

82
RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

10
18/3/87

Registration No. 540 (T) of 1986

Raj Deo and others Applicants.

Versus

Union of India Respondent.

Hon'ble S. Zaheer Hasan, V.C.

Hon'ble Ajay Johri, A.M.

(Delivered by Hon. Ajay Johri, A.M.)

Suit no.1236 of 1983, Raj Deo and others v.
Union of India, has been received on transfer from the
court of Munsif I, Gorakhpur under Section 29 of the
Administrative Tribunals Act 13 of 1985. The plaintiffs
joined the North Eastern Railway as casual Khallasis
in the Const. Wing of the Signal Deptt. in 1959/1962.
They were subsequently transferred to the maintenance
wing of the Signal Department. They were screened and
empanelled for regular absorption in 1969/1970. They
are claiming, that in view of Railway Board's orders,
~~their service in the construction department~~
~~be counted~~ ³² for seniority purposes ~~their seniority~~ should be
reckoned from the date they entered into the grade of
Khallasi in the Construction Department. In the
seniority list issued on 1.4.1975 their names have
been placed below 52 persons given in the Annexure 'B'
of the plaint. Feeling aggrieved by the Defendant's in-
action to correct their seniority they filed a suit
with the prayer that it be declared that they are
entitled to get the benefit of service in the Const.
Wing for purposes of seniority, that they are senior to

the persons enumerated in Annexure 'B' and that the order of 15.1.1983 promoting these persons of Annexure 'B' is illegal and a revised seniority list be prepared showing them above the persons in the list in Annexure 'B'.

2. The defendant, Union of India's case is that the plaintiffs were transferred from the Const. Wing to the Maintenance Wing of Signal Department as unscreened Casual Khallasis with temporary status in 1967. They were screened and empanelled for regular posts in class IV category as Khallasis in 1970. According to the Defendant the persons in the list in Annexure 'B' of the petition were screened in 1965 while the plaintiffs in 1970, and they have been correctly placed junior to them. Consequent to 50 per cent of the posts of Khallasis having been reclassified promotions have been made according to seniority and the benefit of reclassification has also been accordingly given. The plaintiffs 1, 2 and 3 have also since been promoted, and plaintiff no.4 being junior is waiting for his turn. The defendant has said that the seniority list has been correctly prepared and there is no violation of any rules or law.

3. We have heard the learned counsel for both parties. The main contention of the learned counsel for the plaintiffs is that the seniority is to be determined from the date of joining service and since the transfer to the maintenance wing was done on administrative grounds the service rendered in the Construction Organization cannot be ignored. The learned counsel for the defendant has repelled this contention on the ground that the seniority list was published in 1975 and no objection was raised against it at that time. It is too late to

P2
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- : 3 :-

agitiate the matter now. The seniority is determined on the basis of the date of screening and length of service before regular absorption does not count for seniority.

4. A plethora of case laws has been cited by both sides. The short question involved is as to how is the seniority of casual labour, working in a temporary wing transferred to the wing where absorption is possible, is to be determined.

5. On the counting of service as casual labour after absorption, the learned counsel for the plaintiffs had relied on the Railway Board's letter No. E(NG)II/78/CL/12 of 14.10.1980. He has interpreted that in pursuance of the instructions issued by this letter the service as temporary employee counts for seniority. The relevant portion of this letter reads as under :-

37

"As a result of representations from the recognised labour Unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e. other than casual labour employed on projects) after their attainment of temporary status, on completion of 120 days continuous service, should be counted as qualifying service for pensionary benefits, if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Dept. of Personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the

P24

- : 4 :-

aforesaid category of employees on their attainment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn increments. Contribute to P.F. etc. the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees before they are regularly appointed should be conceded to them as provided in the Ministry of Finance O.M. No. F.12(1)EV/68 dated 14th May, 1968 (copy enclosed) for ready reference). The concession of counting half of the above service as qualifying for pensionary benefits, as per the O.M. of 14th May, 1968 should be made applicable to casual labour on the railways who have attained temporary status."

21
31/

There is no ambiguity in this letter in respect of the purposes for which this service is counted. Fifty percent of it is qualifying service for pensionary benefits. It is not counted for seniority purposes. Thus the contention of the learned counsel is on wrong interpretation of the directions given in this letter.

6. According to yet another letter of the Railway Board - E(NG)ii/83/CL/SC/9 of 7.5.1983 and para 2511(a) of the Indian Railway Establishment Manual, the date of regular absorption determines the

seniority vis-a-vis others. Thus this rule is ^{also} very clear and the interpretation of the learned counsel for the plaintiffs is based on wrong premises and cannot be accepted.

7. According to Railway Rules Casual Labour are recruited by senior subordinate. On the Division Screening is done on the basis of unit of recruitment. The plaintiffs were originally engaged as Casual Labour, plaintiffs 1 and 2 under D.S.T.E. (Const.) Muzaffarpur and plaintiffs 3 and 4 under D.S.T.E. (Const.) Lucknow. They were transferred to the Maintenance Wing in November, 1967. This was on temporary basis subject to their getting through the screening test. They were screened in 1970. In their parent department, it appears, there was no possibility of their regularization. Their transfer order said "The transfer of Khallasis from Construction to Maintenance side is purely temporary and subject to their selection through Selection Board". Thus it is clear that they were sent in the capacity of casual labour only. Seniority could count only from the date of regularization. We thus do not find any thing arbitrary or unconstitutional in the process of their regularization and assignment of seniority.

