

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD**

O.A.No. 279/92

Ahmedabad this the 31st day of August, 2000

Hon'ble Mr. V. Ramakrishnan, Vice Chairman
Hon'ble Mr. P.C. Kannan, Judicial Member

1. Veljibhai Becharbhai
 2. Rashmikant Savjibhai Dabhi
 3. Gordhanbhai Keshavbhai
 4. Purshottambhai Manjibhai
- All casual labourers/substitutes
Under Permanent Way Inspector
Western Railway, Bhavnagar Division
Bhavnagar Para – 364 003.

All C/o. Office of Chief Permanent
Way Inspector, Western Railway,
Bhavnagar Para – 364 003.

Applicants.

By Advocate: Mr. M.M.Xavier.

VERSUS

1. The Union of India, owning and
Representing Western Railway through
Its General Manager,
Western Railway, Churchgate,
Bombay – 20.
2. The Chairman,
Railway Board,
Rail Bhavan, New Delhi.
3. The Divisional Railway Manager,
Western Railway,
Bhavnagar Division
Bhavnagar Para.

4. The Chief Permanent Way Inspector,
Western Railway,
Bhavnagar Para.

Respondents

By Advocate: Mr. R.M. Vin

ORDER (Oral)

Hon'ble Mr. V. Ramakrishnan, Vice Chairman,

We have heard Mr. Xavier for the applicant and Mr. Vin for the respondents.

2. The applicants four in number were engaged as open line casual labourers on 23.9.81, 6.10.81, 5.11.81 and 22.9.81 respectively. They are aggrieved by the fact that merely because they have been engaged on a date subsequent to 14.7.81 they have not been absorbed as regular employees whereas persons who had joined prior to that date but had put in ^{lesser} ~~a~~ length of service are being regularised. They have approached the Tribunal seeking the following reliefs:

- A) Your Lordships be please to declare that, the applicants are entitled for considered at par with those who were engaged prior to 14.7.81 in the matter of absorption as regular employee as per rule.
- B) Your lordships be please to declare that the action of respondent in not absorbing them as regular employee is illegal and to direct the respondents to consider them for the same with all consequential benefits admissible under the rules.
- C) Your lordships be pleased to grant any relief that may be considered to be just and proper in the circumstances of the case.

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3. Mr. Xavier for the applicant states that as per the provisions contained in Indian Railway Establishment Manual, (Chapter 25 para 2512) which deals with absorption of casual labourers in regular vacancies the total length of service of the casual labourers should be the criteria for grant of temporary status and regularisation and it should be ensured that the casual labourers who are senior by virtue of longer service are not left out. This rule does not lay down the cut off date of 14.7.81 ~~is~~ sought to be done by the Bhavnagar division in the present case. He also draws attention to the letter dated 20.11.1992 which is enclosed with MA 34/93 where the General Manager had informed the divisions that proposal for obtaining approval for regularisation of the staff who have been engaged after 14.7.81 should be sent to the Headquarters at an early date along with the action proposed against the defaulting staff for engaging such staff. The applicants had been conferred with temporary status but the regularisation was denied for quite some time only on the ground that they were engaged after 14.7.81.

4. It is seen that they have since been regularised as is brought out in the enclosure of MA 582/98 but they are sought to be assigned seniority lower than those who had put in lesser number of days of service as compared to them. Mr. Xavier submits that once they have been engaged and after they have been regularised it should be deemed that the post facto approval of the General Manager has been given and they cannot be denied the benefits available in para 2512 of IREM referred to earlier.

5. Mr. Vin for the respondents draws attention to the reply statement and says that the crucial date of 14.7.81 has been laid down as there is an order from the authorities imposing a ban from engaging any casual labourers after

that date. In view of such a ban, casual labourers engaged after such a cut off date would not be given preference over ^{those engaged} ~~their engagement~~ prior to the cut off date. He contends that they can not get seniority higher than those who are engaged prior to 14.7.81. cr

6. We have carefully considered the rival contentions. The main grievance of the applicants relate to their regularisation. In the reply statement the Railways had taken the line that even though they have been conferred with temporary status, they have no automatic right for regularisation, in view of the operation of the ban order dated 14.7.91. They have however not explained as to why they were engaged as casual labourers if they were aware of the ban order which were issued a few weeks earlier nor as to what action ^{was} taken against any defaulting staff. It is also seen from the General Manager's letter dated 20.11.92 which had been referred to by Mr. Xavier that after discussion with the Union the Headquarter office as early as November 1992 has directed that action should be taken for obtaining post-facto approval of such staff. Para 2 of the letter reads as under: cr

"Staff who have been engaged after 14.7.81 are not being regularised stating that GM's approval is not available. Proposal for obtaining post-facto approval of such staff may please be sent to HQ at an early date along with the action proposed/taken against the defaulting staff/supervisors for engaging such staff."

It is clear from this that the intention is that in such cases ^{of} engagement after 14.7.81, action should be taken against the defaulting officials ^{but} it would not deprive the casual labourers themselves from getting the normal benefits as are available under the rules and that post-facto approval for such staff cr

would be given in suitable cases. Mr. Xavier further contends that right from September to November 1981 when the applicants had been engaged, they had been continuing without any break and that they have also been regularised. It is admittedly the position that the applicants have since been regularised and there is nothing to show that their services were dispensed with if the Railways felt that they were engaged in violation of the ban order. Whatever may be the initial stand of the Railway Administration, the position in the present case ^{is that} the applicants had since been regularised. In other words if there was any infraction of the provisions at the relevant time, the same is to be ignored now and post-facto approval of the competent authority should be deemed to have been taken. As regards their seniority in the appropriate cadre, no rule or instructions have been shown to us that people who are engaged prior to 14.7.81 will be treated as senior irrespective of the length of service. Mr. Xavier has relied on para 2512 of IREM. We may extract the relevant portion as follows:

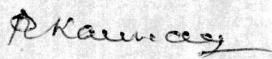
"While showing preference to casual labour over other outsiders in the matter of recruitment to regular class IV establishment, due consideration and weightage should be given to the knowledge and experience gained by them, other conditions being equal, total length of service as casual labour, either continuous or in broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out."

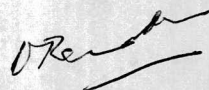
This rule would clearly show that for the date of regularisation and for assigning seniority total length of service as casual labourers is relevant and not the cut off date of 14.7.81. The ban order stipulating that casual labourers should not be engaged after that date but having engaged the applicants as casual labourers for whatever reason, the Railways can not deny

to them the benefits as are admissible under the rules. If they find that there has been a violation of the direction of the higher authority this would require explanation from the official concerned who had engaged ^{them} but it can not penalise the employees who have been actually engaged. ⁿ

7. In the light of the foregoing discussion, we dispose of the present OA with the following directions/observations:

- (i) We note that the applicants in the present case have been regularised by the Railways themselves as is seen from the letter dated 23.11.93 enclosed with MA 589/98.
 - (ii) As regards their seniority in the cadre, the Railways shall assign to them such seniority on the basis of the relevant rules and instructions referred to above and after following due procedure in this regard. In other words, the length of service should be reckoned for the purpose of assigning seniority ^{and date of regularisation}. They shall also intimate the applicants regarding the actual position in the seniority list in the concerned cadre.
 - (iii) This exercise in this regard shall be completed within three months from the date of receipt of a copy of this order.
7. With the above directions/observations, the OA is finally disposed of with no order as to costs.


(P.C. Kannan)
Member(J)


(V. Ramakrishnan)
Vice Chairman

Vtc.