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(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A.NO. 913/97

Allahabad, this the 13th day of JANUARY, 1999

COURT

Hon'ble Mr. S.L.Jain, Member (J)
Hon'ble Mr. G.Ramakrishnan, Member (A)

Tula Ram aged about 38 years son of Shri Mannoo,
resident of Railway Gr.No.A-55/D, Rly Colony, Mathura Jn.

(By Shri R.K.Nigam, Advocate) Applicant.

Versus

1. Union of India through General Manager, Central Railway, Mumbai CST.
2. Divisional Railway Manager, Central Railway, Jhansi.

.... Respondents.

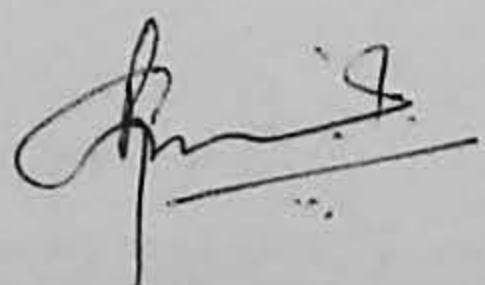
(By Shri G.P.Agrawal, Advocate)

ORDER (Reserved)

(By Hon'ble Mr. G.Ramakrishnan, Member (A))

This is an application under section 19 of the Administrative Tribunals Act, 1985 filed by the applicant, a casual labour in Commercial Department of Jhansi Division (C.Rly.) against the action of the respondent No.2 of sending him Traction Distribution Department. The applicant has sought for the following reliefs :

- (i) Issue a writ, order or direction in the



nature of MANDAMUS thereby commanding the respondents to count 1242 days more in the quantum of service in the original service of the petitioner as already ordered vide letter dated 5-11-92 (Annexure- A-IV) issued by the respondents, making total of 4497 days to the credit of the petitioner and interpolate his name in the screening panel referred to above and immediately issue the absorption order in the Commercial Department in Group 'D' class IV cadre as per original seniority already maintained in the unit, with all consequential benefits.

(ii) Issue another writ order or direction in the nature of MANDAMUS commanding the respondents to operate SC roster point according to R.K.Sabarwal's Judgement in favour of the petitioner and to assign and interpolate petitioner's name in the panel as per SC point and seniority and giving all the consequential benefits to the petitioner and refraining respondents from sending the petitioner to any other department than Commercial Department.

(iii) to issue any other suitable order in favour of the humble petitioner as deem fit by this Hon'ble Tribunal in the facts and circumstances of the case;

(iv) to award cost of the petition in favour of the humble petitioner.

2. Facts which are not in dispute are that the applicant belonging to Scheduled Caste is a Monthly

Rated Casual Labour (MRCL) of the Commercial Department working under Station Manager, Mathura. He was subjected to a screening alongwith other MRCLs of Commercial Department. By a letter dated 31-3-97, 50 screened MRCLs/substitutes of Commercial Department whose educational qualification was High School or above High School were directed to Traction Distribution department for their regular appointment. In this list of 50, applicant's name is at Sl.No.32. The screened panel of MRCL and substitutes of Commercial department was notified on 16-6-97 and applicant's name is at Sl.No.22A.

3. Applicant did not want to go to TRD department and he was willing to continue in the Commercial department as MRCL till a vacancy occurred in that department. The representation made to this effect was forwarded by Station Manager, Mathura to Asstt. Personnel Officer, C.Rly. Jhansi (Annexure- A-III). Applicant made the following submissions in the O.A. for his retention in Commercial department : -

- (i) He belonged to Commercial department and his seniority, channel of promotion etc. was in Commercial department.
- (ii) The respondents did not include his 1242 working days which had affected his seniority and assignment in the screening list resulting in his juniors being absorbed against regular posts in Commercial department.

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(iii) By being sent to TRD department he would lose seniority and chances of promotion in Commercial Department.

(iv) The respondents failed to operate the reservation roster and had they operated the same, he being a Scheduled Caste would have been regularised earlier.

For the above reasons, the applicant sought the above reliefs from this Tribunal.

