

RESERVED

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL : ALLAHABAD BENCH
ALLAHABAD

Dated : ALLD. on this 30th Day of September, 1997.

CORAM : Hon'ble Mr S Das Gupta, A.M.
Hon'ble Mr D C Verma, J.M.

ORIGINAL APPLICATION No. 998 OF 1992

Smt Mamta Rani Datta, M.A.
D/o Shri P N Bhadra, R/o
328, North Humayunpur
Gorakhpur.

..... Applicant

C/A Shri K M Sinha

Vs.

- (1) Union of India, through the
Ministry of Railways, Railway Board
New Delhi.
- (2) The General Manager
North Eastern Railway
Gorakhpur.
- (3) The Chief Administrative Officer/
Chief Engineer, North Eastern Railway
Gorakhpur.
- (4) Deputy Chief Mechanical Engineer(Con)/
Senior Mechanical Engineer (Con)
North Eastern Railway
Gorakhpur.

.... Respondents.

C/R Shri V K Goel

ORDER

(By Hon'ble Mr S Das Gupta, A.M.)

This O.A. has been filed under section 19 of the
Administrative Tribunals Act 1985 praying that the services
of the applicant be regularised.

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2. The facts as averred by the applicant in the O.A. can be stated thus. The applicant worked as Casual Tracer from 03.03.1981 to 25.08.1981, again from 17.11.1981 to 05.06.1982 and lastly from 16.06.1982 to 16.07.1983 whereafter she was discharged. Through a letter dated 26.06.1982, the Railway Board directed the General Manager N E Rly to recommend the names of the persons whose services were to be regularised as Class III employees. However, this direction of the Railway Board was not complied with inasmuch as the complete list of employees whose services were to be regularised, was not sent by the General Manager. This was despite the fact that the General Manager (Mech) had sent a list of such persons to the Chief Engineer, N E Rly indicating the names of the persons whose services were to be regularised and the applicant's name found a place in the said list. Thereafter by letter dated 21.08.1984 issued from the office of Dy G M E, regularisation of the applicant's services was recommended and thereafter the Chief Engineer (Con) also recommended the case of the applicant to the General Manager through his letter dated 6.9.1984. However, her services were not regularised though the services of a large number of persons, who were junior to the applicant, were regularised. Among these persons were Amarendra Kumar Verma who was initially employed as Tracer-cum-Asst. Draftsman. Later, in compliance with the direction of the Hon'ble Supreme Court in a case filed by some of the employees, seniority list of casual employees was prepared and applicant's name

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figured at Sl No. 11. The applicant was directed to join as Casual Tracer cum Asst Draftsman by an order dated 01.01.1988 and she joined the post from the same date. Her services were, however, not regularised but she was given temporary status by an order dated 28.11.1989. It is further stated that names of two employees S P Singh & K V Mathur were ~~not~~ recommended for regularisation of their services. The Railway Board accorded approval with certain conditions. The Board also directed that the Railways should certify that there were no other similar cases awaiting regularisation. Despite this, the name of the applicant was not sent to the Railway Board. The applicant submitted representation on 29.07.1991 and 02.12.1991 to the Railway Board and thereafter filed the present petition before this Tribunal.

3. The respondents have resisted the claim of the applicant by filing counter affidavit. It has been stated therein that the applicant was initially engaged as Project Casual labour in Barabanki - Samastipur Gauge Conversion project from 03.03.1981 to 25.08.1981 as Unskilled labour. He was engaged in the aforesaid project as Skilled Casual labour with effect from 17.11.1981 till 05.06.1982 and thereafter from 16.06.1982 to 15.07.1983. She was discharged on 16.07.1983 due to reduction in workload and insufficiency of funds. It has been stated that the casual labour

employed in project as a rule is engaged only in class IV posts. This post should be filled exclusively from the casual labour who had worked at Project stage. After working the vacancies for recruitment in these units, all casual labours, whether in open line in any Division or in construction projects are to be listed for screening, the interse seniority being fixed by reckoning the previous spells of their employment on the basis of cumulative aggregate service. The names of the casual labour in the project are accordingly sent to the respective Divisional Heads of Open line for absorption after being found fit by the screening committee against class IV posts. Their further averment is that the Railway Board did not issue any direction regarding regularisation of class III ~~casual~~ labour in general but for a particular category i.e. for the Highly skilled category. They have denied that the required information was not sent to the Railway Board. They have asserted that they sent information as required by the Railway Board and the applicant's name did not figure in this list since she was not a Highly skilled labour. They have admitted that in 1985, they had sent a list of casual labours who were working on class III posts for regularisation provided they were on the rolls. This included the names of Amarendra Kumar Verma & A K Sharma. The applicant's name, however, could not be forwarded as she was not on the rolls, she having been disengaged w.e.f. 16.07.1983. Thus the question of considering her case for regularisation

