

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Allahabad : Dated this 31st ~~th~~ day of March, 1999

Original Application No.553 of 1992

District : Hamirpur

CORAM:-

Hon'ble Mr. S.L. Jain, J.M.

Hon'ble Mr. G. Ramakrishnan, A.M.

1. Ram Kirpal
2. Kishori Lal
3. Sukh Dev
4. Mahesh Chandra
5. Ram Kishore
6. Shiv Dularay
7. Har Narain
8. Devi Dayal
9. Shiv Singh
10. Shiv Kumar
10. Shitla Gopal
12. Rameshwar
13. Ram Swaroop
14. Ram Chandra
15. Ram Vishal
16. Manohar Lal
17. Kashi Ram
18. Kanhai Lal
19. Sunder Lal
20. Shiv Dayal
21. Ram Das
22. Lakhan Lal
23. Shiv Nandan
24. Parana Lal
25. Maya Deen
26. Sukh Lal
27. Shyam Lal
28. Kalu
29. Sukh Dev
30. Jhundu
31. Kallu
32. Kali Charan

33. Nathu
34. Ram Autar
35. Shiv Loyal
36. Sri Pal
37. Shyam Lal
38. Bardani Lal
39. Gulab
40. Govind
41. Nand Ram
42. Kali Charan
43. Raj Bahadur
44. Gaya Prasad
45. Ram Swaroop
46. Balram
47. Mata Deen
48. Ram Kishore
49. Kanahia
50. Ram Kesh
51. Rama Dhin
52. Phool Singh
53. Shiv Baran

(Sri RK Ranjan/Sri NL Srivastava, Advocates)

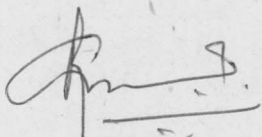
. . . . Applicants

Versus

1. Union of India through Secretary
Ministry of Railway, Rail Bhawan, New Delhi.
2. General Manager, Central Railway, Bombay V.T.
3. Divisional Railway Manager, Jhansi.
4. Permanent Works Inspector,
Karvi, under D.R.M., Jhansi.

(Sri Prashant Mathur, Advocate)

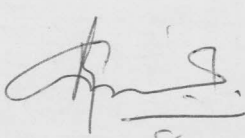
. . . Respondents



O R D E R

By Hon'ble Mr. G. Ramakrishnan, A.M.

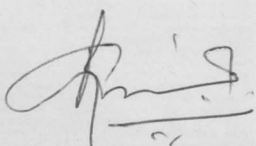
This is an application under Section 19 of the Administrative Tribunals Act, 1985 seeking direction that the respondents be directed to re-engage the applicants in service and thereafter their services be regularised. The applicants sought for the following reliefs :-

- (i) A direction to the respondent nos. 2 and 3 to re-engage the applicants for their job.
 - (ii) A direction may be issued to respondents no. 2 and 3 that after ascertaining from the original records, the respondents may give all privileges and benefits and post of temporary status since they have completed more than required period of the same.
 - (iii) A direction in the nature of Mandamus directing the respondents to give all benefits and privileges including arrears of salary from the date of their disengagement as per the policy.
 - (iv) A direction may be issued to the respondents to prepare a seniority list of casual labourers and fix their seniority according to their period of engagement which is known as Live Casual Register.
 - (v) A direction to the respondent nos. 2 and 3 to give all arrears of salary and benefits of Class IV employee since the date of disengagement of the applicants as per the Chart.
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(vi) Any other direction to the respondents as this Hon'ble Tribunal may deem fit and proper.

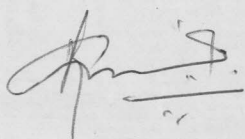
(vii) Award costs of the petition.

