

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.1322 OF 1993

ALONGWITH

ORIGINAL APPLICATION NO.1132 OF 1993

Allahabad, this the 2nd day of July, 1999.

CORAM : Hon'ble Mr.S.Dayal, Member (A)
Hon'ble Mr.S.L.Jain, Member (J)

Santosh Kumar,
S/o. Shri Bansi Lal,
R/o. House No.136, Beligaon,
Allahabad.

.....Applicant in OA No.1322/93

1. Chhotey Lal,
S/o. Sri Ram Sewak,
Village & P.O. Maharajpur,
Distt. Kanpur.

2. Mahendra Pratap Misra,
S/o. Sri Amar Nath Misra,
R/o. Village : Chatwan,
P.O. Marau,
Distt. Varanasi.

.....Applicants in OA No.1132/93

By Shri K.S.Saxena, Advocate.

Versus

1. The Union of India (Thr: General Manager,
Northern Rly. Baroda House,
New Delhi)

2. The Divisional Railway Manager,
Northern Railway, Allahabad.

3. The Divisional Engineer (HQrs),
Northern Railway, Kanpur.

4. Shri Pati Ram,
S/o. Shri Muneshwar,
Khalasi (Works) under IOW (HQrs.),
C/o. Divl. Engineer (HQrs.) N.Rly. Kanpur.

5. Shri Girdhari Lal, S/o. Shri Bhagwandin,
Khalasi (Works) under IOW/HQrs.
C/o. Divisional Engineer (HQrs.) N.Rly,
Kanpur.

.....Respondents in O.A.No.
1322/93.

1. The Union of India (Thr : General Manager,
N.Rly, Baroda House, New Delhi)

2. The Divisional Rly. Manager,
Northern Rly. Allahabad.
3. The Divisional Engineer (HQrs.),
Northern Railway, Kanpur.
4. Shri Gulam Ali, S/o. Shri Vakil,
Khalasi (Works), C/o. DEN/HQrs/Kanpur.
Northern Rly. Kanpur. (working under IOW/HQrs, Kanpur)
5. Shri Pati Ram,
S/o. Shri Muneshwar,
Khalasi (Works), C/o. DEN/HQrs/Kanpur.
Northern Railway, Kanpur (working under IOW/HQrs/
Kanpur)
6. Shri Girdhari Lal, S/o. Shri Bhagwandin,
Khalasi (Works), (working under IOW/HQrs./Kanpur)
C/o. DEN (HQrs.) Kanpur.
Northern Railway, Kanpur.

.....Respondents in OA No.1132/93

By Shri D.C.Saxena and Shri P.Mathur, Advocates

ORDER

(By Hon'ble Mr.S.Dayal, Member(A))

We have heard O.A .No.1322/93 and O.A.No.1132/93 together because the facts and the legal points in issue are common.

2. In these applications under section 19 of Administrative Tribunals Act,1985 the applicants have sought regularisation as permanent employees in Class-IV by revising the panel of 1992 and assign seniority to the applicants over their juniors in the panel of 1992. The cost of the applications have also been prayed for.

3. The applicants have contended that they were engaged as Casual Labour on 23-12-78, 6-4-75 and 11-5-76 respectively. They were given temporary status w.e.f. 14-1-82, 18-11-80 and 12-4-81 respectively. During the intervening periods two screenings of Casual Labour

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of Engineering Department were held in the Division in 1989 and 1992. The applicants were called for screening but despite their seniority and temporary status their names did not appear in the panel. Sri Gulam Ali, Sri Pati Ram and Sri Girdhari Lal, whose names appear at Sl.No.38, 249 and 255 respectively, ^{were empanelled} while the names of the applicants appear at 214, 8 and 27 respectively ^{and they were not empanelled}. The number of working days put in by the applicants are stated to be 3230, 3822 and 3170 respectively. It has been stated that one of the applicants Sri Mahendra Pratap Misra ^{has} been given adhoc promotion as Store Man w.e.f. 5-4-89 and had been working on the same ^{post of promotion} till the filing of the application.

4. The arguments of Shri K.S.Saxena for the applicant and Shri D.C.Saxena and Shri P.Mathur for the respondents have been heard. The pleadings on record have been taken into account.

5. The respondents have mentioned that the empannelment of the applicants in the screenings held in 1992 could not be done because they could not produce their Casual Labour Card which was the authentic record to be examined by the screening committee. It is also stated that Sri Chhotey Lal and Mahendra Pratap Misra were given temporary status on 18-11-80 and 12-4-81. It is also been stated that the service particulars and number of days worked can be verified on the basis of Casual Labour Card, Old Pay Sheet copies, Casual Labour Register and the summary and statement on the basis of above three documents. But these were not available at this stage because they were very old, and it is stated that ^{officials} junior to the applicants were considered suitable because they produced all the relevant record.

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It is also been stated that the adhoc promotion of one of the applicants was not given against the permanent or temporary post and, therefore, cannot form a basis for ^{claim for regular} employment. It has been mentioned that seniority is reckoned on the basis of number of days ^{of} working if they were found genuine on verification with records by screening committee. Since applicants could not produce the relevant record ^{before} to the screening committee they could not be considered for empannelment. The contention of the respondents as depicted in their counter reply is beyond comprehension. The respondents themselves have issued a seniority list of such employees in which their names and number of days worked as well as their rank is shown. This list is annexed as Annexure-A2 in original application No.1132/93. The name of the applicant in O.A.No.1322/93 appears at Sl.No.214 and the names of the two applicants in O.A.No. 1132/93 appears at Sl.No.161 and 219 respectively. The name of respondents Sri Pati Ram and Girdhari Lal appeared at 249 and 255 respectively. This list has been certified by Divisional Engineer (HQrs.), N.Rly. Kanpur. This record is prepared by the respondents themselves and in the absence of any other record should have been relied upon at the time of screening held in 1992. It is also an admitted fact that the applicants had attained temporary status on the respective dates given in the original application. Therefore, their non-inclusion in the panel after screening in 1992 cannot be up-held. The record on which the respondents could rely was solely within their custody. The Casual Labour Cards could have given only dates and number of days worked. If the

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Casual Labour Cards were not available with the applicants, the respondents could have verified by referring to the record which were in their custody. The respondents mentioned that the record was very old and was not available. In the situation the benefit has to be given to the applicants. The respondents ^{are} ~~have~~, therefore, directed to reconsider the applicants for screening w.e.f. 1992 when the private respondents were screened and included. In case the respondents find no record, they shall include the names of the applicants in the panel and grant them the benefit given to the private respondents from a date earlier than one given to Pati Ram or Girdhari Lal. The promotion/regularisation shall be on notional basis with benefit of seniority but without any financial benefit till they actually start holding of regular posts. Compliance of this direction shall be made within a period of four months from the date of communication of this order.

6. There shall be no order as to cost.

Sd/-
J.M

Sd/-
A.M.

Prepared By -
16-7-97