10

Central Administrative Tribunal
Principal Bench, N.Delhi.

.....

O.A. No.1252/94
O.A. No. 1253/94
O.A. No. 1299/94
O.A. No. 1300/94
O.A. No. 1301/94
O.A. No. 1302/94
O.A. No. 1303/94
O.A. No. 1304/94
O.A. No. 1305/94
O.A. No. 1306/94
O.A. No. 1307/94
O.A. No. 1308/94
O.A. No. 1309/94
O.A. No. 1310/94
O.A. No. 1311/94
O.A. No. 1312/94
O.A. No. 1313/94
O.A. No. 1314/94
O.A. No. 1315/94
O.A. No. 1316/94

New Delhi, this the 11th Day of January, 1995.

HON'BLE SHRI J.P.SHARMA, MEMBER (J)
HON'BLE SHRI B.K. SINGH, MEMBER (A)

Union of India through

1. Chief Signal & Telecom, Engineer(Nirman)
Northern Railway,
Baroda House,
New Delhi.

2. Dy. Chief Signal & Telecom.Engineer(P.S.)
Office of the Divisional Railway Manager,
Northern Railway,
New Delhi.

Applicants in all O.A.s

(By Shri D.S.Mahendru, Advocate)

Versus

In O.A. 1252/94

1. Shri Uttam Chand s/o Sh. Sudama Ram
through Bharat Singh Senger Mahamantri,
Near Daga School, Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi.

Contd..2.

In O.A. No. 1253/94

1. Shri Kunj Lal s/o Sh. Samaroo Ram,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents

IN O.A. No. 1299/94

1. Shri Om Prakash s/o Sh. Hosiar Singh,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents

IN O.A. No. 1300/94

1. Shri Babu Lal s/o Shri Makodam,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1301/94

1. Sh. Komal Ram s/o Sh. Bharat,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner(Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN OA No. 1302/94.

1. Shri Chandrika Prasad s/o Sh. Prag Prasad,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

.....3...

(12)

IN OA No. 1303/94.

1. Shri Raghunath s/o Sh. Ram Avtar,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1304/94.

1. Shri Akhand Pratap Singh s/o
Shri Rajinder Pratap,
through Shri Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN OA No. 1305/94.

1. Sh. Kiran Pal Singh s/o Sh. Sahib Singh,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1306/94.

1. Sh. Raj Bahadur s/o Sh. Sarju,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1307/94.

1. Shri Raj Kumar s/o Sh. Duru Ram,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

....4..

(13)

IN O.A. No. 1308/94.

1. Sh. Kanhiya Lal s/o Sh. Ram Gulam,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presidim Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1309/94.

1. Shri Ram Lal s/o Sh. Ram Johar,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1310/94.

1. Shri Bani Singh s/o Sh. Bahori Lal,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN OA. No. 1311/94.

1. Shri Asha Ram s/o Shri Kanhai,
through Bharat Singh Senger Mahantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

....5...

(14)

IN O.A. No. 1312/94.

1. Shri Ram Krishan s/o Sh. Dhani Ram
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN O.A. No. 1313/94.

1. Shri Annwaruddin s/o Shri Zohar Mian,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg, Respondents.
New Delhi.

IN O.A. No. 1314/94.

1. Shri Raj Nath s/o Sh. Bhikani Ram,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN OA No. 1315/94.

1. Sh. Rajinder Singh s/o Sh. Chatter Singh,
through Bharat Singh Senger Mahamantri,
Near Daga School,
Bikaner (Rajasthan).

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

IN OA No. 1316/94.

1. Sh. Jai Shree Pal s/o Sh. Ram Brij Pal,
through Bharat Singh Senger Mahamantri,
near Daga School,
Bikaner (Rajasthan).

...6..

2. The Presiding Officer,
Central Govt. Labour Court,
Kasturba Gandhi Marg,
New Delhi. Respondents.

(By Shri Bharat Singh Senger, Advocate for all the respondents).