2. The applicants in the O.A. claimed that they were employed for Open Line in the Railway Department as casual labour under PWI and I.O.W. Chitrakoot Dham, Karvi, district Banda both under the Divisional Railway Manager, Central Railway, Jhansi. They claimed that as they had worked for more than 180 days as casual labour they were entitled for temporary status. The applicants stated that they had been given casual labour cards in respect of some of them but complete working days of the concerned applicants had not been correctly mentioned. Photostat copies of the casual labour cards were enclosed by the applicants. Further the applicants stated that respondents caused break of service of the applicants due to completion of work and that according to the Railway Board letter no.(NG)/11 AD/CL/25 dated 21-10-1980 circulated under Northern Railway Serial No.7677 and Eastern Railway Serial No. 16918 gaps between two span of service would not count as break in service for the purposes of continuous service of 120/180 days. They further stated that junior persons and fresh candidates who were engaged subsequent to the engagement of the applicants under the respondents as casual workers had been re-engaged against Class IV vacancies whereas the applicants who were senior had been denied employment. However, no details of the juniors were given. Further they stated that the number of days indicated in casual labour cards issued to them, as a result of agitation of the Union, did not



appear to be correct description of work which the applicants had done. They referred to the circular issued on 2-3-1987 (Annexure-A-4) and stated that according to the circular, casual labour who had worked prior to 1-1-1981 would be considered for re-engagement in service and their service would be regularised. They referred to a letter dated 17-2-1989 (Annexure-A-5) and claimed that both open line and project casual labour should be absorbed on the basis of a combined list based on the number of days worked. They also relied on the various provisions of Chapter 20 of the IREM and the judgement delivered by this Bench of the Tribunal in OA No.704 of 1985 and others in support of their reliefs.

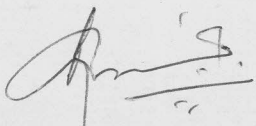
3. In the first counter reply by the respondents they stated without admitting the contents of the Annexure-A1 that according to Annexure-A-1 to the O.A. almost all the applicants had ceased to work in 1978 and 1984 and as such claim of the applicants to file the present application in 1992 without giving any explanation would not entitle the applicants to claim the benefit of limitation and that the application should be dismissed as being highly time barred under Section 21 of the Administrative Tribunal Act, 1985. They further stated that allegation of recruiting fresh candidates is without any basis and the news item enclosed with the application would not help the applicants in claiming relief. They further stated that the applicants have utterly failed to come with any cogent reason to claim relief of re-engagement in service by filing the instant application before the Hon'ble Tribunal under Section 19 of the Administrative Tribunals



Act, 1985 and averred that the respondents had taken all action in conformity with various rules and instructions issued by the Railway Board in this regard and that their claim for relief were devoid of any merit.

4. In the rejoinder filed by the applicants, they reiterated their earlier assertions and stated that as the casual labour cards were issued in 1991, the OA was within limitation. They filed Annexure-RA-1 with the RA, giving names who had been made senior even though according to the applicants they were engaged along with them in similar capacity.

5. In the Suppl. C.A. filed on behalf of the respondents, it was stated that after verifying the work of the applicants and after sanction of the competent authority casual labour cards had been issued to those eligible and their names had been registered in casual labour register of the concerned unit. It has been reiterated that as the applicants were discharged in 1985, present application filed in 1992 was barred by limitation. Further it was stated that as no junior to the applicants had been engaged in the organisation, the applicants were not entitled for any relief. They categorically stated that out of the 53 applicants, as per the respondents' record only 47 applicants whose details have been annexed in the chart enclosed to the Supplementary CA as Annexure-CA-1 had worked under P.W.I. CKTD, Karvi, Banda. Respondents contradicted the statement of applicants given under para 4(i) that they had worked under I.O.W., Karvi when the post of I.O.W. Karvi itself was not in



existence. They further stated that grant of temporary status and regularisation were two different aspects. While the temporary status was granted after working for a particular period of work, regularisation depended on availability of regular vacancies in the organisation and for this purpose, individual employee had to undergo screening and after placement in the panel and on approval by the nominated authority, he was considered for regularisation. They stated that the 47 applicants as per the list attached with the Suppl. CA were borne in the live casual labour register and would be considered for engagement on availability of regular vacancies. They further reiterated that regularisation of casual labour could be done only on the basis of the scheme framed by the Railway Board for which the Railway Board have issued necessary instructions.

