

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O. A. NO. 2302/2000

This the 1st day of October, 2001.

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

1. Indersen Giri S/O Jagirdev Giri,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
2. Piyarelal S/O Vijay Singh,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
3. Chote LalSS/O Ram Bohar,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
4. Ram Phal S/O Prabhu,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
5. Bola Nath Sharma S/O Som Prakash Sharma,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
6. Ram Bahadur S/O Ramadhin,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
7. Om Prakash S/O Bandhu,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
8. Garib Dass S/O Prabhudayal,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.
9. Sat Pal S/O Hans Raj,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.

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- 2 -

10. Brij Nandan S/O Brij Nath,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi.

11. Uma Shankar S/O Vish Ram,
C/O SSE/SIG/C/TKJ New Delhi,
Senior Signal Section Engineer,
Tilak Bridge, Northern Railway,
New Delhi. Applicants

(By Shri D.K.Singh, Advocate)

-versus-

1. Union of India through
Secretary, Ministry of Railways,
Rail Bhawan, New Delhi.

2. Chairman, Railway Board,
Rail Bhawan, New Delhi.

3. General Manager,
Northern Railway, Hqrs Office,
Kashmiri Gate, New Delhi.

4. Divisional Railway Manager,
Delhi Division, State Entry Road,
Connaught Place,
New Delhi. Respondents

(By Shri R.L.Dhawan, Advocate)

O R D E R

The applicants have challenged their non-regularisation in group-C (grade II & III) despite their having put in 22-27 years of continuous service in group-C and passed the trade test. They have also assailed letter dated 4.10.2000 at Annexure-A whereby the respondents have asked some of the applicants to appear in the trade test of H-khalasi (group-D) Rs.2650-4000. In this manner, the applicants have alleged that the respondents are seeking to demote the applicants. According to the applicants, they come from the artisan category of the workmen and have been working in the signal/construction division of the Northern Railway.

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This division, according to the applicants, is a permanent one and they have been performing the work of wireman, carpenter, fitter, diesel mechanic and mason, which are permanent posts in the railway establishment. They claim that though their initial appointment was as casual labour, after completion of 120 days, they have become entitled for temporary status. Relying on the judgment of the Supreme Court in Inder Pal Yadav & Ors. v. Union of India & Ors., (1985) 2 SCC 648, they claim treatment as temporary employees having put in 360 days of continuous employment as casual workmen as on 1.1.1981. According to the applicants, the Railway Board vide circular dated 11.9.1986 had directed the zonal offices of the railways to prepare a list of project casual labour with reference to each division of each railways on the basis of length of service. Seniority lists were to be prepared categorywise, such as unskilled casual labour, semi-skilled casual labour (tradewise) and skilled casual labour (tradewise). The applicants have stated that though they have been given temporary status, the respondents have not regularised their services. Applicant nos. 1 to 4 claim to have qualified the trade test for the post of technician/ signal telecommunication (grade-I) vide letter dated 7.7.1998 (Annexure-E) and seek placement as such. According to the applicants, in terms of para 2007(3) of Indian Railway Establishment Manual (IREM) Volume-II, casual artisans can straightaway be absorbed to the extent of 25% of the promotee quota (50%) who were promoted earlier on ad hoc basis due to non-availability of regular departmental candidates. As per PS No.11475 divisions are required to consider all

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work charged posts of construction organisation also for calculating the cadre position and vacancies. The applicants have alleged that whereas they were under consideration for absorption in group-C (grade-II and III posts), the respondents instead of regularising them in group-C are seeking to demote them to group-D (grade-IV). They have sought quashing of the impugned communication dated 4.10.2000 (Annexure-A) and also direction to the respondents to regularise their services in group-C (grade II and III) with effect from the date of passing of their trade test for the respective grades.

