

**CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH**

OA/387/92

Date of Decision: 16.08.2000

Shri Raghuvirsinh T.Sisodia

: Petitioner (s)

Mr. Y.V.Shah

: Advocate for the petitioner(s)

Versus

Union of India & Ors.

: Respondent(s)

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)

JUDGMENT

1. Whether Reporters of Local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgment?
4. Whether it needs to be circulated to other Benches of the Tribunal?

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CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD REGION

QAV37102

Date of Decision: 08.3.2000

(a) Petitioner(s): Smti. Rupenbhai Patel, 72 years

(b) Advocate for the Petitioner(s): Mrs. Y. V. Sopar

7/6/2000

(c) Respondent(s): Union of India & Ors

(d) Advocate for the Respondent(s): Mrs. N. S. Patel

CORAM

The Hon'ble Mr. V. K. Kulkarni : (The Chairman)

(L) : Mr. P. C. Kulkarni : (The Hon'ble Mr. P. C. Kulkarni)

WITNESSES

1. Whether Republic of India shall be allowed to see the judgments

2. To be letter of the Republic of India

3. Whether their Republic may see the full copy of the judgments

4. Whether it needs to be circulated to the Tribunals

1. Raghuvirsinh T.Sisodia
2. Karuppan Mannagali
3. Lalji Hurpal
4. Ayyakusan Nathu
5. Mohan Roopa
6. Thangaraj Kesavan
7. Saroja Thangavel
8. Limboo D.
9. Daya H.
10. Vasanta A.
11. Sana H.
12. Adhiya H.
13. Murdhamuthu M
14. Govindan P.
15. Kolanchi N.
16. Armugam M.
17. Mukai M.
18. Chinnathambi M.
19. Elagwan K.
20. Govind V.
21. Sana D.
22. Thangwel C.
23. Vali H.
24. Annamalai M.
25. Rajwel S.
26. Karpan V.
27. Kaliyaperumal N.
28. Chinnapan S.
29. Gopal R.
30. Pichamuthu S.
31. Subramaniyan K.
32. Tangraj P.
33. Krishnaveni A.
34. Nal;laperumal A.
35. Prakashan S.
36. Peumai K.
37. Meena N.
38. Vasani H.
39. Jawanji L.
40. Vishiva J.

- 41. Ramesh S.
- 42. Rangaswamy M
- 43. Mahalingam A
- 44. Rangaswamy G.
- 45. Ganesh A.
- 46. Mani P.
- 47. Dayachand H.
- 48. Anthoni N.
- 49. Samuda M
- 50. Maywan A.
- 51. Viram S.
- 52. Muthuswamy S.
- 53. Sampuranam A.
- 54. Pudamma A.
- 55. Muniyan M
- 56. Erachamuthu I.
- 57. Puranchand N.
- 58. Gorishanker K.

: Applicants

C/o. Chief Engineer [C]
Western Railway,
Ahmedabad.

Advocate: Mr. Y. V. Shah

Versus

- 1. Union of India,
Through: The General Manager,
Western Railway,
Churchgate, Bombay-20.
- 2. Chief Engineer [C]
Western Railway,
2nd Floor, Station Building,
Ahmedabad-2.
- 3. Divisional Railway Manager (E),
Western Railway,
Baroda.

: Respondents


Advocate: Mr. N. S. Shevde

JUDGMENT
OA/387/92

Date: 16-8-2000

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

We have heard Mr.Y.V.Shah and Mr.N.S.Shevde, learned counsel for the applicants and the respondents.

2. The applicants ~~in number~~ (58 in number) are from the VOP casual labourers (Rajkot Division) working continuously under the respondents . Their main grievance is that they have not been regularised as Class IV employees till the filing of the OA in 1992.

3. The case of the applicants is that they have been working continuously for more than 2 decades and they were duly compensated for regularisation. However, they have not been regularly absorbed as Class IV employees. They have also referred to the decision of this Tribunal in OA/644/87 in which a direction was given by this Tribunal to regularise the applicants in the said OA who also belong to VOP casual labour and give them all the benefits given to the regular employees (Annexure A-2). In OA/622/87 , this Tribunal directed the Railway Administration to regularise the applicants in the said OA as Class IV employees in their parent division (Annexure A-3) .

