

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL-ALLAHABAD BENCH
ALLAHABAD.

T.A. No. 506 of 1987.

(C.A. No. 129 of 1985.)

The Union of India..... Defendant-Appellant.

Versus

Sri Krishna Pyare Pandey & others.... Plaintiff-Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A).

(By Hon'ble Mr. K. Obayya, Member (A).)

Krishna Pyare Pandey and 5 others who are working as Electrical Khalasis in Kanpur Division of N.E. Railway, aggrieved by their seniority as on 1.1.974 notified through letter No. E/ 255/1/ELEC dated 10.9.1975 filed suit no.491 of 1982 in the court of Munsif Gorakhpur praying for a decree of declaration that they are regularly appointed from the dates on which they were given the grade scale Rs. 70-85 (revised 106-232) and their seniority among electrical khalasis in Kanpur Division be fixed accordingly.

2. Their case was that though they started their career as Casual Labour, during the years 1962-63, they were put on regular scale, and they continued in service ever since, as such they should be deemed to be regularly appointed with effect from the dates on which they were placed on regular scale, and their seniority fixed accordingly. The defendants contested the suit, and according to them, the plaintiffs were appointed against regular vacancies, only in 1972, and earlier they are not entitled for ~~any~~ seniority, since they were not borne on the establishment of the unit, prior to 1972. The suit was decreed and the defendants were directed to assign seniority to the plaintiffs from the dates on which they were put on regular scale. Against the decree and judgment dated 25.2.1985 of the Munsif Gorakhpur, Union of India

preferred appeal C.A. No. 129 of 1985 in the court of District Judge Gorakhpur and by operation of law the appeal stood transferred to the Tribunal and renumbered as T.A. no. 506/87.

3. The Union of India assailed lower courts' decision on grounds of material irregularity and illegality in deciding issue no. 1 in favour of the plaintiffs, since the plaintiffs were only Casual Labour with temporary status as on the dates on which they were deemed to be regular. It is also pointed out that the plaintiffs continued as Temporary employees in their earlier engagement on construction side and that their services were never regularised so long as they continued in construction work, as such their claims for seniority retrospectively from the date of regular scale was not tenable.

4. We have heard the counsel of the parties. The short question is whether the plaintiffs were regular employees as on the dates when they were put on regular scale and whether they are entitled for reckoning their seniority from the dates shown in schedule 'A' appended to the suit. It is contended by the counsel for defendants that the plaintiffs were casual labourers under the DSTE Construction work and that they were engaged for temporary nature of work and after the completion of work they were retrenched as surplus staff with all retrenchment benefits. In 1972 they were appointed as Khalasis in Electrical Branch of Lucknow Division against regular vacancies. This appointment was altogether in a different unit on the maintenance side. Their seniority was assigned correctly from the date of absorption in accordance with the rules. A seniority list was published in 1975 and the petitioners represented to G.M. Gorakhpur and they were also given personal interview and after considering the matter they were informed that their seniority was correctly fixed. Regarding the promotion, it is pointed out by Railway Administration that the petitioners figure between Sl. No. 129 to 149 in the Seniority List and the promotions

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were given only upto Sl. No. 89 of the seniority list. Both the counsels referred to relevant instructions. The counsel for the plaintiff referred to Railway Board's orders dated 21.4.89. This circular instruction is regarding absorption/ utilisation of surplus staff. In that circular it is mentioned that consequent on the change of traction and full or partial closure of steam Loco Sheds, marshalling yards, goods sheds and other redundant assets, certain guidelines have been issued. In para 2 (iii) it is mentioned that surplus staff should be given preference for absorption over casual labourers and direct recruits and others. It is also mentioned that they should be absorbed in existing vacancies or against new posts. In paragraph 3, it is stated that the surplus staff, if only small in number, is adjusted with full seniority and merging their seniority in the respective units.

5. The learned counsel for defendants pointed out that this circular was issued in 1989, hence not applicable to the plaintiffs, whose case relates to 1975 or earlier date. Further the circular referred to is in respect of regular employees who have prescriptive rights. So long as an employee remains a Casual labour or attained temporary status, he is not deemed to be regular, his rights, if any would entitle him for consideration of regularisation, after screening suitability list etc. The learned counsel for the defendants also pointed out that in the Lower Court, witnesses were examined and they also admitted that the plaintiffs were appointed in the year 1972. It was also admitted that the seniority of the Class IV staff were maintained unit-wise and after the completion of work and retrenchment, because of their past service they were reappointed in 1972^{and} absorbed in Electrical Engg. (Maintenance) (Train Lighting) Unit and they were entitled to get their seniority fixed in the electrical unit only from the date of their absorption in the new unit.

