

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

Original Application No.1347 of 1999.

Allahabad, this the 8th day of Dec, 2006.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman
Hon'ble Mr. P.K. Chatterji, Member (A)

1. Jegdish Yadav son of Late Saral Yadav Ticket No.12407, Khalasi mechanical workshop, N.E. Railway Gorakhpur resident of village Pranchpura Post Office- Chakarkha Bohoredas (Salempur) District- Deoria.
2. Jokhan Sharma son of Shri Basudeo Thakur Ticket No.12454, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Baijalpur Kesho Post Office Sonpur (Saran).
3. Grish Chand Srivastava son of Jagdish Narain Lal Ticket No.12520, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Sutarahi, Post Office Mohammadabad Gohna District Mau.
4. Ram Bachan Singh Yadav son of Hamuman Singh Yadav Ticket No.E1161, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Mahmoodpur Post Office Aunriha (Ghazipur)
5. Upendra Pathak son of Shri Umashankar Pathak Ticket No.12393, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Barwa Post Office Asal District Siwan.
6. Alok Kumar son of Shri Bechan Ram, Ticket No.E/730, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Teliabagh, House No.C/28/991) Post Office Teliabagh, Banaras.
7. Keshi Kohar son of Shri Jhuri Kohar, Ticket No.12462, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Husaypur Post Office Piari, District Banaras.

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8. Baliram son of late Bolsaigat Ticket No.12419, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Hatwa Post Office Bhatni, District Deoria.

9. Dharam Nath son of Sam Dawan Ticket No.12430, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Deoghat Post Office Bhatni, District Deoria.

10. Sita Singh Chauhan son of Sahbir Singh Chauhan, Ticket No.12387, Welder mechanical workshop, N.E. Railway Gorakhpur, resident of village Churamanpur (Jhorie) Post Office Dullaspur, District Ghazipur.

11. Parash Nath son of Babu Nandan Ticket No.12432, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Amirath, Post Office Saropur Khamarhia, District Sant Rabidas Nagar (Bhodohi).

12. Kalicharan Sharma son of Tilangi, Ticket No.12413, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Imamauni Post Office Kabirpur (Siwan).

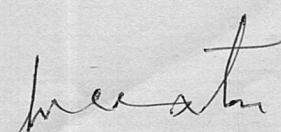
13. Rajendra Yadav son of Paltoo Yadav, Ticket No.12435, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village/P.O. Atranlia, District Azamgarh.

14. Hira Yadava son of Yamuna Yadava, Ticket No.12434, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Durghasi, Barhya, Post Office Maidah, District Ghazipur.

15. Ram Chandra son of Ram Raksha, Ticket No.12424, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Kotharigram, Post Office Aurati, District Bhadohi.

16. Vinod Kumar Mishra son of Late Lal Bihari Mishra, Painter, Ticket No.12451, mechanical workshop, N.E. Railway Gorakhpur, resident of D/59/314 B 5/L Shivperwa, Post Office Maraedih, District Varanasi.

17. Bachan Prasad son of Late Bind Prasad, Ticket No.12423, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of Village, Munshipura, Post Office & District Man Nath Bhanjan.



18. Haro Nath Yadav son of Tipli Yadav, Ticket No.12422, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village & Post Office, Dalsopur, District Mau.

19. Sudarshan Prasad son of Budh Nath Prasad, Ticket No.12389, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Bhagwanpur, Post Office Bhagwanpur (Ballia), District Ballia.

20. Mathura Giri son of Jegannath Giri, Ticket No.12418, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Sehtha Churakia. Post Office Sahtha, District Vaisali (Hagipur).

21. Naresh Rai son of Ram Ashish Rai, Ticket No.12453, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Auligachhi, Post Office Methwahia, District Chupra.

22. Parshuram son of Gaboo, Ticket No.12385, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Karathpur Bhoitolia, Post Office Sardar Nagar, District Gorakhpur.

