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Central Administrative Tribunal
Principal Bench: New Delhi

OA No.2441/91

New Delhi this the 26th Day of May, 1994.

Sh. N.V. Krishnan, Vice-Chairman (A)
Sh. C.J. Roy, Member (J)

1. Net Ram s/o Sh. Prabhati
2. Ugam s/o Sh. Kurada Ram
3. Lila Ram s/o Sh. Babu Lal
4. Gopi Chand s/o Sh. Matadin
5. Bala Ram s/o Sh. Ram Dev
6. Arjun Lal s/o Sh. Rameshwar
7. Rohtas s/o Sh. Birju Ram
8. Raghubir s/o Sh. Natha
9. Kalu Ram s/o Sh. Matadin
10. Rameshwar s/o Sh. Nega Ram
11. Bhadurmali s/o Sh. Sheo Ram ...Applicants

(All are residents of Vill. Gamoli Tesh,
Nimkathana Distt. Sikar)

(By Advocate Sh. V.P. Sharma)

Versus

Union of India through:

1. The General Manager,
Western Railway, Churchgate,
Bombay.
2. The Divisional Railway Manager,
Western Railway,
Jaipur.
3. The P.W.I. Inspector,
Western Railway,
Ateli Distt Mohindergarh (Haryana) ...Respondents

(By Advocate Sh. K.S. Ahuja, proxy for Sh. Jag-
jit Singh, Counsel)

ORDER

Mr. N.V. Krishnan:-

The applicants were casual labourers under the third respondent, P.W.I. Ateli. Their claim is that on the basis of the letters of the Railway Board dated 8.6.81 and 11.9.86 their disengagement from

service as casual labourers is illegal and that they are entitled for regularisation of their service. Hence, they have prayed for a direction to the respondents to consider them for regularisation of their service in preference to juniors and also to direct the respondents to re-engage them in preference to juniors and outsiders, until they are regularised.

2. The respondents have filed a reply contending that these claims are untenable and that no relief is due to the applicants.

3. This case was first left part-heard on 15.2.94. The case was listed for final hearing on 29.4.94 when Sh. V.P. Sharma, learned counsel for the applicants was present. Though the case was called twice, the learned counsel for the respondents did not appear. Sh. Jagjit Singh, the learned counsel for the respondents was represented by proxy counsel Sh. K.S. Ahuja who submitted that he had no instructions to argue the case. The learned counsel for the applicants referred us to the judgement in OA-1095/91 and requested to decide the O.A. on that basis. Hence, the case was reserved for orders.

4. We have perused the record. The applicants have filed particulars of their engagement in Annexure A-5 which reads as follows:-

"Particulars of the applicants

PWI-ATELI.

<u>Sr. No.</u>	<u>Name</u>	<u>F/Name</u>	<u>D/Engagement</u>	<u>Remarks.</u>
1.	Net Ram -	Prabhati	17.11.82.	PWI-ATELI.
2.	Ugam s/o	Sh. Kurada Ram	17.11.82.	"
3.	Lila Ram s/o	Babu Lal	17.11.82	"
4.	Gopi Chand s/o	Sh. Matadin	24.8.83.	"
5.	Kalu Ram S/o	Matadin.		"
6.	Bala Ram s/o	Sh. Ram Dav.	Feb.1982	"
7.	Arjun Lal -	Rameshwar.	"	"

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| 8. | Rohtas - Beerju Ram. | Feb. 1982. | " |
| 9. | Raghubir s/o Sh. Nathan | " | " |
| 10. | Rameshwar s/o SH. Nega Ram | 1978-1984. | " |
| 11. | Bhadurmal s/o Sh. Seo Ram | 1978-1984. | " |

They have not produced their labour cards. They claim that they were removed from service as there was no work.

5. They have produced as Annexures A-1 to A-3 various orders of the respondents engaging a number of casual labourers, in whose case interim directions have been issued by the Principal Bench of the Tribunal in the OAs filed by them, as mentioned therein. The applicants claim that the persons so engaged are their juniors and hence they have a right to be engaged and regularised in preference to the juniors. It is also claimed that some of the applicants had acquired C.P.O. status on completion of 120 days' service whereas others are not allowed to complete 120 days service.