4. After the completion of their work in VOP , they were shifted to Jaipur Division when they filed OA/294/92 and pointed out that their juniors were made permanent in their parent Rajkot Division. In the reply to

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the said OA, the respondents stated that vide General Manager's circular dated 16.11.1987 (Annexures A-6), the applicants working in Jaipur Division are entitled to be absorbed in Jaipur Division where they are presently working and not in their parent division. Based on this reply, this Tribunal vacated the interim relief on 27.8.92. The applicants submit that the said circular has not yet been gazetted / implemented. As the said circular has not been gazetted or implemented till 16.9.1992, they now propose to challenge the said circular dated 16.11.1987 in this OA. The applicants also challenge the fixing of ratio of 80: 20 % for absorption of casual labour who belong to open line and project as Class IV employees and submit that reserving of 80% of vacancies in Class IV to open line casual labour is violative of the provisions of the Constitution. In the facts and circumstances, the applicant prays for the following reliefs:-

" Be pleased to declare the circular of the General Manager dated 16.11.1987 at Annexure A/6 as illegal, null and void, and of without jurisdiction."

45 The respondents in their reply have denied that the Circular dated 16.11.1987 is not valid in law. The said Circular only gives an option to the project casual labour either to be absorbed in the Division in which they are presently working or in their parent division where they were originally engaged. The respondents also denied that there is any discrimination in fixing the ratio of 80:20% for the purpose of regularisation from among open line and project casual labour.

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6. Mr. Y.V.Shah submitted that the circular dated 16.11.1987 (Annexure A-6) is against the instructions of the Railway Board and the scheme for regularisation of project casual labour in so far it provides for ignoring the service of the casual labour in their original division when they were required to be absorbed in their new division. He also refers to the following paragraphs in the Circular of the General Manager dated 16.11.1987 which reads as follows:-

" Such of those project casual labour who have been moved from the division in which they were originally engaged, may also be screened by the Division in which they are working at present provided their seniors who might be working in the Division in which they were originally engaged have been screened and regularly absorbed. If it is found that their seniors have not been screened and regularly absorbed, then the services rendered by them in the earlier unit should not be counted for the purpose of calculating length of service in the Division in which they are being screened now. The services rendered in that Division only should be taken into account for empanelment/screening."

7. Mr. Shevde submits that the said circular is not against the provisions of the Railway Board Scheme for regularisation of casual labour. It only gives an option to the transferred casual labour to be absorbed either in transferred Division or in their parent division. He further submits that prescribing the quota of 80:20% by the DRM is in accordance with the directions of the General Manager and therefore is not illegal or contrary to the provisions of the Railway Establishment Code and IREM. He also submits that providing such percentage is not discriminatory and violative of

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Articles 14 and 16 of the Constitution or violative of letter of the Headquarter Office as contained in Annexure A-4. He also states that the issues raised in this OA are similar to the issues raised in OA/294/92 which was disposed of by this Tribunal on 28.4.2000^{and} in TA No.3/91 which was disposed of on 20.10.99.

8. We have carefully considered the submissions of both counsel and examined the pleadings.

9. The first contention of the applicant is that the letter dated 16.11.1987 from the Head quarter office regarding absorption of project casual labour is against the provisions of the scheme of the Railway Board. We have examined the contents of this letter given at Annexure A-6. The subject matter of this letter reads as follows:-

" Sub:- Labour - Casual Employment of - Policy of preparation of seniority list of Project casual labourers and screening thereof."

10. In our view the instructions contained in the letter is with reference to the preparation of seniority list of project casual labour working in the Division for the purpose of their regularisation. This circular gives the procedure for preparation of the seniority list of project casual labour working within the geographic jurisdiction of the Division in which the project casual labour was engaged. This Circular enables the regularisation of the project casual labour who were originally engaged by certain other division but subsequently moved to another Division. The relevant

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sentence reads as follows:-

" such of those project casual labour who have been moved from the Division in which they were originally engaged, may also be screened by the Division in which they are working at present provided their seniors who might be working in the Division in which they were originally engaged have been screened and regularly absorbed."(emphasis supplied)

11. In the light of the above, we hold that the said letter is in no way prescribes any fresh guidelines violating the provisions of the scheme of the Railway Board for the purpose of regularisation of project casual labourers in their parent division. We therefore, reject this contention of the applicants.

12. The next contention of the applicant is that the DRM of either Rajkot or Ajmer has no power to prescribe 20% of Class IV posts/vacancies in open line for project casual labour and in any case, such prescribing percentage would amount to discrimination and is also violative of Railway Board directives. This contention was raised in TA/3/91 which was disposed of by this Tribunal vide judgment dated 20.10.99. After careful consideration, this contention was rejected by this Tribunal. In OA/294/92 also similar issue was raised and the same was considered in paragraphs No.15 to 20 ^{of the judgment} which reads as follows:-

"15. This contention has also been dealt with in our judgment dated 20.10.99 in TA No.3 of 1991. In terms of para 2006 of IREM absorption of casual labour against regular vacancies shall be decided by the Railway Administration. The Railway Board vide letter dated 17.2.1989 after referring to their earlier letters dated 7.3.72 and 3.5.72 regarding absorption in a regular employment of project casual labour against all the posts created for maintenance of new assets, referred to the following instructions with regard to absorption of project casual labour against regular vacancies arising in open line.

