

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

ALLAHABAD

Allahabad : Dated this 24 th day of March, 1999

Original Application No. 845 of 1992

District : Allahabad

CURIA

Hon'ble Mr. S. K. Agrawal, J. M.

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

1. Baijnath Pal S/o Sri Mata Badal Pal
Casual Khallasi,
R/o Village Tikri, P.O. Ahmadapur,
Asrauli, District Allahabad.
2. Moti Lal S/o Sri Sahdev, Casual Khallasi,
R/o Village Aswan P.O. Bharwari,
District Allahabad.
3. Hashmatullah S/o Sri Nabibullah, Casual Khallasi
R/o Village Basuri, P.O. Karanpura, Distt Allahabad.
4. Ram Babu S/o Sri Ram Prakash, Casual Khallasi,
R/o Village Pipri, P.O. Charwa, Distt Allahabad.
5. Ram Chandra son of Sri Bhagwat Prasad, Casual Flagman,
R/o Village Turanti Ka Purwa P.O. Charwan,
District Allahabad.
6. Jai Prakash S/o Sri Mewa Lal, Casual Flagman,
R/o Village Ramman Ka Purwa, P.O. Sulemsarai,
District Allahabad.
7. Punna Lal S/o Sri Mahabir Prasad, Casual Flagman,
R/o Village Akbarpur, P.O. Chail, Distt Allahabad.

(By Sri A.K. Sinha, Advocate)

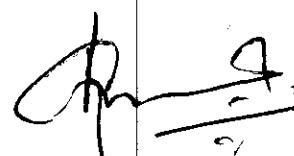
..... Applicants

Versus

1. Union of India through the Divisional Railway
Manager, Northern Railway, Allahabad.
2. Sr. Divisional Railway Manager, Northern Railway,
Allahabad.
3. Divisional Superintending Engineer, (U), N. Railway,
Allahabad.

(By Sri V.K. Goel, Advocate)

..... Respondents



ORDER

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

This joint application filed by seven applicants is against the alleged ~~gross~~ arbitrary action of the respondents of not allowing duty to the applicants and not paying the salary from April, 1990.

2. The applicants claimed in this OA that they were casual labour employed from ~~xxx~~ different dates from 1975 to 1977 and were decasualised and were given CPC Scales of pay with effect from 1986 and that applicant nos.1 to 4 were Khalasis and 5 to 7 were Flagman in the pay scale of Rs. 750-940. They claimed that they were posted in Traffic Department from their decasualization and that all of them had passed the Shuntman Training Course. They stated that in 1989 the applicants were transferred from Allahabad to Tundla in administrative interest with their headquarters at Allahabad and in March, 1990 they were transferred back from Tundla to Allahabad with their HQ at Allahabad intact. They stated further that on 4-4-1990 the respondents transferred the applicants from Allahabad to Etawah, but when they reported to Permanent Way Inspector/PQAS/Etawah on 5th and 6th April, 1990 for duty ordered them to work as Gangman and on their refusal to work as Gangman, the Assistant Engineer, Northern Railway Etawah returned the applicants back to Allahabad with the remarks that he had no work for Khalasis and Flagmen with a letter dated 7-4-1990 annexed as Annexure-A-2 of the OA. They stated that they reported to Chief Controller N. Aly on 8-4-1990, and when they were not given any duty made a joint application dated 16-4-1990 to respondent no.3. They claimed that on this representation various



officers passed orders and finally endorsement was made by ~~ME~~(Spl)/Allahabad to ABN/PQRS/Etawah in terms of which the applicants should be posted in PQRS/Etawah in terms of the orders issued by ~~ME/C~~ & ~~EN/G~~. They filed a copy of the representation with the endorsements of different officers as Annexure-A-3. The applicants claimed that they again contacted the Assistant Engineer, Etawah on 17-4-1990 and showed him the representation with the endorsements but the Asst. Engineer directed them to work as Gangman in the absence of job of Khalasi and Flagman. The applicants stated that having no option they reported back to Chief/Controller/Engineering, Allahabad on 18-4-1990 who did not do anything and since then inspite of representations at various levels they were not given duty or salary. On an application by the applicants no.69 of 1990 -Baijnath Pal and 7 others vs. ~~DM~~, Allahabad and others, Presiding Officer, Labour Court, Allahabad under Section 33(c) (2) of the L.A. Act, 1947, vice his judgement and order dated 27-1-1992 computed the wages of the applicants from March, 1990 to May, 1990 to the tune of Rs.29,820 + Rs.100 as cost of application. Respondents had filed an OA (No.481/1992) against this judgement and had obtained a stay order on 24-4-1992. The applicant filed another application to the Prescribed Authority, Labour Court, Allahabad for salary and allowances for the period from ~~xxx~~ June, 1990 to October, 1991 for Rs.1,72,910.00/- The applicants claimed that they met respondent no.1 on 17-3-1992 and 23-3-1992 and requested him for duty and payment of arrears of salaries who after examining the case of the applicants advised them that they could not be taken to duty. The applicants have mainly prayed for the following reliefs:-

