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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

O.A.1357/92

DATE OF DECISION: 5.1.93

2PM

O.A.1358/92

O.A.1359/92

O.A.1360/92

Lakshman Prasad

Prem Singh

Applicants

Dayanand

Gian Singh

VERSUS

Chief Administrative Officer,

COFMOW

Respondents.

Sh.J.C.Singhal

.. Counsel for the applicants

Sh.R.L.Dhawan

.. Counsel for the respondents

CORAM:

The Hon'ble Sh.Justice Ram Pal Singh, Vice Chairman(J)

The Hon'ble Sh.I.P.Gupta, Member(A)

J U D G E M E N T (ORAL)

The above four O.As. are being dealt with together since they deal with issues which are similar. The main grievances of the applicants are against Annexure A 1 whereby they have been reverted from a Group 'C' post to that of Khallasi (temporary status) with instructions

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to report to D.R.M./N.R./N.D. The learned counsel for the applicant contends that no instructions have been issued by D.R.M., Northern Railway to employ them as casual labourers and therefore, while on the one hand they stand relieved on the other hand they do not get any footing even in the Northern Railway Division in the absence of any orders.

2. The learned counsel for the applicants has taken us through several letters of the Ministry of Railways/Railway Divisions relating to absorption of casual labourers of COFMOW. The first such letter was of 1.8.84. It said that the Ministry of Railways have decided that casual labourers working in COFMOW might be considered for absorption on the Northern Railway alongwith other casual labourers on the basis of their total length of service as casual labourers. The counsel adds that despite the passage of eight long years they have not yet been considered for absorption. He has further invited our attention to a letter of 7.2.92 from the Divisional Railway Manager, Northern Railway to the General Manager, Northern Railway saying, 'that as the result of screening done on 23.1.89 was not announced and there was no record of screening available, as such they cannot be regularised on the basis of the screening done in 1989 (23.1.89). However, they will be called as and when the next screening is held in Mechanical Power C & W'. The next screening has not taken place as yet. The

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learned counsel for the applicant further drew our attention to a letter of 1.8.91 where also it was considered that the screening should be done and after regularisation if COFMOW still wanted to retain some casual labourers their paper lien would be maintained and they will be retained in COFMOW and they will be treated as regular employees on Northern Railway in COFMOW. The first seven names of the applicants occurred in the seniority list of the COFMOW. The list shown to us was quite long.

3. The applicants have prayed for screening for purposes of regularisation as Group 'D' employees and also for regularisation as Reserve Clerks since they have been officiating as Leave Reserve Clerks for a period of nearly five years. The counsel contends that they fulfil all the eligibility conditions for Reserve Clerk grade according to the Recruitment Rules and the vacancies also exist not only in COFMOW but also in various Divisions of Railways.

4. The learned counsel for the respondents argued that the applicants have not come with a clean hand in that they have stated in the rejoinder that notice has been given by Bharat Railway Mazdoor Sangh and the applicants have nothing to do with it. He has shown us documents to indicate that three of the four applicants are active members of the said Mazdoor Sangh. The ld. counsel for the respondents has further drawn our attention to R-2 of his counter where the Ministry of

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Labour have said that demand raised in the dispute is justified and it is proposed to refer the dispute to the Industrial Tribunal for adjudication on the following terms of reference:

"Whether the men of the Management of Northern Railway in not screening an employee on regular basis, the temporary unskilled Workmen Employee in COFMOW, an establishment for Indian Railway is just illegal, if not, all the reliefs which the concerned workmen are entitled to"

5. The Ministry of Labour requested Ministry of Railways to advise the management to settle the dispute amicably with the Union and for adjudication as proposed above by the Industrial Tribunal. Neither an amicable conciliatory settlement has taken place nor has the case been referred to the Industrial Tribunal, according to the learned counsel for the applicant, which has not been denied by the learned counsel for the respondents. The counsel for the applicants stated that the applicants belonged to Railway Mazdoor Sangh but it is not they who gave the strike notice.

6. Analysing the case briefly we find that the respondents had done some screening on 23.1.89 for absorption of casual labours of COFMOW on Northern

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Railway. If the results are not available it is not the fault of the applicants. If the respondents have lost the records it is their duty to trace the records or to rebuild the records by fresh screening. But this fresh screening has to be treated as if it was done on 23.1.89. If as a result of this screening and considering the length of service of the casual labourers, if their turn for regularisation comes according to the screening for regularisation and according to the relevant rules and instructions, they should be regularised. On such regularisation they should be either deputed to any Railway Division if the intention is to thin down the strength in COFMOW. If however, any of the Divisions of the Railways are not able to absorb them even after they have been screened and found suitable, the applicants should be allowed to continue in COFMOW and they should be treated as regular employees on deputation with COFMOW until they get absorbed in any Railway Division. So far as the claim of the applicants in regard to their non reversion from Grade 'C' post is concerned on the ground that they have continued to officiate the Grade 'C' post uninterruptedly for over five years, the learned counsel for the respondents drew our attention to the relevant provisions of the Railway Service (Discipline & Appeal Rules) 1968 which provides for a statutory appeal against an order of reversion from a higher officiating grade. The learned counsel for the respondents has weight in the arguments that they should first exhaust this statutory

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remedy of appeal before coming to this Tribunal. In view thereof the applicants might file an appeal under the relevant provisions of rule to an appropriate authority against their reversion from Group 'C' post in case they feel agrieved by the orders of the appellate authority. They are free to approach this Tribunal and issues raised in regard to reversion in the application will remain open as we are not applying our mind to this aspect of our case in view of the non-exhaustion of the statutory remedy. The statutory appeal, if now barred by limitation, should still be considered and the limitation is condoned as the applicant has filed the O.A. and the applicants can file such an appeal.

7. The screening of the applicants for regularisation in Khallasi's grade, as if it was done on 23.1.89, should be completed within a period of four months from the date of communication of this order.

8. With the directions and orders given above the O.As. are disposed of with no order as to costs.

I. P. Gupta
(I.P.Gupta)
Member (A)

Ram Pal Singh
(Ram Pal Singh)
Vice Chairman (J)