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CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

REGISTRATION NO.490 of 1986(T)

Prabhu Ram Yadav & others

plaintiffs
applicants.

Versus

Union of India and others

Defendants
respondents.

Hon'ble D.S.Misra,A.M.

Hon'ble G.S.Sharma,J.M.

(By Hon'ble D.S.Misra)

This is an original suit no.55 of 1984 which was pending in the court of Munsif Haveli, Varanasi and has come on transfer under Section 29 of the A.T. Act, XIII of 1985.

2. The plaintiffs' case is that they were working as substitute shunt men in the scale of Rs 200-250 w.e.f. 21.7.75 and have acquired the temporary status on various dates during the years 1977, 1978 and 1979; that they were sent for screening test on 19.4.79 and were found suitable for regular absorption against Class IV posts vide letter dated 20.4.79; that after being suitable in screening test, the plaintiffs were posted against regular vacancy of Class IV of Shuntman in the scale of Rs 200-250 and they are continuing as such; that they are contributing towards Provident Fund and have been receiving yearly increment in the scale of pay of Rs 200-250; that without any rhyme or reason, the defendants are adamant to break

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their continuous service on regular basis. The plaintiffs have prayed for issue of a permanent prohibitory injunction restraining the defendants from illegally breaking their continuous service as Shuntmen. The trial court passed an order of maintaining status quo on 14.2.82.

3. In the written statement, filed on behalf of the defendants, it is stated that the plaintiffs did not enter into Railway Service as substitute shuntman or in the scale of Rs 200-250 as claimed; that they were engaged as substitute and subsequently attained the temporary status; that substitutes are not engaged either against any post or in any grade and they are utilized to work against casualities and are paid for the day, they so work; that since the plaintiffs were engaged as substitutes without prior screening they were subjected to screening and put on a list of substitutes found suitable for appointment subject to other formalities like medical examination, verification of antecedents etc. but they have not been appointed / to any post as they are not due for any appointment in terms of their position in the screened list; that the plaintiffs were not posted as shuntmen in the grade Rs 200-250 as claimed as they have first to be appointed in Grade Rs. 196-232 as Class IV staff in the lowest grade before they can be considered for promotion as Shuntman in grade Rs 200-250. The post of shuntman is a promotional one to Class IV staff of T&C Department and the persons to be promoted to the post of Shuntman are to qualify in a training in the duties of shuntman before they can be promoted to the post subject to other conditions like seniority, availability of vacancies etc.; that the plaintiffs

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were working as substitutes and can be taken off such working at any time; that the allegations of defendants being adamant or the intention on the part of the defendants to cause break in their continuity is denied; that they have to be taken off such working since the posts are to be filled by regular incumbents; that no legitimate rights of the plaintiffs will be adversely affected by their being taken off the post of shuntman; that the plaintiffs had earlier filed suit no 50/81 in the same court with the allegation that they were going to be discharged and that they be not disturbed but the case was decided against them and therefore the plaintiffs' suit is barred by res judicata.

4. We have heard learned counsel for the parties and have carefully perused the documents on record. Learned counsel for the plaintiffs' main argument is that the plaintiffs were working on a regular basis against permanent posts of shuntman and they were entitled to continue on these posts without any break. The contention of the defendants is that the plaintiffs had acquired the temporary status and they have been given the privileges accordingly but they have to be absorbed as Class IV employee. The defendants have filed copy of the judgment in the Civil Suit no 80 of 1981 filed by the plaintiffs in the court of Munsif, Haveli, Varanasi for a similar injunction and the same was dismissed by an order dated 18.5.82. They have also filed copy of a judgment of this tribunal in Registration No. 479 of 1986 where the plaintiffs had sought similar relief in the above mentioned suit as well as Registration nos. 127/86, 1236/86, and 1222/86. All these cases were dismissed after holding that the substitutes can only be given a

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job when there is a vacancy available and they do not have any guaranteed right for continuous employment. Learned counsel for the plaintiffs cited the following case law in support of their claim.

1 **Samir Kumar Mukherjee and others Vs General Manager Eastern Railway and others, A.T.R. 1986(2)CAT-7**

2 **Surindra Singh and another Vs. The Engineer in Chief C.P.W.D and others, A.T.R. 1986, CAT 76.**

We have gone through the above mentioned case law and we find that the first case law deals with the payment of salary to persons engaged as volunteers to assist railway ticket checking staff. It has been held that the services of persons who had acquired the temporary status can not be terminated arbitrarily without notice or without giving any reason. The second case deals with persons working as daily rated employees performing the same ^{case} duties as regular employees. In this/the Hon'ble Supreme Court had held that such employees are entitled to the same salary and allowances on the plea of equal pay for equal work. We have considered the matter and we are of the opinion that the case law cited by the learned counsel for the plaintiffs is concerned with the payment of salary of the post and not the terms and conditions of employment. On the other hand, the case law cited by the defendants is on the subject of the right of a casual employee who has acquired the temporary status to continuous employment and regular absorption on the post he is employed. We are of the opinion that the plaintiffs have failed to establish their claim and we find that there is no merit in the suit. We are also of the opinion that

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by virtue of the judgment of the learned Munsif Havali
Varanasi in suit no 80 of 1981, the present suit is also
barred by res judicata.

For the reasons mentioned above, the suit is dismissed
and the status quo order passed by the trial court is vacated.
Parties shall bear their own costs.

A.M. 1.2.88

3rd January
J.M.

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