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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

T.A NO. 3 of 1991 And

O.A.N.O. 140 of 1990

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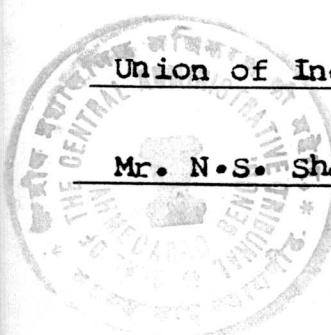
DATE OF DECISION 20/10/99

1. Shri Jaffar Gopsingh & Petitioner
2. Association of Rly., and Posts Employees

Mr. P.H. Pathak Advocate for the Petitioner [s]
Versus

Union of India & Ors. Respondent

Mr. N.S. Shevde Advocate for the Respondent [s]



CORAM

The Hon'ble Mr. V. Ramakrishnan : Vice Chairman

The Hon'ble Mr. P.C. Kannan : Member (J)

T.A 03 OF 1991

Association of Rly., & Post Employees,
Through its General Secretary,
Shri. P.H. Pathak, Having office at
'Allap Dupex', Opp. Anjali Cinema,
Vasna Road, Ahmedabad 7 (Gujarat)

-- Applicant --

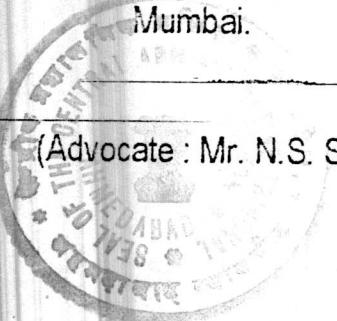
(Advocate : Mr. P.H. Pathak)

V/s.

1. Union of India,
Notice to be served through
The General Manager (W.R.)
Churchgate, Bombay.
2. Divisional Railway Manager (W.R)
Pratapnagar, Baroda.
3. The Chief Engineer (W.R)
Survey & Construction,
Churchgate,
Mumbai.

-- Respondents --

(Advocate : Mr. N.S. Shevde)



O.A 140 OF 1990

1. Shri. Jaffar Gopsingh
2. Association of Railway & Post Employees through its Treasurers
Shri. R.C. Pathak
2, Alap Flats,
Opp. Anlalee Theatre,
Vasna Road, Ahmedabad.

-- Applicants --

(Advocate : Mr. P.H. Pathak)

Versus

1. Union of India
Notice to be served through
The General Manager (WR)
Church gate, Mumbai.
2. The Divisional Railway Manager,
Western Railway
Pratapnagar,
Baroda.
3. The Assistant Engineer,
Western Railway
Dhrangadhra.

-- Respondents --

(Advocate : Mr. N.S. Shevde)

- 4 -

JUDGMENT
T.A 3 OF 1991
AND
O.A 140 OF 1990

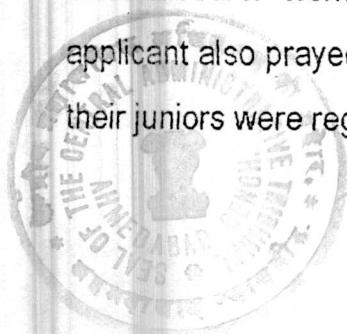
Date : 20/10/99

Per Hon'ble Shri. P.C. Kannan : Member (J).

As these two matters involve common issues, it is proposed to dispose of the same by a common judgment.

(i) T.A NO. 03 OF 1991

The applicant, a registered Trade Union called "The Association of Railway and Postal Employees", has filed Writ Petition No. 779 of 1990 before the Hon'ble Supreme Court as a public interest litigation highlighting the problems of project Casual Labourers whose names are given at Annexure 'A'. The Annexure 'A' contains names of 73 project casual labourers working under the respondents and were not called for screening in Baroda Division in the year 1988-89. The applicants prayed for a declaration that the impugned action of the respondents in not regularising the casual labourers (at Annexure A) against the vacant posts in permanent departments and employing and regularising the outsiders and junior-most labourer working on the open line, as arbitrary, illegal and invalid. The applicant also prayed for a direction to regularise their service on the date on which their juniors were regularised and for consequential benefits. The applicant also

