

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH

(THIS THE 30 TG DAY OF November 2011)

Hon'ble Mr. R.Satpathy, Member (A)
Hon'ble Mr. A.K. Bhardwaj, Member (J)

Original Application No. 1636 of 2003
(U/s 19, Administrative Tribunal Act, 1985)

1. Baijnath Singh, S/o Shri S.N.Singh
R/o Village Adampur, P.O. Gosainpur,
District Ballia.
2. Shiv Bachan Dayal, S/o Shri Raghuveer Dayal
R/o Village Shivrampur , P.O. Rajpur
District- Ballia.
3. Meen bahadur, S/o Shri Padam Singh,
R/o Loco Colony, Area Club-24,
Kanpur.
4. Sukh Lal Yadav, S/o Shri Chhatarpal Yadav
R/o Gram- Chowk Sohanpur, PO Usha
District Kaushambi.

... Applicants

Present for Applicants: Shri R.P. Yadav, Advocate

Versus

1. Union of India through General Manager,
North Central Railway, Allahabad .
2. North Central Railway, through its
General Manager, Allahabad.
3. Senior Signal & Telecommunication Engineer
(Special), North central Railway, Allahabad.
4. Senior Signal & Telecommunication Engineer(R.R.I.C.)
North Central Railway, Kanpur.
5. Divisional Railway Manager,
North Central Railway,
Allahabad.

Arvind

...Respondents

Present for Respondents: Shri Pradeep Chandra, Advocate

ORDER

(DELIVERED BY HON'BLE MR. A.K. BHARDWAJ, MEMBER (J)

According to the applicants they were engaged by the respondents as Casual Khalasi on the dates mentioned herein below:-

<u>Name of the Applicant</u>	<u>Date of Engagement</u>
1. Baij Nath Singh	08.10.1980
2. Shiv Bachan Dayal	29.11.1980
3. Meen Bahadur	01.11.1980
4. Sukh Lal Yadav	06.09.1976

2. As stated by the applicants their employment were discontinued from 14.01.1983, assailing which they filed Writ Petition No. 852/83 before Hon'ble Supreme Court which was heard with similar writ petition Nos. 147,320,69,454,4335, 4434/83 and was finally decided by the Hon'ble Supreme Court by order dated 18.4.1984 (**'Inder Pal Yadav and Others Vs. Union of India and Others, (1985) 2 Supreme Court Cases-648'**). Relevant extract of said order reads as under:-

"Writ Petitions Nos 147,320-69,454,4335-4434 of 1983 Labour and Services-Industrial Disputes Act, 1947-Sections 25-F and 25-G- Casual labour employed on Railway projects in continuous service for more than a year- Termination of their service on ground of winding up of the projects not justified-During pendency of their petitions before Supreme Court, Railway Administration framing scheme for their absorption as temporary workmen on completion of 360 days of continuous employment- Scheme made applicable to those in service as on January 1, 1984- Since choice of that date likely to create arbitrary discrimination, scheme accepted by Supreme Court subject to modification in the date from January 1, 1984 to January 1, 1981- Absorption should be in order of length of continuous service- Principle of last come first go or in the reverse first come last go under Section 25-G to be implemented- Other suitable directions gives- Constitution of India, Articles 32 and 136."

3. In the said case Shri K.C. Bhagat, the then learned Additional Solicitor-General, requested the Court not to render the judgment as he was to take up the matter with the Railway Ministry to find a just and humane solution of the problem affecting the livelihood of these unfortunate workmen. As the future fate of lacs of workmen working under the label of casual project labour was likely to be affected, the Hon'ble Supreme Court adjourned said matters to enable the Railway Ministry to work out a scientific scheme. Railway Ministry framed a Scheme and circulated the same amongst others to all the General Managers of Indian railways including production units as per its circular No. E(NG)II/84/CL/41 dated June 1, 1984. In the Scheme it was provided that all the general Managers were required to implement the decision of the Railway Ministry by the target dates. It was further provided therein that a detailed letter regarding grouping 5.1. (ii) would follow. Such a letter was issued on June 25, 1984. The relevant excerpt of the Scheme as noted by the Hon'ble Supreme Court in its judgment dated 18.4.1984 read as under:-

“5.1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as ‘project casual labour’) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

Casual labour on projects who are in service as on January 1, 1984; and

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Casual labour on projects who though not in service on January 1, 1984, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows)

(b) The decision should be implemented in phases according to the schedule given below

Length of service. (i.e. in continuous Employment.	Date from which may should be implemented	Date by which decision be treated as temporary
i) Those who have completed Five years of service as on January 1, 1984	January 1, 1984	December 31, 1984
ii) Those who have completed Three years but less than Five years of service as on January 1, 1984	January 1, 1985	December 31, 1985
iii) Those who have completed 360 days but less than three Years of service on January 1, 1984	January 1, 1986	December 31, 1986
iv) Those who complete 360 days after January 1, 1984	January 1, 1987 or the date on which 360 days are completed whichever is later.	March 31, 1987

5.2 The Ministry would like to clarify here that casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits now admissible to them (so long as they fulfil the conditions in this regard) till they become due for the benefits mentioned in the preceding sub-paragraph 1".

