



**Central Administrative Tribunal
Principal Bench, New Delhi**

O.A.No.249/2004

Tuesday, this the 17th day of October 2006

**Hon'ble Shri Shanker Raju, Member (J)
Hon'ble Shri N.D. Dayal, Member (A)**

1. Shri Om Prakash
s/o Shri Sardar Singh
r/o village Naya Gaon
PO Bahadurgarh, Dist.
Jhajhar (Haryana)
Presently working as
Mali in the office of
Respondents
2. Shri Jai Pal
s/o Shri Jug Lal
r/o village Naya Gaon
PO Bahadurgarh, District
Jhajhar (Haryana)
Presently working as
Mali in the office of
Respondents
3. Ganeshi Lal
s/o Shri Chandan Singh
r/o H-274, Raj Nagar, Palam Colony
Gali No.8, New Delhi
Presently working as
Mali in the office of
Respondents
4. Shri Ganga Ram
s/o Shri Makhan Lal
r/o H.No.640, Nehru Kutia
Malka Ganj, Delhi-7
Presently working as
Mali in the office of
Respondents
5. Shri Bhoop Singh
s/o Shri Mukhtiar Singh
r/o Railway Nursery
Shakur Basti, Delhi-34
Presently working as
Mali in the office of
Respondents

..Applicants

m (By Advocate: Shri SK Gupta)

-Versus-

1. Union of India through General Manager
Northern Railway
Baroda House, New Delhi
2. Divisional Railway Manager
Northern Railway
Delhi Division
State Entry Road, New Delhi
3. Divisional Personnel Officer
Northern Railway, DRM Office
Delhi Division, State Entry Road
New Delhi

...Respondents

(By Advocate: Shri Shailendra Tiwary)

ORDER (ORAL)**Hon'ble Shri Shanker Raju, Member (J):**

Corrected vide order
dated 8.1.07 in
MA 2118/06.
11/1/07

Heard the learned counsel for parties.

2. Grievance of the applicants is directed against an order passed in compliance of Tribunal's order dated 12.12.2002 in OA-1939/2002 whereby their request for grant of ACP Scheme, while reckoning the service from ¹⁹⁷⁷1977, i.e., the date of appointment as shown in the seniority list for Khallasi, has been turned down.

3. Learned counsel for applicants relied upon a decision of Division Bench of Andhra Pradesh High Court in **General Manager, South Central Railway, Rail Nilayam, Secunderabad, A.P. & another v. Shaik Abdul Khader**, 2004 (2) ATJ SC 23, to contend that for grant of pension the entire service of a casual worker on temporary status and 50% of the service on casual basis has to be reckoned as a qualifying service.

4. Learned counsel for applicant, referring to the combined seniority list of Mali and Mali Khallasi, would contend that the date of appointment of applicant No. 1 has been shown as 15.7.1977 and in accordance with the aforesaid seniority, it resulted in promotion of the

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applicant in the grade and scale of Rs. 2650-4000. Accordingly, now the respondents are estopped and are not allowed to reprobate by contending that the date of regular service in the case of the applicants would have to be reckoned post-screening.

5. On the other hand, learned counsel for respondents vehemently opposed the contentions and stated that Annexure R-1 clearly shows that the date of regular appointment of applicant No.1 is 30.3.1990 and in other cases also the date coincides with post-screening. Accordingly, it is stated that when the Association was consulted, a decision by the Railway Board on 31.3.2004 was taken to the effect that in the matter of grant of ACP 50% of the service rendered by a casual worker on temporary status have to be reckoned for computing 12/24 years of service for financial upgradation.

6. Learned counsel by showing the service book would also contend that the applicants were casual worker in 1996 and appointed on casual basis with temporary status but unscreened till 1989 and on screening, their seniority has been reckoned as a regular service and as per the provisions of ACP Scheme from 30.3.1990 and prospectively in all other applicants' cases. Accordingly, the applicants are not entitled for grant of ACP having not completed 24 years of service.

7. Learned counsel would also contend that none of the juniors of the applicants have been accorded second financial upgradation under ACP Scheme. As such, there is no discrimination meted out to the applicants.

8. On careful consideration of the rival contentions of the parties and perusing the material placed on record, it is trite that

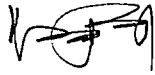
respondents, being Welfare Government, cannot approbate and reprobate simultaneously. On perusal of the service book, though the applicants were screened in 1989 and were accordingly regularized on 30.3.1990 but applicant No. 1 and others have been treated for the purpose of seniority by reckoning the date of grant of temporary status as ¹⁹⁷⁷1977, the date of regular appointment. Accordingly, the names of the applicants have been listed in the combined seniority list of Mali and Mali Khallasies in a definite pay scale.

9. We are of the considered view that in *service jurisprudence*, a seniority list would not be issued incorporating a casual worker or a person, who is yet to be regularized. Accordingly, once the name of a person is incorporated in the combined seniority list of Group 'D' post, the date of appointment mentioned therein by any logic or rationale would have to be deemed as a date of regular appointment. If it is not so, then the applicants would not have been given promotion, and in the seniority, if reckoned from 1990, they would be much junior to the persons in the seniority list issued by the respondents. Accordingly, if this date of appointment is to be treated as date of appointment of the applicants for the purpose of seniority, it is deemed to be regular service and DOPT Scheme of 9.8.1999 would have to be applied *mutatis mutandis*, insofar as reckoning this date as the date of qualifying service for the purpose of eligibility under ACP is concerned.

10. In such view of the matter, the rejection of the claim of the applicants, which is oblivious of the aforesaid, is not with application of mind and the rights of the applicants have been affected by non-consideration of their cases. Accordingly, this OA, for the foregoing reasons, is partly allowed. Impugned order is set aside and the matter is remitted back to the respondents for re-examination on deeming

the date of the applicants for eligibility under ACP as a regular service, vis-à-vis, his juniors and in such an event, if it is so, applicants would be entitled to all consequential benefits.

11. We also make it clear that in case it is established that the juniors of the applicants have already been granted the benefits under ACP Scheme in terms of the earlier order passed by the Tribunal (supra), as regards the payment of interest, the same would also hold good in the present OA as well. The aforesaid shall be complied with, within a period of four months from the date of receipt of a copy of this order. No costs.



(N.D. Dayal)
Member (A)



(Shanker Raju)
Member (J)

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