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CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 2064/92

New Delhi this the 3rd Day of June 1994

Hon'ble Mr. J.P. Sharma, Member (J)

Hon'ble Mr. B.K. Singh, Member (A)

Shri Mahabir Singh, S/o Shri Mangat Ram,
Electric Helper Khalasi under
the Senior Electrical Foreman,
Delhi Serai Rohilla (Loco),
R/o A-1/132, Sultan Puri,
Delhi-110 041.

... Applicant

By Advocate Shri B.K. Batra

Vs.

1. Union of India,
through General Manager,
Northern Railway, Headquarter Office,
Baroda House,
New Delhi.

2. Divisional Rail Manager,
Northern Railway,
Bikenar.

3. Senior Divisional Personnel Officer,
Northern Railway,
DRM Office, Bikenar.

... Respondents

(By Advocate Shri Romesh Gautam)

ORDER

Hon'ble Mr. J.P. Sharma, Member (J)

The applicant amended the Original Application
and the amended application has been taken on record.

The grievance of the applicant is for re-fixing his pay
from May 1981 after taking into account the annual
increment sanctioned from July 1979 to May 1981. He has
claimed arrears of difference of pay from 1981 to
date of payment with all consequential benefits. He has
also prayed for payment of interest. The case of the
applicant is that he joined as casual labour on 11.8.1978
till 14.1.1979 when he was given a break and again
re-engaged on 18.1.1979. He was casual labour Khalasi

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under Sr. Chargeman (Electrical Construction) Kishan Ganj, Delhi. The applicant acquired temporary status after completion of 180 days. The applicant has filed memo dated July 1979 of the Office of Sr. Electrical Chargeman (Construction IV) Minto Bridge, DKZ, New Delhi where the name of the applicant is shown at Serial No.8 and it has mentioned that he has completed six months continuous service and sanction was sought that his pay be regularised in the scale rate (Annexure A 3). Thereafter the applicant was regularised as Helper Khalasi under Electrical Chargeman Shri Ganganagar and joined his duties on 22.5.1981 at that time his pay was fixed at Rs. 196/- per month. The grievance of the applicant is that on regular absorption of casual labour in Group 'D' post, his pay should be fixed with reference to pay last drawn in temporary status. The western railway by their letter dated 27.8.1992 refixed the pay of various khalasi from various dates (Annexure A 8). The Divisional Engineer (Northern Railway) by his letter dated 20.11.1989 (Annexure A 9) had circulated instructions regarding the grant of authorised scale of pay of Casual Labour on completion of four months continuous service and that also contains reference of Railway Board's instructions on the subject. The applicant, therefore, made representation in January 1982 for sanction of a scale rate of pay, payment of difference pay and re-fixation of pay from May 1981 when the services of the applicant were regularised. The pay of the applicant was wrongly fixed at Rs.196/- with effect from 22.5.1985 though the same should have been fixed after adding annual increment to which the applicant was entitled after attaining temporary status. Similar benefit has already been given to other Khalasis Shri Raj Man, Niranjan Singh, Valve Man and Ram Iqbal working under Inspector of Works (MG), Delhi. He also

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stated the case of Shri Manohar Singh Helper Electric Khalasi who was appointed after the applicant was granted scale rate from 13.7.1980. He is getting Rs.960/- while the pay of the applicant is Rs. 935/- per month. Thus, on this basis he prays for the grant of the relief.

2. The respondents in their reply have denied the drawing of arrears pay bill (Annexure A.3) filed by the applicant and challenged its genuineness. The pay of the applicant on regularization as Electrical Khalasi Pump was fixed at Rs. 196/- in the grade of Rs. 196-232/-. In accordance with PS 9048, the applicant is due temporary status from 1.1.1983. The applicant, therefore, is not entitled to scale rate from 11.8.1978 to 14.5.1981 as claimed by him. The applicant has rightly fixed on regularization in the pay scale of Rs. 196-232/- (RS) and is not entitled to any relief.