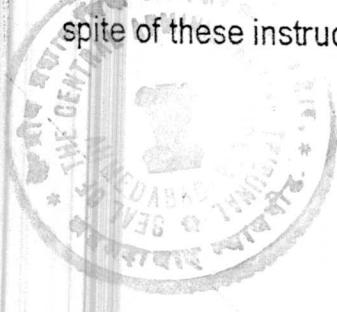


prayed for punishing the respondents for their full disobeying the orders of the Supreme Court regarding preparation of combined seniority list of both project and open line casual labourers and for regularisation as per statement made by the Railway Advocate in Ram Kumar's case [1988 (1) SCC 306].

2. The applicant had stated that they were employed on the Construction Project and they were working since more than 10 years. They stated that as per the Railway Board's circular, the labourers working in the Construction Project should be regularised in the open line. In spite of the instructions of the Railway Board, the respondents were holding screening test from time to time but the applicants were not called for screening. They submitted that outsiders and other labourers working in the open line who were recruited in large numbers as casual labours on the open line in spite of the ban issued by the Railway Board, were screened and regularised illegally. The applicant stated that more than two dozen times, the screening were held by the respondents in the years 1985 and 1987 but the applicants were not

given any chance for consideration. The applicant also contended that about 200 persons who were juniors to the applicants were engaged in the open line, were regularised after screening test. They contended that the action of the respondents is clear case of arbitrary and malafide exercise of power.

3. Referring to the Rule 1512 of the Railway Establishment Manual, the applicant contends that casual labourers under the respondents are required to be regularised in their cadre and also referred to sub-rule (II) of the said rule in terms of which the casual labour in the un-skilled, semi-skilled and highly-skilled categories should be absorbed on the regular vacancies straightway. The applicant further submits that since 1974 onwards, employees working on the project were not given any chance of absorption, though a large number of regular vacancies were available. They also state that on these regular vacancies, the respondents are continuing the substitutes on the regular vacant posts and also adopted un-fair means by giving employment to the candidates as substitutes. He refers to the number of casual labour who were screened between 15.02.72 to 08.06.82 in the Engineering Department of Baroda Division (Annexure B). They also referred to the instructions of the Railway Board dated 08.05.1981 (Annexure C) in terms of which Project casual labourers are required to be appointed against the regular vacancies in posts that may be required for operational and maintenance of new assets created namely, new lines, doubling major yard, conversions etc., Again, General Manager, W.Rly., by letter 12.10.81 reiterated the above instructions of the Railway Board and directed all concerned for compliance (Annexure C). The applicant contends that in spite of these instructions, Project casual labour were not regularised. The applicant



also referred to the judgment of the Supreme Court in the case of Indrapal Yadav, 1985 (2) SCC 648 in which the Hon'ble Supreme Court had directed framing of a scheme for regularising project casual labour and also the judgment of the apex court in Ram Kumar's case 1988 (1) SCC 306. The applicant contends that in terms of the scheme approved by the Supreme Court , the respondents are required to prepare a combined seniority list both of project and open line casual labour for the purpose of regularisation. It has been submitted that in spite of the directions of the Supreme Court, the respondents had prepared separate lists of open line casual labour and project casual labour and conducted separate screening tests for regularising project and open line casual labour.

4. The applicants also referred to the letter dated 21.03.88 from the office of the DRM for holding screening test (Annexure E) and said that out of total vacancies of 1217 in the open line, the respondents had reserved only 25 % of vacancies i.e.304 vacancies for project casual labour and kept about 900 vacancies for open line casual labour. In the circumstances, it has been contended that juniors to the applicants and other large number of casual labour in the open line were called for screening and were absorbed. It is stated that the project casual laour is given discriminatory treatment and the procedure adopted by the respondents is unconstitutional and is in violation of articles 14 and 16 of the Constitution.

