

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD
BENCH ALLAHABAD**

(THIS THE 31st DAY OF May 2011)

Hon'ble Dr. K. B. S. Rajan, Member (J)
Hon'ble Mr. S. N. Shukla , Member (A)

Original Application No. 914 OF 2005
(U/S 19, Administrative Tribunal Act, 1985)

1. Noor Muhammad S/o Sri Mauniddin, R/o Seewa post-Mansoor Nagar District- Basti Working as Class IV employee, N.E. Railway, Gorakhpur. Serial No. 366.
2. Ram Phal son of Sri Trijugi Narain r/o Sangrampur Post Office-Walter ganj District-Basti (Serial No. 299).
3. Sant Ram son of Triveni R/o Sonveaa post office sabarpur Dostirct Gonda. (S. N. 319).
4. Ram Dhari son of Mahangoo Ram R/o Village and Post-Rasoolpur District-Basti (S. No. 296).
5. Ram Chander son of Sukh haran R/o Village- Mahrauli post-Walterganj District Basti (S.N.369).
6. Ram Samujh son of Badan r/o Village-Ama Mafi Bhanpurwa, Post Tinich District-Basti (s.n.335).
7. Atama Ram son of Munnar r/o village—Ama-Mafi Bhanpurwa, Post-Tinich District-Basti(s. N. 303).
8. Prahlad son of Bhawani Ram, R/o Bharauli Post-Rudra nagar District-Deoria (S.N.379).
9. Parikrama son of Bhawani Ram Working as Class IV Employee N.E. Railway, Gorakhpur. (S. N. 383).

.....Applicants.

VERSUS

1. Union of India, through principal Secretary Ministry of Railway, New Delhi.
2. Divisional Railway Manager, Lucknow; N.E. Railway, Lucknow.
3. Divisional Personnel Officer, N.E.R. Lucknow.

4. Senior Divisional Commercial Superintendent, N.E.R., Lucknow.
5. Chief Personnel Officer, N.E.R., Gorakhpur.
6. General Manager, N.E.R., Gorakhpur.

.....Respondents

Present for the Applicant: Sri Damodar Pandey

Present for the Respondents: Sri D. P. Singh

O R D E R

(DELIVERED BY Hon'ble Dr. K. B. S. Rajan, Member (J))

The applicant has filed earlier the following O.As and the results thereof are reflected against each:-

Sl No	O.A. No.	Decision
01	1541 of 2004 for regularization	Decided on 17-12-2004 directing the respondents to dispose of the representation within 3 months.(Ann I)
02	13 of 2001 for Absorption in Group D post	Vide order dated 5-1-2001, respondents were directed to decide the pending representation

2. Challenge in this case is order of respondents dated 11-03-2005 (Annexure 1 to 9) passed by the DRM, NR, whereby he had rejected the application dated 04-02-2005. Brief background is that the applicants had been functioning as casual labourers and they expected their regularization and consequent absorption in Group D post. In this regard they relied upon the decision of the Apex Court in the case of **Union of India and others vs Basant Lal and others (1992) 2 SCC 679**. Some of the applicants filed OA No. 13 of 2001 which was disposed of with a direction to the respondents to decide the

representation and on the rejection of the representation, this OA has been filed seeking a direction for regularization of the applicants as Group 'D' employees.

3. Railway Board in fact issued one master circular 20 which inter alia states as under:-

5.1A Substitutes, who have acquired temporary status should be screened by a Screening committee and not by a Selection board, constituted for this purpose before being absorbed in regulars Group 'C' (class III) and Group 'D' (Class IV) posts.

9.4 If the Substitute who was earlier discharged from service on completion of work or on return of the person against whose post he/she was engaged as Substitute has not booked again in the preceding two complete calendar years, his/her name should be struck off from the Register.

4. As the above provisions came in the way of the applicants for regularization, they have challenged the vires of the above said provisions of Master Circular 20.

5. Respondents have contested the O.A. They have appended a table indicating the break in engagement of all the applicants vide para 7 of the counter affidavit. It is observed therefrom that the time gap ranges between 5 to 6 years.

6. The applicants have furnished their rejoinder and supplementary rejoinder reiterating their contentions as contained in the OA. Certain orders of the Tribunal have also been annexed to the rejoinder/supplementary rejoinder.

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7. Counsel for the applicant argued that there is no justification in putting forth the restriction as contained in para 9.4 and consequently, the same has to go and on the basis of the past overall experience, subject to screening, the applicants should be regularized. Thus, para 5.1A and 9.4 of the master Circular No. 20 should be treated as ultra vires.

8. Arguments heard and documents perused. The impugned order reads as under:-

"सेवा में,

श्री नूर मोहम्मद पुत्र मैनुददीन
ग्राम सीवा, पोस्ट मसूरनगर
जिला बस्ती

विषय — केन्द्रीय प्रशासनिक अधिकरण, इलाहाबाद बेंच, इलाहाबाद
में दायर कोर्ट केस सं० (ओ०ए० 154/2004)

सन्दर्भ — आपका प्रतिवेदन दिनांक 4.2.05

उपरोक्त विषय के संबंध में आपके प्रतिवेदन दि० 4.2.2005 पर सहानुभूतिपूर्वक विचार किया गया और स्पीकिंग आर्डर निम्नवत परित किया जाता है।

