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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 7th day of Feb 2007

Original Application No. 934 of 2005

Hon'ble Mr. Justice Khem Karan, Vice Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

1. Mohd. Umar S/o Shri Abbas Khan, R/o 467 Out side Sainyer Gate, Jhansi.
2. Ram Swroop, S/o Shri Dhani Ram, C/o 467 Out side Sainyer Gate, Jhansi.
3. Naseem Narayan, S/o Shri Madari Lal, C/o 467 Outside Sainyer Gate, Jhansi.
4. Prem Narayan, S/o Sri M. Lal, C/o 467 Outside Sainyer Gate, Jhansi.

. . . Applicants

By Adv: Sri R.K.Nigam & Sri S.M. Ali

V E R S U S

1. The Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager, North Central Railway, Jhansi.
3. Dy. Chief Engineer (Construction), North Central Railway, Behind Railway Hospital, Jhansi.

. . . Respondents

By Adv: Sri Anil Kumar

O R D E R

By Hon'ble Mr. P.K. Chatterji, AM

The four applicants in this OA stated that they entered the Railways as Motor Vehicle Drivers (MVD) on different dates between 1984 to 1986 e.g. Applicant No. 1 joined as MVD on 901.01.1984 under

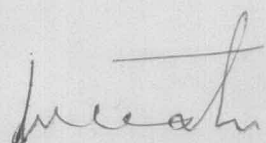
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IOW Jhansi. They were placed in the pay scale of Rs. 950-1500. They also earned their increment regularly in the same pay scale.

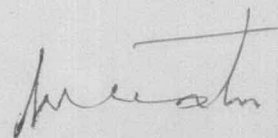
2. It is further stated that as per the scheme of decasualization the four applicants were posted regularly as Khalasi/Gangman on 24.11.1997. However, the applicants alleged that this was only a paper exercise as they were again placed as Adhoc MVD on 03.02.1998. The applicants are of the view that they should have been regularized in the post of MVD in which they were working from the date of their joining the Railways. According to them there was scope of decasualization in the Class III category post of MVD department as per Railway Board's letter No. E(NG) 62 CL/36 dated 16.01.1963 which inter-alia states that casual labours who have been engaged in skilled category post from the beginning can be straight away absorbed in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of 25% of the vacancies reserved for departmental staff from the unskilled and semi skilled categories.

3. The applicants are further aggrieved that due to their not being regularized in the category of MVD from the date of their joining they were deprived of the ACP. Had they been regularized as MVD in accordance with the above cited Railway Board



Circular, they would have become eligible for the ACP. Not only that according to Rules and also as per different judgments of the Courts and Tribunals the respondents should have given them pay protection while regularizing them as Khalasi/Gangman but this has not been done. In this context the applicants cited from the Apex Court judgment in Ram Kumar's case which has ruled that in all such cases pay protection should be given to the effected staff.

4. The applicants were finally absorbed as MVD on 05.12.2002. Thus it would be seen that they were more or less continuously working as MVD from 1984/1985 (Barring short period between 24.11.1997 to 03.02.1998). For these reasons the applicants question the validity and legality of the decision of the Railway to regularize them as Khalais/Gangman completely ignoring this factual position. Even if for argument's sake it is presumed that the act of regularizing them as Khalasi was not wrongful, at least the respondents should have given them pay protection, but even this has not been done. The applicants have referred to a number of judgments of the Apex Court as well as the Tribunal in support their arguments. Firstly, they have cited from Ram Kumar's case decided by the Apex Court to augment their argument for pay protection. They have also cited from the Full Bench Judgment of the Tribunal

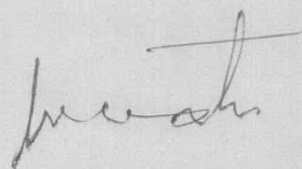


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at Jaipur in the case of Aslam Khan Vs. Union of India & Ors.

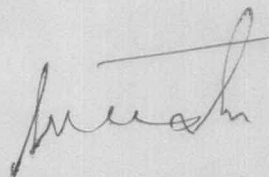
5. With these arguments the applicants have prayed that they should be considered for regularisation as MVD from 24.11.1997. This period should also be counted for the purpose of Seniority in the same cadre and also the respondents should be directed to protect the pay which they were drawing before 24.11.1997.

6. The respondents in their reply denied the allegations fully saying that there was no scope within the rules and according to the decisions of Courts/Tribunals to regularize them in the cadre of MVD. However, while regularizing them as Khalasi/Gangman pay protection was given to the applicants as per rules. The respondents also stated that the same judgment of the Full Bench of Jaipur Bench of this Tribunal which the applicants are trying to take help from, had upheld that the regularisation has to be done in the feeder cadre. In the case of MVD the feeder cadre was that of khalasi/Gangman. As the case of Aslam Khan Vs. U.O.I. & Ors decided by the Full Bench at Jaipur is very relevant in this case it would be worth while to reproduce the relevant portion of the same. Particularly para 9 of the same is very important.