5. The respondents in their reply stated that Annexure 'A' contains names of different casual labour whose full particulars were not given. They also submitted that the names of persons referred to in Annexure 'A' belongs to different classes

like, casual labour, skilled, semi-skilled and highly-skilled and in the absence of full details about their place of work etc., it would not be possible to examine their claims and give detailed reply. The respondents also stated that this petition is not maintainable under C.A.T. (Procedure) Rules 1987.

¶ 6. They referred to the scheme approved by the Railway Board in June '84 for preparation of division-wise combined seniority list for Project casual labours ^{which} was modified in Sept '86 in terms of the Hon'ble Supreme Court in Inderpal Yadav's case. The scheme provides for (i) granting of temporary status in a phased manner to all project casual labour (ii) preparation of division-wise combined seniority list with reference to the originating division. (iii) Instructions for absorption / regularisation of the project casual labour as per the quota to be fixed. They also referred to the judgment of the Supreme Court in Inderpal Yadav's case and submitted that the scheme for giving temporary status in a phased manner to all the eligible project casual labour and for their regularisation according to the scheme were approved by the Hon'ble Supreme Court in the said case. In terms of the scheme and on the instructions of the G.M. W.Rly., the D.R.M. issued orders dated 04.06.86 for reserving 25 % of assessed vacancies of each unit in Engineering Department in the open line for screening and absorption of the construction project ~~casual~~ labour (project casual labour). In the light of the above, while issuing orders for holding screening test in 1988 (Annexure E), DRM reserved 25 % of assessed vacancies in open line exclusively for project casual labour. The respondents also clarified that only 39 regular posts were created by the open line for maintenance of newly created assets and all the 39 posts have been filled up by the project casual labour.

They also submitted that no engagement of any fresh casual labour have been made for a long time. The respondents submitted that the project casual labour working in Civil Engineering Dept., or Signal Dept., are to be absorbed in which they were working viz., Civil Engineering or Signal Engineering as the case may be. It is stated that the project casual labour and open line casual labour are not similarly situated and therefore cannot be compared with each other. They also denied that juniors to the applicants in Annexure A in the project casual labour have been regularised. It is also pointed out that the applicants had not produced a copy of the Railway Board imposing a ban against the engagement of casual labour in open line. It is stated that the posts in the project work are work charged and therefore cannot be of permanent nature. On completion of the project, surplus staff is required to be retrenched or offered work in the nearby project. Non availability of work results in the contraction of the cadre. In 1985, instructions were issued to employ project casual labour in class IV posts that may be required for operation and maintenance of new assets created. It is also contended that all the casual labours cannot be employed for the maintenance of such new assets and therefore, project casual labour have to be accommodated on the open line vacancies.

4. We have heard Mr. Pathak, counsel for the applicant and Shri. Shevde, counsel for the respondents. Shri. Pathak, counsel for the applicant submits that Rule-1512 of IREM refers to the regularisation of the casual labour including project casual labour and there is also a specific direction that 25 % of the vacancies reserved for departmental promotion from the semi-skilled skilled, and highly-skilled categories, should be made available to the casual labour engaged in work charged

23

10.

establishment (Project casual labour) who got promotion to skilled, semi-skilled and highly-skilled categories due to non-availability of departmental candidates after holding the trade test. He also referred to the judgment of the Hon'ble Supreme Court in the case of Ramkumar V/s. UOI referred to earlier, in which the counsel for the Railway Administration informed the apex court about the preparation of common seniority list of project casual labour and open line casual labour, for the purpose of screening and forming a panel. He also refers to the judgment of the Supreme Court in Indra pal Yadav's case referred to Supra in which the Supreme Court approved the scheme for regularising the project casual labour. He also referred to the letter dated 08.08.86 (Anneuxure F) and the minutes of the meeting held on 28.07.86 in which a reference was made to the preparation of common seniority list. He submits that in spite of the above, the DRM Baroda did not publish the combined seniority list of the casual labours working on both project and non-project according to their category till the filing of the petition in July'90.

