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CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, DELHI.

Regn.No. O.A. 2230/1990.      DATE OF DECISION: August 28, 1991.

Anil Kumar Datta      ....      Applicant.

V/s.

Union of India      ....      Respondents.

CORAM: Hon'ble Mr. Justice Ram Pal Singh, V.C. (J).  
Hon'ble Mr. P.C. Jain, Member (A).

Shri R.L. Sethi, counsel for the applicant.  
Shri P.S. Mahendru, counsel for the respondents.

(Judgment of the Bench delivered by  
Hon'ble Mr. P.C. Jain, Member (A)).

JUDGMENT

Aggrieved by his alleged denial of promotion from the post of Fitter Grade III to Fitter Grade II, the applicant, who is posted as Fitter Grade III, Signal Department, SSTE (PS), DRM's office, Northern Railway, New Delhi, has, in this application under Section 19 of the Administrative Tribunals Act, 1985, prayed for a direction to the respondents to consider him for promotion to the post of Fitter Grade II and if found eligible/suitable, for giving promotion with effect from the date his next junior was promoted with consequential financial benefits from the respective date.

2. We have perused the material on record and have also heard the learned counsel for the parties.

3. Briefly stated, the relevant facts are that the applicant was appointed as a casual Khalasi on 25.5.1978, allegedly on daily wages on TLA basis. He is stated to have been promoted as Fitter on daily wages from 15.7.1978 to meet the exigencies for the project of doubling between Subzimandi-Ganaur, in a work charged organisation. The case of the applicant, however, is that he was appointed as Fitter Grade III in the regular scale on 25.7.1978. The applicant contends that he has been representing for his promotion, but to no effect and that the denial of promotion to him is arbitrary and

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discriminatory, as a number of his juniors similarly placed are said to have been already promoted, his work and conduct has been outstanding and there is nothing against him and the denial of promotion to him is against law, contrary to rules and not in consonance with the principles of natural justice, equity and good conscious.

4. The respondents have contested the application and they have denied the allegations of arbitrariness, discrimination etc. According to them, the applicant is still a casual labourer with temporary status and is yet to be regularised. Further, the project casual labourers, including the applicant, were granted temporary status in pursuance of the judgment in the case of INDERPAL YADAV Vs. UNION OF INDIA and RAM KUMAR Vs. UNION OF INDIA. The applicant was due and granted temporary status with effect from 1.1.1983. In accordance with the scheme approved by the Supreme Court, a list was prepared and the regularisation of the project casual labourers has to be done on the basis of the combined seniority on Division basis. It is also stated that since the applicant is the juniormost Fitter in the organisation under SSTE(PS)/NDLS, he is not entitled to any alleged promotion and more so, he has not yet been regularised. A copy of the seniority list of seven TS Fitters working under SSTE/PS, New Delhi, has been filed as Annexure R-1 to the counter reply. A combined seniority list on Division basis has also been filed as Annexure R-2, in which his name appears at Sl. No.30. It has been specifically denied that casual labourers junior to the applicant have been promoted in preference to the applicant. The persons allegedly junior to the applicant as mentioned in Annexure A-4 are stated to be regular staff. It is also contended that the applicant has repeatedly been advised verbally that there is no vacancy of Fitter Grade II in this unit. The applicant had

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mentioned four names in Annexure A-4 allegedly junior to him and who were said to have been promoted in preference to him. The respondents have contended that these persons are regular staff members. Shri Sashi Mohan is stated to be a regular ESM Grade I and he maintains grade seniority on open line. Similarly, Shri Baldev Singh, Fitter Grade I, is a regular staff member and maintains similar seniority. No staff by names of Darshan Singh and Saroop Singh are stated to be working under that organisation or any other units of S&T/Construction as Fitter.

5. The real contention between the parties is about the status of the applicant. According to the applicant, he was appointed as a regular Fitter Grade III in the regular time scale of pay and he earned regular annual increments in that scale. According to the respondents, however, he is yet to be made regular as Fitter Grade III and unless he becomes regular Fitter Grade III, he is not eligible for promotion to Fitter Grade II. The applicant has not filed any document in support of his contention that his initial appointment in 1978 was as a regular Fitter Grade III. On the other hand, the seniority list of casual labourers of SSTE/PS/MDLS (Annexure R-1) shows the applicant as a casual labourer. Among the seven persons in that list, his name appears at the bottom. He was granted temporary status with effect from 1.1.1983, while the other six persons senior to him, were granted temporary status with effect from 1.1.1981. This list also shows that among the seven persons, he had put in least number of days of work as on 31.12.1988. In the Divisional seniority list at Annexure R-2, his name appears at Sl. No.30 and as on 1.4.1985, he is shown to have put in 2464 days of work, while 29 persons above him had put in more days of work. At the request of the learned counsel for the applicant, his Service Book was also sent for and the same has been produced by the learned counsel for the respondents. The Service Book also shows that the applicant was granted

