

(RESERVED)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

ALLAHABAD this the 10th day of Feb 2006.

ORIGINAL APPLICATION NO. 505 OF 2005.

HON'BLE MR. A.K. SINGH, Member-A

1. Jai Ram S/o Terra,
R/o Village Deogaon P.O. Deogaon, Thana
Barua Sumerpur, District Hamirpur.
2. Amar Prasad son of Shri Lalloo,
R/o Village Badagon, P.O. Deogaon, Thana
Deogaon, District Hamirpur.
3. Ram Bihari
S/o Shri Mullu Prasad
R/o Village Deogaon, Thana
Barua Sumerpur, District Hamirpur.
4. Ram Kumar
S/o Shri Brij Lal,
R/o Village Deogaon Thana Barua Sumerpur
5. Saukhi Lal
S/o Shri Gorey Lal Pal
R/o Village Deogaon, Thana Barua Sumerpur,
District Hamirpur.
6. Jai Lal
S/o Shri Binda
R/o Village Badagaon, P.O. Deogaon, Thana
Barua Sumerpur, District Hamirpur.

.....APPLICANTS.

Counsel for the applicants: - Sri S. Mandhyan.

V E R S U S

1. Union of India through General Manager,
North Central Railway, Allahabad.
2. Divisional Railway Manager,
North Central Railway, Jhansi.
3. Sr. Divisional Engineer, North Central Railway,
Jhansi.

.....RESPONDENTS

Counsel for the respondents: - Sri A.V. Srivastava

ORDER

BY HON'BLE MR. A.K. SINGH, Member-A

O.A. 505 has been filed by applicant and six others on the ground that they had put in over 120 days as casual labour and are also granted temporary status as required under Rules, they have not been called for screening in the fresh recruitment drive which is underway while their juniors have been called for the same. They submit that they are backward category candidates and have been employed as Gangman on casual basis from time to time and all have completed more than 120 days and have right to be regularized on the post of Gangman being fully eligible otherwise according to the requirement of Indian Railways Establishment Manual. Applicant NO.5 was initially engaged on 23.9.1980 and in the first spell worked till 18.12.1980 i.e. 86 days, thereafter again was engaged on 29.12.1980 till 24.3.1981. Again the applicant was engaged on 01.04.1981 and then on 02.05.1981 to 30.09.1981. He worked during this period for 327 days, thereafter was again engaged on 25.12.1984, again as Khalasi and continued till 18.3.1985 and thereafter lastly he worked on the post of Khalasi from 19.5.1985 to 18.6.1985. Applicant NO.6 also continued considerably for long period and his name also finds mention in the Live Casual Register at page 129 as is certified by the Senior Section Engineer (Works) Juhi. Applicant No.7 worked from 8.5.1984 to 28.7.1984, 1.5.1985 to 14.7.1985, 24.10.1985 to 19.11.1985 and finally from 1.7.1986 to 28.7.1986. From the bare perusal of the record as available with the applicants it can be demonstrated beyond doubt that they had legitimately worked for the railways though on casual basis for sporadic period and were all entitled to be accorded temporary status having worked for more than 120 days. They have further submitted that despite their names in the Live Casual Register mentioned at their respective places. They are being grossly discriminated against

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by not providing any job after 1986 and all being poor little Indian are suffering at the hands of the respondents. They have further submitted that no consistent policy of engagement on regular basis in accordance with number of days worked has ever been followed. The applicants are also aggrieved by such illegal actions on the part of the respondents from time to time after the scheme of 1986, 1987, 1993 and 1996. The respondent NO.2 issue general letter dated 30.08.2001 required to be sent by erstwhile casual labours so as to make them able to fill up those forms who shall be called for screening committee so constituted for regularization of Group D category employees including the Gangman and Khalasi. It may be specifically stated that none of the applicants have received letter dated 30.8.2001 which in itself is grossly illegal and discriminatory. They have submitted that as late as on 5.4.2004 the respondents again started screening of the casual labours which were registered in the casual life register, but none of the applications have been called to appear before the Screening Committee thereby discriminating against them. It may be stated that the illegality is being perpetuated by even filling up the posts which were to be filled in by list of Gangman & Khalasi from the separate list and that too juniors in the initial date of appointment. Therefore, everything is moving in tutored fashion continuing on their whims and extraneous consideration. They have further submitted that all the applicants are unemployed and have become over age for any other job and they have legitimate ground for being taken back in service and regularization looking to their seniority as per their initial engagement, hence could not be by-passed in such high handedness to the utter detriment of the interest of these poor applicants.