6. It is stated that in the OM dated 11.9.86 (Annexure A6) the Railway Board had given instructions to prepare a list of Project casual labours and prepare a seniority list on that basis for giving them temporary status as directed in para 3 of that circular. The applicants are entitled to be placed in the list.



7. The respondents have filed a reply in which it is contended that the application is barred by limitation. It is further submitted that the applicants had abandoned and relinquished their casual engagement and hence they are not entitled to any benefit. Further, the applicants who are working as Project casual labourers would get the benefit of temporary status only after completion of 360 days service. None of the applicants has acquired such status.

8. In reply to para 3 & 4.1 of the O.A. it is stated that the particulars of service of the applicants are given in the Annexure-R-2 collectively, duly attested by the third respondent. According to the information furnished, the applicants at serial No.5, 10 and 11 had never worked with Railways. The other applicants have been engaged for periods from 4 days to 205 days. Thus, none of them is eligible to be given temporary status. It is contended that the Railway Board circular as per Annexure A-6 is not applicable to these applicants.

9. The applicants have not been retrenched because they themselves had abandoned their work and, therefore, they cannot be placed on the list of casual labourers.

10. We have carefully considered the pleadings in this case. Regarding limitation, we reserve our observations to the end.

11. It is clear that the applicants have not denied in their rejoinder the contentions raised by the respondents in paras 3 and 4.1 of the reply about the service rendered by the applicants. The only rejoinder given by them is that the reply is wrong and that paras

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3 and 4.1 of the O.A. are reiterated. This certainly does not suffice to establish the periods for which the applicants have worked as casual labourers. We have, therefore, no difficulty in concluding that the applicants who are Project casual labourers have not completed 360 days of engagement so as to entitle them to the benefit of the Railway Board's circular dated 11.9.86 (Annexure A-6). Further, applicants No. 5, 10 & 11 not having worked with the Railways, are not entitled to any relief.

12. We have seen the judgement of the Tribunal in OA-1095/91 delivered on 13.11.92 on the basis of which the applicants want us to dispose of this O.A. That O.A. was disposed of with the following directions:-

"OA 1095 of 1991 is disposed of with the following orders and directions:-

(i) Irrespective of whether the applicants are covered by the scheme prepared by the respondents pursuant to the directions contained in Inderpal Yadav's case and the various administrative instructions issued by the respondents on the subject of reengagement and regularisation of casual labourers, the applicants who have been reengaged pursuant to the interim order passed by the Tribunal should be continued in service so long as the respondents need the services of casual labourers and they should not be replaced by persons with lesser length of service and outsiders. The interim order passed on 14.05.1991 is hereby made absolute.

"(ii) The respondents shall consider the case of the applicants for absorption and regularisation after verifying the relevant records and in the light of the scheme prepared by them and as approved by the Supreme Court in Inderpal Yadav's case and the relevant administrative instructions issued by them."

13. We are unable to accept the contention of the respondents that the applicants abandoned their engagement. No proof of abandonment has been filed to the effect that even after notice to join, they refused to do so. That is the requirement as held in Beer Singh's case by the Tribunal, i.e. OA-78/87 (Annexure A.9).

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14. In the present case, notice was issued to the respondents on 1.11.91 regarding interim relief and in the meanwhile the respondents were directed to consider engaging the applicants as casual labourers if vacancy exists in preference to their juniors and outsiders. This interim order has been continued since then.

15. In view of our finding that the applicants/other than applicants 5, 10 & 11 have not rendered service long enough to qualify them for being given temporary status in accordance with the Railway Board's circular dated 11.9.86, we are of the view that no direction can be given to the respondents in this regard.