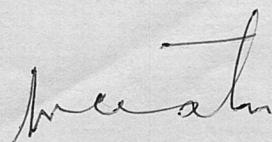
23. Ram Singh son of Narottam, Ticket No.12522, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Mirzapur, Post Office Saidpur, District Ghazipur.

24. Bachan Yadav son of Rushi Yadav, Ticket No.E/511, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Charamanpur, Post Office Dulehpur (Ghazipur).

25. Ramdhyan son of Mahesh, Ticket No.12420, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Jhariapur, Post Office Dullahpur (Ghazipur).

26. Harandra Prasad Gupta son of Sanjay Prasad, Ticket No.12415, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Ratnapura (Kumhar Toli) Post Office Bhagwan Bazar, District-Chapra.

27. Mohd. Unish son of Khalis Ahmad, Ticket No.12396, Khalasi mechanical workshop, N.E. Railway Gorakhpur, resident of village Hatwa Nehahani, Post Office Bhatni (Dewaria).



28. Zahir Hussain son of Mohd. Ismail, Ticket No.12391, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Bangali Pokeri, Daruga Hata, Post Office & District Siwan.

29. Ramesh Chandra son of Babulal, Ticket No.12383, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Satrudhanpur Post Office Fatawaha Inar, (Gorakhpur).

30. Hadish Anasri son of Khaiati, Ticket No.12357, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Bishunpura, Post Office Bhatpur Rani, District-Deoria.

31. Surendra Singh Yadav son of Ram Balak Rai, Ticket No.12425, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Baniapur (Parsakey Tola), Post Office Baniapur (Chapra).

32. Sheo Chandra Yadav son of Sata Yadav, Ticket No.12433, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Abardia (Haripura), Post Office Gogha (Doharighat), District-Mau.

33. Satya Narain Sharma son of Thakur Sharma, Ticket No.12458, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Rudaltpur, Post Office Jalalpur, District-Chapra.

34. Shiva Nand Singh son of Vindhya Chal Singh, Ticket No.12417, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Bhiti, Post Office Man Nath Bhanjan, District-Mau.

35. Ali Ahmad son of Halim, Ticket No.12388, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Bishunpura, Post Office Bhalta Rani, District-Deoria.

36. Pakhandi son of Jagaedeo, Ticket No.E/759, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village / Post Office Barthara Kela, District-Chandanli (Varanasi).

37. Chauthi son of Lanjari, Ticket No.E/707, Khalasi Mechanical Workshop, N.E. Railway

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Gorakhpur, resident of village Mahmadpur, Post Office Aunritar, District-Ghazipur.

38. Bhishwanath son of Surajibali, Ticket No.12384, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Haraiya, Post Office Chhatiaon, District-Azengah.

39. Harifa son of Sheejor, Ticket No.12384, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Chanleypur, Post Office Kolahardeshpur, District-Ghazipur.

40. Janardan Singh son of Late Sheo Nanden Prasad, Ticket No.12352, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Baria, Post Office Bhangari Bazar, District-Deoria.

41. Bishwanath Sharma son of Late Bolha Sharma, Ticket No.12359, Fitter Mechanical Workshop, N.E. Railway Gorakhpur, resident of village & Post Office Goahara, District-Begusaraw.

42. Ram Kripal Yadav son of Pauhari, Ticket No.12360, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Nadauli, Post Office Chakerwa Behordes, District-Deoria.

43. Ram Milan son of Late Lalchand, Ticket No.12355, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Geroso, Post Office Banka Mishra, District-Deoria.

44. Rajbali Rai son of Rambadan Rai, Ticket No.E/145, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Mayatola (Korya), Post Office Khairah, District-Chapra.

45. Ahmad Ali son of Sahib Hussain, Ticket No.12386, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village / Post Office Tetareah, District-Siwan.

46. Phool chand son of Bausan Yadav, Ticket No.E/1003, Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Rampur, Post Office Marafgeng, District-Varanasi.

47. Manzoor Alam son of Rati Mohdzoor, Ticket No.12392, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Dajhin Tola Siwan, District-Siwan.