8. In the light of the above submissions, he submits that the DRM, Baroda is under an obligation to call eligible casual labour working in Project, for screening in accordance with their seniority to fill-up all the 1217 vacancies as notified on 21.03.88 (Annexure E). He further submits that the order reserving only 25 % of vacancies to project casual labour of the total of 1217 vacant posts available in open line department is not in accordance with the IREM. He submits that in any case, D.R.M. is not the competent authority to issue such orders. In the facts and circumstances, he submits that the action of the respondents is totally not justified

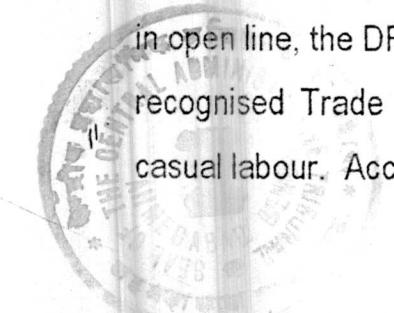
and submits that all the applicants referred to in the Annexure 'A' ought to have been regularised from the date on which their juniors in open line have been regularised and the applicants are entitled to be granted all consequential benefits.

9. Mr. Shevde submits that in accordance with the provisions of the IREM, the casual labour of Railways are employed in the open line and in the projects (para-2001). While casual labour engaged in open line are given temporary status after 120 days of work without a break, the grant of temporary status to project casual labour are regulated in terms of the instructions issued by the Railway Board. In terms of para-2001, note-8, with the approval of General Manager, fresh engagement of casual labour in open line is permitted in certain exceptional cases. In terms of para-2006, regularisation of casual labour is not automatic but is subject to availability of vacancies and suitability and eligibility of the individual casual labour and rules regarding seniority unit, method of absorption etc., decided by the Railway Administration. Para 2007 (3) also provides for regularisation of skilled, semi-skilled and highly-skilled categories of casual labours in regular vacancies in skilled grades provided they have passed the requisite trade test, to the extent of 25 % of the vacancies reserved for departmental promotion from the unskilled and semiskilled categories.

10. Shri. Shevde also refers to the scheme of the project casual labourers as approved by the Supreme Court in Indrapal Yadav's case and states that in terms of the scheme, a separate seniority list of project casual labour with reference to each division of each railway on the basis of length of service is required to be prepared.

The man with longest service shall have priority over others who have joined later on. Detailed instructions are also given for preparation of the seniority list of Project casual labour. He submits that this scheme no where refers to the preparation of a combined list of both project casual labour and also open line casual labour. He also referred to the judgment of the Hon'ble Supreme Court in the above case in which the apex court suggested certain modifications. However, the apex court did not make any suggestion regarding preparation of a combined seniority list of both project casual labour and open line casual labour as contended by the applicant. He also submitted that in Ramkumar's case referred to Supra, the counsel for Rly., Admn., did not make any statement regarding the combined seniority of both project and open line casual labour.

11. He also refers to the instructions that project casual labour are engaged in the initial stage by the construction division at the subordinate level and in the facts and circumstances, the officers at the sub-ordinate level becomes the appointing authority. He also refers to the Railway Board's letter dated 01.06.84 addressed to the General Manager regarding terms of scheme of project casual labour and the General Manager, W.Rly., letter dated 16.11.87 in which a reference has been made to the earlier letter dated 19.09.86 quoting the instructions issued for preparation of seniority list and their absorption in open line. He refers to those instructions and states that as regards absorption of project casual labour, against regular vacancies in open line, the DRM has been directed to fix the percentage in consultation with the recognised Trade Unions in proportion to the strength of project and non-project casual labour. Accordingly, DRM Baroda vide letter dated 04.06.86 directed that



