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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH,
NEW DELHI.

O.A.No. 392/91

New Delhi: March 24th, 1995.

HON'BLE MR. S.R.ADIGE, MEMBER (A).

HON'BLE MRS. LAKSHMI SWAMINATHAN, MEMBER (J).

Shri Jaswinder Singh,
s/o Shri Joginder Singh

2. Shri Uma Shanker,
s/o Shri Narayan Dass

3. Shri Vinod Kumar Sahu,
s/o Shri Sita Ram Sahu.

4. Shri Surinder Kumar Asthana, (All Linemen)
s/o Shri Brij Bahadur,

5. Shri Akram Ali, Painter
s/o Shri Iqbal Ali,
All working under Chief Traction Foreman

(TRD) Central Railway, Jhansi.

...Applicants

By Advocate Shri B.S.Mainee.

Versus

Union of India through:

1. General Manager,
Central Railway,
Bombay V.T.

2. The Divisional Rly. Manager,
Central Railway,
Jhansi.

3. The Sr. Divl. Elec. Engineer (TRD)
Central Railway, Jhansi.

.....Respondents.

By Advocate Shri P.S.Mahendru with Shri D.S.
Mahendru.

JUDGMENT

By Hon'ble Mr. S.R.Adige, Member (A)

In this application, Shri Jaswinder Singh and four others, all working as Lineman and Painter (Class III) on casual basis since 1984, have prayed for regularisation in Class III category itself, and have impugned the action of the respondents in seeking to absorb them against Class IV posts.

2. The case of the applicants is that

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Sl.Nos. 1 to 3 applied for the post of casual Linemen and were selected as such in 1984, while Sl.No. 4 applied for the post of Painter, and was selected after qualifying the trade test. They state that these are skilled posts, and after the expiry of 120 days, they were given temporary status and have been working continuously against those posts drawing the pay scales admissible for those posts and were also getting annual increments. They contend that inspite of working against these posts since 1984, the respondents are seeking to regularise them against Class IV posts which is illegal, arbitrary, discriminatory and unconstitutional.

3. The respondents have challenged the O.A. and state that the applicants were engaged as casual labourers on purely adhoc basis, on a written agreement executed between ^{the parties} (Annexure-A1). They further state that the applicants were screened for the post of casual Lineman, but no practical test was conducted as the same was not necessary for the engagement as casual Lineman. The respondents state that as the engagement was purely contractual, the applicants have no enforceable right to seek relief.

4. We have heard Shri B.S.Mainee for the applicants and Shri P.S.Mahendru along with Shri D.S.Mahendru for the respondents.

5. Shri Mainee has relied upon Railway Board Circular dated 19.7.65 according to which Casual Labourers promoted to skilled or highly skilled posts or recruited to such posts against casual

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vacancies either in Workshop or elsewhere , may be absorbed in regular vacancies in skilled grade after passing the trade test to the extent of 25% of the vacancies reserved for departmental promotees.

6. On the other hand, Shri Mahendra for the respondents invited our attention to Rule 216 Indian Railway Establishment Code, Volume I, according to which the direct recruitment to Railway Services Group 'C' shall be made only through the agency of the Railway Recruitment Board unless otherwise specially authorised by the Railway Board. Attention has also been invited to Rule 159 Indian Railway Establishment Manual, Volume I, which states as follows:-

"159(1) The vacancies in the category of skilled Artisans Grade III in scale Rs.950-1500 in various Engineering Departments will be filled as under:
(i) 25% by selection from course completed 'Act Apprentices', ITI passed candidates and Matriculates from the open market; serving employees who are course completed Act Apprentices or ITI qualified could be considered against this quota allowing age relaxation as applicable to serving employees .
(ii) 25% from serving semi-skilled and unskilled staff with educational qualification as laid down in Apprentices Act; and
(iii) 50% by promotion of staff in the lower grade as per prescribed procedure."

7. In this connection, Shri Mainee has also invited our attention to Railway Board Circular No.831 dated 24-12-70 which states that a Railway servant put to officiate in Grade 'C' for five years or more, should be confirmed, if otherwise suitable

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against the quota reserved for direct recruitment. He has also relied upon the rulings in S.K.Sharma Vs. UOI -SLJ 1991(3) 391; State of Haryana Vs. Piara Singh & others-SLJ 1992 (3) 34; and F.Xavier Vs. UOI ATR 1990 (1) 424.

8. On the other hand, Shri Mahendru invited our attention to rulings in Dr. A.H.Fargaonkar Vs. State of Maharashtra & others -J.T.1994(v) 378 and J & K PSC Vs. Dr, Narendra & others -J.T.1993(vi) 593.

9. Shri Mahendru has also invited our attention to the judgment in O.A.No.32/91 Virendra Kumar Tiwari & others Vs. UOI & others decided on 13.1.95. In fact, reference to O.A. No.32/91 has been made by the applicants in this O.A. which is before us. In that O.A. also, the applicant Shri V.K.Tiwari and others were put to work as Linemen on daily wage basis and after expiry of 120 days of continuous service, they were given temporary status. Although they had claimed that they had put in number of years as Linemen, the Tribunal rejected their prayer for regularisation on the ground that no such regularisation could be made unless they had been trade tested and had obtained minimum of 39 marks out of 60 as per Railway Board's Circular. It was further noted that for at least some part of the relevant period those applicants had continued as Linemen because ^{of} the interim orders had been passed by the Tribunal and no advantage could be accrued to them because of the same. It was stated that while cause of action had arisen in 1987 ~~and~~ ^{itself} the application ^{was} filed on 1.1.91 and, therefore, ^{was} barred by delay and laches

also, apart from failing on account of merits also. Under the circumstances that application was dismissed but since the applicants had been continuing as Linemen since long, the respondents were directed to subject them to a further trade test by relaxing the age as per the instructions contained in Railway Establishment Rules and if they clear^{went to} the trade test, they ~~would~~ be regularised from the date they clear^{went to} the same against, available vacancies, if any. All those who had been empanelled earlier after passing the trade test, would rank senior to them because they had become members of the cadre earlier and if those applicants did not clear the trade test, they were to be reverted to Class IV posts which were originally offered to them in 1990.

10. We are satisfied that the material facts in O.A.No.32/91 Virender Kumar Tiwari & others Vs. UOI are on all fours with the present O.A. before us and as a Coordinate Bench, we are bound by the ratio contained in judgment dated 13.1.95 in the said O.A. Furthermore, we notice that in the present case also, by virtue of interim orders dated 21.2.91 the applicants are continuing in their posts of skilled Linemen/Painter.

11. Under the circumstances, the judgment dated 13.1.95 in O.A.No.32/91 Virender Kumar Tiwari & others Vs. UOI & others is fully applicable to the facts of the present case and this application is accordingly disposed of with a direction to

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the respondents to take further action in accordance
with paragraph 9. No costs.

Lakshmi Swaminathan
(LAKSHMI SWAMINATHAN)
MEMBER (J)

S.R. Adige
(S.R. ADIGE)
MEMBER (A)

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