

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD

ORIGINAL APPLICATION NO. 1385 OF 2002
ALLAHABAD THIS THE 24th DAY OF May, 2004

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A
HON'BLE MR. A. K. BHATNAGAR, MEMBER-J

1. Hanuman Prasad Srivastava,
Son of Late Sadhu Saran Lal.
2. Ram Lalit,
Son of Ram Saran Singh.
3. Vikram son of Late Chinkoo.
4. Ram Bhawan,
Son of Shri Swami Nath.
5. Mahajan, Son of Shri Ram Niwas.
6. Brij Narain Singh,
Son of Asharfi Singh.
7. Sumer , son of late Nanda.
8. Ram Sagar, Son of Shri Paras Nath.
9. Lal Chand, Son of Shri Mahattam
10. Nag Narain Singh,
Son of Shri Ram Rakcha Singh.
11. Paras Nath,
Son of Late Shri Nepal.
12. Bindeshwari.
son of late Sheeshman.
13. Shree Niwas,
son of late Chinkoo.
15. Ram Preet.
Son of late Chinkoo.

16. Bhav Nath,
Son of Shri Sohan.

All working as Khalasi (Helper Grade-II), Bridge
Workshop, North Western Railway, Gorakhpur Cantt.

.....Applicants.

(By Advocate Shri S.K. Om)

Versus

1. Union of India,
through General Manager, North Eastern Railway,
Gorakhpur.
2. Chief Personnel Officer,
North Eastern Railway, Gorakhpur.
3. Chief Workshop Manager, Bridge Workshop,
North Eastern Railway, Gorakhpur.


.....Respondents

(By Advocate Shri G. Chaudhary)

ORDER

HON'BLE MAJ GEN. K.K. SRIVASTAVA, MEMBER-A

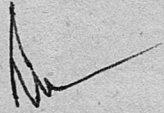
The present Original Application has been filed
by the applicants 16 in number, under section 19 of
Administrative Tribunals Act 1985, claiming the relief of
mandamus, that respondents be directed to declare the
result of their screening test held on 6.2.2002 and 7.2.2002
and respondents be directed to give them financial benefits
as provided in Advance Progression Scheme (A.P.S. in short)
dated 1.10.1999 issued by the Railway Board.



2. The facts of the present case, in brief, are that the applicants were initially engaged as Casual labour in the Railways and after completing the requisite number of days, they were assigned temporary status on different dates somewhere in the year 1981-82 and finally they (except applicant no.16) were screened on the post of Khalasi in Group 'D' category on 6.2.1992. Applicant no.16 was granted temporary status on 1.1.1981 and was screened on 31.10.1994. A chart showing the details of granting of temporary status and screening has been annexed as Annexure-1 to the O.A. and since the time when the applicants were granted temporary status, applicants are continuously working without any break.

3. The further case of the applicants is that the Railway Board has framed a scheme dated 01.10.1999, known as A.P.S. whereby it was provided that a Railway employee, after completion of 12 years in one grade would be entitled for one advance scale and after completion of 24 years of service, he is entitled for 2 advance scale. By the said scheme, financial benefit is granted to the employees, where there is lack of promotional avenue.

4. Applicants have further stated that in pursuance of the A.P.S. Scheme, screening Committee was framed which prepared a list of all the employees who are continuously working in the same grade from last 12 years. The list contains the names of all the applicants at Sl.No.4,9,10, 12,13,15,18,20,26,27,28,29,30,31,33, and 41 (Annexure-3). Thereafter they were required to appear in the aptitude test held on 06.02.2002 and 07.02.2002. Applicants




appeared in the test but their results were not declared and they were orally informed that they are not entitled for A.P.S. Scheme as they did not complete 12 years of service from the date of their regularisation.

5. Applicants have stated they were granted temporary status in the year 1981-82 and since then they are regularly and continuously working and they have been found eligible by the screening Committee, therefore, there is no justification in not assigning them the benefit of APS Scheme and the same is arbitrary in as much as in terms of scheme and the same is arbitrary in as much as in terms of scheme dated 01.10.1999, 12 years of regular continuous service is required and it is not 12 years from the date of regular appointment.

6. It has been stated in para 10 of the O.A. that in similar circumstances similar benefits have been given to large number of casual labours but applicants have been denied the similar treatment.

7. Respondents^{have} resisted the claim of the applicants by filing a counter reply stating therein that the applicants are not entitled for the financial benefits envisaged in APS Scheme dated 01.10.1999 as applicants have not completed 12 years of service from the date of their regular appointment in as much as applicants have been appointed in the year 1992. Respondents have further stated that APS Scheme is applicable only in the case of regular appointment. Thus, the period spent by the applicants as temporary status is not to be counted.

8. Applicants have filed the rejoinder reply, detailing

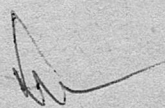


the facts of the O.A.

9. We have heard the counsel for the parties, considered their submissions and perused the records as well as the pleadings.