4. Respondents have resisted the claim of the applicant on the grounds that the applicant was screened and empanelled in Commercial department, but was regularised in TRD department as the applicant had passed High School and no vacancy existed in Commercial department in pursuance to the Ministry of Railways direction that all working casual should be regularised by December, 1997, and the policy decision taken that casual labour/MRCL be regularised in other departments where regular vacancies existed in case vacancies did not exist in the departments where these were working.

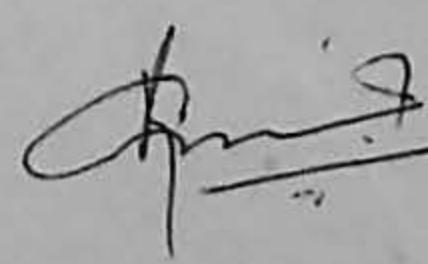
4.1 As regards not taking into account 1242 working days, it was stated "It is absolutely incorrect and denied that the 1242 days of working from 18-1-1987 to 14-1-90 was ignored. The working of these days have nothing to do with screening and empanelment of the applicant." Further it was stated that as he was posted in T.R.D. department his seniority would be determined in the T.R.D. department on the basis of

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his resumption in T.R.D. department at par with others and that in case the applicant was directed to be regularised in Commercial department it would be a discrimination for other casual labour employees of Commercial Department who were senior to the applicant. Regarding reservation for SC/ST, it was stated that screened panel was prepared on the basis of number of days worked by the casual labour and not on the basis of SC/ST.

5. In a supplementary affidavit filed by the applicant, he referred to and annexed the instructions issued by the Railway Board regarding maintenance of post based reservation rosters and also a letter dated 21-1-98 from Chief Goods Supervisor, Goods Shed, Morena addressed to DRM(C), Jhansi, C.Rly, for filling up two vacancies of Goods Porters at the station. He stated that vacancy was available and alongwith roster point and requested for retention in Commercial department.

6. In the objection filed against the Supplementary Affidavit by the respondent counsel, it had been stated that the applicant had no legal right and had reported sick, and that a number of seniors to the applicant had already been regularised and they had joined different departments and so seniority or juniority was not the basis for insisting to work in a particular department. It was also stated that the roster was not applicable in the case of regularisation of MRCLs/CLs.



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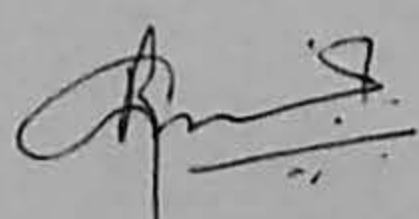
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7. After hearing the learned counsels for the parties and considering the rival pleadings, the following two issues have been framed by us for adjudication :-

- (i) Whether a casual labour of one department on being screened can be regularised in another department?
- (ii) Whether reservation rules will be applicable when regularisation of casual labour is done?

8. Para 179 of the Indian Railway Establishment Manual (IREM) Volume-I (Revised Edition - 1989) lays down the procedure in respect of recruitment of Class-IV railway servants. Para 2006 of Indian Railway Establishment Manual Vol.II deals with 'Absorption of Casual Labour in regular vacancies'. It reads as follows "Absorption of Casual Labour in regular Group 'D' employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit, method of absorption etc. decided by the Railway Administration."

8.1 Para 179 of the IREM Vol.I (Revised Edition -1989) especially sub paras (ii), (vi) and (xiii) (a) deals with the recruitment units, procedure of recruitment and casual labour, substitutes and temporary workmen. These sub paras are reproduced below :-



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Para 179 (ii) - Recruitment Units :-

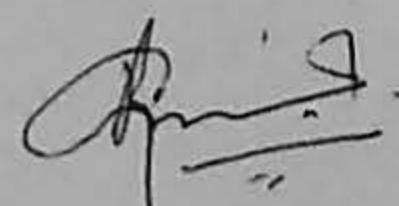
The unit for recruitment shall normally be the division, major workshops, loco sheds, C&W sick lines, P.W.I. lengths, etc. recruitment for each category will be made separately. If necessary, there may be more than one unit for recruitment in a division.

