

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Original Application no.
Transfer Application no.

998/1989

Date of Decision 26.9.91

Hari Nath & others. Petitioner

Sri Anand Kumar Advocate for the
Petitioner

V E R S U S

Union of India & others. Respondents.

Sri A.K. Chaur Advocate for the
Respondents.

C O R A M

Hon'ble Dr. R. K. Senena JM

Hon'ble Mr. D. S. Bawja AM

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ? ✓
3. Whether their Lordship wish to see the fair copy of the judgement ? ✓
4. Whether to be circulated to all Bench ?

S. M. Singh
SIGNATURE

PIYUSH/

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 26th day of September 1996.

Original application No. 998 of 1989.

Hon'ble Dr. R.K. Saxena, JM
Hon'ble Mr. D.S. Baweja, AM

1. Hari Nath, S/o Sadhu, R/o
Village Asmanpatti, Police Station
Urwa, Basera, District Mirzapur.
2. Balram, S/o Ram Kripal, R/o
Village Bentra Ganesh Dutt Post
Office, Sriniwas Dham, District
Mirzapur.
3. Chhotey Lal, S/o Gauri Shankar,
R/o Village Banta Ganesh Dutt, Police
Station Sriniwas Dham, District Mirzapur.
4. Shyam Bahadur, S/o Gomati Pd, R/o
Village Banta Bisekhar Singh, Post Office
Sriniwas Dham, Dist. Mirzapur.
5. Ram Pratap, S/o Sri Moode, R/o
Village Bhataura Post Office Kalna,
Gaipura, Dist. Mirzapur.
6. Vishnoo Gharan, S/o Sri Jagpati, R/o
Village Niguravan Singh P.O. Zigna,
Dist. Mirzapur.
7. Sheshdhar, S/o Sri Ramjas, R/o
Village Cherapur Post Office Bairi
Bisa, Dist. Varanasi.
8. Rajendra Prasad, S/o Mohan Lal, R/o
Village Ghapartala, Post Office Uruwan,
Dist. Allahabad.
9. Suraj Lal, S/o Sri Rangai, R/o
Village Lachia-Ka-Purwa, Post Office
Chaura, Dist. Mirzapur.
10. Samiullah, S/o Sri Abdul Hemid,
R/o Village Khairahi, Post Office
Khairahi, Dist. Sonbhadra.
11. Bihari, S/o Sri Hargen Pal, R/o
Village Rampur Shaktigarh, Post Office
Chhattisgarh, Dist. Mirzapur.
12. Laxman, S/o Sri Jhunoo, R/o Village
Shaktigarh, Post Office Shaktigarh,
Dist. Mirzapur.

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13. Raj Narain, S/o Shiv Bodh,
R/o Village Khaminia, Post Aunta,
Dist. Mirzapur.

14. Chinta Mani, S/o Sri Dukkhi,
R/o Village Khaminia, Post Aunta,
Dist. Mirzapur.

15. Ram Chandra, S/o Sri Ram Prasad,
R/o Village Hanumanpur, Post Jigna
Dist. Mirzapur.

16. Vijai, S/o Sri Algoo, R/o Village
Negura Ban Singh Post Naraiya,
Dist. Mirzapur.

17. Shyam Lal, S/o Sri Kanhaiya,
R/o Village Hanumanpur, P.O. Jigna,
Dist. Mirzapur.

18. Lala Prasad, S/o Sri Golai Prasad,
R/o Village Bauta Visheshwar Singh,
Post Sri Niwas Dham, Dist. Mirzapur.

..... Applicants.

C/A Sri Anand Kumar

Versus

1. Union of India, through General
Manager, Northern Railway, Baroda
House, New Delhi.

2. Divisional Railway Manager,
Northern Railway, Allahabad.

3. Divisional Engineer (DEN) Northern
Railway, Mirzapur.

4. Secretary (Establishment) Railway
Board, Rail Bhawan, New Delhi.

..... Respondents.

