

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH : ALLAHABAD**

**Original Application No.1118 of 2002.**

**Allahabad, this the 12<sup>th</sup> day of April, 2006.**

**Hon'ble Mr. K.B.S. Rajan, Member-J**

1. Krishna S/o Nagina Choudhary, R/o Village Chochi, Post Hathuwa, Semrawn, District Gopal Ganj.
2. Chandrama Chaudhary, S/o Jewat Chaudhary, R/o Chonchali, Post Hathuwa, Semrawn, District Gopalganj.
3. Hari Shankar Yadav, S/o Sri Suraj Yadav, R/o Gram Wari Dewaria, Post Post Hathuwa, District Gopalganj

....Applicants.

(By Advocate : Shri H.C. Shukla)

Versus

1. Union of India, through the Secretary, Ministry of Railways, New Delhi.
2. D.R.M. N.E.R., Varanasi.

.....Respondents.

(By Advocate : Shri D.P.Singh)

**ORDER**

The facts of the case are as under:-

- (i) The applicants have been working as Substitutes/Casual Labourers at Varanasi Division of N.E.R. The competent authority vide order dated 6.1.1986 conferred upon the applicants' temporary status revising the pay scale in the scale of Rs. 196-232/-.
- (ii) Once the person acquires, the privileges of temporary Railway servant by operation of law, the conditions of his services would be governed as set out in Chapter XXIII of IRM and temporary Railway servant's services cannot be dispensed with in any manner without giving a show cause notice.

- (iii) The order of temporary status, witnesses the work done entitling to continue indefinitely on live casual Register.
- (iv) In the year 1996, when a seniority list was published on which the applicants were not brought on. The applicants submitted objections, which was never disposed of.
- (v) The applicants filed O.A. no. 1126 of 1998 which was disposed of vide order dated 5.12.2000. The respondents were directed to decide the matter within four months by passing a detailed reasoned and speaking order.
- (vi) The competent authority rejected the claim of the applicants vide order dated 3.9.2001 stating therein that the work done by the applicants after 31.12.1980 was not sanctioned by the competent authority.
- (vii) The applicants worth and desired to be protected in the view held by Full Bench in O.A. no. 706 of 1996 in re. Mahavir and Others Vs. Union of India & Others.
- (viii) The applicants were illegally and wrongly were not kept on roll on 30.4.1996. In the impugned order dated 3.9.2001, the respondents have given the alleged reason only and erroneously have arrived at alleged conclusion giving no material.
- (ix) The most outstanding ground is that in the similarly situated circumstance, one Singhashan Chaudhary's case has been considered for regularized vide order dated 2.11.1999.
- (x) The order dated 11.3.1985-86 shows Singhashan Chaudhary's engagement on 17.4.1984, completion of 120 days on 14.8.1984 and conferment of temporary status on 15.8.1994. Applicant nos. 1 & 2 engagement and conferment of temporary status is much earlier in point of time to Singhashan Chaudhary and that of applicant no.3 engagement and conferment on temporary status is earlier in point of time.
- (xi) In view of the above, the applicants enjoying the status of temporary.

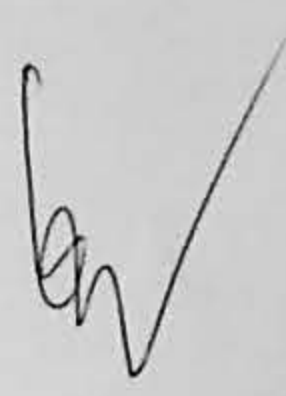


Government servants and they can never be screened or otherwise discontinued without giving a show cause notice.

(xii) The applicants have cited the following case laws in support of their case:

- (a) Mahabir & Others Vs. Union of India & Others AT Full Bench 1997-2001 100.
- (b) Rama Shanker Barnwal Vs. State of U.P. & Others (2000) I UPLBEC 567.

2. The contentions of the respondents are as under:-

- (i) The applicants were engaged as Casual Labourers after 31.12.1980 and that too without obtaining prior approval of the General Manager. As per Railway Board's circular dated 31.12.1980 a fresh casual labour could only be engaged after prior the approval of the General Manager and this authority was not delegated to any other lower authority.
  - (ii) The applicants' appointment itself was illegal. Vide circular dated 11.12.1996, the Railway Board provided absorption of the casual labourers for those who were on the roll on 30.4.1996. Admittedly, the applicants were not on the roll on 30.4.1996 and as such they were not fulfilling the condition for regularization as required under the Railway Board's circular dated 11.12.1996.
  - (iii) It is admitted by the applicants themselves that they have worked only 1994.
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(iv) It is well settled law that for regularization both conditions should be fulfilled as required under the Circular dated 11.12.1996/3.9.1996.