JUDGEMENT (ORAL)

HON'BLE SHRI J.P.SHARMA, MEMBER (J)

The respondent employees had filed an application before the Labour Court under Section 33-C(2) of Industrial Disputes Act, 1947 and the matter came before the Central Government Labour Court, New Delhi.
they filed the afore-mentioned applications separately against the Chief Signal and Tele-communication Engineer, Baroda House, New Delhi and Deputy Chief Signal and Tele-communication Engineer (PS), Divisional Railway Office, New Delhi. The employees were, at the time of filing of the applications in Labour Court in the year 1991, working as casual labourers Khalasi. The grievances raised by them separately individually is with regard to the difference of wages from 7.5.1979 to 30th September, 1991 when the applicants were working under the supervision of Signal Inspector (PSW). The employees have stated in their respective application that since 7.5.1979 they were working like other regular railway employees and as such are entitled to the scale of pay of a regular employees in the scale of pay of Rs. 196-232/- which has been revised from 1.1.1986 to Rs. 750-940/-. The work, duties and functions performed by these employees are in noway different from that of the regular

...7...

employees of railway discharging the same duties, work and functions. The claim has been preferred on the basis of personnel Branch Circulars No. 5949, 6101, 6737 and 3187 and under para 2501 and 2504 of the Indian Railway Establishment Manual Vol-II. It is further stated that the employees have worked for a number of days and has an existing right the scale of pay of Rs. 196-232/- and Rs. 750-940/- was due to tham. There is no difference between the projeetand open workers lins/so far as the place of working of the applicants in the railways is concerned. The claim has been made about the difference in the scale of pay, 196-232/- and the wages paid at the relevant time.

2. The Railways have contested this claim before the Labour Court by filing a reply and stated that the Labour Court has no jurisdiction to entertain the said claim under Section 33-C (2) of the Industrial Disputes Act. It is further stated that the employees are alleging a new right which will be beyond the ambit and scope of Section 33-C (2) of the said Act. It is further stated that all the petitions are stale as more than 10 years after the claim has been preferred. U/S 33-C (2) On this ground alone the applications/are not maintainable. It is further stated that the applicants workmen are project casual workers and they are covered under special scheme formulated in due reference of the order of the Hon'ble Supreme Court in the Writ Petition No. 40897/85 which has been re-affirmed in the case of Ram Kumar & Others Vs. Union of India & Others decided on 2nd December, 1987. The principles of 'equal pay for equal work' does not apply

to the case of the applicants. There has been a notification by the competent authority under para 2501 of the Indian Railway Establishment Manual where it was clarified that the employees are working in a project. It is further stated that the classification of casual labour open line and casual labour project is reasonable classification which has been approved and accepted by the Hon'ble Supreme Court of India in their Judgement dated 11.8.1986 and re-affirmed by the Judgement dated 2.12.1987 i.e. the case of Inder Pal Yadav and Ram Kumar respectively. The respondents have also taken a number of other objections to the maintainability of the award.

3. After hearing the parties the Labour Court New Delhi by its Judgement, impugned in this case, decreed the claim of the employees for an amount lesser than what was claimed by the employees. The amount decree in each and every case differs and a chart thereof is appended below:-

O.A.No.	Name of employees	Period	Claim allowed
1252	Uttam Chand	9/79 to 9/91	6271.85
1253/94	Kunj Lal	10/75 to 9/91	10462.35
1299/94	Om Parkash	12/10 to 9/91	8480.85
1300/94	Baby Lal	11/78 to 9/91	8399.80
1301/94	Komal Ram	1/76 to 9/91	9595.15
1302/94	Chandrika Prasad	3/74 to 9/91	15399.00
1303/94	Raghunath	2/74 to 9/91	16047.25
1304/94	Akhand Pratap Singh	1/79 to 9/91	8050.90
1305/94	Kiran Pal Singh	2/79 to 9/91	7449.30
1306/94	Raj Bahadur	1/76 to 9/91	9400.40
1307/94	Raj Kumar	6/79 to 9/91	7066.55
1308/94	Kanhiya Lal	2/79 to 9/91	8001.95
1309/94	Ram Lal	4/79 to 9/91	7338.10
1310/94	Bani Singh	6/74 to 9/91	15083.05
1311/94	Asha Ram	2/79 to 9/91	7530.10
1312/94	Ram Krishan	11/78 to 9/91	8884.65
1313/94	Annwaruddin	3/76 to 9/91	7242.80
1314/94	Raj Nath	11/78 to 9/91	7035.90
1315/94	Rajinder Singh	9/78 to 9/91	7887.30
1316/94	Jai Shree Pal	5/81 to 9/91	7495.45

Contd...9..

