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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

O.A.No.1502 /1995

Date of Decision: 22- 1 -1999

Shri Mahender Singh & Ors. ..

APPLICANT

(By Advocate Shri Romesh Goutam

versus

Union of India & Ors. ..

RESPONDENTS

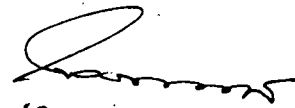
(By Advocate Shri R. L. Dhawan with K.R. Sachdeva

CORAM:

THE HON BLE SHRI T. N. Bhat, Member (J)

THE HON BLE SHRI S.P. BISWAS, MEMBER(A)

1. TO BE REFERRED TO THE REPORTER OR NOT? YES
2. WHETHER IT NEEDS TO BE CIRCULATED TO OTHER BENCHES OF THE TRIBUNAL?


(S. P. Biswas)
Member (A)

Cases referred:

1. Inder Pal Yadav Vs. UOI 1985 (2) SCC 648
2. R. K. Panda & Ors. Vs. SAIL & Ors. 1994 (5) SCC 304
3. Piar Singh 1992 (3) SLJ 34
4. State of U.P. Vs. Madhyamik Siksha 1996 (7) SCC 34
5. Sanjay Bhattacharjee Vs. UOI 1997 (3) SCALE 103
6. Sandeep Kumar Vs. State of UP & Ors. 1993 Suppl. 1 SCC 525
7. UOI Vs. D. K. Saxena 1995 (3) SCC 401
8. State of Punjab V. Gurdev Singh JT 1991 (2) SC 465
9. R. C. Samanta V. UOI JT 1993 (3) SC 418
10. Rehmat Ullah Khan & Ors. Vs. UOI (Full Bench Judgement-CAT) Vol. I-323

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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.1502/95

New Delhi, this 22nd day of January, 1999

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

S/Shri

1. Mohinder Singh
220.Moti Bagh, Sabzi Mandi
Delhi
 2. Harkesh Singh
F-107, New Ranjit Nagar, New Delhi
 3. Mukesh Kumar
230, Gali No.11, Than Singh Nagar
Anand Parbat, New Delhi
 4. Sunil Kumar
20, Block B, Old Sabzi Mandi
Moti Bagh, Delhi
 5. Anil Kumar
T-68, Railway Colony
Shahdara, Delhi
 6. Subhash Chand
Basti Khazoo Ka Per, Shahdara, Delhi
 7. Zakir Hussain
Khazoor Ka Per, Shahdara, Delhi
 8. Ravi Kant
230B, Gali No.11, Than Singh Nagar
Anand Parbat, Delhi
 9. Mukandi Lal
F-53, DDA, New Ranjit Nagar
Patel Nagar, New Delhi
 10. Vinod Prasad Badoni
36, Balbir Nagar, Gali No.4
Shahdara, Delhi
- .. Applicants

(By Advocate Shri Romesh Goutam)

versus

Union of India, through

1. Secretary
Railway Board
Rail Bhavan, New Delhi
 2. General Manager
Northern Railway
Baroda House, New Delhi
 3. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi
- .. Respondents

(By Shri R.L. Dhawan with Shri K.R. Sachdeva,
Advocates)

ORDER

Hon'ble Shri S.P. Biswas

1. The applicants are aggrieved by P-10 order dated 23.3.1994 issued by the respondents by which names of some of the applicants have been deleted

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from the Live Casual Labourer Register (LCLR for short) since they were initially engaged after 31.12.86. The list in particular does not contain names of applicants No.1, 2, 3, 5 and 8. Consequently, applicants seek relief in terms of issuance of directions to the respondents to quash and set aside the aforesaid order and put their names in the LCLR forthwith and regularise their services in turn in accordance with the rules.

2. It is the case of the applicants that based on the instructions issued by the Railway Board in its circular dated 11.9.86 (P-1), it was the duty of the respondents to include names of all the casual labourers who have been discharged after 1.1.81. The aforesaid circular is based on the judgement of the apex court in the case of **Inder Pal Yadav Vs. UOI 1985(2) SCC 648**. Applicants would also seek to establish their stand on the strength of P-6 order dated 12.2.92 passed by this Tribunal in a group of OAs. In this order, the Tribunal has dealt with the issues pertaining to hot-weather watermen who had worked in the Railways for several years. Applicants have also relied on the circular issued by the General Manager/Northern Railway (220E/190-XIX-A/RIV dated 28.8.87) wherein detailed instructions, as in paras 7 to 14, have been given towards recording names of such employees in the LCLR.