2. In their counter, the respondents have stated that initially engaged as casual labour on daily rated basis, the applicants were granted temporary status in terms of Railway Board's instructions dated 11.9.1986 (Annexure R-I). They had appeared in the screening test in 1980 along with 1472 casual labour of Delhi division and on being adjudged suitable as S&T khalasi grade Rs.196-232, were regularised as S&T khalasi grade Rs.196-232(RS)/Rs.2550-3200(RP) in group-D posts. Vide impugned order dated 4.10.2000 the applicants were called for trade test for the post of helper khalasi scale Rs.2650-4000 (RP) in group-D. However, the applicants have not availed themselves of the opportunity. They have been working in construction organisation in miscellaneous categories of artisans on ad hoc basis. These categories have to be filled from H-khalasi to carpenter, mason and fitter on option basis. Applicant nos. 5 to 11 have their lien as signal khalasi and their channel of promotion is khalasi to H-khalasi and then

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ESM-III. As per their channel of promotion, a carpenter, fitter or mason cannot be regularised as signal technician. According to the respondents, all the applicants were granted temporary status as per the decision of the Supreme court in Inder Pal Yadav (supra). They have also been regularised as per their screening in group-D and all benefits due to them at par with their juniors are being given, but the applicants have refused to accept the same. The respondents have contended that the applicants do not have any right of regularisation over and above their seniors in the parent divisions. Relying on a Full Bench judgment of this Tribunal in Ram Lubhaya & Ors. v. Union of India & Ors., 2001 (1) ATJ 40 they have contended that staff having lien in open line and promoted on ad hoc basis in construction organisation are not eligible for regularisation in higher posts/grade in construction organisation. The staff having lien in open line on the division are eligible for further promotion as per their seniority in open line subject to passing the prescribed trade test/suitability test, as per rules.

3. We have heard the learned counsel of both sides and considered the material on record.

4. The learned counsel for the applicants stated that as per the provisions of paragraph 2007(3) of IREM Vol.-II, casual artisans can straightaway be absorbed to the extent of 25% of promotee quota (50%) who were promoted earlier on ad hoc basis due to non-availability of regular departmental candidates. He also relied on PS

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No. 11475 contending that the divisions are required to consider all work charged posts of construction organisation also for calculating the cadre position and vacancies. The learned counsel also stated that the applicants should be given the benefit of the length of service as casual labour for 22-27 years and regularised in group-C (grade II and III) on presumption of availability of permanent posts. They also stated that the applicants have not been shown as regularised in the service books; they have been shown as casual labour.

5. The learned counsel for the applicant has relied on the following judgments :

- 1) L. Robert D'souza v. Executive Engineer, Southern Railway & Anr., (1982) 1 SCC 645.
- 2) Ram Kumar & Ors. v. Union of India & Ors., (1988) 1 SCC 306.
- 3) Union of India v. Moti Lal & Ors., (1996) 7 SCC 481.
- 4) V.M.Chandra v. Union of India, (1999) 4 SCC 62.

In L. Robert D'souza (supra), the casual labour having rendered service for more than six months continuously was considered to be temporary workmen and it was held that termination of service of such a person without complying with the legal requirements was illegal and void. In the present case, there is no denying the fact that the applicants had been accorded temporary status as per Railway Board's instructions of 11.9.1986 as contended by the respondents. In the matter of Moti Lal (supra) it was held that persons appointed directly as casual mates although continued as such for a long period of 22-25 years and thereby acquiring temporary status, were not *ifso facto* entitled to regularisation. However,

in view of their long service as directly recruited casual mates, their regularisation in a lower post was held to be inequitable. It was directed that the above direction should not be treated as a precedent. In the present matter, the applicants were not directly recruited to a class-III post in their parent cadre. They were promoted to a class-III post in the construction division. The issue in the present matter is whether the applicants can be regularised in the promoted post in their parent organisation/construction division. The facts and issues in the cited case and the present matter are different and distinguishable. In the case of Moti Lal (supra), the ruling in the case of Ram Kumar (supra) had also been considered. In the case of V.M.Chandra (supra), the appellant was employed as technical mate on daily wages. After about five years she was granted temporary status. She had represented for temporary status in group-C. Her services were terminated on the plea that she was not entitled to be employed in group-C. She filed a case before the Tribunal. The Tribunal remitted her case to the Chairman, Railway Board, who took the view that the appellant could not be absorbed because there was no post with the designation 'technical mate'. The appellant was directed to be absorbed as skilled artisan grade-III. The facts of the present case are different. In the present case, the applicants had been initially engaged as casual khalasi. They were given temporary status. They had appeared in screening test for group-D posts held by the Delhi division in 1980 and were regularised in group-D posts. They have been working in construction

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organisation in miscellaneous categories of artisans on ad hoc basis. They were promoted on ad hoc basis in construction organisation in group-C on the condition that they would have no claim for promotion in other units and open line. The facts of the present case are different than those of the cited case.