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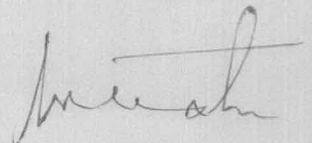
- "6. Further reliance is placed on Railway Board's Circular dated 9.4.1997, which provides as under:
- "3. The question of regularization of the casual labour working in Group 'C' scales has been under consideration of the matter. After careful consideration of the matter, Board have decided that the regularization of Casual Labour working in Group 'C' scales may be done in the following lines:
- (i) All casual labour/substitutes in Group 'C' scales whether they are Diploma Holders or have other qualifications may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualification without any age bar.
- (ii) Notwithstanding (i) above such of the casual labour in Group 'C' scales as are presently enabled for absorption as skilled artisans against 25% of the promotion quota may continue to be considered for absorption as such.
- (iii) Notwithstanding (i) and (ii) above, all casual labour may continue to be considered for absorption in Group 'D' on the basis of the number of days put in as casual labour in respective units.
7. If one was to consider the present issue based on the aforesaid para 2007 (3) of the Indian Railway Establishment Manual (1990) and the Railway Board's Circular of 9th April 1997, without reference to the decision of the Supreme Court, it could possibly be open to us to take a contrary view. However, we are bound by the aforesaid decision of the Supreme Court. The aforesaid decision cannot be termed as per-incurnum as the same has been rendered after examining the relevant provisions of the rules as well as the administrative instructions issued by the Railway Authorities and this is clear from the observation to be found in the opening portion of para 9 of the judgment which has been reproduced.
8. On a consideration of the rules as also the administrative instructions, the Supreme Court has found that a daily wager or a casual worker against a particular post, who acquires a temporary status having worked against the said post for a specified number of days does not acquire a right to be regularized against the said post, he can only be considered for regularization in accordance with Rules i.e. he can be considered for regularization only to Group 'D' post.
9. In the result, we answer the reference as Under:-
- "A person directly engaged on Group 'C' post (Promotional) on causal basis and has been subsequently granted temporary status would not be entitled to be regularized on Group C post directly but would be liable to be regularized in the feeder cadre in Group D post only. His pay which he drew in the Group C post, will however be liable to protected,
10. The O.A. will go back to the Division Bench for disposal on merits and in accordance with law in the light of the decision rendered in the present reference".



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7. Regarding the allegations by the applicants that even officials who were junior to them as MVD were given the benefit of ACP, the respondents have strongly denied the allegation and have said with emphasis that no staff junior to the applicants were given ACP.

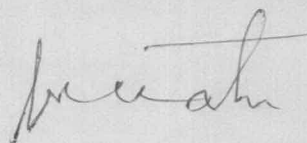
8. It may be seen from the relief which the applicants have sought that these are somewhat mixed up. Firstly, they have claimed that regularisation should be made in the cadre of MVD. Secondly, they have also demanded that pay protection should be given. As a matter of fact if the first claim is to be justified, regularisation would be made as MVD and the question of pay protection will not arise. The question whether the applicants are eligible for getting ACP will depend upon whether their claim for decasualization in the cadre of MVD is justified or not. Therefore, we feel it is necessary to deal with the second question first. In this context we would like to revert to the judgment in Aslam Khan Vs. U.O.I. & Ors (supra). It would appear from the decision that the aspect has been examined comprehensively and the decision was that decasualization (regularizations) has to be made in the feeding cadre which in this particular case is that of Khalasi/Gangman. Therefore the claim of decasualization in the cadre of MVD will not stand and for this reason the claim of ACP as well.



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Taking the date from which the applicants were regularized as MVD as 05.12.2002, obviously the applicants would not become eligible for ACP promotion.

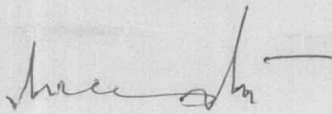
9. That leaves us with the only other relief that has been prayed for i.e. pay protection as per rules. It has been alleged by the applicants that at the time of their regularization as Khalasi/Gangman, they were working as MVD in the pay scale of Rs. 950-1500. But there pay was not protected as the Hon'ble Supreme Court had decided in Ram Kumar's case. As per rules the pay of the applicants needed to be protected by the respondents. The respondents have, however, strongly refuted the allegation and said that pay protection was given to the applicants as admissible under rules (Para 12 of CA). The respondents have, however, not clarified what are the rules of such pay protection and how it was done in respect of the applicants while fixing them in a lower scale of Khalasi/Gangman from that of MVD. On the other hand we find at para 12 of the counter affidavit respondents stated that if the applicants were not happy with the pay at which it was fixed in the scale of Khalasi/Gangman, they should have objected to the same at the time of fixation and not so much time, thereafter. We are not very sure whether it amounts to a tacit acknowledgment that there might



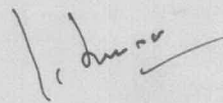
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have been an error in the fixation, the correction of which, however, they now seek to preempt on the ground of delay. The applicants have also not clarified as to why the fixation allowed by the respondents was not as per rules. Therefore, this area remains rather a gray area without adequate light being thrown on it by either party so as to give a clear direction.

10. We are of the view that the best course would be to ask the respondents to examine the matter of pay protection afresh and take a just and proper decision as per rules and the settled law. With this objective and in the interest of justice, we, therefore, direct that the respondent No. 1 will examine the matter afresh treating this OA as representation of the applicant (barring the aspects of regularisation in the category of MVD and grant of ACP, which have already been rejected in the above paragraphs) and take a decision strictly as per rules and communicate the same to the applicants in a reasoned and speaking order. This may be done within a period of four months from the date of receipt of a copy of this order. With this direction this OA is disposed of. No cost.



Member (A)



Vice-Chairman