4. Taking note of the scheme dated 25th June, 1984 Hon'ble Supreme Court required the Railway Administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. Para 6 to 7 of the judgment read as under:-

"6 To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those who rendered longest service. If in the process any adjustments are necessary, same had to be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In other words, the principle of last come first go or to reverse it first come last go as enunciated in Section 25-G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly.

5. All these writ petitions and special leave petitions shall stand disposed of in consistent with the scheme as modified by this judgment and the directions herein given.

6. The scheme as would stand modified by the directions herein given forms part of this judgment and a copy of it shall be annexed to this judgment".

5. According to applicant the order of Hon'ble Supreme Court dated 18.4.1985 was served upon the respondents and they had placed the applicants at Sl.No122, 124, 125 & 126 of Combined Seniority List of Project Casual Labour. The said seniority list is

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placed on record as Annexure P-3 (Pg.29 of OA). It is stated by the applicants that those who were placed in the seniority list below them have since been regularized , while the claim of applicants for regularization is ignored. Such averment is made in para 4 (vi) of the OA. Although respondents have denied the averment made in para 4(vi) of the OA but they have not specifically stated that no junior of the applicants in the seniority list placed on record at Annexure P-3 were regularized. Para 10 of the Counter affidavit filed by the respondents read as under:-

“That the contents of para 4 (vi) of the OA are wrong, false hence denied . The respondents have not committed any illegality and they have acted in compliance of the orders of Hon'ble Apex Court”.

In para 4(viii) of the OA applicants have made specific averment that in not regularising them the respondents have flouted the order of Hon'ble Supreme Court. In para 11 of the counter reply the respondents have stated that the applicants had been given alternative job under Permanent Way Inspector, Fatehpur in compliance of the orders and directions of Hon'ble Supreme Court.

Para 8 of the counter affidavit read as under:-

“In reply to the contents of paras 4iv) of the O.A. it is stated that the applicants have not mentioned their appointment at Fatehpur under P.W.I, Fatehpur on 24.11.1983 which they left on their own accord. There were earlier several similar original applications being OA No. 82 of 1983, writ petition nos 147, 454, 9045 and 9674 of 1983. By order of Hon'ble Supreme Court dated 17.11.1983, Shri S. Banerjee, Dy. Registrar (Legal) was

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nominated as Court Officer to accompany the Railway project casual labour to whom Railway offered reinstatement of Elbeabad (Bikaner Division), Fatehpur (Allahabad Division) and Sirhund (Delhi Division). The Court Officer accompanied the applicants and they joined duties with P.W.I, Fatehpur on 24.11.1983 in the presence of Court Officer. The applicants were also paid one month's advance wages as per the orders of Hon'ble Apex court. However, the applicants did not continue their jobs and left the job on their own accord."

6. In the said para of the counter affidavit the respondents have referred to re-engagement of the applicants on 24.11.1983 as per the order of Hon'ble Supreme Court. It is nowhere borne out of the record that the respondents did any exercise of considering the applicants for their regularization pursuant to order dated 18.4.1985 passed by Hon'ble Supreme Court.

Applicants had filed Civil Misc. writ petition No.23901 of 1987 before Hon'ble Supreme Court which their Lordships of Hon'ble Supreme Court disposed of with the following order passed on 17.12.1997.

"O R D E R

1. "The petitioners are casual labourers in the Railways. It is not disputed that their regularization depends upon satisfying the terms of the scheme which has been framed by the Railways under the orders of this Court. We are told that a draft seniority list has already been circulated and objections have been called for and the last date for

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filings objections is over. The petitioners appear not to have raised any objection against the draft seniority list. Learned counsel for the Railway Administration agrees that two weeks further time will be available to them for raising their objections for the draft seniority list. The officer concerned in regard to the petitioners is the Senior Divisional personnel Officer, Northern Railway, Divisional Railway Manager's Office, Allahabad. Objections should be tendered there and if the petitioners so want, they shall be afforded personal hearing through some representative acceptable to them. On the basis of the seniority list to be prepared, Railway Administration agrees that the petitioners will be provided with service according to the terms of the scheme.

2. In terms of the draft seniority list, four persons being Shiv Narain, Bhola Prasad, Shyam Lal and Satish Prasad against tentative seniority list at Sl.Nos. 113, 114, 116 and 120 respectively are qualified to be taken in. We direct the Railway Administration to take them into service within one week from today subject to the condition that when the seniority list is finalized, if the position is disturbed and they do not qualify, the Railway Administration would be free to keep them out from service until their turn comes.

