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Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos. 1.OA-218/88
2.OA-522/88
✓ 3.OA-981/87

Date: 22.9.1989

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| 1. Shri Bhagwana & 41 Others | } ... Applicants |
| 2. Shri Bidesh & 24 Others | |
| ✓ 3. Shri Birendra Kumar & 37 Others | |

Versus

Union of India & Others ... Respondents

For the Applicants ... Shri D.N. Govardhan,
Advocate

For the Respondents ... Shri P.S. Mahindru,
Advocate.

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri P.C. Jain, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *no*

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

The applicants in these cases have worked as Class IV employees in the Construction Division of Northern Railways for over a decade. As the issues raised in these applications are common, it is proposed to consider and dispose them of by a common judgement.

2. The applicants in OA-218/88 had filed writ petition No.673/87 in the Supreme Court which was heard by Shri B.C. Ray, J. on 4.6.1987 when the respondents were directed to maintain status quo as obtaining between the parties with regard to the continuance of the services of the petitioners. The writ petition was dismissed on 20.10.1987 with the observation that

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the petitioners should approach the authorities concerned for redressal of grievances. On behalf of 42 workers of the Construction Department, representation was submitted to the PWI, Northern Railways on 26.10.1987 for grant of equal pay for equal work and regularisation of their employment. Feeling aggrieved by the inaction on the part of the respondents, OA-218/88 was filed in the Tribunal on 4.2.1988.

3. OA-522/88 was filed in the Tribunal on 25.3.1988 by the applicants in which an interim order was passed on 18.4.1988 directing the respondents to provisionally give duty passes to the applicants for travelling from Karnal to the place of work and back, subject to the outcome of the application. In case it is found on the final decision of the application that they are not entitled to these facilities, recovery of the cost involved in the provision of duty passes also will be subject to the outcome of the application. An interim order to the same effect was passed on 23.5.1988 in OA-218/88. In OA-981/87, an interim order was passed on 17.7.1987 to the effect that the status quo as regards the change of headquarters and possession of the residential accommodation by the applicants be maintained and this order was made absolute on 14.8.1987.

4. All the applicants have worked in the Delhi Division of Northern Railways; some of them for 10-11 years, and some others from 10-12 years. They have worked in the Construction Division as Mates, Gangmen, Trolleyman, Chowkidars, etc., in regular pay-scales.

The applicants have claimed that they have already been screened, which is a pre-requisite for regularisation, but this has been denied by the respondents. In OA-218/88, the applicants have produced a copy of the fitness certificate of one of the applicants (Annexure II) but in the other two applications, they have not produced even such a copy of the certificate. It is, however, an undisputed fact that all the applicants have been given temporary status.

5. Rule 2501 of the Railway Establishment Code provides, inter alia, that casual labour is not liable to transfer and the conditions applicable to permanent and temporary staff do not apply to them. However, once any employee acquires temporary status after fulfilling the prescribed conditions, he retains that status so long as he is in other works. Even if he is transferred by the Administration to work of a different nature, he does not lose his temporary status.

6. The grievance of the applicants in OA-218/88 and OA-522/88 relates to their non-regularisation, shifting of their headquarters from Karnal where they have been continuously working and denial of equal pay for equal work and other conditions of service applicable to regular employees. The grievance of the applicants in OA-981/87 relates to the refusal by the respondents to allow them to be regularised in the Maintenance Unit in Panipat-Karnal, where they have worked continuously for over 21 years and the refusal to give them the benefits and privileges of permanent railway service.

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7. The case of the applicants in OA-218/88 and OA-522/88 is that they are entitled to regularisation after completing 120 days of work. Persons similarly situated have been so regularised but not the applicants. This has been alleged to be discriminatory. They have further contended that several posts are lying vacant and there is no reason why the applicants not be absorbed permanently.

As regards their headquarters, it has been alleged that since 1982, it was Karnal where they have built their ~~jhugis~~ costing Rs.5,000-6000 after obtaining loans, that their families are at Karnal, that their children are staying there, and that their names also have been included in the voters' list there. The headquarters of PWI Construction Division, Northern Railways, and SEN Construction Division are also at Karnal and they continue to draw travelling allowance, duty pass, etc., on work but these have been denied to the applicants.

8. The case of the applicants in OA-981/87 is that they have worked in the Maintenance Unit for over 2½ years but they have not been absorbed in that Unit, while about 300 employees similarly situated who were working in that Unit, have been made permanent after completing six months of work. Apart from this, the respondents are seeking to replace the applicants by fresh employees. They have also alleged that they have been threatened that their headquarters will be changed from Karnal.