Sr.
C/R A.K. Gaur

ORDER

Hon'ble Mr. D.S. Baweja, AM

This is joint application by eighteen applicants

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praying for issue of direction to the respondents for
(a) to absorb the applicants against temporary and regular group D posts. (b) To screen all the applicants against Group D vacancies and include their names in the panel notified on 17.9.1989 and on other panels yet to be notified. (c) To quash the orders dated 16.8.88 and 29.6.88 which contain the names of illegally appointed persons beyond the rules.

2. The applicants have stated their facts as follows. All the applicants were engaged by Northern Railway Administration under permanent way Inspector/Inspector of works at Mirzapur, Chinar and Chark. The applicants after continuous working of 120 days attained temporary status. The applicants allege that they were retrenched after some time without any show cause notice or retrenchment compensation. The names of the applicants are registered in the Line Casual labour register and the details are furnished at Annexure-A. As per the instructions contained in General Manager, Northern Railway's letter dated 20.8.1987 they are entitled for re-engagement. The reengagement of the Casual labour was to be regulated as per the seniority to be maintained on Divisional basis on the principle of "last go, first in". However the respondents have engaged junior persons without approval of General Manager after the ban was imposed on engagement of new faces after 1.1.81 and the applicants who are senior have been denied the same. These juniors are still continuing. The applicants have made repeated representations but no action has been taken to reengage them and also to regularise against the Group D vacancies. Being aggrieved, this application has been filed on 8.11.89.

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3. The main grounds advanced in support of their reliefs are :-

(a) Applicants had attained the temporary status and their services cannot be terminated without following the prescribed rules.

(b) Respondents have violated the provisions of Section 25 F of the Industrial Dispute Act 1947 while terminating their services.

(c) Junior persons have been reengaged or continued in job while the seniors have been discharged without following the rule of "last go, first in" as provided in the Industrial Disputes Act 1947.

(d) Illegally appointed new faces after the ban without the approval of the competent authority are continuing in service and are going to be screened and regularised.

(e) The applicants are entitled to ^{be} regularised against Group D vacancies in terms of para 2572 of Indian Railway Establishment Manual.

4. The respondents have filed the counter reply. The respondents have contend that none of the applicants were appointed. However a few of them and probably most of them were engaged as casual labours for track maintenance of normal nature and such casual labourers are retrenched as and when the track maintenance work is completed. They do not attain the status of temporary employee under any of the rules referred to by the applicants. There is no question of any notice or any compensation and they are not covered under the term retrenchment under Industrial Dispute Act 1947. Respondent submit that only the names of the applicants No. 5, 8, 9, 10 and 11 appeared in the live ^{labour} casual register and they will be reengaged as per the seniority as and when necessity arises. Regularisation of

(c)

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the casual labour against the group D Vacancies is done after screening. The applicants could not succeed in the screening test. Their representation was considered and rejected and the applicants were advised of the same. No juniors to the applicants have been retained in service and the engagement of the casual labour is being done as per the policy instructions laid down. The respondents have also opposed the application during hearing being highly barred by limitation. In view of these facts brought out in the counter, the application is misconceived and devoid of merits and deserves to be rejected.

5. The respondents have opposed the application being barred by limitation during the hearing, though this plea had not been taken in the counter-affidavit or at any other time. The applicants have pleaded that if the name is included in the Live Casual Labour Register, then non-engagement or regularisation against Group 'D' vacancies is a continuing cause of action. The applicants have cited the judgment "Hukum Singh Vs. U.O.I" (1993) 24 ATC 747 in support of this contention. We have gone through this judgement and are in respectful agreement, with the same. Further the applicants have sought relief for inclusion of the names in the panel notified on 17.9.1989. In view of these facts, we are unable to subscribe the view of the respondents that the application is barred by limitation in respect of the reliefs at (a) above.

