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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD
ALLAHABAD

Allahabad : Dated the 29th of September, 1995

Original Application No. 1409 of 1988

DISTT : ALLAHABAD

Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. S. Dayal, A.M.

Sri Lav Kush son of Sri Babua Lal
R/o Commercial Superintendent's Office,
Northern Railway, Goods Shed, L.P.O.,
Allahabad.

..... Applicant

By Sri K.K. Mishra

Versus

1. Union of India through Ministry
of Railways, Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Chief Goods Supervisor,
Northern Railway, Allahabad.

..... Respondents

Sri Govind Saran

ORDER

Compared by
R.K.
(1409/1)

Sri S. Dayal, A.M.

The Applicant has come to us under Section 19
of the Administrative Tribunals Act, 1985, seeking
the following reliefs :-

- (i) a direction to the respondents to give

the status of employee
benefits of temporary Mailway servant
to the petitioner in accordance with
Paragraph 2501 of the Indian Railway
Establishment Manual.

- (ii) a direction to the respondents to announce the result of screening test and publish ~~the~~ panel of screened candidates.
- (iii) a direction to the respondents not to interfere in the discharge of duties of the applicants.
- (iv) a direction to the respondents not to make any fresh appointments till the temporary status is conferred on the petitioner.
- (v) a direction to the respondents to issue service card to the applicant, and
- (vi) a direction to the respondents to regularise the services of the applicant in the pay scale of Rs.750-950 (revised) with consequential benefit of arrears.

2. The facts as given by the applicant in the application are that the applicant was initially appointed as casual labour on 17-12-86 in Northern Railway Goods Shed/Lost Property Office/Transportation Dock, Allahabad under the control of the Chief Goods Supervisor, Allahabad. He claims to have continued on the job ^{and} was working even at the time of drafting the application to the Tribunal in December, 1988. He claims to have worked for more than 500 days upto

that time.

3. He states that his services were discontinued by Respondent No.3, namely, the Chief Goods Supervisor, under Chapter 25 of the Indian Railway Establishment Manual, and he again started working from 20.7.1988 without any break and completed 153 days in his second spell. The total period worked by him is claimed to be 553 days. He is being paid Rs.18/- per day as wages. He claims that he should have ^{been} given temporary status after 120 days of working and he is entitled to basic scale of Rs.750-940 with corresponding fitment in the monthly scale alongwith arrears. He has cited case of L. Robert D Souza (AIR 1982 SC 854) and the case of Inder Pal Yadav (1982 SCC 648). He claims that he is entitled to temporary status with effect from December, 1988. He claims that the Respondent No.3 all of a sudden changed the designation of the Applicant from casual labour to 'Bazaroo Shramik', in the bill of daily wages for 10-11-1988 Annexure-CA-3 to the O.A.). He states that the Respondents are going to retrench his services as the Goods Shed of Allahabad was going to be shifted partly at Naini and partly to Subedarganj and thus he was being deprived of the status of temporary worker in accordance with Chapter 25 of Indian Railway Establishment Manual. He states that he worked as casual labour in the railway from 11-11-1986 to 20-7-1988 as per certificate certified by the Chief Goods Supervisor, Allahabad and has continued after that date without any break in service. He states that verbal order of retrenchment ~~was~~ passed by the Chief Goods Supervisor on 18-12-1988 was illegal. He claims that a worker who has completed 120 days of

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of continuous service cannot be retrenched unless the job for the post on which he was recruited has been completed. He further claims that screening list of casual labour of Goods Shed was sent to Divisional Railway Manager, Allahabad by Chief Goods Supervisor on 17.12.1987 but the result of the Screening test has not been published. The screening list shows the period of service of the applicant upto 15.08.1987. He states that his services were discontinued from 22.02.88 but after 20.03.88 he was again given a job in the L.P.O. which was again discontinued, after 20.07.88. The petitioner claims to have worked continuously.

4. The respondents have filed a Counter Affidavit. They have mentioned in the Counter Affidavit that the applicant has wrongly been given his designation as contract labour in the Application and that he was not an employee in the office of Commercial Superintendent, Goods Shed/LPO, Allahabad and that the applicant was not an employee of the railway department. They have ~~and the~~ stated that since the applicant was not an employee of the railway department, he has wrongly impleaded Respondent no. 1 to 3 in the application. They have denied that the applicant has continuously worked as casual labour in the Northern Railway, Goods Shed/LPO Allahabad. They have also denied that he was ~~and the~~ retrenched after working for three years or that he was entitled to be confirmed under para 2501 of the Indian Railway Establishment Manual or for regularisation and permanent absorption on the regular establishment of the railway. They have stated that the application

was employed as a contract labour on the day to day basis, and ^{accordingly}, he was made ~~accordingly~~ payment every day in the evening after his finishing the work. He was never engaged regularly and continuously in the railway department. They have stated that the Applicant was engaged as a contract labour on a day to day payment basis and he was paid on the same day whenever he worked. They have further stated that certain formalities for employing a casual labour ~~were~~ required to be completed. Personal sanction of General Manager was not existing in his case. No formal sanction in the form of ELA with copies to various offices of the Division existed. There was no muster sheet in his case neither was his attendance marked in the muster sheet. There was no paid ~~rest~~ which was given to him. There was no preparation of pay sheet on the basis of muster for the wage period in his case. No such pay sheet as passed by the account department existed in his case. This proves that he was not appointed as a casual labour. He claims that there is no relationship between the Applicant and the Respondents. The Applicant worked as a contract labour as on day to day basis. It is also stated that the Application is barred by limitation. He actually worked on day today payment basis without any continuity and was given payment only in the evening of the day on which he worked. They have stated that the . The Applicant has not filed original photocopy of certificate dated 20-2-1988 and therefore, it cannot be ascertained whether any such certificate has been