(i) Pass an order or direction to the respondents to



take back the applicants on duty in their department as Khalasis and Flagmen respectively immediately (Operating Department) with continuity in service and with all consequential benefits to the applicants.

(ii) Pass an order or direction to the respondents to pay the arrears of the salary and other allowances, bonus etc. to the applicants from November, 1991 onwards till the date of allowing duty with 20% interest till the date of payment of the arrears.

3. The applicants have advanced the following grounds for the reliefs sought :-

(i) The action of the respondents in not allowing duty to the applicants inspite of their various representations and retaining their juniors in job either at Allahabad or at any other station under the respondents is highly arbitrary, discriminatory and violative of the provisions of Section 28-F of the Industrial Disputes Act, 1947.

(ii) Keeping the applicant out of job since April 1990 without assigning any reasons and not paying their monthly salary amounts to major punishment and is violative of the provisions as contained in the I&A Rules, 1968 and Article 311 of the Constitution of India on the face of their juniors.

(iii) The action of the respondents in calling persons including juniors to the applicants for screening and regularisation is arbitrary and discriminatory and is violative of Articles 14 and 16 of the Constitution.



(iv) There are vacancies of Khallas and Flagmen in the operating department at other stations including at Allahabad and the respondents could very well accommodate them there instead of knowingly sending them to Etawah where as per the indication of the Assistant Engineer there are no vacancies of Khallas and Flagmen. This action of the respondents is highly arbitrary and shows their obstinacy.

4. Respondents filed written statement in which they stated that the applicants were casual labour working against purely temporary casual short term work charged posts of Gangmen/Flagmen/Khallas and their names find place in the casual live register of Engineering Department. They stated that on expiry of casual sanction against which they were engaged under MFI/Engineering Control, they were shifted under Permanent way Inspector (PWI), Etawah instead of retrenching ~~from~~ them from service for want of productive work at Allahabad. They stated that the correspondence exchanged between the Engineering Authorities at Allahabad and Etawah did not confer any right to the applicants to claim for their regular employment, seniority, retention at Allahabad etc. under the statutory provisions contained in Indian Railway Establishment Code Vol I & II. They stated that the applicants never worked in the Traffic Department as casual labour as claimed by the applicants. They stated that the applicant nos. 1 to 4 were Khallas CPC Scale and 5 to 7 were Flagmen in Engineering Department under the administrative control of Controller, Engineering Department. It was stated that the



applicants wanted duty as Flagmen although vacancies did not exist and hence it was decided to continue them in their parental job of casual Gangmen to continue their services but they refused to do such work and hence they were not entitled for any salary. They reiterated that no vacancy of Flagmen or Khallasis existed at Allahabad. They denied that anybody junior to the applicants had been retained at Allahabad. They also denied of having held any screening as alleged. They also stated the applicants were sent for training to Subedarganj as Shuntman wrongly and corrective action was taken by the competent authority and in any case this action of training had not changed the position in any way of the applicants being casual labour. They also admitted of having obtained a stay order in OA No. 481/1992. They stated that none of the grounds had been made out.

5. Rejoinder Reply was filed by the applicants in which apart from reiterating what was stated by them in the OA, they denied having been engaged as Gangmen at any time. They further submitted that their rights were based on para 2511 and 2512 of Chapter 25 of the Indian Railway Establishment Manual. They also cited Hon'ble Supreme Court's judgement in UOI vs. Basant Lal reported in (1992) 5 SCC (L&S) 611 for their claim to be screened and regularised.