25% of the assessed vacancies of each unit in Engineering Department should be set-apart for screening and absorption of project casual labour. He also refers to the affidavits of the respondents in which it was clearly brought out that the project casual labour and open line casual labour are not similarly situated and their cases cannot be compared. With regard to the minutes of meeting held on 28.07.86 given to at Annexure F, he referred to paras 6 to 10 of the affidavit dated 03.07.98 filed by the Chief Engineer (Construction of Survey) and stated that in August'85, a large number of project casual labour were retrenched and some of them filed case before the Gujarat High Court on the basis of the Supreme Court in Indrapal Yadav's case. At the preliminary hearing, the Hon'ble High Court directed the respondents to produce the Division wise seniority list on 20.01.86 and observed that unless such a seniority list is produced, interim relief granted in favour of the petitioners cannot be vacated. The matter was therefore referred to the headquarters for seeking clarification. Thereafter, Rly., Board issued detailed instructions in their letter dated 11.09.86 and accordingly a combined division wise seniority list of project casual labour was prepared and notified by Vadodara Division and the project casual labour were screened and regularised in accordance with the said seniority list.

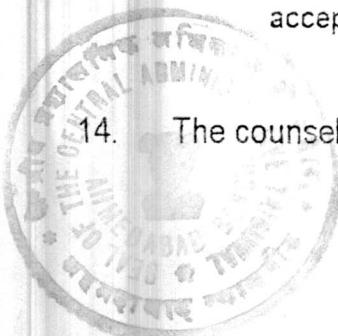
12. We have examined the submissions of both the counsel and also examined the pleadings.

13. The first contention of the applicant is regarding preparation of common-seniority list of both project and open line casual labour. The IREM Chapter-20 refers to two types of casual labours, one regarding open line casual labour and

other regarding project casual labour (Para-2001). This para also contains separate provisions regarding grant of temporary status to project casual labour and open line casual labour. This para also provides that the casual labour register will be maintained in accordance with the instructions issued from time to time by the Railway Board. Para-2006 provides that absorption of casual labour in regular vacancies shall be subject to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority list, method of absorption etc., decided by the Railway Administration. The Supreme Court of India in the case of ^(Supra) Indra Pal Yadav and Ors V/s. UOI and Ors, considered the case of project casual labour and approved the scheme circulated by the Railway Board by circular dated 01.06.84 subject to certain modifications. This scheme as modified and approved by the Hon'ble Supreme Court would apply to casual labour engaged on project only. In para-6 of the said judgment, the Supreme Court advised preparation of list of project casual labour with reference to each division of each railways and then start absorbing those with the longest service. The observations of the Supreme Court in this para reads as follows :-

" 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 with the longest service. If in the process any adjustments are necessary, the same must 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. " (emphasis supplied)

14. The counsel for the applicant referred to the judgment of the Supreme Court



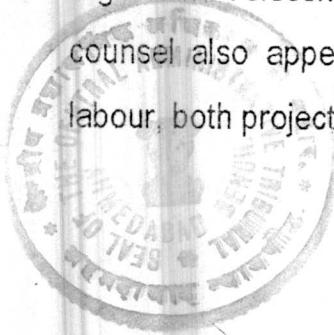
in Ram Kumar's case referred to above. This case is regarding retiral benefits admissible to casual labour. After hearing both the sides, the Hon'ble Supreme Court disposed of the Writ Petition with the following observations :-

" 15. For over ten years, litigations of this type have been coming to the Court. About three years back, this Court directed a scheme for absorption in Yadav case which has been framed and is operative. Casual labour seems to be the requirement of the Railway Administration and cannot be avoided. The Raiway Establishment Manual has made provisions for their protection but implementation is not effective. Several instructions issued by the Railway Board and the Northern Railway Headquarters were placed before us to show that the Administration is anxious to take appropriate steps to remove the difficulties faced by the casual labour but there is perhaps slackness in enforcing them. We hope and trust that such an unfortunate situation will not arise again and in the event of any such allegation coming to the Court, obviously the Administration will have to be blamed. "

15. In para-5 of the said judgment, the learned counsel who appeared on behalf of the Railway Administration, stated that the petitioner who were project casual labour, did not belong to the open line. In para-5, reference has been made regarding the submissions made by the counsel for the Railway Administration regarding the separate schemes formulated for the open line and project casual labour and with regard to the preparation of combined seniority list of all project casual labour working in construction of new lines, major projects, restoration of dismantled lines and major important open line works, like doubling, widening of tunnels etc. The Supreme Court made the following observations in para – 6 of the judgment which reads as follows :-

