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CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH,
ALLAHABAD

Allahabad this the 2th day of January, 1997

Coram : Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

Original Application No. 1354 of 1993.

1. Paras Nath Mishra s/o. Sri Ram Prakash Mishra,
R/o. village Nibi-Bhatan, Meja, Allahabad.
2. Shri Kant Chaubey s/o. Sri Rajmani Chaubey,
R/o. village Badewara, P.O. Jigna, Mirzapur.
3. Ram Narain son of Rameshwar Dayala, r/o.
village Chak Salempur, P.O. Kukawadi, District
Etawah.
4. Shyam Sundar son of Sri Paran Nath Mishra,
R/o. village Bharari Meja, Allahabad.
5. Kripa Shankar Shukla s/o. Sri Indramani Shukla,
R/o. village and Post Benda, Karchhana, Allahabad.
6. Prem Shanker Pandey s/o. Adinath Pandey, R/o.
Village Khedaupura, P.O. Koirauna, Varanasi.
7. Ram Parawan, Mishra s/o. Matuk Dhari Mishra,
R/o. Village Nibi Bhatan, Meja, Allahabad
8. Ashok Kumar Ojha s/o. Rama Shankar Ojha,
R/o. village Tain Saraiya, P.O. Amilia Kalan,
Meja, Allahabad.
9. Dharmaraj son of Sri Giridhari Prasad r/o.
Village Chitauli Jigna, District Mirzapur.
10. Harish Chandra Yadava s/o. Rameshwar Prasad,
R/o. 632-B Traffic Colony, Civil Lines, Allahabad.

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11. Vidya Shakar s/o. Sri Achyutanand r/o. Sukulpur, Ramapur, Varanasi.
 12. Ram Pujan Shukla s/o. Sri Shambhoo Nath Shukla, R/o. Bahpura, Post Ithara, Varanasi.
 13. Vishwanath son of Sri Bechan Lal r/o. Mehewa Khurd P.O. Nahwai, District Allahabad.
-Applicants.
(Through Sri A. K. Sinha)

Versus

1. Union of India through the Divisional Railway Manager, Northern Railway, Allahabad.
 2. Assistant Personnel Officer-(I), Northern Railway, Allahabad.
-Respondents.
(Through Sri A. V. Srivastava, Advocate)

ORDER

(By Hon. Mr. T. L. Verma, Member-J)

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In this application under Section 19 of the Administrative Tribunals Act, 1985, the applicants seek a direction to the respondents to declare the result of the screening test held between August and October, 1989 on the basis of seniority list as notified by notifications contained in Annexure-A-1 to Annexure-A-4 and thereafter to interpolate the names of the applicants at appropriate places in the panel dated 3.2.1990 and to pay arrears of salary of Group 'D' posts with effect from the date from which their juniors have been regularised in Group 'D' post with interest thereon @ 14% per annum.

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2. The brief facts of the case are that the applicants were appointed as Casual Labours prior to 1.8.1978 ~~and~~ on various dates and were posted as such under the respondents. They claim to have put in more than 120 days as Casual labourers under the respondents and ~~have~~ th accordingly acquired temporary status. According to the Railway Board's order and circulars casual labourers appointed prior to 1.8.1978 are entitled to be given preference in the matter of screening for regularisation in regular service. Pursuant to the above circular of the Railway Board, the respondents are stated to have prepared four lists for screening (Annexures-A-1, A-2, A-3 and A-4). The services of the applicants, it is stated, were verified and were included in the list prepared for screening. They were called for screening test held between 3.8.1989 and 23.8.1989. The result of the screening test was declared and provisional panel dated 3.2.1990 of 394 persons was notified. The panel so prepared, however, did not include the names of the applicants. The panel being provisional, the applicants expected that more names would be included as was indicated by Foot Note-I appended to the panel. As the names of the applicants were not included in the supplementary panel (Annexure-A-7) also, they submitted representation dated 28.5.1991 followed by representations dated 14.9.1992 and 30.5.1991 which were duly received by the office of the respondents. In the meantime, Sheo Narain and 8 others filed O.A.No.189 of 1991 before this Tribunal for a direction ^{to decide} ~~the~~ the result of the screening test of the applicants held during August, and October, 1989 and to add the name

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of the applicants at the appropriate placed in the panel dated 3.2.1990. The O.A. was allowed on 20.5.93 and a direction was issued to the respondents to verify the list and in case any junior to the applicants, particularly ^{those} whose names have been indicated in the panel ^{was} regularised, the cases of the applicants may also be considered for similar benefits. After coming to ~~know~~ know of the aforesaid direction issued in O.A.No.189 of 1991, the applicants made another representation dated 4.6.1993 to consider their cases also in the light of the judgement rendered in O.A.No.189/91. The representations filed by the applicants, however, have failed to yield any result, hence this application for the reliefs mentioned above.

3. The respondents have resisted the claim of the applicants. The main stand of the respondents is that the applicants were considered by screening committee but they were not found suitable as such their names have not been included in the panel.

4. We have heard the learned counsel for the parties and perused the record carefully. The respondents have not disputed the averments made by the applicants to the effect that in terms of the instructions issued by the Railway Board, casual labours who were appointed prior to 1.8.1978 were ~~not~~ entitled to preferential treatment in the matter of regularisation in service. The respondents have also not disputed that the applicants had put in more than 120 and more days as casual labour under the respondents during the period of their employment

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It is also not in dispute that the applicants were screened but they have not been included in the panel prepared. The respondents allege that the applicants were not found suitable for the job. The averments made in the counter-affidavit, however, do not indicate why the applicants were found not suitable. Suitability or unsuitability for regularisation of casual labourers ~~xxx~~ depends on whether the claimants possess minimum education qualification and also whether he is within the age ^{limit} and medically fit. The respondents could have specifically stated as to which of the qualification the applicants did not fulfil for being eligible for regularisation of their services. The learned counsel for the ~~ap~~ respondents was directed to produce the record of screening in which reasons for applicants being not suitable have been recorded, for our perusal. The record, however, had not been produced before us. We are left with no alternative but to ~~take~~ ^{draw} an adverse presumption that had the records been produced, the same would have ~~approved~~ the case of the applicants. The action of the respondents in excluding the names of the applicants in the panel prepared for screening without ^{specifying} ~~specifying~~ the reason ~~for~~ doing so, therefore, is highly arbitrary and cannot be sustained.

5. In the result we dispose of this application with a direction to the respondents to consider the case of the applicants and accord them similar benefits as have been accorded to their juniors and interpolate their names in the panel dated

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3.2.1990 at appropriate places and consider them for regularisation in their own turn. They will be entitled to seniority for all service purposes from the date their juniors have been regularised except back wages. The parties to bear their own costs.

L. Sharma
Member-J

W. E.
Member-A

(pandey)