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Reserved

Central Administrative Tribunal, Allahabad.

Registration O.A.No.437 of 1988

Abdul Raseed and 6 others ... Applicants.

Vs.

Union of India and 2 others ... Respondents.

Hon'ble D.S.Misra, AM
Hon'ble G.S.Sharma, JM

(By Hon'ble G.S.Sharma, JM)

This is an Original Application u/s.19 of the Administrative Tribunals Act XIII of 1985. The Applicants along with one Sanjay Kumar Shaiba have prayed that the Respondents be directed to give the Applicants the benefit of temporary railway servants under Para 2501 of the Indian Railway Establishment Manual (hereinafter referred to as the Railway Manual) and they should be further directed not to interfere with their working as casual labourers as well as for granting the prescribed pay scale of Rs.750-950 to them. During the pendency of the Application, Sanjay Kumar Shaiba is stated to have been absorbed by the Respondents in regular service and his name was deleted from the array of the parties.

2. The case of the Applicants is that they started working as Casual Labourers in the Goods Shed/LPO of the Northern Railway at Allahabad from different dates in 1986 and their services were thereafter discontinued by the Chief Goods Supervisor Allahabad- Respondent no.3 in accordance with the provisions of Chapter XXV of the Railway Manual. The Applicants were reemployed from 15.10.1987 and even after that, they had completed continuous service of more than 120 days and they acquired the status of temporary railway servants. The particulars of the service rendered by each Applicant ha-

been detailed in Paras 6(1) ~~to~~ (6) and (8) of the petition and the annexures 1 ~~to~~ 8 thereto. It is alleged that even after acquiring the temporary status, they continued to be paid the daily wages at the rate of Rs.18 per day and under a verbal order dated 19.3.1988, they were not allowed to work though they continued to report for duty at the office of the Respondent no.3. The grievance of the Applicants is that their services could not be dispensed with summarily in this manner and they have been subjected to unlawful discrimination in the matter of payment of their wages and regularisation of service and the verbal order dated 19.3.1988 is illegal and they continued to be in service under the law with all benefits permissible under the Rules.

3. The petition has been contested on behalf of the Respondents and in the reply filed by Sr. Divisional Commercial Superintendent (for short Sr.DCS) Allahabad on their behalf it has been stated that the Applicants are not Casual Labourers but they are Bazaroo Mazdoors (for short B.Ms) and their petition is not maintainable under the law and the Tribunal has no jurisdiction to entertain the same. As the Applicants were not engaged in any casual post and no service cards were issued to them and no register showing their names as casual labourers was maintained and their age limit was also not considered at the time of giving employment to them, they cannot claim themselves to be Casual Labourers. The Applicants were engaged as Market Labourers on daily wages and they did not continue in the work for more than

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120 days. It was also denied that the services of the Applicants were formerly dispensed with under Chapter XXV of the Railway Manual and it was stated that the Applicants have not acquired any status and they are not entitled to any relief.

4. In the Rejoinder filed by the Applicants, they reiterated their allegations and further stated that the Sr. DCS has not filed any letter of authority to file a reply on behalf of the Respondents and he was, thus, ~~not~~ competent to file the reply and the same is liable to be ignored.

5. The short point arising for determination in this case is whether the Applicants had worked as Casual Labourers in the Northern Railway at Allahabad and after rendering the continuous service of more than 120 days had acquired temporary status. The Respondents did not dispute the fact that the Applicants had served the Railway Administration at Allahabad for sometime but not in their capacity as Casual Labourers and they had actually worked as B.Ms on daily wages. In support of their contention, the Respondents have not filed any document. They also did not bring any rules, instructions, or orders of the Railway Board or any other competent authority ^{for} not treating the B.Ms as Casual Labourers. The settled position this day is that even substitutes, canteen employees and seasonal watermen, etc., come under the definition of Casual Labour and the benefits ~~permissible~~ ^{available &} to the Casual Labour have been extended to such persons. According to Para 2501 of the Railway Manual, the term 'casual labour' refers to labour whose employment is seasonal and intermittent, sporadic or extends over short periods. In

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our opinion, even if it be assumed that the Applicants were engaged as B.Ms, they come under the definition of Casual Labour as given in the Manual and it is not open to the Respondents to say that the Applicants were never engaged as Casual Labourers.

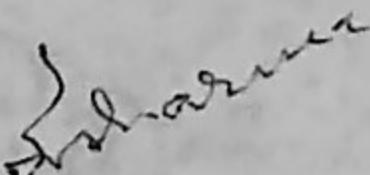
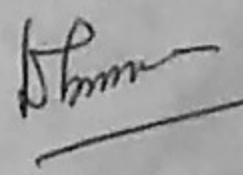
6. The Railway Manual further lays down that the casual labourers, who have worked for 120 days, will be granted temporary status. A casual labourer on acquiring a temporary status becomes entitled to certain benefits under the rules of the Railways and it appears that in order to deprive the Applicants of the said benefits, the Respondents preferred to take a stand that the Applicants are merely B.Ms and not Casual Labourers which we are unable to accept. The Applicants have also alleged in the petition that they have rendered the continuous service of more than 120 days even ~~after~~ ^{from} their subsequent employment from 15.10.1987 and they had regularly worked upto the impugned order dated 19.3.1988. The certificates, annexures 1 to 5, 7 and 8 furnished by the Applicants regarding their employment are only up to 15.10.1987. On their own showing, their employment upto this date was discontinued by the Railway Authorities in accordance with the provisions of Chapter XXV of the Railway Manual. These certificates are, therefore, of no help to them for claiming continuous ~~right~~ ^{service} on that post. They have not been able to furnish the proof of their continuous working for more than 120 days after 15.10.1987 and it has been alleged that the Respondents did not furnish the required certificates to them nor issued the labour cards. On the record, we find an application dated 25.10.1988 of the Applicants for summoning certain record from the Respondents such as attendance register, pay slips etc., to prove their working as casual labour

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even after 15.10.1987 but the said application was not brought to our notice and it was not pressed at the time the arguments were heard. The Respondents having admitted the fact that the Applicants did work as B.Ms at Allahabad as and when required, it was their duty to produce the relevant record to establish that their working was short of 120 days or was not continuous but they preferred not to file any document on record. The Respondents however, cannot be given any advantage of suppressing the material evidence from the Tribunal and the principles of natural justice demand that the Applicants who are poor labourers should not be deprived of their rights merely because they failed to obtain the required certificates of their working from the concerned railway officers.

7. Under the circumstances, the DRM Northern Railway, Allahabad- Respondent no.2 is directed to examine the case of the Applicants for screening and absorption in the regular service and for such benefits to which they may be found entitled under the rules treating their employment as Bazaroo Mazdoors as Casual Labourers. In case any Applicant is not found fit for absorption on screening, the Respondents will be free to dispense with his services in accordance with rules. The compliance of this order shall be made within a period of 4 months from the date of communication of this order. The parties are directed to bear their own costs.


MEMBER (J)
MEMBER (A)