" 6. Admittedly the petitioners have put in more than 360 days of service. Though counsel for the petitioners had pointed out that the Administration was requiring continuous service for purpose of eligibility, learned Additional Solicitor General on instructions obtained from the Railway officers present in court during arguments has clarified that continuity is not insisted upon and though there is break in such continuity the previous service is also taken into account. Learned Additional Solicitor General has made a categorical statement before us that once temporary status is acquired, casual employees of both categories stand at par. Keeping the prevailing practice in the Railways in view, it is difficult for us to obliterate the distinction between the two categories of employees ~~still temporary~~ status is acquired. **(emphasis supplied)**

16. The counsel for the applicant submitted that there is a categorical statement regarding the preparation of common seniority list of both project and open line casual labour and their treatment at par. He also referred to Annexure 'F' ⁽⁵⁰⁴⁾ in which a reference was made regarding the preparation of combined seniority list of both project and open line casual labour. He submitted that in the light of the same, a common seniority list is required to be prepared. We have carefully considered the submissions of the counsel in this regard. The statement of the counsel for the Railway Administration as observed by the Hon'ble Supreme Court in the Ramkumar's case does not categorically state that the regularisation of the casual labour is being done on the basis of common seniority list of both project and open line casual labour. In our opinion, the counsel for Railway Administration appears to have submitted that the seniority list of project is a one combined seniority list of all ^{casual labour} ~~such~~ casual labour employed on works of each of the Departments like Civil Engineering, Signal and Telecom, Electrical within the geographical boundaries of a division. The counsel also appears to have stated that in the matter regularisation of casual labour, both project and open line casual labour are considered. A reference has

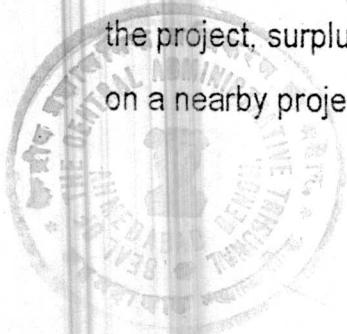


been made to the minutes of meeting held on 28.07.86 (Annexure F). It appears to be some tentative decision taken. However, in the light of the contents of the affidavit dated 03.07.98 filed by the Chief Engineer clarifying the matter and the statement that no such seniority list was ever prepared, we hold that the Annexure 'F' cannot be relied upon to show that such a list was ever prepared. However, keeping in view the scheme as approved by the Supreme Court in Indrapal Yadav's case, the provisions of IREM, and the instructions of the Railway Board and other authorities referred to above and the reply of the respondents, we hold that the respondents are required to prepare and maintain separate seniority list for project casual labour and open line casual labour. We therefore reject the contention of the applicant that a combined seniority list of both project and open line casual labour is required to be prepared in terms of the judgments of the Supreme Court and IREM.

17. The next contention of the applicant is that the respondents had regularised juniors to the applicants from the open line casual labour. The applicants submitted that the Railway Board had imposed a ban on recruitment of all open line casual labour and in the circumstances all the regular vacancies in open line ought to have been made from both project and open line casual labour based on their seniority. The respondents deny the allegation in their reply that the Railway Board had issued a total ban on the recruitment of casual labour in the open line. The applicants have not produced any order of the Railway Board in support of their contention. A reference to the IREM, para 2001 (2) shows that the Railway Administration is empowered to engage fresh faces with the personnel approval of General Manager.

The Board's letter dated 27.02.78 (Annexure D) also enables the inspectors to engage open line casual labour under certain circumstances. It is also seen that engagement of project and open line casual labour had continued for a long time. There are two separate schemes for project and open line casual labour and a separate seniority list for each of the category has been kept by the respondents in accordance with the scheme. In view of the above, there is no common seniority among the two categories and in the circumstances the question of regularisation of juniors to the applicants from the open line casual labour does not arise. We therefore, reject this contention.