6. During hearing, learned counsel for the applicant apart from stating what had been stated in the O.A. and R.A., also relied upon the following judgements of the Hon'ble Supreme Court and this Bench of the C.A.T. in support of the claim of the applicants.

(i) The Judgement of the Hon'ble Supreme Court in Civil Appeal No.847 of 1992 decided on 18th February, 1992 between Union of India and Others and Basant Lal and Others, reported in 1992 S.C.C. (L&S) 611 (ii) The judgement of the Allahabad Bench of C.A.T. in OA No. 1550/1992 between Prahlad and Others Versus Union of India and Others, decided on 10-12-1996.

7. Learned counsel for the respondents during hearing drew our specific attention to the contents of S.C.A. and stated that out of 53 applicants particulars of 47 applicants had been verified and



their names had been entered in the live casual labour register and that further action for their engagement will be taken as stated in the Suppl. C.A.

8. We have given careful consideration to the submissions of the learned counsel for the parties and rival pleadings and have also perused the complete record.

9. We notice that as per statement attached as Annexure-A-1 to the OA that the applicants claim to have worked with the respondents for different periods, the last day of which was in the year 1983, 1984 and 1985 except in respect of two in 1987 and one in 1978. By an amendment of application the applicants annexed the copy of the casual labour cards issued to 44 of them (Annexure-A-7 to A-50) and copies of certificates issued by PWS, Bharwa, Sumerpur in respect of three applicants (Annexure-A-51 to A-53). Respondents have through Supplementary Counter Reply that working of 47 of the applicants had been verified and a statement showing their working particulars was filed as Annexure-CA-1. On a perusal of the same we find in respect of 43 names the working period is indicated and in respect of four nothing is indicated. Respondents have further averred in the Supplementary Counter Reply that the names of these 47 applicants have been entered in the live casual labour register of the concerned unit and will be considered on availability of regular vacancies.

10. The applicants have claimed for re-engagement on the plea that juniors to them have been engaged by the respondents. Respondents in the Supplementary

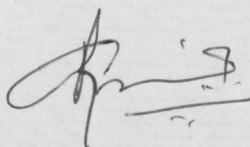


Counter Affidavit have averred that no junior had been engaged. The applicants had not given the names of the juniors in the O.A. But alongwith the R.A. they have filed a list of names in Annexure-1 to the R.A. From a perusal of this list of names and the remarks shown against each of them indicates that none of these are working under PWI, Karvi. According to first sub-para of para 2(i) of Annexure-3 of the O.A. casual labour register is to be maintained by the Senior Subordinate-in-Charge. Second sub-para of para 2(i) of this letter reads as under :-

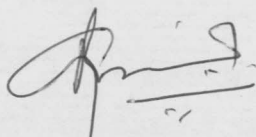
"The casual labour discharged will be retained on the casual labour register for giving him engagement in the future when fresh work is available. At such occasions no fresh casual labour is to be engaged until exhausting such casual labour whose names are available on the Live Casual Labour Register."

10. From a careful consideration of the above, the averment of the respondents that no junior had been engaged and from a perusal of the details given in Annexure-1 of R.A., we are of the view that the applicants have not made out a case for re-engagement on the ground that juniors to them have been engaged under PWI, Karvi by the respondents.

11. One of the reliefs claimed by the applicants is grant of temporary status since they had completed more than the required period for the same and the consequential benefits and arrears of salary from the date of their disengagement. There is no dispute in the fact that at least 47 of the applicants as listed in