(v) The following case laws cited by the applicants are as under :

(i) AIR 2004 SC 4504 in re. A. Uma Kant Vs. Registrar, Cooperative Societies & Others.

(ii) 2004 (103) FLR 341 (SC) in re. Pankaj Gupta Vs. State of J&K & Ors.

(iii) 2005 1 SCC 439 in re. Mahendra L Jain Vs. Indore Development Authority & Others.

(iv) AIR 2002 SC 1397 in re. Punjab State Electricity Board Vs. Wazir Singh.

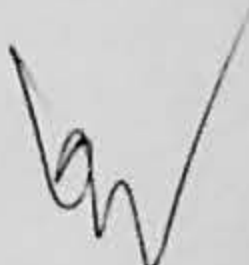
3. The case has been examined.

4. The factum of temporary status having been granted has not been denied.

5. The Railways never whispered during grant of temporary status that the appointment was not with the approval of the competent authority.

6. The Railways chose not to file CA in O.A. 1126 of 1998.

7. It is only after the order in O.A. 1126 of 1998 was passed and legal notice dated 16.8.2001 was issued by the applicants citing



the example of Sri Singhashan Choudhary that the respondents have reached cul-de-shak and turn around to state that the initial appointment of the applicants lacks approval of the competent authority; this is state managed affairs and an after thought and hence has to be simply ignored.

8. As regards the condition that for availing of the benefit of the circular dated 11.10.1996, though there was a mention about 56,000 casual labourers on roll as on 30.4.1996 vide the first paragraph, there is no specific condition that the casual labourers should have been on the roll as on 30.4.1996.

Para 3 of the circular reads as under :-\*

"3. The matter has been considered by the Board and it has been decided as under:-

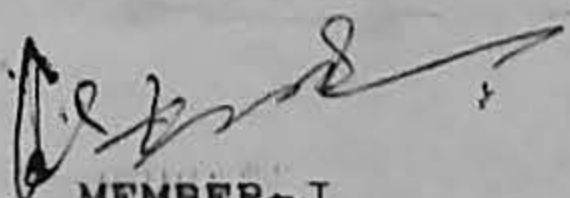
3.1 Since all the Casual Labour on roll are already in Railway service for a number of years, the extant adhoc procedure for filling Group 'D' posts by process of screening is modified so as to limit the process to scrutiny of the records only, dispensing with the personal interview.

3.1.1 In the modified procedure, the service particulars such as date of birth, date of initial engagement, date of attaining temporary status, number of days worked upto 31.8.1996, caste/community to which the Casual Labour belongs etc. may be noted, verified and authenticated and lists of those found eligible and suitable, prepared in the order of number of days worked as on 31.8.1996, as per seniority grouping followed by the Railway viz. Division or Sub-division as a unit as the case may be, and approved by the DRM or the concerned head of Units in SAG as the case may be.

3.2 The authenticated list will be prepared by two Assistant officers, one belonging to the department in which the casual labours are working and another from the personnel Branch."

9. When it was admitted fact that the applicants were enjoying temporary status, they are deemed to be on roll especially when they have continued as casual labourers for a substantial period up to 1994, thus, in the absence of the stipulation that necessarily the casual labourers should be on roll as on 30.4.1996, and in view of the fact that the applicants had put in substantial years of service, they are entitled to regularization in their turn; more so when Singhashan Choudhary a later entrant was already regularized.

10. The O.A. succeeds. Order dated 3.9.2000 is quashed and set aside. As the applicant had approached this Tribunal as early as in 1998 vide O.A. no. 1126 of 1998, taking into account their age as of 1998, if the same be within the age limit, [prescribed for regularization, the respondents shall conduct screening of the applicants and if found suitable, regularize their services notionally w.e.f. 1998 and actually from the date of regularization. The above exercise shall be completed within a period of 4 months from the date of communication of this order. No costs.

  
MEMBER-J