4. The challenge before this Tribunal is to the Judgement of Central Government Labour Court on the ground that the Labour Court has no jurisdiction to decide the matter in the manner treating the working, capability as well as duty and responsibility of these employees similar to the regularly employed employees in the railways. The Labour Court did not make any mention of the fact that any right has been created in favour of the applicants by an earlier adjudication by competent authority either on the basis of an award subsequently accepted by the Government or a direction of any competent authority regarding the finalization of the pay scales of these employees after they have attained the temporary status having put in more than four months of service from the date of initial engagement as casual labourer. The contantion of thelearned counsel for these employees is that he has pressed his claim before the Labour Court on the recommendation of Mian Bhai Tribunal which has given certain findings in the shape of an award recommending the Government that a temporary status to the casual labour may be granted if such a casual labour has put in four months of service and earlier to this the railway has prescribed six months for grant of temporary status. It was further recommended by the said Tribunal that if a casual labour is engaged on works which automatically expire on 31st March the continuity of his service shall not be regarded as broken if the sanction for the work has been given subsequently and the same casual labour is employed to finish the work provided further that no casual labourer shall be prevented fromworking on such job so as to deprive him of earning the status of a temporary railway worker.

.....10...

(19)

5. According to the learned counsel, the Government has accepted the above recommendation and it was decided that the casual labour other than those who were employed on Project should be treated as 'temporary' after the expiry of four months continuous employment instead of six months as at present laid down in Board's letter No. E(NG)/60 CL 13 dated 22.8.1962 as amended from time to time. By referring to this award of the Mian Bhai Tribunal and acceptance by the Governme nt, the contention of the learned counsel is that since the casual labour has been given the status of a temporary employee, he is entitled to the grant of wages as are paid to a regular employee in therailway establishment. It appears that this acceptance of the Government is with respect to the labourers employed in the projects. The learned counsel has referred to the decision of the Delhi High Court in the case of Union of India Vs. Presiding Officer, Central Govt. Labour Court and another decided on 13th July, 1988 reported in 1990 Volume-6 S.L.R. Page 712. In that case certain persons were engaged under Chief Signal and Tele-communication Engineer (Construction)Northern Railway sometimes in 1977. They have claimed balance payment of pay from the period from 28th January, 1978 to 28th March, 1978 on the basis of the scale rate of Rs. 196-232/- in this writ petition filed in 1985, the Management contested the claim of the employees before the Labour Court on a number of grounds stating that they were engaged on a daily wage of Rs. 9/- per day in a construction project and were not entitled to the said scale of pay. The learned counsel has highlighted para 18 of the report where it is observed that even if a workman has gotsome advantages as a result of Inderpal Yadav and Ram Kumar's case decided in August, 1986 and Feb.,1987 respectively, it does not mean that he is precluded fr m challenging on the facts and circumstances

...1...

(20)

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 of India cannot stop the workman from contending that he was not a "project casual worker" and consequently became a temporary servant on the completion of 120 days in view of the various circulars of the Railway Board. The contention of the railway, therefore, was not accepted by the Courts, learned counsel wanted to impress that those persons who were employed in construction division are to be treated as casual labour working in a similar manner as in theopen line. Learned counsel has also referred to the case of Union of India and Ors. Vs. Basant Lal & Ors. reported in 1993 Labour and Industrial Cases page 1 decided by the Hon'ble Supreme Court of India. In this case Basant Lal & Others were employed as casual labourers in July, 1988 and theirservices were terminated by oral order dated 19.12.1988. Basant Lal & Others came before the Central Administrative Tribunal andmoved Original Application and against this judgement the Union of India filed S.L.P. which was later on registered as Civil Appeal. It has been held that if a workman has been employed on the project work then they can acquire temporary status only after completing 360 days of service and those whose are working in open line can acquire temporary status after completion of 120 days. However, in that case while disposing of the petition the Hon'ble Supreme Court allowed to grant wages to all the employees from 12.5.1991 equal to a temporary status employees at the initial stage of pay.