According to them, a worker who has been working for 360 days in the post, should be made permanent as per the circular issued by the Railway Board in 1978.

9. The case of the respondents in OA-218/88 and OA-522/88 is that no permanent posts exist under the respondents to absorb the applicants who have been appointed against the work-charged posts for construction works. They have stated that the sanction of permanent posts of Gangmen for maintenance of track completed from Panipat-Karnal-Bhainikhard have been applied for but the same has not been sanctioned by the competent authority. They have further stated that on receipt of the sanction for Gangmen, the applicants will be posted as regular Gangmen after their screening test according to their seniority. They have not admitted the averment of the applicants as regards the headquarters of PWI or SEN of the concerned Construction Unit. According to them, the applicants have been appointed against the work-charged sanctioned posts for a particular work and, accordingly, their headquarters have been changed with the shifting of the construction work from one place to another. As to the plea that they have built jhuggie, the respondents have stated that these have been constructed on railway land without permission and that action is being taken for such unauthorised construction.

10. The case of the respondents in OA-981/87 is that the applicants have been working in the Construction Organisation of the respondents for periods ranging from 7 years to 14 years, that they were deputed for maintenance of newly constructed double-line track from

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Panipat to Karnal for the last 2½ years, and that they themselves refused to work on maintenance and stated so in writing (vide Annexure R-1), ^{and} that in view of their refusal to work on maintenance, old retrenched Class IV workers have been engaged temporarily in the Maintenance Unit. It has been further contended that in the case of the construction workers, they are shifted from place to place after completion of each work. The construction labour is provided with temporary tented accommodation. The respondents have, however, admitted that 102 posts for the maintenance of the newly constructed track between Panipat and Karnal Sections are to be sanctioned by the Competent Authority and till such time, these posts are sanctioned, the applicants cannot be made permanent in the proposed posts. However, by refusing to work on maintenance, they have waived the claim to be absorbed in the permanent posts in the Maintenance Unit. The applicants have, however, denied that they have refused to work in the Maintenance Unit and have contended that Annexure R-1 which has been relied upon by the respondents, has been extracted from them by using threat and coercion.

11. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The respondents have admitted in the counter-affidavits filed by them in these three cases that the applicants have attained temporary status and are getting all the benefits and privileges admissible to such employees.¹

1. Vide para.3, page 5 of the counter-affidavit in OA-981/87, page 25 of the paper-book; para.6, page 3 of the counter-affidavit in OA-218/88, page 34 of the paper-book; and para. 6(v), page 3 of the counter-affidavit in OA-522/88, page 25 of the paper-book.

Therefore, we are of the opinion that no directions need be issued to the respondents to give the applicants all ^{admissible} the benefits and privileges to employees who have attained temporary status.

12. The question arises whether the claim of the applicants for regularisation of their services in their respective categories is tenable, and if so, to what extent.

13. One of the pre-requisites for regularisation is the passing of the screening test prescribed under the relevant rules. Another condition is that there must be adequate number of permanent vacancies or posts to accommodate all the applicants in accordance with their seniority.

14. There is no material on record to substantiate the contention of the applicants that all of them have already been screened and that they thereby qualify for appointment to the posts in the respective categories on a permanent basis.

15. As regards the existence of vacancies or posts in which the applicant could be appointed on a permanent basis, there is divergence in the versions of both the parties.

The applicants maintain that there are adequate number of vacancies or posts in which they could be regularised. The respondents have stated that the competent authority has not yet sanctioned permanent posts to carry out the work of maintenance of the track completed from Panipat-Karnal-Bhainikhurd, though proposals in this behalf have already been made. They have, however, held out a promise that once the posts are sanctioned, the applicants will be appointed against permanent posts after they pass the screening test and according to their seniority.

16. Admittedly, the applicants have put in more than 360 days of service. They have acquired temporary status and they are entitled to the benefits conferred by para.2511 of the Indian Railway Establishment Manual. In *Inderpal Yadav and Others Vs. Union of India*, 1985(1) SCALE 703, the Supreme Court directed that seniority of project casual labourers should be combined and prepared departmentwise and categorywise and in terms of the directions of that Court. Steps taken by the respondents in this regard have been noticed in the case of *Ram Kumar and Others Vs. Union of India & Others*, 1987 (2) SCALE 1189. In *Ram Kumar's* case, the Supreme Court emphasised the need for speedy absorption of casual labour on permanent basis.