जनवरी /2004 में सम्पन्न यातायात विभाग (परिचालन एवं वाणिज्य) की छान परीक्षा हेतु रेलवे बोर्ड के मास्टर सरकुलर 20 के द्वारा 5.1ए व 9.4 में दिये गये निर्देशों के अनुसार ऐसे श्रमिकों के नामा पर विचार किया नहीं किया गया, जो लगातार 2 वर्ष या उससे अधिक समय से रेलवे में सेवारत नहीं थे।

चूँकि आप छान परीक्षा से पूर्व लगातार 2 वर्षों से अधिक समय से सेवारत नहीं रहे अतः वर्तमान नियमों के आधार पर छान परीक्षा विचार करने हेतु योग्य नहीं पाये गये।

भवदीय
(के० के० श्रीवास्तव)"

9. It is to be borne in mind that different types of casual labourers are engaged in the Railways. (a) as substitutes; (b) as open line casual labourers and (c) project work casual labourers. There is basic difference in all the three. In respect

of substitutes, they are entitled to certain other benefits as held in the case of ***Prabhavati Devi v. Union of India, (1996) 7 SCC 27***, wherein the Apex Court has held as under:-

4. The deceased kept working as a 'substitute' till 5-1-1987 when he died. But before his demise, he came to acquire certain rights and privileges under Rule 2318 of the Rules applicable to Railway Establishments. The said rule provides that substitutes shall be afforded all the rights and privileges as may be admissible to temporary Railway servants, from time to time, on completion of 6 months' continuous service. Indubitably, the deceased had worked beyond 6 months and that too continuously. Having become a temporary servant in this manner, he became entitled to family pension under sub-rule 3(b) of Rule 2311, whereunder it is provided that the widow/minor children of a temporary Railway servant, who dies while in service after a service of not less than 1 year continuous (qualifying) service shall be eligible for a family pension under the provisions of para 801 of the Manual of Railway Pension Rules. Further, in their case the amount of death gratuity admissible will be reduced by an amount equal to the employee's 2 months' pay on which the death gratuity is determined....

In respect of project casual labourers, certain other benefits are available as observed by the Apex court in the case of ***Union of India v. K.G. Radhakrishana Panickar, (1998) 5 SCC 111***:

As regards Project Casual Labour this benefit of being treated as temporary became available only with effect from 1-1-1981 under the scheme which was accepted by this Court in Inder Pal Yadav. Before the acceptance of that scheme the benefit of temporary status was not available to Project Casual Labour. It was thus a new benefit which was conferred on Project Casual Labour under the scheme as approved by this Court in Inder Pal Yadav and on the basis of this new benefit Project Casual Labour became entitled to count half of the service rendered as Project Casual Labour on the basis of the order dated 14-10-1980 after being treated as temporary on the basis of the scheme as accepted in Inder Pal Yadav

Vide the decision in Robert D'Souza vs Executive Engineer, S.

Rly (1982) 1 SCC 645, the Apex Court has held as under:-

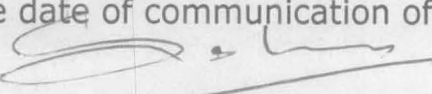
*Railway Administration has miles to go and promises to keep and this becomes clear from the fact that the appellant, a daily-rated workman, continued to render continuous service **for 20 years** which would imply that there was work for a daily-rated workman everyday for 20 years at a stretch without break and yet his status did not improve and continued to be treated as daily-rated casual labour whose service can be terminated at the whim and fancy of the local satraps. It is high time that these utterly unfair provisions wholly denying socio-economic justice are properly modified and brought in conformity with the modern concept of justice and fair play to the lowest and the lowliest in Railway Administration.*

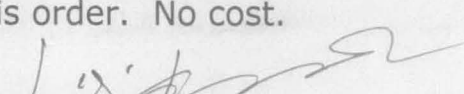
10. The case of the applicants is also that they have **put in 20 years** of casual service but there has been no regularization and rejection of their case is based on the rule relating to regularization of substitutes. From the pleadings it is not exactly clear whether the applicants were engaged as substitutes or casual labourers of other character. For, vide order dated 05-01-2001, the applicants were engaged as seasonal waterman and later on as watchmen. There is no regular post of seasonal waterman and as such it could not be that at the time of their appointment, the applicants would have been engaged as substitutes. It is only when these were engaged as substitutes, does the master circular No 20 apply. For others, other regulations would apply. Recently, Railway porters have been regularized even without any age restrictions. On the basis of the Live casual labour Register maintained, many casual labourers are regularized. As such the case of the applicants would certainly fall under such a category, where, even after sufficient break, they would be entitled for regularization under the extant instructions. If so, the applicants should be extended that benefit.

11. The General Manager has full powers in respect of framing of rules for regulating the recruitment and conditions of service of employees, vide *Union of India v. Pushpa Rani*, (2008) 9 SCC 242. Rules normally provide for relaxation also and if so, under the inherent powers vested with the Rule making authority and save when there is a specific provision to state that there shall be no relaxation, relaxation could well be considered for a class or category of persons when fully justified. This is one such case, where the casual labourers who are stated to have worked for twenty years are considered for regularization even by invoking the relaxation power.

12. The **OA is therefore, disposed** of, with a direction to the General Manager who may consider, keeping in view the decisions cited above, the case of the applicants for regularisation from any date as may be prescribed by the General Manager. If the case of the applicants does not fall under any of the categories for regularization and if there be no power to relax, then the individuals may be suitably informed by a reasoned order.

13. This drill may be performed within a period of four months from the date of communication of this order. No cost.


(S.N. Shukla)
Member-A


(Dr. K.B.S. Rajan)
Member-J