IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: NEW DELHI

Date of Decision: 23.4.86

OA 123/86
Babu Singh ... Petitioner

Versus

Union of India ... Respondents

OA 124/86
Prem Pal ... Petitioner

Versus

Union of India ... Respondents

OA 125/86
Pritan Giri ... Petitioner

Versus

Union of India ... Respondents

OA 126/86
Suresh Kumar ... Petitioner

Versus

Union of India ... Respondents

OA 127/86
Chain Pal Singh ... Petitioner

Versus

Union of India ... Respondents

OA 128/86
Mohinder Kumar ... Petitioner

Versus

Union of India ... Respondents

Shri D.N. Vohra with Shri Rajinder Saini, Advocates for the petitioners

Shri Madan Lokur, Advocate for the respondents.

CORAM: HON'BLE MR. S.P.MUKERJI, Member
HON'BLE MR. H.P.BAGCHI, Judicial Member

JUDGMENT:

Since a common question of fact and law is involved in all these cases, hence we propose to dispose them of by one common judgment and order.

2. The petitioners, S/Shri Babu Singh , Prem Pal,

Pritan Giri, Suresh Kumar, Chain Pal Singh and Mohinder Kumar have come up under section 19 of the Administrative Tribunals Act in O.A.Nos. 123 to 128 of 1986 with a common grievance that even though they had been engaged as casual labour by the Northern Railways Authorities for more than 120 days they have not been given the status of temporary employees as also the privileges to which such employees are entitled. The brief facts which are common to all these six petitioner are simple and can be summarised as follows:

3. The petitioners were appointed as Carriage & Wagon Safaiwala as casual labour in Delhi Division in pursuance of the order of the Divisional Railway Manager (Northern Railway) New Delhi dated 19th April 1985 and the further letter of the Divisional Railway Manager (M) New Delhi dated 20th April 1985, at the Hazrat Nizamuddin Railway Station, New Delhi between 14.4.85 and 31.5.1985. Certificates have been given by the railway authorities to this effect in favour of the petitioners. However, it appears that the Railway authorities have been giving these petitioners breaks in service each not exceeding one day, after they had put in continuous service of 2 to 3 months. The respondents case is that these breaks were given to the petitioners with a view to disqualify them for regularisation so that regularisation of such daily rated workers as who had been engaged by them much earlier than the petitioners could be possible. Accordingly on this basis they have averred that the petitioners have not rendered more than 120 days of continuous service and cannot lay their claim on the status of temporary employees.

3. We have heard the arguments advanced by learned counsel &

for both the parties and gone through the papers very closely. It is admitted that the petitioners have been engaged as daily rated workers between 14.4.85 and 31.5.85. Accordingly, the certificates issued in their favour, copies of which are annexed to the petition to testify this fact have been adduced. However, the respondents have been giving these petitioners admittedly breaks of not exceeding one day after every one, two or three months. Such breaks cannot therefore be taken as nothing other than as deliberate breaks to deprive the petitioners of their rights to claim the status of temporary employees after coming 120 days of continuous service. Howsoever righteous the objectives of the respondents may be inasmuch as they intended to accommodate casual workers who had been engaged much earlier than the petitioners, the deliberate and technical nature of the breaks cannot be gainsaid. The motive will not justify the dubious nature of the action taken.

4. It is admitted that by virtue of para 2501(2)(B)(i) of the Indian Railway Establishment Manual the petitioners after completing 120 days of continuous service could acquire status of temporary employees and further that under para 2511 of the same Manual having acquired the status of temporary employees all the rights and privileges admissible to temporary railway employees will be available to them also.

5. The only hurdle in the way of the petitioners in acquiring the temporary status and the privileges flowing therefrom, is that of the technical breaks of day each to which they have been subjected at the hands of the respondents after putting in one, two or three months' continuous service. There have been number of rulings of the Hon'ble Supreme Court and the High Courts whereunder daily rated workers have been bestowed with

the same pay and allowances as regular workers and the practice of giving technical breaks only to fracture the continuity of their service has been castigated in no uncertain terms by these Hon'ble Courts. Even the Railway authorities in their Circular No.5098 dated 11.5.73 have laid down that "it shall not be proper to discharge such labour deliberately with a view to cause a break in their service and deprive them of attaining the temporary status."

6. A clear ruling in such a case is available from the Hon'ble Supreme Court in H.D. Singh Vs. The Reserve Bank of India, reported as 1985 IFLR (Vol.51) page 494. Such repeated appointments and termination have been ruled as unfair labour practice by the Hon'ble High of Punjab in a judgment Ferozpur Central Co-operative Bank Ltd. Vs. Presiding Officer, Labour Court, Bhatinda and others reported in 1985(2) SLJ page 306. As regards the plea of applicant to regularise casual labour who have been engaged since 1978, the order of the Divisional Manager dated 19th April 1985 a copy whereof has been appended as Annexure 'B' to the petition makes it abundantly clear that the petitioners were engaged as casual labour from the open market and only after those casual labour who had been engaged before 3.1.81 could be accommodated. Since the respondents have been obliged to re-engage the petitioners after one day's break in each case shows that they were short of casual workers which also shows that there is no clash of interests between the petitioners and other casual labours who had been ~~enged~~ engaged by the respondents prior to 3.1.81.

7. In the facts and circumstances of the we have no hesitation in accepting the applications

and in ignoring technical breaks and declaring that their continuous service as casual labour has exceeded 120 days and accordingly they have attained the status of temporary employees under Para 2501 and Para 2511 of the Indian Railway Establishment Manual so as to be entitled to the pay and other privileges of temporary railway employees as claimed by them.

8. In effect, we allow the applications. There will be no order as to costs. A copy of this judgment will be placed on each of the six files of O.As. 123 to 128 of 1986.

(H.P.BAGCHI)
JUDICIAL MEMBER

(S.P.MUKERJI)
MEMBER