6. In a supplementary rejoinder reply filed by the applicants, it was stated by them that their names were not borne either in the live casual labour register of Engineering Department or Traffic Department. They also gave a list of 46 persons alleging them to be junior to the applicants, who were working under respondents as Khallasis/Flagmen. They also stated that the respondents had empanelled 81 persons against Traffic & Commercial

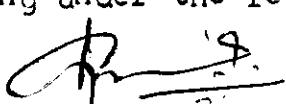


Department viae Panel No. 757E/E. I. 4/Gangmen/82-90/Pt. II dt. 9-3-1995 and another Panel No. E/Screening/E. I-42/Parichalan/94 dt. 15-3-1995 consisting of 31 persons and that many junior persons find place in these panels.

7. We heard the learned counsel for the parties. Learned counsel for the applicants submitted that OA No. 481/1992 and OA No. 938 of 1993 were disposed of by this Tribunal and the files of these original Applications were material to peruse certain documents.

8. We gave careful consideration to the rival pleadings of the parties and the submissions of the learned counsel for the parties and perusal of the whole records as also those of OA No. 481 of 1992 and OA No. 938 of 1993. From the file of OA No. 481 of 1992, we find that there is one more OA filed by the applicants numbered as O.A. No. 651 of 1990. On perusal of the file of O.A. No. 651 of 1990 it was found that the same was dismissed as not pressed on 8-5-1997. OA No. 481/1992 and OA No. 938 of 1993 were dismissed as they were not maintainable before the Tribunal after the judgement of the Apex Court in the Civil Appeal of L. Chandra Kumar Vs. Union of India & Others, J.I. 1997 (3) S.C. 589.

9. The learned counsel for the applicants during hearing mainly argued that the applicants belonged to Traffic and Commercial Department and sending them to Etawah and giving them the work of Gangmen there when their juniors have been retained at Allahabad to work as Khalasis and Flagman was arbitrary. The applicants have also through the supplementary rejoinder reply filed on 22-9-1995 submitted a list of 46 persons who are still working under the respondents as Khalasis/Flagmen

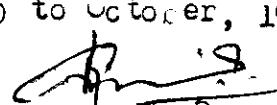
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and who are juniors to the applicants. The applicants have taken the plea that Section 25 of the I. A. Act is fully applicable in the present case.

10. In the recent judgement in OA No. 8960 of 1995 with OA No. 1764 of 1992 and OA No. 817 of 1994, the Principal Bench (Full Bench) of this Tribunal has held as under :-

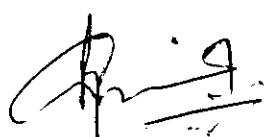
"However, the Supreme Court did not say that the Tribunal has jurisdiction to entertain an application of a workman under the Industrial Disputes Act for granting any relief under the provisions of that Act. According to us the Industrial Disputes Act is a Special Act containing provisions for the investigations and settlement of industrial disputes which can be done only by the authorities and tribunals constituted under the Act. In other words if the applicants wanted reliefs under Section 25-F of the Act their remedy was to move the Labour or Industrial Court under the Act for that purpose. This Tribunal has no jurisdiction to investigate and settle the disputes under Section 19 of the Administrative Tribunals Act 1985. There was a contrary decision of a Full Bench of this Tribunal in A. Parmarally Vs. CHW & Telecom. FB Judgements of CAT (1989-1991) Vol 11 P-334, which was impliedly overruled by the Supreme Court in Krishan Prasad Gupta Vs. Controller of Printing and Stationery, (1996) 32 AIC 211 (SC) as held by Jagalpur Bench of this Tribunal in Bhushan Singh Vs. UOI OA No. 71/97 decided on 29-9-1998 (Jagalpur). Accordingly, the conclusion otherwise arrived at in Santosh Kumar Yadav (supra) deserves to be overruled and is hereby overruled."

11. Further on the same facts and circumstances the applicants had gone to the Labour Court under Section 33(c)(2) of the Industrial Disputes Act, 1947 for the period from March, 1990 to May, 1990 and again from June 1990 to October, 1991 and obtained two awards



For the wages from November, 1991 onwards they have now approached this Tribunal where they have mainly taken the ground of violation of Section 25-F of the L.A. Act for the relief claimed. As held by the Full Bench of this Tribunal referred to above, this Tribunal has no jurisdiction in the matter.

12. In view of the law laid down by the Full Bench of this Tribunal quoted above and also taking into account the fact that the applicants had already obtained two awards from the Labour Court for periods from March 1990 to October, 1991 on the same cause of action, we are of the considered view that this Tribunal has no jurisdiction in this case and, therefore, this OA is liable to be dismissed. Accordingly, this OA is dismissed with no order as to costs.


Member (A)
Member (J)

Sube/