18. The next contention of the applicants is that reserving only 25 % posts of vacancies for project casual labour is discriminatory and violative of the provisions of articles 14 and 16 of the Constitution. It is also claimed that DRM, Baroda is not competent to reserve 25 % of the regular vacancies in the open line for the project casual labour. The respondents have referred to the provisions of IREM and the scheme framed in terms of the judgments of Hon'ble Supreme Court and the instructions of the General Manager, W.Rly., and submit that DRM, in the facts and circumstances, is competent to issue orders for reserving 25 % of the regular vacancies to project casual labour. In terms of para-2006, absorption of the casual labour against regular vacancies shall be decided by the Railway Administration. The project casual labour are not on the permanent establishment and they are engaged ^{Subordinate on} by the lower level ~~subordinate~~ staff of the Railway Administration. On completion of the project, surplus staff is required to be retrenched or offered work of similar nature on a nearby project. In terms of the Railway Board instructions dated 08.05.81



(Annexure C) project casual labour may be appointed only against class-IV posts that may be required for operation and maintenance of new assets created (Viz., new lines, conversions, doubling major yards etc.,). Till the framing of the scheme in June 1984 for regularising project casual labour, there was no provision for the grant of temporary status and regularisation. The duties of the casual labour in open line are different from that of the project casual labour in Civil Engineering & Signal Department. In our view, the open line casual labour who having worked against these posts gain sufficient experience and it cannot be claimed that they are similarly situated. While regularising vacancies in the open line, it is open to the Railway Administration to ~~prefer~~ ^{DN} open line casual labour. In the circumstances, the project casual labour cannot compare themselves with the casual labour in the open line. The scheme framed for preparation of seniority list, grant of temporary status, etc., does not prescribe any percentage for the project casual labour. Keeping in view, the provisions of the scheme and other instructions, the DRM, Baroda, as the Head of the Division had prescribed 25 % of the regular vacancies in class-IV after consulting the Trade Unions and in proportion to the strength of both open line and project casual labour and other factors. We therefore, hold that such reservation of vacancies is legally valid and is in accordance with the scheme.

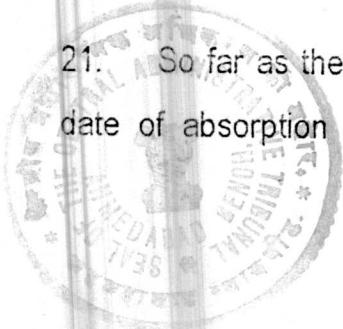
19. The main grievance of the applicant in this O.A is regarding the regularisation of 73 project casual labour as given in Annexure 'A'. The respondents had submitted that the Annexure 'A' to the O.A contains 73 names of project casual labour drawn from different cadres and full particulars of the applicants have not been furnished. In the light of the above, the respondents in their reply submitted that it is

not possible for them to indicate each of the person's position as on date. They have however stated that they were conducting screening for project casual labour after publishing the division-wise seniority list and regularised them according to their turn. It is stated that out of a total of 1075 project casual labour with temporary status, in the division, 741 of them were absorbed upto Jan'96 and only 334, are required to be absorbed. The applicants however, have not furnished the upto date factual position regarding them. It is probable that the remaining 334 applicants referred to in Annexure 'A' would also been duly screened in accordance with the scheme and the eligible persons among them regularised. In the facts and circumstances, the main grievance of the applicant appears to have been redressed.

(II) O.A 140 OF 1990

20. In this O.A. the applicants who are project casual labour have sought a declaration that the respondents intentionally ignored the regular absorption of the applicants for more than 15 years and also seek a direction that the respondents should regularise their service from the date their juniors working on open line were absorbed. The applicants also prayed that the action of the respondents in posting the applicants who were un-skilled staff as Gangman is arbitrary, illegal and unconstitutional and seek a direction that the respondents shall regularise the applicants in the respective cadres as Khalasi / Watchman etc.,

21. So far as the prayer regarding regular absorption of the applicants from the date of absorption of their juniors working in open line is concerned, we had



examined the same in the main case (T.A No.03 of 91). For the reasons stated therein, we hold that this contention is devoid of any merit.