6. We have given our serious consideration to the rival contentions. We have also carefully gone through the record. Admittedly the plaintiffs were initially appointed as Casual Labour. In due course they became eligible for according temporary status which was evidently given to them. The plaintiff's claim for regularisation with effect from the dates on which they were given regular scale as indicated in schedule 'A' to the suit. We have gone through the schedule, it indicates that plaintiffs were appointed/promoted in the grade Rs. 70-85 (196 - 232) on different dates between 16.1.62 and 6.9.63. The schedule does not indicate on which dates, they were regularised and whether their posting on the above dates was against the regular vacancies in the department. The schedule is only a statement of the plaintiffs and it is not a copy of any official document, nor is it supported by any order or authenticated. The defendants have stated that on the dates on which they are claiming seniority, the plaintiffs were only casual on temporary status and that they were not regular employees of the Railways. The applicants have not filed any copy of the appointment order or regularisation order. A Casual Labour after putting 120 days of service is given the status of Temporary employees and he is put on regular scale. Regular scale and regularisation are not one and the same. The regular scale only indicates that the casual labour has ceased to be a daily rated employees and has become a monthly salaried employee. The employees who acquire temporary status are listed in the register and thereafter their appointment against regular vacancies is made after due screening and suitability tests. The plaintiffs have not come with the case that they were screened for the regular posts while they were working on the construction side. It is also not denied that the plaintiffs were initially working on the construction side under DSTE which work was of a temporary nature and later in 1972 they were appointed against

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regular vacancies on the maintenance side in the Electrical Engineering (Train lighting). In the matter of recruitment, training and seniority the Indian Railway Establishment Code (I.R.E.C.) contains the principles governing these aspects. Para 102 lays down that a Casual Labourer who acquires temporary status, becomes a regular Railway servant only after absorption on post after process of selection. Para~~no~~ 2501, 2502, 2511 and 2512 of I.R.E.M., speaks of certain privileges to the employees acquiring temporary status, but not seniority rights are given. In case of Surplus staff there are instructions as to how they are to be absorbed in other departments. This ofcourse applies only when the surplus staff were regular in service with rights of permanent tenure. It is also noticed that on the issue of absorption of construction staff on Signal and Telecommunication Department in the maintenance was considered even in the year 1972 and the criteria laid down in letter No. E/254/6/24 PF II (MSM/X dated 11/18.4.72, a copy of which is on record as 16/Ga/1. Para no. 4 clearly indicates that construction staff taken on duty and subsequently granted authorised scale should be trade tested and absorbed against direct recruitment quota, and they will count their seniority from the date of absorption. The same position is further ~~elucidated~~ clarified in subsequent paras 5 & 6 and 7 of the said letter. It is on record that the plaintiffs were not appointed in the maintenance side against regular vacancies prior to 1972. Even if their cases are treated as Surplus staff such staff carry with them such rights which vest with them. They cannot claim rights which do not vest with them to the detriment of a regular employees already working in the departments. Having been absorbed in the maintenance side in the year 1972 the plaintiffs are certainly not entitled to claim seniority from the date prior to their absorption when they were not working in the regular department on the maintenance side and they were only

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on construction side. In S. Chokkalingam Vs. U.O.I & Ors. (1986 (I) SLJ P. 101) it was held by Madras Bench of the Tribunal, that a Casual labour with Temporary Status, cannot be termed as a regular Railway Servant, as he has not acquired a right to the post, his seniority has to be fixed on the basis of his regular appointment.

7. For the reasons discussed above, the plaintiffs who were not entitled for retrospective seniority over the regular employees already working in the Maintenance unit; and that being employees with temporary status, their seniority was fixed from the dates of absorption against regular vacancies. In the circumstance, we hold that the appeal deserves to be allowed. We are of the view that the lower court erred in holding that the plaintiffs are entitled for seniority from the dates of their regular scale though they were not appointed against regular vacancies. The appeal is allowed and judgment and decree of the lower court dated 25.2.1985 is quashed. Parties to bear their own costs.

Member (A).

Dt. ~~May~~ ^{June 14}, 1992.

(DPS)

Vice Chairman.