6. The sum and substance of the above discussions is that these employees who were initially engaged as casual labours under Chief Signal and Tele-communication Engineer (Const.) Northern Railway (CSTE(Cons.) claim for the grant of temporary status after completing of 120 days and by implication that they are entitled to scale of pay.

(21)

7. The learned counsel has also referred the decision of the Punjab Co-operative Bank Vs. R.S.Bhatia in which it is considered that the claim preferred under Section 33-C(2) of the Act where the objection by the respondents employer that the claim is barred by limitation as well as delay and laches was held to be rightly rejected by the Labour Court.

8. The learned counsel for Union of India i.e. the applicant in this case has referred a decision in the case of Municipal Corporation of New Delhi Vs. Ganesh Razak & another where the Supreme Court of India has given a common Judgement in a bunch such petitions by its order dated 20th October, 1994 reported in Judgements Today 1994 Volume-7 page 476. The Hon'ble Supreme Court of India has considered the scope and authority of the Labour Court to grant relief in an application under Section 33-C (2) and observed as follows in para 12:-

> "12. The High Court has referred to some of these decisions but missed the true import thereof. The ration of these decisions clearly indicates that where the very basis of the claim or the entitlement of the workmen to a certain benefit is disputed, there being no earlier adjudication or recognition thereof by the employer, the dispute relating to entitlement is not incidental to the benefit claimed and is, therefore, clearly outside the scope of a proceeding under Section 33 C(2) of the Act. The Labour Court has no jurisdiction to first decide the workmen's entitlement and then proceed to compute the benefit so adjudicated on that basis in exercise of its power under Section 33 C(2) of the Act. It is only when the entitlement has been earlier adjudicated or recognised by the employer

....13..

(22)

and thereafter for the purpose of implementation of enforcement thereof some ambiguity requires interpretation that the interpretation is treated as incidental to the Labour Court's power under Section 33 C(2) of the Act like that of the Executing Court's power to interpret the decree for thepurpose of its execution".

9. In the reported case, the Hon'ble Supreme Court of India observed that the claim of the workmen in the matter before them of daily rated, casual labourers there is no earlier adjudication or recognition by the employer regarding their wages in any award of settlement. The workmen's claim of doing the same kind of work and their entitlement to the wages at the same rate as the regular worken on the principle of 'equal pay for equal work' being disputed, without an adjudication of their dispute resulting in acceptance of their claim to this effect, there could be no occasion for computation of the benefit on that basis to attract Section 33 C(2). The mere fact that that some other workmen are alleged to have made a similar claim by filing Writ Petition under Article 32 of the Constitution is indicative of the need or adjudication of the claim of entitlement of the benefit before computation of such a benefit could be sought. Respondent's claim is not based onprior adjudication made in the Writ Petitions filed by some other workmen upholding a similar claim which could be relied upon as an adjudication ensuring to the benefit of these respondents as well.

10. The learned counsel for the respondents/ i.e. employees has taken us to para 15 of the reported case of Union of India Vs. Presiding Officer (Supra). We are not in full agreement with the ratio laid down by the Delhi High Court regarding

...14..

(23)

the project in which the applicants have been engaged. The employees when a query was put to the learned counsel for the employees i.e. Union of India, have since been shifted from Delhi to other place of working as casual labour Khalasi, on certain other projects.

11. The finding given that the project in which the applicants have been engaged i.e. C.S.T.(Const.) is of permanent nature cannot be accepted on the face of it. Permanency depends on the circumstances and facts particular to a situation that may be permanent within one, two or three years and cannot acquire permanency in the score of years. Merely because of deeming clause which has been used will not confer a status of permanency on a project or on a construction work. We, therefore, respectfully disagree with the finding of the Delhi High Court.