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temporary status in the grade of Fitter (Rs.260-400) with effect from 1.1.1983. The Service Book also contains a copy of the Notice dated 13.10.1986, which shows the names and other particulars of the project casual labour and the dates from which temporary status has been granted to them in pursuance of the Railway Board's letter dated 11.9.1986 and in compliance to the Hon'ble Supreme Court's order dated 11.8.86. The applicant's name appears at Sl. No.10 of this Notice and the date of grant of temporary status is shown as 1.1.1983. As per this Notice, a copy of the same was placed in the Service Book of each employee and another copy displayed at the Notice Board. It is thus clear that the contention of the applicant that he was not a casual labourer but was appointed initially in 1978 as a regular employee, has not been substantiated. He has not shown that he had challenged either the seniority lists placed at Annexure R-1 and R-2 to the counter reply or the Notice dated 13.10.1986, all already referred to above. Moreover, the respondents have stated in para 5.4 of their reply that the applicant is on the panel of screened casual labourers and his merit number is 1038 and that a call letter dated 13.2.91 (Annexure R-3) had been issued to him to report to SSTE/PS New Delhi by 4.3.91 for regularisation of his services, but the applicant had not accepted and received the call letter and also did not turn up for regularisation. In his rejoinder, the applicant has not denied this.

6. In view of the foregoing discussion, the contention of the applicant that the action of the respondents is against law or rules or is arbitrary or discriminatory, is not at all established. We find that the O.A. is devoid of merit and the same is accordingly dismissed, leaving the parties to bear their own costs.

*(P.C. JAIN)*  
(P.C. JAIN)  
Member(A)

*(RAM PAL SINGH)*  
(RAM PAL SINGH)  
Vice Chairman(J)

ANNEXURE 'III'

IN THE SUPREME COURT OF INDIA

ORIGINAL JURISDICTION

WRIT PETITION NOS. 15863-15506 OF 1984

Ram Kumar & Ors.

...Petitioners.

-Versus-

Union of India & Ors.

...Respondents.

J U D G M E N T

RANGANATH MISRA. J:

The petitioner in each of these applications under article 32 of the Constitution is a workman engaged on terms of casual labour for periods varying between 10 and 16 years in the Construction Department of the Single Unit in the Northern Railway. All the writ petitions having disposed of by a common judgment as questions of law and fact involved therein are similar.

The petitioners alleged that notwithstanding the fact that each of them has put in continuous service for quite a long period, the Railway Administration, respondent herein, has not treated them as temporary servants and has applied discriminatory rates of wages. They have asked for a direction to treat the petitioners at par with maintenance workers and to declare

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that they are entitled to equal pay for equal work and have asked for their absorption in the regular cadre in the permanent category as per the circulars issued by the respondents. A number of documents and circulars issued by the Administration have been produced in support of their claim.

The Senior signal & Telecom Engineer (Power-Signalling) has filed a counter-affidavit on behalf of the respondents challenging the claim of the petitioners. According to the respondents five out of the forty-four petitioners in this group of writ petitions had undergone medical examination and were granted temporary status as Khallasis. One of them has been directed to be absorbed against a permanent vacancy in the open line; five others have refused to go to the open line for permanent absorption. He further averred that though prior to the issue of the Railway Board's directions on January 1, 1984, project casual labourers were not entitled to all the privileges like House Rent Allowance, City Compensatory Allowance, Casual Leave, increment etc., they are now entitled to all the privileges as applicable to open line temporary railway servants after attaining temporary status. In paragraph 23 of the counter-affidavit, it has been specifically

pleaded that as per the extant rules, temporary status will first be given in the cadre of Khallasi and then promotion to skilled category after conducting the trade-test is admissible. A further detailed counter-affidavit has again been filed by another senior Singal & Telecom Engineer, wherein along with the affidavit particulars of service of each of the petitioners has been provided. Particulars of service of each of the petitioners has been provided. Petitioners have filed a Rejoinder.

At the hearing of the applications, counsel for the petitioners as also the learned Additional Solicitor General were given full opportunity of placing their arguments and documents. In addition, they have also furnished written submissions.

It is stated on behalf of the Administration that out of forty-four petitioners sixteen have now been empanelled and of them five have been given temporary appointments; eleven are said to have refused to join and seventeen are still continuing with temporary status. Learned Additional Solicitor General states that petitioners are project employees and do not belong to the open line. According to him employees in the open line acquire temporary status on completion of 120

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days service as against 180 days which was the previous requirement. That status is acquired on completion of 360 days by casual labour in project works as provided in the scheme formulated under orders of this Court, though such status were acquirable by project casual labourers on completion of 180 days of continuous employment previously. Learned counsel for the respondents has placed reliance on the definition of 'project' which means : "a project should be taken as construction of new lines, major projects, restoration of dismantled lines and major important openline works, line doubling, widening of tunnels etc. which are completed within a definite time limit".

Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility, learned Additional Solicitor General on instructions obtained from the Railway Officers present in court during arguments has clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. Learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees

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of both categories stand at par. Keeping the prevailing practice in the Railways in view, it is difficult for us to obliterate the distinction between the two categories of employees till temporary status is acquired.

With the acquisition of temporary status the casual labourers are entitled to ;

- (1) Termination of service and period of notice (subject the provisions of the Industrial Disputes Act, 1947).
- (2) Scales of pay.
- (3) Compensatory and local allowances.
- (4) Medical attendance.
- (5) Leave rules.
- (6) Provident Fund and terminal gratuity.
- (7) Allotment of Railway accommodation and recovery of rent.
- (8) Railway passes.
- (9) Advances.
- (10) Any other benefit specifically authorised by the Ministry of Railways.

It is not disputed that the benefit of Discipline and Appeal Rules is also applicable to casual

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labour with temporary status. It is also conceded that on eventual absorption in regular employment half the service rendered with temporary status is counted as qualifying service for pensionary benefits.

In the Signal and Telecom Construction Organisation under which the petitioners are working, according to the Railway Administration further privileges of being regularised in permanent service is afforded by giving them access to their regularisation against permanent vacancies which mostly occur, in open line. For such purpose, casual, labour in open line as willing project casual labour are combined for the purpose of screening and forming of panel on the basis of seniority depending upon the days of work put in. In view of the submissions, learned counsel for the respondents has pleaded that the allegation of discrimination does not exist.

Disputes arising out of termination of employment and inter seniority came before this Court in Writ petition No. 147 of 1983 (Inderpal Yadav & Ors vs. Union of India). This Court changed the existing prevalent practice for reckoning seniority and directed that seniority of project casual labourers should be combined and prepared department wise and categories and in

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terms of the directions of this Court, steps have been taken. It has been further contended that by the time the writ petitions were filed, the Railway Board's order of 1st of June, 1934, had not been given but with those directions now holding, the field, the ambit of grievances has been very much reduced. Learned Additional Solicitor General has gone to the extent of even saying that nothing survives in the writ petitions.

What exactly are the benefits admissible to temporary railway servants have, however, been seriously debated.

Paragraph 2511 of the Indian Railway Establishment Manual provided :-

- (a) "Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however,

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count for any purposes like reckoning or retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regulation service.

(b)

Such casual labour who acquire temporary status, will not, however, be brought on to the permanent establishment unless they are selected through regular Selection Boards for Class IV staff. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchange. Such of them who join as casual labourers before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for class IV posts to the extent of their total service which may be either continuous or in broken periods.

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It is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like

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regular scales of pay, increments etc. Service prior to the absorption against a regular temporary/permanent, post after requisite selection will however, not constitute as qualifying service for pensionary benefits."

It is the stand of the learned Additional solicitor General that no pensionary benefit are admissible even to temporary railway servants and, therefore, that retiral advantage is not available to casual labour acquiring temporary status. We have been shown the different provisions in the Railway Establishment Manual as also the different orders and directions issued by the Administration. We agree with the learned Additional Solicitor General that retiral benefit of pension is not admissible to either category of employees.

As already stated, sixteen out of the forty-four petitioners have already been empanelled and eleven seem to have joined, while seventeen are continuing on temporary status. We expect the Railway Administration to take prompt steps to screen such of the petitioners who have not yet been tested for the purpose of regularising their service.

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Learned Additional Solicitor General

Specifically accepted the position that the petitioners should be entitled to the same pay as is admissible to others either in the project or in the open line. That would take away inequality which is main grievance of the petitioners. The respondents shall have a direction to consider the claims of each of the petitioners promptly and make appropriate orders for their regularisation.

For over ten years, litigations of this type have been coming to the Court. About three years back, this Court directed a scheme for absorption in Yadav's case which has been framed and is operative. Casual labour seems to be the requirement of the Railway Administration and cannot be avoided. The Railway Establishment Manual has made provisions for their protection but implementation is not effective. Several instructions issued by the Railway Board and the Northern Railway Headquarters were placed before us to show that the Administration is anxious to take appropriate steps to remove the difficulties faced by the casual labour but there is perhaps slackness in enforcing them. We hope and trust that such an unfortunate situation will not arise again and in the event any such allegation

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coming to the Court, obviously the Administration will have to be blamed.

The writ petitions are disposed of with the directions indicated above without any order for costs.

(RANGANATH MISRA), J.

(G.L. GOZA), J.

NEW DELHI;

December 2, 1937.