6. We have heard the learned counsel of both the parties. We have carefully analysed the arguments advanced during the hearing and considered the material placed on the record.

7. From the application, we find that the applicants have not given any details of their working except the

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data given at Annexure-A. On going through annexure-A, we find that this statement only gives the number of days of working and the S. No. of Live Casual Labour register. It does not indicate when the list has been notified and what is the seniority unit. Further it is observed that in respect of S.Nos. 16, 17 & 18, the total number of days of working is less than 120 days but still it is averred that all the applicants had completed 120 days. Further in case of applicants at S. No. 7 to 12, no reference of S.Nos of the Live casual labour register have been indicated. It is also significant to note that ^{the serial} several numbers of the Live Casual labour register quoted does not appear to be correct as they are not in order of seniority as per the total days of working. For example in case of S.No. 112 of (applicant No. 15) ^{the} date of engagement is 4.8.76 and total number of days of working are 167 while in case of S. No. 119 of (applicant No. 5) ^{the} date of engagement on 4.1.76, the number of working days are 166. This shows that person with lesser number of working days and engaged subsequently ^{is} are shown senior in the list. This situation is not understandable. The applicants have also indicated the S. Nos. of their casual labour cards but the copies of these cards have not been brought on record to support their details of the working. The above observations are detailed in the context of the submissions made by the respondents in para 13 of the counter reply wherein it is submitted that only the names of the applicants No. 5, 8, 9, 10, 13 appear in the Live Casual Labour register maintained in the Division. However the S.Nos. in the register have not been disclosed. The respondents are ^{also} non committal about the engagement of the four applicants. In fact a bald statement has been made by the respondents in para 8 of the counter that a few of them and probably most of them were engaged as casual labour. The applicants on the other hand have controverted

this averment stating that their names are maintained in the Live casual labour register of the concerned supervisors where they were initially engaged. The applicants have also contended that the respondents have not clearly stated as to in which Live Casual labour register, their names are listed. We are inclined to be in agreement with this contention. The respondents are also not consistent in their stand, Considering the averment of the applicants in the rejoinder that the respondents have admitted that the names of the applicants appear in the Live Casual labour register as is clear from the General Manager (P) Northern Railway's letter dated 20.8.1987, (This has not been brought on record). Annexure C also gives indications that the names of the casual labours who have been verified by the concerned Inspectors shall be entered in the Live Casual Labour Register. From what has been detailed above, it will be seen that there are counter claims with regard to engagement, number of days of working and inclusion of the names in the Live Casual Labour register. With this position of the facts on the basic issue, we are unable to go into merits of the claims made by the applicants.

9. Keeping in view what has been concluded in para 7 with regard to engagement and inclusion of the names in the Live Casual labour register, we will consider the various grounds raised and the reliefs prayed for. The first ground is that the applicants had attained temporary status and the services of the applicants have been terminated without the following the extant rules as applicable to temporary servant, and also termination has been done in violation of the provisions of the Section 25 F of the Industrial Disputes Act 1971. None of the documents brought on the record and the averments made in the application, indicate

the dates when the applicants' services were terminated. With the initial engagements in 1976-1978, and considering the number of working days claimed in annexure A, it could be safely inferred that the services ^{here} terminated long back before the filing of the present application on 8.11.39.

/ Keeping these facts in view, the claim is highly time barred. Not only this ~~it~~ does not merit any consideration in the absence of the details. The second plea is with regard to the juniors having been retained in service and the services of the seniors have been terminated. The applicants have not given any specific names of the juniors. If the applicants claim that their names are included in the Live Casual Labour register, then it is imperative to disclose the specific names of the juniors in support of this allegation that the seniors which included the applicants have been ignored. This has not been done and only a bald statement has been made. We are unable to go into the merits of this contention with such vague submissions. The third submission is that inspite of the ban imposed by the Railway Board, the engagement of more than 500 new faces had been done after 1.1.81 during 1984 for the work of P.O.R.S. ignoring the old faces who were retrenched and available for reengagement. A few names of the new faces alleged to have been engaged during 1984 have been mentioned in the rejoinder. The respondents have denied any such engagements without approval. The applicants have themselves stated that engagement of the fresh faces could be done with the approval of the General Manager. If it is so, then the applicants have not brought any document on record to show that the engagement of the alleged new faces was done without the approval of the General Manager. We are unable to comprehend as to how the applicants have come to this