12. However, since there is already a circular by the Railway Board No. 6106 dated 21st March, 1974 which governs the employment of casual labour on railway granting of authorised scale of pay to casual labourers on completion of nine months now four months continuous work/service. The aforesaid circular is quoted below:-

"Serial No. 6106 - Circular No. 220-E/190-VIII (EIV) dated 21.3.1974.

Sub:- Employment of Casual Labour on Railway, Granting of Authorised Scale of Pay to Casual Labours on completion of 9 months now four months continuous service.

Attention is invited to Railway Board's letter No. PC-72/RLI-69/3(1) dated -7-73 wherein the Board while accepting the recommendation of the Railway Labour Tribunal have decided that Casual Labour other than those employed in the Projects should be treated as temporary, after the expiry of 4 months continuous employment, instead of 6 months as existed previously. It follow that it is the

...15.

the responsibility of the administration to bring the Casual Labours who have continuously been employed for a period of 4 months to authorised scale of pay. It is, however,observed that in some departments Casual Labours have been brought pm authorised scale of Pay and continue to be employed on casual Labour rates. Non-granting of authorised scale of pay to such Labourer on expiry of 4 months attracts the provision of Board's orders .It is understood that in all estimates prepared by the Executive Officer concerned, provision for pay is made on C/L rates. This may be on account of limited funds allotted for the work. All T.L.As are also sanctioned making provision for employing C.L.rates and on account of this Casual Labourer are not being brought authorised scale of pay after the stipulated period.

It is desired that all the concerned should be advised in this regard to make provision for labours on Authorised Scale of pay so as to comply with Railway Board's orders referred to above. By doing this you may be slightly over budgeting in as much as for the first 4 months the provision would be made on Authorised Scales whereas staff would be appointed on Casual Labour rates, but the slight over budgeting would be desirable to ensure that Railway Board's orders are implemented and there should be no labour unrest on this account.

The officers concerned should also be instructed that no Casual Labour is prevented from working on such jobs so as to deprive him of earning the status of temporary Railway Servant on the expiry of his continuous employment for a period beyond 4 months.

It may, however, again be clarified that only Casual Labour employed in works other than Project are to be given Authorised Scales of Pay or continuous employment of 4 months."

This goes to show that the casual labourers on other projects will acquire a temporary status on completion of four months and shall be entitled to the prescribed scale of pay or the scale of pay prevelent at the relevant point of time.

Contd....p/16/...

(25)

13. Now the only question remains whether the employees are in a project in construction or in open line. For the open line the period of four months is prescribed and for the construction work the period of 360 days is prescribed which has been upheld by the Hon'ble Supreme Court of India in the case of Inderpal Yadav decided in August, 1986.

14. In view of the above facts and circumstances we find that the order of Central Government Labour Court cannot be sustained and is, therefore, queshed in all these cases and the claim decided infavour of the respondents is set aside.

15. However, the case is remanded to the Labour Court to decide the matter afresh including limitation and jurisdiction. If the Labour Court comes to a decision that the applicants have been working in a Project and not on the Open Line, the final order shall be passed by them and the petition shall be disposed of accordingly. If the Labour Court finds th t irrespective of the Judgement of the Delhi High Court referred to above that the applicants are entitled to grant of temporary status only after 120 days in that case theissue will be decided onthe basis of Circular No. 6101 referred to above. It shall be open to the Labour Court to go into the merit of the claim of each of the casual worker/applicants whether at that relevant point of time such casual labourers were in continuous employment or have been getting their salary according to prescribed pay scales or that they have been continuously worked without any break or reasonable break as provided under the said Circular of the Railway Board, in that event their claim should be

....17...

26

decided according to law.

16. All these applications of Union of Indiaare allowed and the Judgement of the Labour Court is quashed and the case is remanded to the Labour Court for fresh decision in the light of the observation made in the body of the judgement. No costs. A copy of this order be placed on each file.

(B.K. SINGH)
MEMBER(A)

(J.P.SHARMA)
MEMBER(J)

nka

Attested

K.L.S. 11/1/95

K.L. SHARMA
Central Administrative Tribunal
Principal Bench/New Delhi-110001