38

8. Article 14 permits of reasonable classification. The principle of equality does not take away the power of classifying persons. The classification has to be real and must bear just and reasonable relation to the object to be achieved. Classification of Casual Labour in Construction Wing and Casual Labour in Maintenance Wing as separate entities cannot be said to offend Article 14. Thus on transfer to the maintenance wing the plaintiffs came to belong to the same class and it is only thereafter

that they could not be treated differently. It is not the plaintiffs' case that there has been any discrimination thereafter. They were subjected to screening along with others and regularized after getting successful in the screening test. They were given seniority from the date of regularization.

9. The learned counsel for the defendant had contested that the seniority list was published in 1975 and the matter was agitated in 1983. We are of view that such matters cannot be raised at such distant times and we do find some force in this contention of the learned counsel for the defendant. We also find support of this view in the case of K.P. Muddal and others v. R.P. Singh and others (1987 (1) S.C.C.(Lab) 6) where the Hon'ble Supreme Court have held that promotions should not be disturbed after long lapse of time and applications should not be entertained after such inordinate delays.

10. Casual Labour after working for 120 days attain temporary status. This entitles them to certain privileges. It does not make them temporary employees. The status of employee is achieved by them only after getting regularized. They are not brought on the regular establishment till they get selected through screening tests. According to para 2501 of the Indian Railway Establishment Manual, conditions applicable to permanent and temporary staff do not apply to them. They are not Railway servants for Code Rules. Thus paras 302 and 311 of the Manual do not apply to them. Till the plaintiffs were empanelled and till regular appointment they have no right for the post. Indian Railway Establishment

Code Vol. I para 102(13) excludes casual labours from the definition of railway servants. This matter came up in S. Chokkalingam v. Union of India (A.T.R. 1986 C.A.T. 275) which has been relied upon by the learned counsel for the defendant. It was held in this case that -

"A proper reading of the statutory rules and the provisions of Railways Establishment Code as well as Railway Establishment Manual makes it clear that as between the applicant and respondents, the latter cannot be taken to be juniors to the applicants as they became permanent long before the applicant and so the period between 4.10.1969 and 7.5.1976 when he was actually empanelled for regular appointment cannot be taken as the basis for fixation of seniority as claimed by the applicant."

K 38
This ratio equally applies to the plaintiffs' case.

11. The learned counsel for the defendant has also relied on the case of Ashok Gulati and others v. B.S. Jain and others (AIR 1987 S.C. 424). ³⁸ In this case it was observed by the Hon'ble Supreme Court that -

"Seniority of a person appointed must be reckoned from the date he becomes a member of the service. The date from which seniority is to be reckoned may be laid down by rules or instructions (a) on the basis of the date of appointment (b) on the basis of confirmation (c) on the basis of regularisation of service (d) on the basis of length of service or (e) on any other reasonable basis. It is well

32/3

settled that an ad hoc or fortuitous appointment on a temporary or stop-gap basis cannot be taken into account for the purpose of seniority even if the appointee was qualified to hold the post on a regular basis, as such temporary tenure hardly counts for seniority in any system of service jurisprudence."

12. The observations made by the Hon'ble Supreme Court make it certain that the seniority has to be counted in terms of certain rules and in the case of casual labour the rules are available.³² It is on the basis of the ³² regularisation into service. ³² *There is again no ambiguity about it.*

13. The learned counsel for the plaintiffs has ^{also} relied on the case of S.N. Misra and others v. B.L. Rastogi and others (A.I.R. 1978 Allahabad 165). This case pertained to the implementation of scheme of divisionalisation of administration and the transfer of surplus ministerial staff to open line cadre. The Hon'ble High Court of Judicature at Allahabad, Lucknow Bench had held that the transferred employees were entitled to their seniority. In the plaintiffs' case they were only casual labour with temporary status which did not give them any right to any post. They had not been ~~screened~~ ³² ~~selected~~ at the relevant time when it was considered that they may be transferred to the Maintenance Wing to enable them to get regularised and absorbed. Therefore, as already observed in para ³² supra unless they got regularised they had no case for counting their seniority. The ratio of the judgment in this case does not apply to the plaintiffs ³² case.

- : 9 :-

14. Casual Labour have their seniority on the basis of the unit to which they belong. Nothing has been brought before us to say that any of the petitioners' juniors have been absorbed and regularized before them in the Construction Wing. Similarly it is not their case that they have not been considered for absorption on the basis of the number of days worked by them. A group screened and regularized earlier becomes senior to a group screened and regularized subsequently. A person with more number of days to his credit in a particular unit has to be senior to those with lesser number of days in the same unit. The exercise of providing regular appointment by giving them a chance for absorption in the maintenance wing could not be claimed for obtaining a benefit not due.

15. In view of above the prayer made by the plaintiffs that they should be entitled to get the benefit of service in the Construction Wing for purposes of seniority cannot be accepted and is liable to be rejected.

16. In the result the petition (Suit no.12-36 of 1983) is dismissed. Parties will bear their own costs.

Dated: March 13th, 1987.

V.C.

विजय चौधरी
A.M.