10. Counsel for the applicants have submitted that all the applicants were initially engaged as casual labour on different dates from 1974 to 1979 and after completion of requisite number of days they were assigned temporary status (CPC Scale) in the year 1982 to 1983 and were finally absorbed on 06.02.1992 and applicant no.14 was appointed on 31.10.1994 (As per Annexure -1 to O.A.). It is further submitted by him that from the date of grant of temporary status (CPC Scale) all the applicants are regularly working without any break even for a single day. Thus, the scheme dated 01.10.1999 is applicable on them.

11. Applicant's counsel placed before us the provisions of I.R.E.M. Manual whereby the Railway Board has directed that the half of the service rendered by a casual employee after attaining temporary status (CPC Scale) till their regularisation would be counted towards pensionary benefits. On the basis of it he asserted that since 1/2 of the temporary service status is countable for service for the purpose of pension fixation, same should have been counted for APS Scheme also. It is further submitted by the applicants that in similar circumstances, similar benefit has been accorded to other casual labour, working in different other units who were regularised later. While granting them benefit of APS Scheme, to those employees 12 years have been counted from the date they were assigned



temporary status but the respondents are adopting different yardstick with regard to applicants and the applicants have been deprived of the similar benefit. In para 10 of the O.A. applicants have referred to Railway Board's letter dated 15.3.2002 (Annexure A-6) in which 436 casual labours were granted benefits of APS Scheme and 12 years have been counted from the date of temporary status/C.P.C. Scale. The letter dated 15.5.2002 issued by the Railway Board reads as under:-

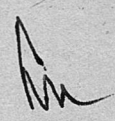
"The matter has been examined in this office and the post facto approval of Railway Board is, hereby, accorded for regularisation of the services of 436 casual labourers in Group 'D' from the date of their getting APS/CPC scales. The Casual Labour who have passed trade test in their first attempt may be treated as regularised in Group 'C' from the date of their getting APS/CPC Scales."

12. This issues with the concurrence of the Finance Directorate of the Ministry of Railways (Railway Board).

13. Reliance has further been placed by the applicants that by the letter dated 13.4.1997 (Annexure A-7), Group 'D' employees were granted benefit of temporary status on the ground that they could not be regularised earlier due to administrative reasons. Similar benefits have further been granted to another set of employees working in Construction Unit vide letter dated 20.01.2001 (Annexure A-8).

14. Paragraph 10 of the O.A. has been replied by the respondents in para 12 of the counter reply which reads as under:-

" 12. That in reply to the contents of paragraph no.4.10 that from the perusal of the paragraph no.3.1 of the circular dated 1.10.1999 it is very clear that the employees of the temporary status will not get the benefit of the ACP Scheme and hence only the name of one suitable candidate was declared."




15. Similarly para 11 and 12 where the applicants have annexed the similar orders of employees of Bridge Workshop and Construction Unit the report while denying the same in para 13 of Counter reply have given evasive reply which reads as under:-

"13. That in reply to the contents of paragraph no.4.11,4.12,4.13 has already replied in the above paragraph."

16. Thus from a perusal of para 12 and 13 of the counter, it has nowhere been denied that similar benefits of A.P.S. scheme have not been extended to casual labours of Railway Board, Construction and Bridge Workshop. Nor any reason has been shown as to why the benefit extended by the Railway Board and other construction units is not applicable in the present case, and how the applicant's case is different from the persons mentioned in these two orders.

17. The reason assigned by the respondents that benefit of A.P.S. is applicable on the basis of 12 years service from the regular appointment and not continuous service is not acceptable to us for the simple reason that admittedly this benefit has been extended by the Railway Board itself from the date of temporary status. Similarly other construction units such as Bridge Workshop and construction unit has also granted the same benefit.

18. Counsel for the applicants also pointed out that in the case of applicants also their regularisation was delayed due to administrative exigencies and inspite of there being vacancies they could not be regularised and for this reason also their case is identical to the circumstances mentioned in the letter dated 18.04.1997



(Annexure-7 to O.A.). Respondents have failed to give any cogent reason for not granting the benefit of APS scheme as has been given to employees mentioned in Annexures 6,7 and 8 of O.A.

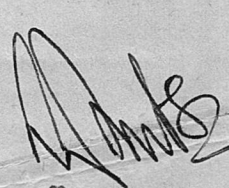
19. For the ~~xxxxxx~~ ^{reasons} aforementioned we are of the view that applicants are also entitled for the benefits of APS scheme dated 1.10.1990 and there is no justification for the respondents in not declaring the result of aptitude test of the applicants held on 6.02.2002 and 7.2.2002 and in case the applicants qualify the aptitude test, they would be granted benefit of APS as provided by the Railway Board in its circular dated 01.10.1999.

20. Let the entire exercise be completed by the respondents within a period of three months from the date the certified copy is produced before them.

21. The O.A. succeeds and the same is accordingly allowed.

22. There shall be no order as to costs.


Member-J


Member-A

/Neelam/