16. However, it is clear that the applicants/excepting the three had worked as casual labourers for some time or other. The General Manager, Northern Railway has issued a circular dated 28.8.87, which has been produced as Annexure A-12 by the applicants with MA-531/94. The reference number is not distinct but appears to be 220E/190-XIX-A/RIV. The relevant paras of that circular reads as under:-

"7. Railway Board have revised these instructions and have now vide their letter No.E.(NG) II/78/CL.2 dated 25.4.86 (PS 8989) decided that the name of each casual labour who were discharged at any time after 1.1.81 on completion of work borne on the live casual labour registers and if the names of certain such labour have been deleted due to earlier instruction these should be restored on the live casual labour register. It was also stipulated in this letter that casual labour engaged for short duration like a week or days for emergencies or for restoration of breaches etc. will however continue to be governed by Board letter No.E/NG/II/80CL/5, dated 10.12.84 PS 8989 and such casual labour will not be issued any casual labour card and shall not be retained on the casual labours registers.

8. Again as a result of Hon'ble Supreme Court order dated 23.2.1987 Railway Board vide their letter No.E/NG/II/84'CL/41, dated, 2.3.87 (PS 9191) and dated 4.3.87 PS No.9185 directed that the casual labour both on projects and be given an opportunity to be considered and placed on the live casual labour registers provided they represent

/(sic:open line ?)

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to the Administration on or before 31.3.1987.

9. From the above discussions, it is to summerise that while maintaining live casual labour register, those casual labours discharged prior to 1.1.1981 and had not worked for two years, their names should be deleted except such casual labour who had made special representation in terms of PS no.9191 and 9195 (to be executed upto 31.3.87) and considered eligible further, all casual labour discharged after 1.1.81 their names are to be continued on the live casual labour register indefinitely.

10. Further, it is obvious that if any requirements of casual labour in the seniority unit arise, the same is to be met with by re-engaging casual labour register of that seniority unit in order of seniority on the principal of last go first in. If there are no persons on live casual labour registers, the casual labour registers of the adjacent units must be invoked before resorting to any fresh intake.

11. If no casual labour is available on live casual register and fresh intake has to be resorted to (with approval of competent authority which at present is w.e.f. 3.1.91) preference should be given to those casual labours who had earlier worked on Railways, but their names have been deleted from the live casual labour registers as per extant instructions and if such labour is not available only then fresh labour should be recruited.

12. It is also clarified that as per extant orders, if a casual labour retrenched on completion of work, does not accept the offer made to him or does not turn up to work when offered, on availability of fresh work, he loses the benefit of previous spell of his employment as casual labour(PS No.8634).

13. The controlling officers/senior Gazetted Officers of each seniority units are required to ensure that such live casual labour registers are maintained by the concerned staff and surprise checks should be organised and action should be taken against the defaulting staff. These registers must be reviewed once a quarter.

14. The instructions should be brought to the notice of all concerned, dealing with casual labour, particularly Sr. Subordinate and Asstt. Officers and ensure that suitable checks and monitoring that these live casual labour registers are carefully maintained updated and utilised for purpose of re-engagement of casual labour."

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17. We are of the view that it is these instructions which would apply to the applicants in the present case. In other words, subject to these instructions their names will have to be included in the Live Casual Labour Register and in case the need for engaging casual labourer arises, the respondents shall have to engage the casual labourers whose names are mentioned in this register, in accordance with their seniority. This is the only relief which the applicants would be entitled to.

18. We can now consider the issue of limitation. We do not find any merit in this plea of the respondents for two reasons. Firstly, we find that they are blowing hot and cold and contradicting themselves. In para 2 of the reply it is stated that the OA is hopelessly barred by limitation. Nevertheless, in para 3, they contend, in the same breath that the OA is premature as the applicants have not represented to the respondents and not exhausted the alternative remedies. If that be so, the bar of limitation cannot apply. Further, the respondents have no case that the seniority of casual labourers whose names are entered in the live register was published and despite this the applicants remained quiet. Hence, we dismiss this objection.

19. We, therefore, dispose of this O.A. with a direction to the respondents to include the names of the applicants ^{except applicants 5, 10 and 11} in the Live Casual Labour Register, if eligible for such inclusion, in terms of the circular dated 28.8.87, referred to above and give engagement to the applicants as casual labourers as and when need arises, in accordance with their seniority in that Register.

20. The O.A. is disposed of, as above, with no order as to costs.

1-8-2011
26/5/94
(C.J. Roy)
Member(J)

'Sanju'

26/5/94
(N.V. Krishnan)
Vice-Chairman