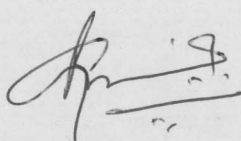


Annexure-CA-1 to the Supplementary Counter Reply had worked under PWI/CKTD/Karvi which would go to show that these applicants are open line casual labour and are entitled for temporary status on completion of 120 days subject to fulfilment of other conditions contained in Chapter XX of the Indian Railway Establishment Manual, Volume II (IREM) Revised Edition 1990). According to the IREM, such of those casual labour engaged in open line (Revenue) works, who continued to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary (i.e. "given temporary status") on completion of 120 days of continuous employment. According to verified statement of the service particulars given by the respondents at least 21 of the applicants have completed more than 120 days within one spell or more than one spell and they are entitled for temporary status subject to the condition that those who have worked in more than one spell, if the breaks in service were of the type included in para 2003 of IREM. As observed by us earlier it is not disputed that the applicants had ceased to work on various dates in 1978, 1983, 1984, 1985 and 1987. Therefore, the dates on which they would have attained temporary status would be even earlier. This OA is filed in April 1992. Therefore, the relief of re-engagement or grant of temporary status through this OA is badly delayed and is barred by limitation under Section 21 of the A.T. Act, 1985. However, one of the consequences of grant of temporary status is fixation of pay at the minimum of the scale of pay of the post, payment of DA etc.



Had the applicants been in service this would have become a recurring cause of action every month when they receive the wages and as had been held by the Appex Court in MR Gupta Vs. UOI & Ors (ATJ-1995(2) SC 567) Correct fixation of pay is not barred by limitation. Therefore, as and when the applicants are re-engaged as casual labour or appointed against regular vacancies, non-grant of temporary status will affect their salary and allowances. Therefore, we feel that if the applicants who are entitled for the temporary status as per the provisions contained in the IREM, are not granted the same, it will give a cause of action to them every month on their re-engagement.

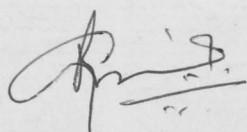
12. The names of 47 of the applicants have already been entered in the live casual labour register and the respondents have also agreed to consider their candidature on availability of regular vacancies. However, there still exists some dispute between the applicants and the respondents regarding the number of days shown in the casual labour cards (C.L. Cards) and regarding non-issue of casual labour cards. We feel that this can best be resolved between the applicants and respondents because these are dependent on the verification of facts. Such of the applicants who have any grievance about the number of days shown in their C.L. Cards or about non-issue of C.L. Card, may represent within three months from today individually to respondent no.2 giving complete details of their previous working etc. The respondents may verify the details given in such representation and either cause correction in C.L. Cards already issued/issue C.L. Cards to those who had not been issued as the case may be or



in case of inability give the concerned applicant a reasoned detailed reply. This shall be completed ^{/date of} within three months from the receipt of the representations.

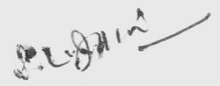
13. As we have already come to the conclusion that non-grant of temporary status on completion of the laid down conditions, will give rise to a cause of action every month to the applicants on re-engagement in their turn on availability of regular vacancies as accepted by the respondents, we direct the respondents to advise the applicants who are entitled for the same, the dates from which they are due the temporary status within three months from the date of receipt of the copy of this order. We also direct the respondents to give the benefit of this temporary status to the applicants as ^{and} when they are re-engaged. No arrears of pay and allowances on account of this grant of temporary status with retrospective effect will be admissible as the same is badly delayed and is barred by limitation as stated earlier.

14. The ratio of the judgement of Hon'ble Supreme Court of India in the case of UOI & Others Vs. Basant Lal & Others, cited by the learned counsel for the applicant has no applicability in the facts and circumstances of this case. We have also perused the judgement of this Bench of the Tribunal in OA No. 1550/1992. We are of the view that in the facts and circumstances of the present OA, the ratio of the judgement in O.A. No. 1550/1992 is not applicable so also the ratio of the judgement of this Bench of the Tribunal delivered on 11-2-1991 in OA No. 704 of 1988 and 6 Others OAs (Annexure-A-6).



15. In view of the detailed analysis made by us in the foregoing paragraphs this Original Application is allowed in part and is disposed of with the direction to the parties as given in paragraph nos. 12 and 13 above. In the circumstances there will be no order as to costs.


Member (A)


Member (J)

Dube/