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" The Board have reviewed the matter in consultation with two recognised Federations. After taking into account the views expressed by the Federations during discussions, Board considered that while no hard and fast rule can be laid down in this regard, as the situations and practices may vary from Railway to Railway, it is necessary for the Railway Administrations to ensure that project casual labour are given the due consideration in absorption against regular vacancies arising in the open line. They, therefore, desire that each Railway Administration should, in consultation with the recognised unions, evolve suitable guidelines for absorption of both project casual labour and non-project (or Revenue) casual labour, in regular employment against normal vacancies. As well as posts sanctioned for decasulisation in an equitable manner, to the extent possible."

16. In accordance with the provisions of IREM and the instructions of the Railway Board, the General Manager, Western Railway vide letter dated 16.11.87 (Annexure R-1 in OA/294/92) issued the following guidelines/instructions:-

" As regards absorption of project casual labour on regular percentage may be fixed in consultation with the recognised unions in proportion to the strength of project and non-project casual labour. For this purpose, the total number of vacancies in the unskilled categories in the different screening units of open line departments should be assessed and the number of vacancies to be filled up from the project casual labour should be estimated applying the percentage fixed. The screened list of the project casual labour departmentwise should be prepared accordingly for this number. From this list, project casual labour should be posted to the different units/departments against the vacancies in that unit according to the percentage of vacancies to be filled from project casual labour. The unskilled posts created for the maintenance and operation of the new assets should normally be filled up by the project casual labour unless there are non-project casual labour in service in the area with longer length of service. In addition to this percentage of vacancies, the posts created on open line as a result of de-casualisation shall be filled up by the open line casual labour only.

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The above orders are applicable to all departments which employ both project and non-project casual labour. Incase there are any local court's CA's order which are different from the above, the full details may be referred to this office so that the same can be examined and course of action to be taken advised."

17. It is in accordance with the above instructions of G. M. , the DRM after consulting the recognised unions and examining the other relevant factors prescribed 20% of vacancies in open line for the project casual labour .

18. The General Manager in his letter dated 16.1.90 (Annexure A-VIII in OA/294/92) referred to with approval, the quotas fixed by different divisions. Para 2.1 of the said letter reads as follows:-

" 21. In this connection, attention is invited to the instructions contained in this office letter No.E(R & T) 615/0 dated 16.11.87 for fixing up a percentage in consultation with the recognised Unions in proportion to the strength of project and non-project casual labors. According to these instructions, the Divisions have fixed the percentage for absorption of project and non-project casual labors against the regular vacancies in Group 'D' categories as under:-

<u>Division</u>	<u>Percentage for non-project casual labour</u>	<u>Percentage for Project Casual Labour.</u>
BCT	70%	30%
BRG	80%	20%
RTM	80%	20%
KT	80%	20%
ATT	90.75%	03.25%
		(Position to be checked up and action taken accordingly.)
JP	80%	20%
RJT	80%	20%
BVP	60%	40%

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19. It may thus be seen that the General Manager, Western Railway after prescribing the detailed procedure/guidelines, directed the DRM of each division to percentage for absorption of project casual labour. In our opinion, the action of the General Manager cannot be regarded as sub-delegation of the statutory power. We hold that the prescribing 20% of the vacancies in open line for absorption from project casual labour is in accordance with the provisions of IREM is valid in law.

20. It is also contended that prescribing 20% of regular vacancies in open lines for the project casual labour is discriminatory and violative of Articles 14 and 16 of the Constitution. The project casual labour are not on the permanent establishment and they are engaged by the lower level subordinate staff of the railway administration. On completion of the project, the surplus staff were required to be retrenched or offered work of similar nature on a nearby project. Prior to 1984, the project casual labour were considered for absorption 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.) It is only after the judgment of the Inderpal Yadav case and in terms of the scheme framed by Railway Board, project casual labour were considered for absorption against class IV posts in open line."

13. Keeping in view the nature of duties of the casual labour in open line and project, the Tribunal upheld the prescribing of 20% quota to project C.I. as valid.

13A. In the light of the above observations in the judgment in OA/294/92 which was disposed of 28/4/00, we reject the contentions of the applicant in this regard. We hold that the prescription of the ratio of 80: 20% for absorption of casual labour from among open line and project casual labour cannot be regarded as violative of provisions of Railway Establishment Code or IREM or discriminatory or violative of Articles of 14 & 16 of the Constitution or against the scheme of the Railway Board for regularisation of project casual labour.

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14. In the light of the above, the O.A., fails and accordingly rejected. No costs.

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(P.C.Kannan)

Member (J)

Other
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(V.Ramakrishnan)
Vice Chairman

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