Para 179 (vi) - Procedure of recruitment :-

An employment notice indicating the total No. of vacancies, the number of vacancies reserved for Scheduled Castes and Scheduled Tribes, scale of pay, qualifications prescribed etc. as well as the last date for receipt of applications, should be prepared in due time and issued to Employment Exchanges within the recruitment unit and to the recognised associations of SCs and STs, so that adequate publicity is given with a view to attract the maximum number of local residents. Copies of these notices should also be exhibited on notice boards outside Railway officers etc. situated in the area of recruitment.

Para 179 (xiii)(a) - Substitutes, casual and temporary workmen will have prior claim over others to permanent recruitment. The percentage of reservation for SCs and STs should be observed in recruitment to temporary or permanent vacancies.

9. A reading of the above will indicate that the unit of recruitment will be a department of the division or a sub-department of a division or a sub-department of a sub-division. Therefore, normally the casual labour



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should get regularised in the same department in the same division on occurrence of regular vacancies. Respondents have stated as well it is noted from Newspaper reports about the announcement in the Parliament by Railway Minister that Railway decided to regularise all the casual labour on roll on 30-4-96, of about 56000 within a specific time frame i.e. by Dec'97. If in the light of this direction, the zonal Railway Administrations have decided to absorb the casual labour working in one department in another department due to non-availability of vacancies in the former department, no fault can be found in the same in view of provision of para 2006 of IREM Vol.II. Accordingly issue No.1 is decided in the affirmative.

10. Screening of casual labour is done to regularise them against regular vacancies. In the absence of casual labour, the vacancies would have been filled up by recruitment from open market. Therefore screening and regularisation of casual labour against vacancies has to be treated as a form of recruitment. In recruitments for filling up posts/vacancies under Union of India reservation rules apply which is also evident from sub paras (vi) and (xiii)(a) of para 179 of IREM Vol.I. Accordingly issue No.2 has also to be decided in the affirmative.

11. Now coming to this case under consideration, the affirmative finding of issue No.2 will not be of any help to the applicant as the respondents have stated



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that there were no vacancies in the Commercial department. Even if the applicant's contention of existence of two vacancies is accepted, the same will not be of any help to the applicant as he is placed at 22A of the second panel and the vacancy which he is alleging occurs on 21-1-98 after filing the O.A. Thus having no cause of action for the present O.A.

12. As regards the contention of the applicant that his 1242 working days had been ignored, while the respondents have denied the same, it had also been stated by the respondents that the working of these days did not have anything to do with screening and empannelment. We perused the copy of DRM/Jhansi's letter dated 5-11-92 filed as Annexure A-IV relied upon for the claim by the applicant. From this letter it is seen that even though the applicant as an MRCL would be given seniority from 18-1-87, as during the period 18-1-87 to 15-8-90 he had not worked no arrear payment is due for this period. As no payment has been made for this period and he had not worked during this period, the applicant's demand for inclusion of 1242 days can not be accepted.

13. In view of the foregoing the applicant is not entitled for the reliefs claimed. However the respondents are directed to give an opportunity to the applicant (alongwith other similarly placed casual labour and substitutes who worked in the Commercial department

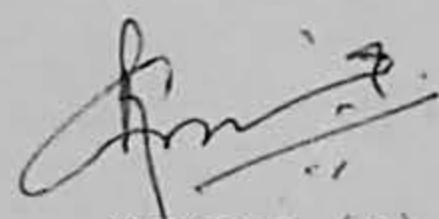
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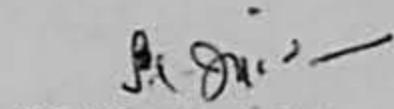
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and who have been regularised in other departments) to seek transfer to Group 'D' posts in Commercial department on the first availability of vacancies without affecting the earlier seniority list of the Commercial department. Those who avail of this opportunity may be transferred to Commercial department against existing and further arising vacancies maintaining inter-se seniority as per the screened panel notified on 16-6-97.

14. The D.A. is accordingly disposed of with no order as to costs.



MEMBER (A)



MEMBER (J)

gvs/