3. The main plank of applicants' claim is on the basis of discrimination resorted to by the respondents while including names of such officials

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in LCLR. Respondents appear to have accorded approval for putting names of such employees in LCLR in respect of those candidates who were initially engaged before 31.12.86 and have also rendered over 120 days of working. P-10 order dated 23.3.94 is based on this criteria. Applicants would allege hostile discrimination in the sense that applicant No.5, a Scheduled Caste candidate, has been allowed to have his name incorporated in LCLR and even offered re-engagement as Safaiwala though appointed after 31.12.1986. Again, one Shri Kamal Kishore whose name figures at Sl.No.37 of P-10 order has been directed to be re-engaged, though engaged on 1.7.87, i.e. after the cut-off date 31.12.86. That apart, respondents have been engaging fresh casual labourers from the open market. This is evident from the letter dated 28.9.95 by which Mohd. Saleem Rai has been appointed. A copy of the said letter has been annexed at P-12.

4. When the matter came up initially for hearing on 17.9.96, this Tribunal held that alternative forum of adjudication has to be explored in the light of the decision by the Supreme Court in **R.K.Panda & Ors. Vs. Steel Authority of India & Ors. 1994(5) SCC 304**. It was also felt by this Tribunal that length of service, eligibility for re-engagement etc. which could really form part of the process of judicial review need examination in depth. Appropriate notice was issued to the Attorney General of India requesting him to depute a Law Officer who could assist the court in respect

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of the issues mentioned aforesaid. Shri K.T.S.Tulsi, learned senior counsel in the Supreme Court was also requested to appear as amicus-curiae.

5. Dr. A.M.Singhvi, Additional Solicitor General of India appeared on behalf of Union of India and expressed the view that such matters are to be decided in terms of the judgement of the apex court in the case of **Piara Singh 1992 (3) SLJ 34**, **State of U.P. Vs. Madhyamik Sikha 1996(7) SCC 34**, **Sanjay Bhattacharjee Vs. UOI 1997(3) SCALE 103**. In short, such employees could not be considered for regularisation unless they fulfill some or all the criteria and conditions enunciated by the Hon'ble Supreme Court. The learned ASG expressed the view that it is extremely doubtful whether in terms of qualifications, length of service, sponsorship and vacancies etc. applicants would be entitled to be considered for regularisation in terms of the norms laid down. Such daily wage workers could only be regularised as and when regular post is available on the basis of length of engagement, seniority and performance of work etc. Such employees do not have any vested right to employment by way of regularisation or by way of automatic right to appointment flowing from inclusion of the names in the waiting list. The proposition that disputed questions should be relegated to appropriate Tribunals created by way of specific alternate channels of remedy is too well established to be emphasised. Regularisation of service put in by the applicants in earlier

casual capacity would itself be a detailed question of fact to be decided in such proceedings. In a nut-shell, the Tribunal cannot be said to have general power to do justice or mould relief contrary to either the statute or rules or prior judicial precedents. Under these circumstances, the learned ASG argued that such cases could at best be adjudicated at the alternative legal forum.

6. Shri K.T.S.Tulsi, learned senior advocate appearing as amicus-curiae, submitted that these applications have been filed by the applicants who were engaged as hot-weather watermen and from the very nature of designation, it is apparent that nature of work was seasonal and not of perennial nature. This work would have been available only in hot weather condition. Since hot weather conditions do not prevail round the year work could not be said to be of regular nature. In view of this position, applicants cannot claim a right for permanent absorption since the posts for which they have claimed to have been engaged were temporary and seasonal in nature. In support of this contention, learned counsel drew our attention to the judgement of the Hon'ble Supreme Court in the case of **Sandeep Kumar Vs. State of UP & Ors. 1993 Supp. 1 SCC 525** and **UOI Vs. D.K.Saxena 1995 (3) SCC 401**. It was, however, submitted that the Tribunal does have the jurisdiction to entertain such application of the casual labourers. However, since the applicants have raised disputed questions of facts, it would be advisable to refer these



matters to the Labour Court who have the jurisdiction to deal with the dispute under the Industrial Disputes Act, 1947.

7. The official respondents, while opposing the claims, have argued that this application has been filed more than 4-8 years after applicants were discharged from service and as such is clearly hit by limitation. Reliance was placed on the law laid down by the Hon'ble Supreme Court in the case of **State of Punjab Vs. Gurdev Singh, JT 1991(3) SC 465** and that of **R.C. Samanta Vs. UOI JT 1993(3) SC 418**.

