.1999. The applicants made a representation on 15.12.1998 to the competent authority to allow them to appear in the selection of Grade-II Fitter and also requested for assigning proper seniority. The representation remained unresponded. The applicants have sought assignment of proper seniority from the date of joining in EMU Car Shed, Ghaziabad taking into consideration the number of days they have worked in the construction organisation and were absorbed with respondent No.3 vide Scheme dated 19.12.1994 along with all consequential benefits. In the OA, the applicants have also challenged the action of the respondents as arbitrary, illegal in not fixing their pay scales in accordance with the rules of the Railway Board.

2. The respondents have taken a preliminary objection that the OA is barred by limitation stating that the applicants have filed the OA after a lapse of

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more than three years of their absorption in EMU Car Shed, Ghaziabad in response to respondents' letter dated 15.2.1996. It is also stated by the respondents that the applicants numbering 12 do not have a common cause of act the relief claimed by them is also not identical. They do not have any interest in the matter and they cannot be allowed to join in a single OA under the provisions of Rule 4(5) of the Central Administrative Tribunal (Procedure) Rules, 1987. According to the respondents whereas some of the applicants have raised the issue of seniority, the others have raised the issue of pay and seniority both. In this behalf, the learned counsel of the applicants drew our attention to the relief clause in which the applicants have sought assignment of proper seniority from the date of their joining in EMU Car Shed, Ghaziabad taking into consideration the number of days they have worked in the construction organisation and expressed willingness for absorption and fixation of pay on the basis of seniority. In view of the stance adopted by the learned counsel of the applicants, we are of the view that now that the applicants have claimed assignment of seniority alone, they are allowed to join together in a single application as they have now the same cause of action and the nature of relief claimed is also identical.

3. The respondents have contradicted the claim of the applicants that they have given their willingness for absorption in EMU Car Shed, Ghaziabad earlier than their juniors. According to the respondents, the inter se seniority of the staff of

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the same panel of screening who were sent for absorption in EMU Car Shed, Ghaziabad under the same office order (viz. the last batch which includes the names of the applicants) should remain intact i.e. the juniors persons of the same panel who happened to join EMU Car Shed, Ghaziabad earlier should not rank senior to those who joined the same unit subsequently though senior in the same panel of screening (in the instant case, the staff included in the last batch).

4. We have heard the learned counsel of both sides and carefully considered the material on record. The learned counsel of the applicants contended that the seniority of the casual labours such as the applicants who had been accorded temporary status and regularised on screening in the construction division should be maintained even on their absorption against Group 'D' permanent posts in Delhi Division under the Scheme at Annexure -1. The fact that some juniors of the applicants had been spared earlier by the respondents for joining against Group 'D' permanent posts in Delhi Division should not be held against the applicants who gave their willingness to join against Group 'D' permanent posts in Delhi Division consequent upon the order dated 19.12.1994, Annexure-1 as they cannot be held at fault for not joining against Group 'D' permanent posts in Delhi Division earlier than their juniors.

5. As regards the question of limitation, the learned counsel of the applicants stated that the respondents have themselves stated in their reply that

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the seniority of the applicant was assigned on 9.9.1998. The applicants made a representation on 15.12.1998 which remained un replied. In this view of the matter, we are in agreement with the learned counsel of the applicants that the OA was filed within limitation period under the provisions of the statute.

6. The learned counsel of the applicants drew our attention to the format of the application for consideration as casual labour in Group 'D' against permanent posts in Delhi Division at Annexure P-5. Col.13 of the application reads as under:-

"If already screened willingness to forfeit the claim of earlier screening & go as unscreened to DLI Divn. in group 'D' in gr. Rs.750-940 (RPS)."

Col.14 of the application which relates to casual labourers working in Group 'C' reads:

"(a) If willing to be considered against requirement in group 'D' posts as un-screened/in grade Rs.750-940 (RPS) on Delhi division. Please state yes or NO & give their option in order of preference in Solo.No.11."

7. A bare perusal of these columns of the application for consideration as casual labour in Group 'D' against permanent posts in Delhi Division makes it clear that pre-screening for absorption against any Group 'D' permanent post was not obligatory. The screening should have been organised and cleared later on even after joining in Group 'D' against permanent posts in Delhi Division. The learned counsel of the applicants also drew to our

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dated 17.1.1995

notice, Memo No. 803-E/83/V/Const. relating to short listing of casual labourers for absorption in grade RPS.750-940 (RPS) as Khalasi in Electrical/Diesel sheds etc. on Delhi Division. This Memorandum includes a list of Matriculate casual labours who have opted for absorption in Group 'D' against permanent posts in Delhi Division. This list includes the names of all the applicants among others and the seniority of those casual labours who had opted for absorption on the basis of their dates of appointment as casual labours in construction division ranging between 1978 and 1984. Whereas the learned counsel of the respondents has contended that the seniority on absorption should be strictly on the basis of their joining against Group 'D' posts in Delhi Division, we are of the view that as the applicants cannot be faulted for not joining earlier than their juniors as having not been spared by the respondents, their seniority on basis of number of days they have worked in the construction division cannot be given go bye particularly when the applicants have given their willingness earlier than their juniors and have ultimately cleared the screening in 1995. According to the learned counsel of the respondents, the batch of 36 casual labours were spared for joining against Group 'D' permanent posts in Delhi Division on 8.3.1995. The second batch of 81 was spared on 10.3.1995. The third batch of 34 including the applicants herein was spared to join in Delhi Division on 16.2.1996. In our view having regard to their seniority on the basis of number of days of their working in the construction division, it

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is immaterial that the applicants were spared to join against Group 'D' permanent posts in Delhi Division on 16.2.1996 in the third batch and later than their juniors. Their original seniority on the basis of the number of days put in by them in the construction division has to be kept in view while according them proper seniority against Group 'D' permanent posts in Delhi Division.

8. In the light of the aforesaid discussion, we find merit in the OA. The same is allowed and the respondents are directed to assign proper seniority to the applicants from the dates of their joining in EMU Car Shed, Ghaziabad taking into consideration the number of days they have worked in the construction division and were absorbed with respondent No.3 vide Scheme dated 19.12.1994 ignoring of course the dates of their actual joining in EMU Car Shed, Ghaziabad. No costs.

V.K. Majotra

(V.K. Majotra)
Member (A)

Ashok Agarwal

(Ashok Agarwal)
Chairman

sns