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48. Om Prakesh Yadav son of Lalmoni Yadav, Ticket No.12394, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Krishna Nagar Privat Colony Gorakhpur, Post Office Bharatpur Gaurakhpur.

49. Rajkumar Rai son of Ram Narain Rai, Ticket No.E/1180, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Salempur, Post Office Dharhara, District-Vaishali (Hagipur).

50. Ramashankar son of Rajkumar Sharma, Ticket No.E/1067, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village / Post Office Ramgadha, District-Siwan.

51. Lal Babu Srivastava son of Shri Felena Pal, Ticket No.12390, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Nawapali, Post Office Chatra, District-Siwan.

52. Ramjee Prasad son of Bachan Rai, Ticket No.E/174, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village Auli, Post Office Methwalia, District-Chapra.

53. Pyarey Ram son of Ramoo, Ticket No.12586, Khalasi Mechanical Workshop, N.E. Railway Gorakhpur, resident of village / Post Office Dadhwol, District-Gazipur.

....Applicants.

(By Advocate :Shri Sudama Pandey)

Versus

1. The Union of India through the General Manager, North Eastern Railway, Gorakhpur.
2. The General Manager (P) North Eastern Railway, Gorakhpur.
3. Chief Workshop Manager, Mechanical Workshop North Eastern Railway, Gorakhpur.
4. Divisional Rail Manager North Eastern Railway, Varanasi.

....Respondents.

(By Advocate :Shri G.P. Agarwal)

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O R D E R

By Hon'ble Mr. P.K. Chatterji, A.M. :

All the 53 applicants in this OA are aggrieved that while they were directed by the respondents to report for duty in the Mechanical Work Shop, N.E. Railway, Gorakhpur after being released from the establishment of D.R.M., Varanasi, on being rendered surplus were kept in waiting before being given definite assignment and during the period they were kept in waiting, they were not given any salary. All the 53 applicants had been working against Group "D" regular post as temporary status employees after proper screening and medical examination with all the rights and privilege admissible to a temporary Railway servant, such as regular scale of pay contributory Provident Fund, Leave, Pass PTO and medical facilities etc. When they were rendered surplus by D.R.M., Varanasi, they were transferred to Chief Works Manager at Gorakhpur for further duty. Annexure-1 to this OA, the applicants have given details of their appointment dates, date of temporary status, and date of relief from Varanasi and dates of reporting for duty at C.W.M., Gorakhpur.

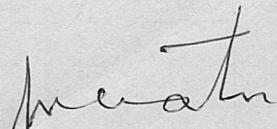
2. It has been alleged by the applicants although they were regular employees at Varanasi, they were issued fresh appointment on different dates in respect of the different applicants. The applicants thereafter made representations for wages during the intervening period i.e. the date between their reporting for duty at Gorakhpur and the date of their fresh appointment. When this representation was made

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by the applicants, the C.W.M., N.E. Railway, Gorakhpur wrote a letter dated 18.2.1998 to DRM, Varanasi to clarify the status of the applicant, while they were working at Varanasi and also requesting to clarify whether juniors of the applicants were working at Varanasi while they had been waiting for duty at Gorakhpur.

3. In response to the letter dated 18.2.1998 (Annexure-3) a clarification was issued by D.R.M., Varanasi dated 27.4.1998 stating that all the applicants were in regular work at Varanasi and even juniors to them were working in this Division before the applicants were relieved. A copy of this letter is annexed as Annexure-4 to the OA. The applicants have stated that their was no need for fresh appointment at Gorakhpur and the date of their appointment should be the same as the date they were granted temporary status after completion of 120 days of continuous service at Varanasi without break. With the aforementioned facts the applicants sought for following relief(s) :-

- (i) The respondents be directed to arrange immediate payment of salary and allowances for the waiting periods at CWM/Gorakhpur from the dates they reported there and were waiting for duty.
- (ii) The respondents be directed not to alter the date of appointment afresh but to consider their past services rendered by them and pay and allowances, leave, at their credits to be also considered and taken in to account with all other consequential benefits and seniority as per Railway Board's order dated 21.4.1989.
- (iii) Any other order or orders as your Lordships may please deem fit and proper in the interest of justice.