6. The respondents have produced letter dated 23.7.1990 which relates to result of screening of casual labour/substitute S&T khalasi/trolleymen working in construction as well as in open line - S&T department held in 1980. The names of the applicants have been shown as fit for categories in group-D. It is also stated that whereas some of those declared fit in category-D have already been absorbed against regular vacancies in group-D, the remaining may be absorbed as per the result of screening subject to certain conditions. As per this letter, obviously the applicants have been screened in 1980 and whereas result of 300 candidates had been declared earlier, the result of the remaining candidates was declared by this letter exempting them from fresh screening and directing that the existing vacancies on open line in construction division be filled up from the remaining screened casual labour.

7. The respondents have also filed seniority list of signal H-khalasi/khalasi dated 28.1.2000 in which the applicants' names have been shown as such and it has also been indicated that they have declined to be considered for regularisation in group-D.

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8. The learned counsel for the respondents stated that the applicants have been accorded ad hoc promotions in construction division which does not have any cadre, and such work charged personnel cannot be regularised on the basis of ad hoc promotions in the construction division.

9. From the material on record, it is clear that the applicants were initially engaged as casual labour on daily rated basis. They were granted temporary status as per Railway Board's instructions of 11.9.1986. They had appeared in the screening test held in 1980 along with 1472 casual labour of Delhi division and had been adjudged suitable as S&T khalasi in group-D posts by Delhi division. These facts are established from the respondents' letter dated 23.7.1990 relating to result of screening of casual labour/substitute S&T khalasi/trolleymen working in construction as well as open line - S&T department. On the basis of the above results, a large number of candidates had already been absorbed against regular vacancies of group-D and the remaining were to be absorbed subject to certain conditions. The respondents have also made a provisional seniority list of signal H-khalasi/khalasi dated 28.1.2000 in which names of the applicants have been shown as H-khalasi/khalasi. The judgment of the Full Bench in the matter of Ram Lubhaya (supra) is squarely applicable to the facts of the present case. The Full Bench had been constituted to answer the following references :

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- 10 -

"(a) Whether a person who is holding lien in parent cadre under a Division of the Railways and on being deputed to a Construction Organisation and there having been promoted on a higher post on adhoc basis, continue to function on the post on adhoc basis, for a very long time, will be entitled to regularisation on that post in his parent cadre of the Division, and also from the date he is continuously working on that post on adhoc basis.

(b) Whether such person should be regularised in construction Division from the date of continuously working on adhoc basis, treating the post on which he is working as a regular post since the post continues to exist for about 15 years, notwithstanding the contention of the respondent that the Construction Organisation is a temporary organisation and persons are appointed against work charged posts."

These references were answered as follows :

"15. In the result we answer the reference as under :

(a) Railway servants hold lien in their parent cadre under a division of the Railways and on being deputed to Construction Organisation, and there having promoted on a higher post on ad hoc basis and continue to function on the post on ad hoc basis for a very long time would not be entitled to regularisation in their parent division/office. They are entitled to regularisation in their turn, in the parent division/office strictly in accordance with the rules and instructions on the subject.

(b) This is answered in the negative."

10. Agreeing with the Full Bench in the above case, I hold that though the applicants had been promoted in the construction division on ad hoc basis and had continued to function as such for a long time, they are not entitled to regularisation on that post in their parent division. They are entitled to regularisation on repatriation to their parent division in their turn

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- 11 -

strictly in accordance with rules and instructions on the subject. They can also not be regularised in the construction division from the date of continuous working on ad hoc basis treating the post on which they have been working, as regular post.

11. Having regard to the reasons recorded and discussion made above, the OA is dismissed being devoid of merit. No costs.

V.K.Majotra
(V.K. Majotra) 1.10.2001
Member (A)

/as/