conclusion. In this context it will be also significant to observe that if the applicants were aggrieved of the engagement of the fresh faces in 1984 overlooking their claims, they should have represented against the same. There is no averment to this effect and no representation has been also brought on the record. Further the representations listed in para 6 of the application have been made only during 1988 and 1989. These averments are vague, generalised and without any specifics and therefore do not deserve consideration.

9. Now we come to the specific reliefs prayed for in light of the discussions above in paras 7 and 8. Taking the relief (c) first, on going through the order dated 16.8.88 (Annexure-I) we find that this is a notification for screening of the casual labour of the commercial and Traffic Departments. No averment has been made whether any panel had been issued in pursuance of this notification. The applicants belong to the Engineer^{ng} Department. The applicants have not come out with a case as to why this screening should be quashed. The applicants can claim to be considered for this screening only if they belong to that seniority unit or the seniority unit is common for all the departments of the Division. There is no such averment. No material has been also brought on the record to show that seniority of the casual labour of ^{all} the units is to be considered together. In light of these facts, we are not able to appreciate any merit in the prayer for quashing this order. As regards the quashing of the order dated 16.8.1988 (Annexure-II) we observe ^{that} this letter refers to the distribution of the casual labour of the Railway Recruitment Board to the various units. This does

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not cover the regularisation against group D posts as it is clearly mentioned as "casual labour". In view of this, the contention of the applicants that they have been absorbed against Group D vacancies does not carry any weight.

10. In respect of the reliefs (a) and (b), we observe that the copy of the panel dated 17.9.89 has not been brought on the record. It is also not averred as to who are the juniors who have been placed on this panel. In para 6 we have earlier concluded that the very engagement, working details and inclusion of the names of the applicants in the Live Casual Labour register, is in dispute. In respect of the applicants 5, 8, 9, 10, 13 the respondents have admitted their names on the Live Casual Labour register, but the respondents have stated that ^{these} applicants shall be engaged when their turn comes. On the other hand the applicants have averred that they are eligible to be included in the panel issued on 17.9.89. Keeping these facts in view, we deem it fit to direct as under:-

(a) The applicants shall submit a representation within a month from the communication of the judgement giving details of their engagement, casual labour cards, details of inclusion of the names in Live Casual labour register and other relevant details to the respondent No. 2.

(b) The respondents No. 2 shall verify the details from the records and the documents furnished by the applicants indicating the applicants within two months after the receipt of the representation.

(c) In case the claim of the applicants is established, then their names shall be included in the casual labour register at the appropriate places. If they become eligible by virtue of their names having been included in the Live Casual Labour register, then the applicants shall

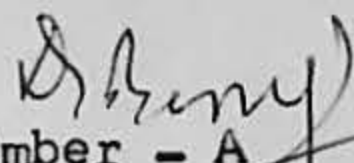
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be screened as per the extant rules and their names be included either in the panel issued on 17.9.89 any subsequent panel as due. The applicant shall be absorbed against group D vacancies in preference over the others if any waiting from the panels subsequent to the panel in which the applicants are included.

(d) In case the claim of the applicants or such of the applicants in this application is not established on verification of the records, then their representation shall be replied by a speaking order within three months from the date of receipt of the representation.

11. In the light of the above discussions, the application is allowed with the directions contained in the para 10 above. No order as to costs.


Member - A


Member - J

Arvind.