

Reserved

Central Administrative Tribunal,  
Allahabad Bench, Allahabad.

Dated, Allahabad, This the 3rd day of February 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. Rafiq Uddin, J.M.

Original Application No. 240 of 1998 & 340 of 1998

in O.A. 240/98

Ramesh Chandra Verma  
aged about 35 years  
son of Sri Mahesh Prasad,  
R/O E.W.S. Block No.1 Room No. 79  
Preetamnagar,  
Allahabad.

. . . Applicant

(Through Sri A.N. Sinha and  
Sri O.P. Khare, Adv.)

in O.A. 340/98

Mukesh Srivastava  
aged about 35 years  
son of Sri Hari Om Prakash,  
r/o 164 Arya Nagar, Muthiganj,  
Allahabad.

. . . Applicant.

(Through Sri A.N. Sinha, Adv. and  
Sri O.P. Khare, Adv.)

Versus

in both the O.As.

1. Union of India through the Secretary, Railway Board, Rafi Marg, New Delhi.
2. Senior Divisional Commercial Manager, Northern Railway, Allahabad.
3. Divisional Railway Manager, Northern Railway, Office of the Divisional Railway Manager, Allahabad.
4. Station Superintendent, North Central Railway, Allahabad.

. . . Respondents.

(Through Sri Prashant Mathur, Adv. and  
Sri B.B. Paul, Adv.)

Order (Reserved)

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

These two applications were heard together because

of common frame work of facts and issues of law and common order is being passed.

2. <sup>two</sup> These applications have been filed for consideration of the applicant's cases under the Provisions of Paragraph 2511 of the Indian Railway Establishment Manual read with Railway Board's Circular dated 12.7.73 for regularisation of services of the applicants. They have further claimed the relief that the respondents should be directed to pay the salary of Ticket Collector to the applicants from 7.4.92 to 3.9.97 and leave salary from 4.9.97 to 22.2.98 at the same rate.

3. The applicant Sri Mukesh Srivastava claimed that he was engaged as Mobile Ticket Collector by the Station Superintendent, Northern Railway, Allahabad for eight hours duty at Rs.18/- per day and he performed his duties from 25.1.87 to 26.2.87 like a regular Ticket Collector during Magh Mela and vacation period. The applicant Sri Ramesh Chandra Verma has claimed that he was so engaged from 24.1.87 to 26.2.87. It is claimed that the engagements of the applicants were on the basis of a scheme framed by the Railway Board for Mobile Booking Clerks. The applicants claim that they were discharged on 27.2.87 orally and were re-engaged on 13.3.92 and 7.4.92 respectively at Rs.18/- per day. They fell ill and sent medical certificate for grant of leave from 4.9.97 to 27.2.98 and 22.2.98 respectively. On 28.2.98 and 23.2.98 respectively they reported back for duty with fitness certificates but they were not allowed to join. They seek regularisation of service on account of the work put in by them as casual Ticket Collector from 7.4.92.

4. We have heard the arguments of Sri O.P. Khare for the applicants and Sri B.B. Paul for the respondents. The pleadings have been perused.

5. The main contention of the applicants is that the respondents continued their services although they got ad-interim stay against the order of the Tribunal dated 10.7.91. It has further been stated by the applicants that the respondents permitted the services of the applicants to be continued even after order dated 3.4.97 was passed by the Apex Court in Civil Appeal No. 9148 of 1994. We do not find any order of the respondents to this effect nor have the applicants produced such order. The applicants contention seems to be that owing to absence of such an order after grant of ad-interim stay by the Apex Court against the order of the Tribunal dated 10.7.91 as also after the final judgment in the said S.L.P. had been passed by the Apex Court on 3.4.97, the entire services for the period from 7.4.92 till 22.2.98 should be counted towards the period of work put in by the applicants as casual labour in addition to the work put in by them from 24.1.87 to 26.2.87 and the entire period should be considered for regularisation of the applicants.

6. We find from the letter dated 11.3.92 from Senior Divisional Commercial Superintendent, Allahabad to the Station Superintendent, Northern Railway, Allahabad, that the orders of the Tribunal in O.A. 471 of 1990 dated 10.7.91 should be complied with but the order shall be subject to the final disposal of the said S.L.P. in the Apex Court (Annexure A-7 to the O.A.). This order is not however, the order of given to the applicants.

7. Orders of Railway Board exist with regard to

casual labourers who had worked in the past requiring the Railway authorities whose services have not been continued in the past to include the name of such casual labour on Live Register for Casual Labour for purposes of re-engagement and regularisation when their turn comes. The seniority given to such casual labour when they are put on Live Register for Casual Labour is on the basis of total number of days of work put in. The applicants have prayed for regularisation on this basis.