The next contention of the applicant is that they should be regularised as Khalasi / Watchman in their own respective cadres. The applicants submit that they were offered regular appointments as Gangman which is not the equivalent post in the cadre of the applicants. The applicants also state that Artisan staff who are working as Khalasi would not be able to perform the duties of Gangman. They also state that the post of Gangman is a safety post and the respondents have not taken into consideration these aspects while posting the applicant as Gangman. The applicants further submitted that they are Khalasi / Watchman, while the open line casual labour are of different categories of labours. As the applicants are performing the duties of helpers, Watchman and other un-skilled and semi-skilled jobs, they contend that they are required to be regularised in their own category in accordance with their seniority. They also referred to the instructions of the Railway Board dated 21.10.81 (Annexure A-3) in terms of which project casual labour should be promoted in class-IV posts that can be required for operational and maintenance of new assets created in the open line.

22. The respondents in their reply have submitted that the applicants are not Artisan staff in the category of skilled, semi-skilled and highly-skilled workers. They also deny that the applicants who are working as Khalasi / Watchman etc., cannot perform the duties of Gangman. They further submit that the Khalasi, Watchman and the Gangman belong to class IV category. Besides these, there are, also other

categories like messengers in class IV service. They submit that while regularising the casual labour against regular vacancies, they can be regularised on any post in class-IV in their seniority group or in other groups in the interest of the administration. They also submitted that when the temporary status casual labour are screened, the screening committee has to decide the post for which a casual labour is found suitable. The applicant no.1 in this O.A has been working as Gangman and has also been screened as Gangman and he has also been found medically fit. It is also submitted that the applicant and other project casual labour are absorbed as per the vacancies available. When an offer of appointment is made to a casual labour offering a post of temporary Gangman, the concerned employee is at liberty to accept the said letter or reject it. The respondents further submit that the regularisation of casual labour is being done according to the scheme as approved by the Hon'ble Supreme Court in the case of Indrapal Yadav. In the facts and circumstances, they deny that the applicants are entitled to be absorbed in their own cadre as Khalasi / Watchman etc.,

23. We have examined the submissions of both counsel. The applicants contend that the respondents ought to have regularised them in their own respective cadres as Khalasi / Watchman. In support of their contention, they have not relied upon any of the provisions of the IREM or instructions of the Railway Board. The respondents on the other hand relies on the provisions of the scheme for regularisation of project casual labour which had the approval of the Hon'ble Supreme Court. The provisions of para 1512 (1) of IREM would not apply to project casual labour and ~~sub-para (2)~~ only sub-para (2) of the said para would apply to the project casual labour which reads as follows:-

" (ii) Casual labour engaged in work-charged establishments of certain Departments who get promoted to semi-skilled, skilled and highly skilled categories due to non-availability of departmental candidates and continue to work as casual employees for long period shall straightway be absorbed in regular vacancies in skilled grades provided they have passed the requisite test to the extent of 25 % of the vacancies reserved for departmental promotion from the un-skilled and semi-skilled categories. These orders also apply to the casual labour who are recruited directly in the skilled categories is worked charged established after qualifying in the Trade Test.'

The applicants do not belong to the categories referred to in the above sub-para. The applicants are being regularised in accordance with the provisions of the scheme, on the available vacancies in the open line, after due screening and medical examination. In the facts and circumstances, we find no force in the contention of the applicants that they are entitled to be absorbed in their own respective cadres as Khalasi / Watchman.

24. - In the light of the above, both the O.As fail and accordingly are dismissed. There will be no orders as to costs.

sl/-
(P.C. Kannan)
Member (J)

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by { Pskew
by 26/10/98 sd/-

(V. Ramakrishnan)
Vice Chairman

Approved 26/10/98

Central
26/10/98
Approved