(iv) Cost of the case may please be awarded.

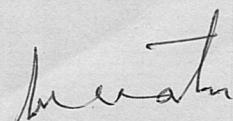
4. The respondents denied the allegations and stated that the applicants were not regularly appointed as per Para 2006 of I.R.E.M. Vol.II, which states as below :-

"Absorption of casual labour in regular Group "D" employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption is, however, not automatic but is subject, inter-alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc. decided by the Railway Administration."

5. The respondents have further stated that according to Master Circular No.20 on appointment of substitutes in the Railways "the date of appointment of a substitute to be recorded in the service book against the column" Date of appointment should be the date on which they attain temporary status after a continuous service of 04 months if the same is followed by their regular absorption. Otherwise, it should be the date on which they are regularly absorbed. Certain formalities are also requires to be observed which are :-

- (a) Acquire M.R.C.L.
- (b) Should be screened
- © Character Verification to be done
- (d) Vacancy should be available
- (e) Suitability test of the applicant to be conducted.

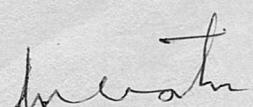
The respondents have denied that these formalities have been conducted in respect of the applicant either at Varanasi or at Gorakhpur.



6. The respondents have further stated that the applicants became surplus at Varanasi so there were only two alternatives before the administration. Either to retrench them or to give employment so the applicants were adjusted at Gorakhpur after being rendered surplus and, therefore, it was not a case for transfer at administrative exigency. Moreover, the drawing a regular pay does not ipso-facto make the workman a regular Railway servant. The conditions and prerequisites for regular employment have to be complied with.

7. The respondents have further disputed the claim of the applicant by saying that without impugning the fresh appointment letter at Gorakhpur they are not entitled to the other relief claimed by them. This is a legal question and we shall revert to the matter at the appropriate stage.

8. The respondents have further stated that the information given by the applicant in Annexure-1 which is their own making is not with the respondents. Moreover, the applicants have not furnished any documents from the office of D.R.M., Varanasi that they were been declared surplus nor they have furnished any documents that they reported for duty at Gorakhpur and any evidence that they were directed to wait for being given further assignment. In absence of these documents it was not possible for the Tribunal to come to a decision on the waiting period. With regard to Annexure-4 i.e. the letter from Varanasi that they were being regularly engaged for work at Varanasi and that

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their juniors were also working on the date there they are relieved, it would be worthwhile to reproduce to exact reply of the respondents.

"That the contents of para 4 (vii) of the Original Application need no comment. It is submitted that under existing rules the seniors are absorbed earlier rather than their juniors. For this reason alone a clarification was desired from Varanasi Division as mentioned by the applicants. It was informed by the said division that juniors to applicants were working there. The applicants were senior so they were absorbed prior to their juniors under rules. As such there is no irregularity in their regular appointment in workshop Gorakhpur so the application is liable to be dismissed."

9. The respondents have also stated that the application is liable to be rejected on the ground that plea made therein are vague as held in (1995) 30 ATC 447 S. Nalinakshan Vs. Union of India and others, and this should be rejected.

10. We have gone through the pleadings and arguments of both sides and have applied our mind in the matter. The respondents have denied categorically that the applicants were given appointment after being given temporary status at Varanasi prior to their relief from Gorakhpur. The applicants, however, have claimed that all of them given temporary status and thereafter regularised. As proof of their regularisation, they have cited the relevant rules pertaining to the Railways.