8. The applicants have contended that their services should be considered as continuing and that they should be allowed to join their duty and regularised. The learned counsel for the applicants have sought to rely upon the judgment of Allahabad High Court in Abdul Quddus Vs. Joint Director of Agriculture and others reported in 1992 A.I.R. Page 104 in which it has been held that if an official was appointed temporarily as Class IV and fell ill sending application for leave for different period on different dates, his services can be terminated by a simple termination order but not giving effect to such an order on a back date. It has also been laid down by this judgment that when an appointment has been made in writing, it can be cancelled only a specific order after rejection of application for leave. The applicants have claimed that they were not paid salary of August and were not allowed to join after proceeding on leave with effect from 4.9.97. The respondents have denied their claim. This judgment is not applicable to the applicants because they were neither temporary appointees to Group 'D' nor <sup>were</sup> ~~to be~~ their services terminated retrospectively.

9. The learned counsel for the applicant has also placed reliance on Sadhan Chandra Dey and others

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page 138 in which it has been laid down that an order may be passed by the Tribunal in case of casual employees for granting of temporary status from retrospective date for preservation of seniority but benefit of pay and allowances may be granted from a prospective date. If in a case some employees were given benefit of pay and allowances from retrospective date, such a case can not be treated as precedent for grant of similar benefit to others. This judgment is not applicable because order of grant of temporary status has not been passed and the applicants appear to have worked from 13.3.92/4.7.92 onwards subject to decision in appeal in their case. The period of work from 4.7.92 can not be counted towards grant of temporary status.

10. The learned counsel for the applicants has cited the case of Ram Kumar and others Vs. Union of India and others reported in A.I.R. 1988, Supreme Court 390 in which casual labour engaged for period varying between 10 and 16 years had claimed temporary status / absorption in regular cadre, The Apex Court had directed the respondents to consider the claim of the applicants promptly and make appropriate orders for their regularisation. In applicant's case such entitlement can be considered on the basis of their work from 24/25.1.87 to 26.2.87 and they can be considered for engagement/regularisation in their turn.

11. The learned counsel for the applicants has sought to rely on Gopal Krishnaji Ketkar Vs. Mohammad Haji Latif and others reported in A.I.R. 1968

S.C. 1413 in which it has been laid down that if a party is in possession of best evidence which would throw light on the issue in controversy chooses to withhold it, Court should draw an adverse inference against the party although onus of proof does not lie on that party. The learned counsel for the applicants contended that orders of reinstatement is in possession of the respondents and they have chosen to withhold it and, therefore, adverse inference should be drawn against them. In this case since the applicants were appointed on the basis of the order of the Tribunal, appeal against which was referred by the respondents was allowed by the Apex Court, the ratio of this judgment will not be applicable. The order of reinstatement will also not have any effect on appeal being allowed.

12. The learned counsel for the applicants cited judgment of the Apex Court in B.H.E.L. Workers Association and others v. Union of India and others 1985(1) A.C. 333 in which it has been held that contract workers are entitled to wages, holidays, leave, if the conditions of service which are in writing are not unreasonably imposed by the employer.

S.C. 1413 in which it has been laid down that if a party is in possession of best evidence which would throw light on the issue in controversy chooses to withhold it, Court should draw an adverse inference against the party although onus of proof does not lie on that party. The learned counsel for the applicants contended that orders of reinstatement is in possession of the respondents and they have chosen to withhold it and, therefore, adverse inference should be drawn against them. In this case since the applicants were appointed on the basis of the order of the Tribunal, appeal against which preferred by the respondents was allowed by the Apex Court, the ratio of this judgment will not be applicable. The order of reinstatement will <sup>not</sup> ~~please~~ to have any effect on appeal being allowed.

12. The learned counsel for the applicants cited judgment of the Apex Court in B.H.E.L. Workers Association and others Vs. Union of India and others 1985(1) A.I.S.L.J., S.C. 331 in which it has been held that contract labour are entitled to wages, holidays hours of work and conditions of service which are applicable to workmen directly employed by the principal employer of the establishment in the same or similar kind of work. The ratio of this case will not apply because the applicants did not have the status of contract labour and their claim for absorption on the basis of Scheme for Mobile Booking Clerks has been rejected by the Apex Court.

13. The admitted facts of the case are that the applicants had filed O.As. in the Tribunal and had obtained orders in their favour on 10.7.91 directing the respondents to reinstate the applicants in

service on the post held by them earlier and to process their cases for regularisation as had been done in the past for Mobile Booking Clerk/Voluntary Ticket Collectors engaged prior to 17.11.86. No back wages were to be paid to the applicants.

Pursuant to this order the respondents are said to have passed order dated 11.3.92 and re-engaged the applicants on 11.3.92 and 7.4.92 respectively. This re-engagement as per order dated 11.3.92 was subject to the final disposal of S.L.P. in Supreme Court.

The order of the Supreme Court in S.L.P. went against the applicants. The applicants can therefore, not now claim any benefit of re-engagement/regularisation by filing another O.A. The controversy between the applicants and the respondents stands finally resolved by the judgment of the Apex Court. They are not entitled to obtain any order on fresh pleas as these could and ought to have been taken in the O.A.s earlier.

14. The applications are therefore disposed of with the above directions. No order as to costs.

However, the applicants have claimed that they worked from 1.8.97 to 3.9.97 and have not been paid for this period. The respondents are directed to consider their claim within three months and make payment of the amount if ~~any~~ <sup>due</sup>.

— Sel-  
Member (T)

— Sel-  
Member (A)