17. The headquarters of the applicants in OA-218/88 and OA-522/88 were at Karnal where they were working in the Construction Division of the Northern Railways and it is their case that adequate number of posts are lying vacant there in which they could be permanently absorbed. The case of the respondents is that there are no such posts lying vacant and that their proposal for creation of posts is pending the sanction of the competent authority. After completion of the construction work at Karnal, the double-line (Project) has been handed over to open-line for usual operation and its maintenance. There is no work for the work-charged staff at Karnal and the office of the Construction Division has been wound up and it has been shifted to Ghaziabad at the site of new construction work. The applicants have already been transferred to the new site at Ghaziabad.

since 6.2.1989. In this context, they have produced copies of the relevant orders issued by them.¹ According to the respondents, the applicants have been rendered surplus at Karnal and that they are continuing there by virtue of the stay order^a passed by this Tribunal.

18. In our opinion, it will not be appropriate to issue any directions to the respondents restraining them from transferring the employees of the Construction Division from Karnal to Ghaziabad on the ground that the work at Karnal has been completed and that they have been rendered surplus at Karnal. It is true that casual labourers are not ordinarily liable to transfer as per rule 2501 of the Railway Establishment Code. However, in case they are rendered surplus in one place and are deputed elsewhere depending on the availability of work, the same cannot be faulted. The Supreme Court has held in a batch of writ petitions disposed of on 9.11.1987 that it would be reasonable to shift the staff working in the Construction Division from places where they have been rendered surplus to places where work is available,² the O. that a seniority list of petitioners and other workmen of the same category should be prepared by the respondents within three months from 9.11.1987 and that the persons named in the list should be absorbed into permanent service in accordance with their seniority in such list.

1. Vide Annexure R-3 dated 26.1.1989; Annexure R-4 dated 24.2.1989; Annexure R-6 dated 25.2.1989 to the reply of the respondents in MP-479 of 1989 in OA-218/89, pages 65, 66 and 68 of the paper-book.
2. Vide Writ Petition No.1288 with W.P. Nos. 1249 and 1250/87 (Malkhan Singh and Others Vs. Union of India and Others); Writ Petition No.1250 of 1987 with Civil Miscellaneous Petition No.23802 of 1987 (Dhanna & Others Vs. Union of India and Others).

19. In the conspectus of the facts and circumstances, OA-981/87, OA-218/88 and OA-522/88 are disposed of by the following orders and directions:-

(1) The respondents are directed to take a decision on the proposal regarding the sanctioning of permanent posts for the maintenance work of the track completed from Panipat-Karnal-Bhainikhurd as expeditiously as possible. In case these posts are created, they should consider the suitability of the applicants for appointment to the said posts in accordance with the relevant rules, including the requirement of their passing the screening test. Such appointment will also be on the basis of their respective seniority in each category for which they may be found suitable for appointment. A seniority list of the employees who have attained temporary status in the Construction Division, should be drawn up expeditiously for this purpose, if this has not already been done.

(2) The respondents are directed to consider the applicants in OA-981 of 1987 for appointment on a permanent basis in the Maintenance Unit in Panipat-Karnal in their present posts subject to what is stated in (1) above. We hold that in the circumstances of the case, they cannot be taken to have waived their option to work in the Maintenance Unit, notwithstanding the note submitted by them with their thumb impressions.

(3) Such of those applicants as cannot be permanently absorbed as regular employees at Karnal and who have been rendered surplus at Karnal, should be given work if they report to the Construction Division at Ghaziabad or any other place, depending on the availability of work. In case, permanent vacancies arise at Karnal, they may be accommodated at Karnal in those vacancies, in accordance with their respective seniority, if they opt for the same.

(4) The respondents have stated in the counter-affidavits filed by them that the applicants are being paid their pay and allowances correctly and equal to those employees who have attained temporary status. In view of this, we do not issue any specific orders or directions to the respondents. They should, however, make available to the applicants the details of pay and allowances being paid to them each month.

(5) The respondents are restrained from reverting the applicants belonging to the semi-skilled and skilled categories to the unskilled category so long as vacancies exist in semi-skilled and skilled categories.

(6) The interim orders passed on 17.7.1987 in OA-981/87, on 18.4.1988 in OA-522/88 and on 23.5.88 in OA-218/88 will stand vacated with effect from 1.11.1989.

Let a copy of this order be placed in each of the case files.

(P.C. Jain)
Administrative Member

(P.K. Kartha)
Vice-Chairman(Judl.)