really issued by the Chief Goods Supervisor. They state that even if such a certificate is issued, it would not change the legal position of the Applicant from that of contract labour. The Respondents have denied that their counsel has confessed before the Court that the Applicant had already completed the requisite period for acquiring the temporary status. They have stated that the Applicant is a contract labour, therefore, he is not entitled to be confirmed with the status of temporary worker in accordance with the Chapter 25 of the Indian Railway Establishment Manual. They have stated that there is no provision for issuance of certificate to the temporary labourers and that Chief Goods Supervisor was not authorised to issue such a certificate. They have denied that the Applicant was continuously working from 20-7-1988 onwards. They have stated that there can be no retrenchment in his case because he was not an employee of the railway department. The Respondents have stated in the Counter Affidavit that the Chief Goods Supervisor has no authority to engage casual labour and as such, the authority only vested in the General Manager, Northern Railway. Therefore, the action of the Chief Goods Supervisor was against the

provision of rules, regulations and law and instructions of the railway department. They have denied that the applicant had completed requisite period for acquiring temporary status or that the Applicant was entitled for regularisation in accordance with the circular of the railway board.

5. The applicant has filed rejoinder affidavit and has reiterated the averments made in the application. He states that the application alongwith other condidates was appointed and all formalitiés were completed before his appointment. The applicant has drawn attention to paragraph no. of the application that he was causal labour on the basis of approval given by respondent no. 2 and that the name of the Applicant alongwith other candidates was sent to respondent no.2 to give them temporary status. He has produced a copy of the judgement of a bench of this Tribunal in Abdul Rashid versus Union of India and others in O.A. no. 437 of 1988 decided on 04.07.89 in which he claims that the Court has given judgement in favour of applicants similarly situated and that the applicants had already been absorbed by the respondents. He has stated that the word casual labour has been defined in Chapter 2501 of the Indian Railway Establishment Manual as labour whose employment is seasonal and intermittent, sporadic or extended over short period. Thus even through the applicant was engaged as contract labour or ~~as~~ ~~the~~

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bazaroo labour, he whould be considered to be a casual labour as per Indian Railway Establishment Manual. He has mentioned that a perusal of the letter dated 26.07.88 shows that that the Applicant alongwith other candidates was sent to perform duties at Naini Goods Shed on the direction of Sr. D.C.S. He has further stated that casual labour may be made to work on the basis of daily payment without a weekly off, without any security of service for years to come. He has claimed that he became entitled to temporary status after working for more than 120 days continuously and that he was entitled to be reconsidered for the Class IV vacancy after following the prescribed procedure for screening the suitability of the Applicant.

6. We are not required to go into the validity or toherwise of the contentions put forth by the parties because a Division Bench of this Tribunal in Abdul Rasheed , versus Union of India had already considered them in another case and has adjudicate on the issues. That case is in parimateria with the facts of the present case. As a matter of fact one of the co-bazaroo majdoor of the applicant Sri Abdul Rashid was a party in that case as can be seen from Annexure 3 of this application. The division bench in that case held that 'bazaroo majdoors' were casual workers. Temporary status had been granted to the applicants in that case and the Divisional Railway Manager, Respondent no. 2, had been directed to examine the case of the applicants for screening and absorption in the regular service with other such benefits to which

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the casual labourers may be entitled after the process. If they are not found fit for absorption, their services could be dispensed with in accordance with rules.

7. In the instant case, the respondents have denied that the applicant has continuously worked as 'bazaar' labour for a period of 120 days. The applicant has produced annexure 5 in which it is shown that the applicant had worked for 134 days and that his name was recommended for screening to the D.R.M. However, the respondents have denied the genuineness of this certificate merely on the ground that the original has not been produced and only a typed copy is annexed and on the ground that chief Goods supervisor was not authorised to give such a certificate. As regards the first objection, the respondents did not ask for production of the original but are asking us to draw an adverse presumption which in our opinion is not proper. As regards the second objection, the certificate of service could only have been given by the immediate supervisor who in this case was the Chief Goods supervisor. The respondents have not denied that the applicant worked as a bazaar majdoor and have not come out with the number of days the applicant worked and cannot be allowed to take advantage of technicalities. The respondents have advanced other arguments also. We find no merits in their arguments as the case of other 'bazaar majdoors' similarly situated had been considered by Allahabad Bench of the tribunal and adjudicated in Abdul Rasheed and others vs. Union of India and others in O.A. 437 of 1988.

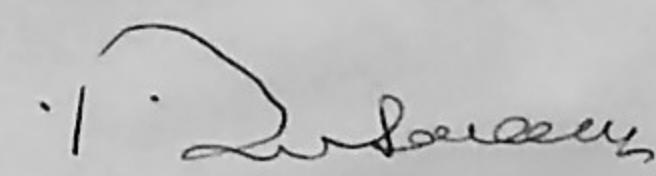
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8. In the light of the judgement referred to in the last paragraph, we direct the respondents to consider the case of the applicant on the basis of the treatment given to Sri Abdul Rasheed prsuant to the directions given in Abdul Rasheed versus Union of India (OA 437 of 1988). The applicant claims to have been screened as he had attained temporary status and entitled to regularisation on the basis of screening done in the past. The respondents shall also consider this claim of the applicant for regularisation with effect from the date of screening. He shall, if found fit, be considered for regularisation and granted all the benefits to which he may be entitled as a regularised casual labour from the date of regularisation. This shall done within a period of three months.

9. There shall be no order as to costs.


Member-A


Member-J

/pc/

Compared by
Piyush