3. The counsel for the petitioners wanted a date to be fixed by

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4. which final seniority list should be published. Learned Additional Solicitor General on instruction wanted two month's time but we allow three month's time and debar the union of India from making any application for extension of time. Contempt petition is disposed of."

Applicants again filed writ petition 17658/96 before Hon'ble Supreme Court which their Lordships declined to entertain observing that it was open to the applicants to set up their grievance before concerned authorities. The said order of Hon'ble Supreme Court reads as under:-

ORDER

"We do not find any ground to entertain this writ petition. It will be open to the petitioners to move a representation to the concerned authorities setting out their grievance and the same shall be duly considered. The writ petition is dismissed."

7. Applicants again filed writ petition No. 57/2001 which Hon'ble Supreme Court allowed them to withdraw with liberty to approach this Tribunal. The said order was passed by Hon'ble Supreme Court on 24.1.2003. Accordingly applicants have filed the present original application. In the case of Secretary State of Karnataka Vs. Uma Devi, (3) & Ors, Supreme Court Cases Pg-1, Hon'ble Supreme Court ruled that decisions laying down principles contrary to principle laid down in captioned case were denuded of their status as precedent. Relevant para of the judgment read as under:-

{"54 It is clarified that those decisions which run counter to the principle settled in this decision, or in which directions running

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counter to what we have held herein, will stand denuded of their status as precedents.”}

However, the judgment in the case of 'Inder Pal Yadav & Ors Vs. Union of India & Ors would still be binding on the parties to the case. A judgment even when it is declared as not binding precedent remain binding on parties. In para 4(Xi) of the OA applicants have stated that in compliance of the Hon'ble Supreme Court order dated 30.4.1997 the applicants moved representation before the concerned authority for redressal of their grievance , but even after running from pillar to post no action has been taken. Para 4(xi) of the OA reads as under:-

“In compliance of the Hon'ble Supreme Court order dated 30.4.1997 the applicants moved representation before the concerned authority for their grievance which shall be3w duly considered by the respondent for their service be regularized. But even after running from pillar to post when no action was taken by the respondents on the grievance of the applicants then the applicants preferred W.P.(7) No. 57 of 2001 Baij Nath Singh Vs. Union of India and Ors before the Hon'ble Supreme Court of India which was finally decided by the Hon'ble Supreme Court granted liberty to the applicants to withdraw the petition and approach before Hon'ble Tribunal for redressal of their grievance in accordance with law. The copy of the order dated 24.01.2003 is being filed herewith and marked as Annexure 5 to the O.A.

In Para 14 of the Counter affidavit respondents have stated that they have made all efforts to make applicants to join

the duty, but they left on their own. The said para 14 of the C.A filed by the respondents read as under:-

"The contents of para 4(xi) of the O.A. are wrong hence denied. The respondents made all efforts to make them join the duty, but they left on their own."

8. From the stand taken by the respondents in their counter it is clear that the applicants are not in service as they had left the alternative engagement and did not continue their jobs. In view of the law laid down by Hon'ble Supreme Court in the case of Secretary State of Karnataka Vs. Uma Devi (2006 (4) SCC P-1, applicants cannot claim any legal right for re-engagement or continuance in service. In the circumstances, we deem it appropriate to direct the applicants to report to the Deputy CSTEC, Northern Railway, Kanpur with a copy of their representation made by them to concerned authorities in compliance of order dated 30.4.1997 passed by Hon'ble Supreme Court in W.P. No.658/96. The said authority would examine the representation in particular the fact, whether the applicants were petitioner before Hon'ble Supreme Court in the case of 'Inder Pal Yadav & Ors Vs. Union of India & Ors(Batch of petition) In case it is found that the applicants were also petitioners before Hon'ble Supreme Court in the said case, and the casual labourers who were junior to applicants are re-engaged and absorbed by them, the respondents would straight way examine the claim of the applicants for their re-engagement and absorption in terms of order dated 18.4.1985 passed in the case of 'Inder Pal Yadav & Ors Vs. Union of India & Ors, (1985) 2 Supreme Court Cases-648. If respondents are satisfied that the applicants were not petitioners in

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the said case they would examine and decide the representation made by the applicants in compliance of order dated 30.4.1997 passed by Hon'ble Supreme Court in W.P. No. 17658/96 keeping in view the law laid down by the Hon'ble Supreme Court in 'Secretary, State of Karnataka & Ors Vs. Uma Devi (3) & Ors, (2006) 4 SCC, pg-1.

9. The Original Application is disposed of. No order as to costs.

A. K. Bhardwaj
(A.K. Bhardwaj)
Member (J)

R. Satpathy
(R. Satpathy)
Member (A)

Uv/