11. The applicants have drawn our attention to the provision that only regular railway employees would contributed to the Group Insurance Scheme

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and before they got relieved from Varanasi. They were all contributed Group Insurance Scheme besides Provident Fund and other benefits. This would imply that they were already regularised. The extract from the relevant provision is as follows:-

"The scheme shall apply to all employees including regular work-charged employees and Central Govt. servants/Railway. Employees on deputation/foreign service to State Governments, Union Territories, Autonomous bodies, Public Sector Undertakings etc. but this does not apply to part-time and ad-hoc employees or to contract employees or to persons on deputation from State Govt. Public Sector Undertaking or other Autonomous organisations, Casual Labour/Substitutes even on their attaining temporary status till they are regularly absorbed in the Railways but work-charged staff if they are regular employees will be covered by these rules."

12. Moreover, they have cited from Railway Board's letter No.E(NG) II-69RE1/90 dated 18.12.1970 to say that it is mandatory for the respondents to screen the casual labours after attainment of temporary status and this was done and accordingly they were screened before regularisation. The relevant extracts which reads as under :-

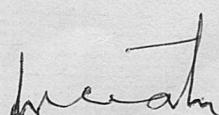
"Empanelment of Casual Labours and Substitutes-Ref :Board's letter of even number dated 16th March,1970. It has been represented to the Board that even in respect of substitutes who have already put in long periods of service and have become entitled to benefits of temporary service, their service is facing a break merely to comply with the Board's orders contained in the letter referred to above. The intention of Board's letter of 16th March,1970 is that to regular railway service only empanelled personnel should be appointed and such

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empanelment should be promptly done so that unapproved substitutes are not continued in service for long spells. Instructions have also been issued separately that substitutes and casual labour, who have acquired temporary status, should, inter-alia, be considered for empanelment by screening committees constituted in terms of Board's letter No.E(NG) II-70/CL/28 dated 20th July, 1970. The Board desire to clarify that substitutes who have already acquired temporary status should be immediately screened in terms of the orders referred to above and that their service should not be artificially broken merely to comply with the orders that such substitutes should not be continued for more than three months. Substitutes are to be replaced only by properly empanelled persons. Where it is not necessary to operate a post, it is not obviously necessary to retain any substitute."

13. We are of the view that a clear picture regarding status of the applicants have not emerged through the OA and the reply thereto. The applicants seem to have a ground that while their juniors were working against regular posts at Varanasi on the dates of their relief. They can be deemed to have already been regularised. It would imply that they were regularised prior to the date of their ~~relief~~ ^{relieving} from Varanasi, as otherwise it would mean that their juniors were regularised before considering their case and that would not be tenable under the law.

14. We have applied our mind to the contents of the letter from the D.R.M., Varanasi as well as reply of the respondents at Para-12. It is obvious from Para-12 that it is self contradictory and does not address the points in question.



15. The other points made by the respondents that the case of the applicant was not of a transfer under the administrative exigency but a case of adjustment of surplus staff is also not of consequence in so far as the present dispute is involved. There is no need to split hair on this point. We are also not inclined to attach much importance to the question whether the relief as prayed for are not admissible when the fresh appointment letter at Gorakhpur was not challenged. It is not denied by the respondents that the applicants were not given the temporary status and were working against the regular post at Varanasi. If for the sake of arguments it is taken that the applicants were not regularised in the service then it would also infringing the provisions of the Railway Board that regularisation should follow granting of temporary status quickly and should not be deferred.

16. In our view the respondents should take a fresh look into the matter. It is not that the information given in Annexure-1 is not verifiable from the records. It is also not disputed that even juniors to the applicants were working against regular posts at Varanasi, prior to relief of the applicants. It would automatically strengthen the claim of the applicants. We are also not satisfied with the reply to the question in respect of the letter of clarification from Varanasi (Annexure-4) as given by the respondents in para-12 of the CA.

17. It would be obvious from the observations above that there are a few points still to be answered before a just and appropriate decision

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is taken in respect of the claim of the applicants.

18. We, therefore, direct the respondent No.3 to consider the claim of the applicants as made out in this OA afresh and in the light of our aforementioned observations and take a decision as admissible under the rules and issue a speaking and reasoned order. This should be done within a period of four months from the date of copy of this order. No order as to costs.

Meenakshi

Member-A

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Vice-Chairman

RKM/