8. Respondents would further submit that the Railway Board's instructions in letter dated 11.9.86 (P-1) are applicable only to Project Casual labourers and not to the applicants as they were engaged as labours in open line and not as project casual labours in terms of para 2001 of IREM Vol.II 1990 Edition. It has been further submitted that instructions in P-2 circular dated 28.8.97 are applicable to the facts and circumstances of this case since the applicants's initial engagements as casual labours were without the approval of competent authority (i.e. GM of the Railway) and as such their engagements are void ab-initio. Respondents would further submit that the decision contained in P-10 communication has not been challenged. The willingness of applicants No.1, 2,3,6, 7 and 8 have been received and papers have been sent to hqrs. for obtaining approval of the

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competent authority. Remaining applicants viz Sl.No.4, 9 and 10 have not been found suitable for appointment for the following reasons:

- (i) Applicant No.4 did not attend the screening/short listing held in August/November, 1992
- (ii) Applicant No.9 did not attain temporary status as he had worked only for 54 days.
- (iii) To form a centralised casual labour in Divisional Office an open call was given to all casual labours who had worked for more than 120 days upto 31.12.88 by a formal communication dated 9.4.90. Applicant No.10 did not respond to this call and his name was deleted from the centralised casual labour register.

9. Based on the claims and counterclaims as detailed aforesaid, the fate of this case hinges on the determination of the following issues:

- (i) Whether the Tribunal would have jurisdiction to adjudicate cases of casual labours falling in the category of hot-weather staff?
- (ii) Whether the applicants could have legal rights for re-engagement as hot weather staff or as casual labours?

10. The basic issue as to whether the casual labours who do not hold any civil posts can come to CAT need not detain us any longer. The full bench of this Tribunal have had an opportunity of examining these very issues in the case of **Rehmat Ullah Khan & Ors. UOI Full Bench Judgements (CAT) Vo.I page 323.** In para 32 of the order, this Tribunal held that "though a casual labourer does not hold a civil post, he is in the service of the Union. He is essentially in the civil service of the Union. We hold the same view in respect of a

civilian similarly employed in the Defence Services who is not a member of the Armed Forces of the Union. We are further of the view that the CAT has jurisdiction to entertain the cases of casual labour/daily rated/daily wager under Section 29 of the Act. We are, therefore, unable to agree with the view expressed by the Jabalpur Bench in the case of A.Singh & Ors. V. UOI and Ors. and the Cuttack Bench in the case of K.Nayak V. UOI on the question of want of jurisdiction of the Tribunal to entertain applications under section 19 and 29 of the Act filed by casual labour/daily wager/daily rated workers".

11. In other words, it was held that casual labours who work with Union of India under section 2(a), their service matters under section 3(c) are subject to the jurisdiction of Tribunal under section 14(1)(b). They can file application under section 19 and their pending suits stood transferred to CAT under section 29.

12. Although respondents have taken the plea of limitation, however, in the light of the ratio arrived at in the case of Vishal Mani Vs. GM/Northern Railway decided on 16.10.95 in OA 859/95, the plea of the respondents in respect of limitation will not hold good. What is not denied is that an employee of similar nature has been offered re-engagement as late as 13.12.95. Admittedly, applicants at Sl.No.1, 2, 3, 6, 7 and 8 have been called for re-engagement and they have already expressed their willingness for

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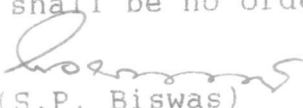
re-engagement. When approval can be given for applicant No.5 who has been engaged much after 31.12.96, why the same cannot be accorded for the rest of the applicants has not been explained by the respondents although the applicants have given in writing that they are agreeable to work as Safaiwalas.

13. Admittedly we find that applicants namely Mahender Singh, Harkesh Singh, Mukesh Kumar, Subhash Chand, Zakir Hussain and Ravi Kant have been asked to express their willingness as late as in April, 1996 for working as Safaiwals. Based on this, applicants No.4, 9 and 10 cannot be denied the same opportunity.

14. In the background of the detailed discussions aforesaid, the OA partly is allowed with the following directions:

- (a) Respondents shall ascertain from Applicants No.4, 9 and 10 in respect of their willingness for working as Safaiwalas. In case they give their willingness, respondents shall consider issuing similar offers as has been done in the case of applicant No.5 and others. This, however, will be subject of availability of work/vacancies.
- (b) Action in respect of the aforesaid direction, shall be complied with within a period of three months from the date of issue of this order.

There shall be no order as to costs.


(S.P. Biswas)
Member(A)


(T.N. Bhat)
Member(J)

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