5. The relief sought by the applicants is as follows: -

"To regularize the services of the applicants as casual labours in the

Engineering Branch according to their seniority strictly as per Live Casual Labour Register."

6. Respondents have opposed the O.A. They submit that as per Rules Casual Labour Cards are issued by way of routine to each and every casual labour who had worked under the respondents irrespective of number of working days and in the said cards apart from other detail of the Casual Labour, it includes the total number of working days worked by him of Casual Labour and it also includes his LTI duly attested by the officer under whom he had worked. As a matter of facts Casual Labour Cards are never issued under the specific order of the Chief Personnel Officer in the case of the applicant. The Casual labour card^s was issued on his application made to the concerned authority. They further submit that the Railway Board vide a Circular dated 28.2.2002 issued instructions for absorption of Ex Casual Labour borne in Live/Supplementary Casual Labour Register. They further submit that notification dated 30.8.2001 was given vide publicity and it was sent to all units for pasting on the notice board and the said procedure was adopted. Respondents further submit that the applicants are leveling baseless averments and allegations against the respondents for laches committed on their part. Since the applicants did not apply within a stipulated period in the prescribed form, they were rightly not considered for regularization in terms of said notification dated 30.8.2001 and thus there had been no illegality or violation of Rules committed by the respondents. Respondents further submit that the applicants have not filed any representation to the Higher Authorities nor they have enclosed the copies of the said representation along with their instant petition and as such their allegations that they are being deprived of their legitimate right for regularization are baseless and incorrect. As a matter of fact, the applicants themselves are not

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regularization as they had never applied in terms of notification dated 30.8.2001 as stated above.

7. Respondents have also opposed the O.A. on the ground that it was time barred under section 21 of the Administrative Tribunals Act 1985 and have cited the Apex Court judgment in the case of **Ramesh Chandra Sharma Vs. Udham Singh Kamal** and others. Accordingly they pray for dismissal of the O.A. in question.

8. The applicants as well as respondents were also heard in person through their respective counsels and were also directed to file their written submissions. I have carefully considered the submissions made on behalf of both sides the applicants as well as respondents.

9. I find that the principle laid down by the Apex Court in the case of National Federation of Railway Porters Vendors and Bearers Vs. Union of India and others reported in J.T. 1995 (4) S.C. 568, an extract which is quoted below applies to this case also:-

"Absorption and regularization of the petitioners in the writ petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and no such other terms to which they may be subjected to according to the Rules or Circular of the Railway Board, as expeditiously as possible, not being later than six months from today, those who have put in longer periods of work as Railway Post Parcel Porters on contract labour getting preference in the matter of earlier appointment"

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In another case of Inder Pal Yadav Vs. Union of India and others, it has been held by the Apex Court that "To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare a list of project casual labour with reference to

each Railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in the Industrial jurisprudence that the men with longest services shall have priority over those, who have joined later on. In other words, the principle of last come first go or to reverse it, first come last go, as initiated in section 25G of the Industrial Disputes Act 1947 has been accepted. We direct accordingly.

10. The above two judgments of the Apex Court sparsely apply to the facts and circumstance of the present case.

11. Moreover as per Para 179, sub para 13 (a) of the Indian Railway Establishment Manual, the casual labour and substitutes will be given preference over fresh recruits in the matter of recruitment. Para 179 sub para 13 reads as under:

"Substitutes, casual and temporary workmen will have prior claim over others to permanent recruitment. The percentages of reservation for Scheduled Castes and Scheduled Tribes should be observed in recruitment to temporary or permanent vacancies."