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did not arise. Subsequently in compliance with the Hon'ble Supreme Court decision in the case of Inder Pal Yadav, a seniority list of all project casual labour was prepared for the regularisation of their services as per scheme prepared by the Railway Board and modified and approved by the Hon'ble Supreme Court. The applicant's name also figured in the seniority list at Sl No.11 in the skilled category. Thereafter, applicant was re-engaged as skilled casual labour and she continued upto 31.07.1992 and she was also granted, temporary status in accordance with the scheme as approved by the Hon'ble Supreme Court. As regards the regularisation of the services of S P Singh & K V Mathur, the respondents have stated that these persons were promoted/appointed as ad hoc Tracer and not as casual labour. The respondents have also brought on record that the sanction of posts of casual Tracer having expired on 30.06.1992, the applicant, on her own request, was re-engaged as a casual Painter on 01.10.1992 and she is continuing as such. The Railway administration, it has been assured, will consider her case for regularisation as Painter as and when her turn comes and on availability of posts as per extant rules.

4. The applicant has filed rejoinder affidavit in which she has taken a stand that her name having been recommended by the Hon'ble Supreme Court, she is entitled to her regularisation as Tracer, since she has already completed the requisite number of working days, particularly when several persons junior to her were regularised.

5. We heard the learned counsel for the both the parties and also perused rival pleadings on record.

6. It is clear from the averment that the applicant was working on casual basis and her services were being utilised as a Tracer, which is a Group 'C' post. The respondents have admitted that the applicant was working in a project as Skilled casual labour w.e.f 17.11.1981. Neither the applicant nor the respondents have indicated any rules under which casual workers' services can be regularised on a group 'C' post. The Hon'ble Supreme Court in the case of Union of India Vs Motilal ~~is~~(1996) 33 AIC 304 held that there would be no question of regularisation in a class III post as such posts are required to be filled by promotion. There is nothing on record to indicate whether the post of Tracer is meant to be filled by promotion from the group 'D' categories or not. However, in view of the admission of the respondents that the services of some of the casual workers were regularised as Tracers, it can be presumed that such a regularisation is not impermissible. We have proceeded to decide this matter on the aforesaid supposition.

7. The name of the applicant was being maintained in a seniority list as contended by the applicant ~~herself~~ and also admitted by the respondents. This was a seniority list of Project's casual workers prepared in accordance with the scheme formulated for regularisation of project labour in accordance with the direction given by the Hon'ble Supreme Court in the case of Inder Pal Yadav. In accordance

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with this scheme, the case of the applicant should have been considered in her ^{own} ~~turn~~. The applicant has alleged that the services of two casual tracers who were junior to her were regularised while the case of the applicant was ignored. The respondents have not denied this contention but have stated that these two persons were actually on the rolls of the respondents while the applicant had been disengaged. Therefore, it would appear that while the services of the applicant were terminated on 16.07.1983, at least two persons who were junior to her, were either appointed or continued ignoring the claim of the applicant for continuance. However, such disengagement of the applicant and continuance of her juniors appear to have taken place between 1983 & 1985 and since this was not challenged by the applicant within the prescribed period of limitation, no relief can be granted to the applicant on that basis.

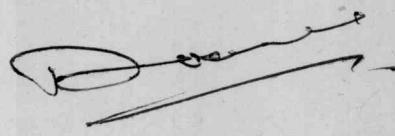
8. We have noted that the applicant was re-engaged as Casual Tracer in January 1988. She continued as such upto 31.07.1992 having been conferred temporary status in the meantime. We have also noted that there after, she was engaged as a Casual Painter, the sanction of the post of Casual tracer having expired. The applicant has also averred that the post of Tracer has since been converted into the post of Assistant Draftsman.

9. In view of the aforesaid facts and circumstances, we hold that the applicant shall have a right to be re-engaged as a casual tracer, in case such post is

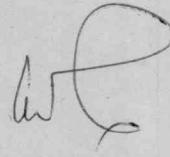
still being operated, in preference to her juniors.

In case the regular posts of Tracer are still in existence, she will also have a right to be regularised on such a post in her own turn. She will also have a right to be considered for regularisation as a Painter in her own turn against the vacancy that may become available, about which the respondents have also given an assurance.

10. The respondents are therefore directed to consider the case of the applicant on the basis of her right as enumerated in the preceding paragraphs. The O.A. is disposed of accordingly leaving the parties to bear their own costs.



J.M.



A.M.

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