3. We heard the learned counsel for the parties at length and perused the record. The claim of the applicant according to the respondent's counsel is barred by limitation. The applicant wants refixation of pay with effect from 22.5.1981 while in fact he made representation for the first time in the year 1992. In fact PS 9048 is regarding Project Casual Labour regarding terms of employment. The said circular is passed on the decision of the Hon'ble Supreme Court in the case of Inder Pal and ors Vs. Union of India & Ors decided on 18.4.1985. The railway have issued a composite instructions in that regard. The learned counsel for the applicant has placed reliance on the circular of the Railway Board dated 19.8.1984. It is stated therein that CPC Scales of pay are not being given to casual labours on the open line when they become due for the same. Similar cases are there where in respect of project casual

consolidated monthly wages are not being paid when they become due for the same. The learned counsel for the applicant has also referred to PS No. 6661 dated 23.11.1976 on the subject of Fixation of pay of casual labourers on their absorption in a regular Class IV post, and this refers to Railway Board's Circular dated 5.11.1976. This circular lays down that casual labourers with temporary status when absorbed in regular Class IV posts to be fixed as follows:

- a) those who have hitherto been drawing pay in incidental grades will have their pay fixed with reference to the last pay drawn; and
- ii) those who have been working in semiskilled and skilled grades but are absorbed in regular Class IV unskilled grades will have their pay fixed by granting increments in the unskilled grade with reference to their earlier service as casual labour in higher or equivalent grades.

4. The counsel for the respondents could not place on record any material to show that the above circular of the Railway Board dated 5.11.1976 has since been modified or repealed. The respondents in their counter have admitted that the applicant has been working with them from 11.8.1978 and continuously upto 14.1.1979 without break and after break of 3 days from 18.1.1979 till the date of his regularization and absorption in Class IV i.e. 22.5.1982. Thus the fixation of the pay of the applicant after he has acquired temporary status having completed four months of service has to be fixed in the scale rate. The learned counsel for the applicant has placed reliance on the case of Ram Kishan Parshad & Others Vs. Union of India and Ors

decided on 5.2.1993. In this reported case reference has been made to the case of Inder Pal Yadav 1985 SCC (L&S) 526 . The Hon'ble Supreme Court also considered the matter of casual labourers in the case of Ram Kumar Vs. Union of India reported in 1988 SCC 326. The casual labourers are entitled to temporary status as mentioned in para 2511 of Indian Railways Establishment Manual and as such would be entitled to some pay as admissible to others either in the project or in the open line.

5. In view of the above facts and circumstances the applicant has to be fixed in the scale of Rs. 196-232 with effect from 22.5.1981 when he was regularised and appointed to Group 'D' post. The respondents have fixed his pay at Rs. 196/- ignoring the period of his working as casual labour. After the applicant had acquired temporary status after putting in four months service or 360 days in the construction line, he should also be given the increment while fixing his pay on 22.5.1981. The applicant as such would be entitled to one or two increments which will depend as to when the year of granting temporary status is passed in his case after considering the actual days of working he has put in with the respondents in the construction/open line. It is a fact that the applicant has come very late before the Tribunal and the application was filed in August 1992 while he is claiming the benefits with effect from 22.5.1981. The delay, of course, is on the part of the applicant but it is not a case where the application can be thrown out on the point of limitation. The respondents have also issued circular letters from time to time directing the railway authority to give the benefit to the casual labourers in confirmity with the decision of the Hon'ble Supreme Court in the case of Inder Pal Yadav as well as in the case of Ram Kumar Vs. Union of India decided in

1988 (Supra) even then the application is not in time but the learned counsel for the applicant has given up the arrears of pay when the applicant would have got or refixation of pay with effect from 22.5.1981, and he should be given the actual benefits only from one year before filing of this application i.e. from August 1991 or from the date of the increment applicable in his case.

6. The application is, therefore partly allowed with the following directions:

1. The pay of the applicant shall be re-fixed in the pay scale of Rs. 196-232 on 22.5.1981 after considering his earlier service as casual labour and on counting that service the applicant shall be granted a temporary status as per the direction in the case of Inder Pal Yadav and Ram Kumar (Supra) and thereafter he should be given the rate scale of pay on monthly basis with annual increment in the scale of Rs. 196-232. The pay of the applicant on 22.5.1981 shall be fixed on the basis of the last pay drawn as casual labour temporary status.
2. After refixing of pay the applicant shall be given normal increment as and when fell due and shall also be re-fixed in the scale of Fourth Pay Commission on notional basis. The difference of arrears of pay shall be actually payable to the applicant from August 1991 or from the date when his increment in the year 1991 fell due.
7. The respondents are directed to pay whole of the amount within a period of six months from the date of receipt of the copy of this order. The respondents shall also verify the arrear bill of the applicant which has been prepared

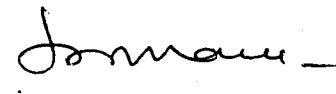
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and filed by the applicant as Annexure A.3 to the application and shall pay the amount if the said bill is genuine and has been duly sanctioned within the aforesaid period.

8. In the circumstances parties to bear their own costs.


(B.K. Singh)
Member(A)


(J.P. Sharma)
Member(J)

Mittal