

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI

D.A. No. 1980/1988

DATE OF DECISION 10.10.1991

Shri Aparbal Yadav and 2 others

... Petitioners

Shri B.S. Maines

... Advocate for the Petitioners

Versus

Union of India, through the General Manager,  
Northern Railway, Baroda House, New Delhi & another

Shri Inderjit Sharma

... Advocate for the Respondents

C O R A M

THE HON'BLE MR. S.P. MUKERJI, VICE CHAIRMAN

&

THE HON'BLE MR T.S. OBEROI, MEMBER(J)

1. Whether Reporters of local papers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

J U D G M E N T

(Hon'ble Shri S.P. Mukerji, Vice Chairman)

In this application dated 10th October, 1988 the three applicants who have been working as Jeep Drivers under the Chief Engineer, Northern Railway, have prayed that the respondents be directed to regularise the services of the applicants as Drivers from the dates of their adhoc promotion made after due screening and trade test and given consequential benefits of seniority and promotion to higher grades from the dates their juniors had been promoted. The brief facts of the case are as follows.

2. The applicants were originally appointed as casual rated Drivers between January, 1961 and April, 1968 in the Construction Department of Northern Railway. They were regularised as Gangman/Khalasi between 1971 and 1973 in the scale of Rs. 195-239. They

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were given adhoc promotion as Jeep Drivers in the scale of Rs.260-400 on various dates between 24.8.74 and 15.7.75. Their grievance is that they have still not been regularised but continued on an adhoc basis depriving them of their seniority and further promotion. Their contention is that they were regularised as Gangmen after proper screening and promoted as Drivers after trade-test and are continuing as such continuously for nearly fourteen years. Their contention is that persons junior to them have been promoted as Drivers even in the higher grades without considering the applicants. Their representations have brought forth no results. They have particularly challenged the communication dated 15.7.1987 at Annexure A1 by which fourteen casual labourer/ad hoc Drivers had been called for regular selection as Drivers ignoring the applicants.

3. The respondents in their counter affidavit have not challenged the facts given by the applicants except that the date of ad hoc appointment of applicant No.3 has been stated to be 15.7.75 and not 1.7.75. They have also conceded that they have been working continuously on an ad hoc basis since the dates of their adhoc appointments as Drivers. They have, however, denied that any person junior to the applicants has been promoted and posted as Driver on a regular basis ignoring the claims of the applicants. They have clarified that in accordance with the instructions of the Railway Board, there is a 40% Construction Service quota for regularisation against Class IV posts, against which the applicants were regularised as Gangmen. In the additional counter affidavit the respondents have stated that the impugned letter dated 15.7.87 at Annexure-A1 was issued for screening of casual labourer/ad hoc Drivers but the screening test could not be held as there were representations against considering those who had already been screened as Gangmen/Gateman and it was

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decided that only casual Drivers should be screened for regular appointment. On that basis the names of nine candidates figuring at Annexure-A1 were removed vide Annexure RA/3.

4. In the reply rejoinder the applicants have stated that it will be discriminatory to regularise the casual Drivers while they as ad hoc Drivers have been working as Drivers for such a long period. They have also referred to the decision taken by the respondents at annexure to the reply dated 29.1.91 to the additional affidavit by which one Shri Milapchand who was appointed as a casual Driver on 5.5.83 was promoted to the Highly Skilled category with effect from 1.5.84 and on that basis it was agreed that all Drivers who had been appointed prior to Shri Milapchand should be granted Highly Skilled grade of Drivers on an ad hoc basis and necessary sanction in Highly Skilled grade was directed to for those Drivers be issued.

5. We have heard the arguments of the learned counsel for both the parties. The learned counsel for the respondents conceded that having been regularised as a Gangman/Khalasi in the scale of Rs.196-239 between 1971 and 1972, the applicants have been working as Jeep Drivers continuously from 2.9.74, 24.8.74 and 15.7.75. It was also conceded that the applicants passed the trade-test in 1974. In the circumstances we see no reason why the applicants also should not have been considered for regular appointment as Jeep Drivers. There is no reason why casual Drivers who have been engaged as such much later than the applicants should be considered for regular appointment without considering the applicants. The ground taken that the applicants had already been regularised as Gangman/Khalasi does not impress us because regularisation as Gangman which is a Class IV post does not disentitle the applicants

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from being considered for regular appointment as Jeep Drivers which is a Class III post especially in view of the fact that their services are being utilised as ad hoc Jeep Drivers for more than fifteen years continuously. The Supreme Court and this Tribunal has been taking the view that keeping employees for extended period on an ad hoc basis demoralises the organisation and the employees. Further, overlooking the claims of the applicants and considering casual Drivers who have been working as casual Drivers from dates much later than the dates from which the applicants have been working as ad hoc Drivers will be discriminatory.

5. In the facts and circumstances we allow the application to the extent of directing the respondents to consider the applicants for regular appointment as Drivers and in the matter of seniority they should be deemed to be senior to all those Drivers who were appointed as Drivers either on an ad hoc or on a casual basis after the applicants were appointed as Drivers on an ad hoc basis. If the applicants pass the screening test, they should be regularised from the date any casual or ad hoc Driver who was working as such <sup>from</sup> ~~by~~ a date later than the dates from which the applicants started working as ad hoc Drivers, was regularised. The applicants will also be entitled to consequential benefits of seniority and consideration for further promotion on the above basis. There will be no order as to costs. The applicants will be at liberty to challenge the screening test, if so advised and in accordance with law, if they feel aggrieved by the results of that screening test.

Deb (11.10.91)  
(T.S. Oberoi)  
Member(J)

10.10.1991

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Sark (11.10.91)  
(S.P. Mukerji)  
Vice Chairman