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"Substitutes, casual and temporary workman who acquire temporary status as a result of having worked on other then projects for more than 120 days and for 360 days on projects or the casual labour with more than 120 days or 360 days service, as the case may be, should be considered for regular employment without having to go through employment exchange".

"A register should be maintained by all Divisions concerned to indicate the names of

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casual labour, substitutes and temporary workmen who have rendered 6 months service either continuous or in broken periods, for the purpose of future employment as casual workmen and also as regular employees.....The names should be recorded strictly in the order of their taking casual appointment at the initial stages and for the purpose of employment for regular Gr. D posts. They should, as far as possible be selected in the order maintained in the aforesaid conditions being equal, total length of service as casual labour, either continuous or broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out".

Moreover, Railway Board vide para F(1) of their circular letter NO. ^{ke} E (NG) II-77/CL/46 dated 8.6.1981 have also issued the following instructions in this regard.

"No outsider should be appointed to class IV posts which become available upto 31.12.1987 and all such posts should be filled only from among casual labour and substitutes".

The instructions of the Govt. are, therefore, clear on the point that casual labour and substitutes will be preferred to any direct recruit in the matter of regular recruitment.

As regards the age limit, para F (VII) of the aforesaid Circular clearly lays down:-

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"As long as it is established that a casual labour has been enrolled within the age limit relaxation at the time of actual absorption should be automatic and guided by this factor".....Even in old cases where the age limit was not observed relaxation of age should be considered sympathetically D.R.Ms may exercise such powers to grant relaxation in age limit".

12. The respondents have also raised the points of limitation and submit that the O.A. is time barred

under section 21 of Administrative Tribunal Act, 1985. In my opinion, the provision of section 21 will not apply in this case as the respondents themselves admit that the names of the applicants are alive on Live Casual Labour Register and therefore, the cause of action is continuous and recurring in this case and hence no limitation will apply to the cases of applicants. Moreover, they are illiterate labour and it was obligatory on the part of the Railway Administration to comply with the requirement of para 179 sub paras 13 XII (a), (b) and c as well as the direction by the Apex Court in the case of Inder Pal Yadav Vs. Union of India and it is clear that they have failed in their obligation to comply with these instructions. They cannot, therefore, blame the applicants for the same.

14. From the above, it becomes crystally clear that age limit cannot form an impediment in either regularization/regular recruitment of a casual labour and that they have to be given preference over fresh recruits in the matter of regular employment.

Indy 15. The facts of the case, therefore, clearly establish that the authorities have been unfair in denying, the just claim of the applicants and in so doing, have also violated the provisions of law quoted above. It is also established that age limit does not, and also should not apply to a casual worker at the time of regularization as he has

already entered the service of Indian Railways at a fairly young age, as in this case. Hence, relaxation of age in this case has to be automatic, in view of the instruction quoted above.

16. In view of the above, the O.A. succeeds and the following directions are issued to respondents in the matter:

- (a) The applicants will be given preference over their juniors as well as fresh recruits in the matter of regularization, as and when regular vacancies arises.
- (b) In case applicants have exceeded the maximum age limit for such regularization, the same shall be ignored and relaxation in age limit provided to them automatically. This direction is being issued on this ground also, that they have become overage as a result of non-compliance of their obligation to regularise the applicants, in their turn, as per settled law laid down by the Apex Court as well as various instructions issued by the Railway Board on the subject.
- (c) When the applicants are regularized on the availability of vacancies, they will be assigned higher seniority over their juniors who have already been regularized earlier superceding them.
- (d) Respondents are also directed to continue the name of the applicants in the Live

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computerized list at appropriate places in their seniority and also to consider their re-engagement in the vacancies that are likely to arise in future.

17. Accordingly, the O.A. succeeds and is allowed in terms of above direction.

No order as to costs.

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Member-A

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