

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH
CALCUTTA

No.O.A.641/1996

Date of order : 22.9.2006.

Present : Hon'ble Mr. B.V. Rao, Judicial Member
Hon'ble Dr. A.R. Basu, Administrative Member

T.K. AHMED KUTTY & OTHERS
VS.
UNION OF INDIA & ORS.

For the applicants : Mr. A. Chakraborty, counsel
For the respondents : Mr. S. Choudhury, counsel

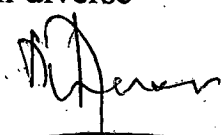
ORDER

Per Dr. A.R. Basu, A.M.

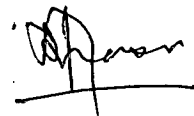
This O.A. has been filed by the applicants praying for the following
reliefs:-

- a) Declaration that the applicants belonging to the category of casual labour employed in construction work other than work-charged projects and being rendered four months continuous service without break, by the operation of statutory rules should be treated as temporary railway servant after the expiry of four months continuous service;
- b) An order do issue directing the respondents to give the applicants temporary status after completion of four months continuous service in the Construction Unit for the purpose of extension of pensionary and other benefits;
- c) Leave may be granted to add the other applicants in the original application under Rule 4(5) (a) of the CAT Procedure Rules.

2. Facts of the case in brief is that the applicants were appointed as casual labourers in the Construction Unit under the Respondent NO.4 i.e. the Telecommunication Inspector(MW)-Works, S.E. Railway, Kharagpur in the year 1973. They were regularized in service in the open line on diverse

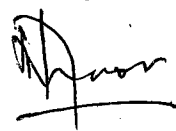


dates between 1983-1985. After their regularisation in the open line they were again transferred in the Construction Unit under the respondent No.4 and are working in Class III posts in the scale of Rs.950-1500/-(RPS). The applicants were initially appointed as Khalasi and subsequently they were promoted to Class III posts. The contention of the applicants is that they were engaged as Casual Labours, Construction Unit and were never treated as Project Workers. The function of the applicants were erection, fabrication, drilling, welding and all types of mechanical works for the maintenance of Micro Wave Tower throughout Kharagpur Division. Some times they are to perform the said duties outside the division also. The construction of Micro Wave Tower and maintenance work started in 1970 throughout the S.E. Railway and are still continuing. The applicants have stated that it is a regular unit all over the Indian Railway and cannot be termed as 'Project'. The applicants are working continuously in the Construction Unit for the last 20 years or more. As the applicants had been appointed in the Construction Unit for performing the construction work, they claimed that they are entitled to get the benefit of temporary status after completion of 120 days of continuous service as per rules. The applicants on 27.9.1994 made a representation to the respondent No.3 i.e. the District Signal & Telecommunication Engineer,(MW), Works, S.E. Railway, Garden Reach Calcutta, praying for attainment of temporary status after completion of 120 days continuous service. On 27.11.1995 the Chief Personnel Officer, S.E. Railway, Garden Reach informed the respondent NO.4 vide his letter that the applicants are not entitled to get the benefit of temporary status after



completion of 120 days of continuous service since they are working in the project. Accordingly the respondent No.4 informed the applicants that as they are absorbed as Project Casual Labours, they are not entitled to get the benefit of temporary status after completion of 120 days of continuous service. The contention of the applicants in this O.A. is that though they had been working in the construction unit, no reference to project has been mentioned in their Service Card and the department was never described as Construction Unit. The applicants have stated that since the Construction Unit is a regular and permanent Unit all over the Indian Railways, it cannot be equated with the 'Project', therefore, having rendered continuous service for more than four months they should be given the temporary status. As the respondents did not pay any heed to their repeated request for temporary status, they have filed this O.A. under Section 19 of the Administrative Tribunals Act.

3. The respondents in their written reply have disputed and denied the claim of the applicants. The respondents have enclosed the particulars of the Casual Labourers as Annexure R to the reply. They have mentioned that the Casual Labours of this unit who were treated as Project Casual Labourers, are not generally liable to transfer frequently. Occasionally the nature of their work calls for movement from one place to another within S.E. Railway. In Para 12 of the reply the respondents have stated that the applicants are recruited for a short period but may continue as long as they are required for the progress of work and the Project Casual Labour who are engaged for more than six months get the scale rate of pay but not temporary



status. This is as per the Miya Bhai Act. The respondents have further contended that this organization is a Project Construction Unit, hence, the labourers engaged in this organization are entitled to get temporary status on completion of 360 days of continuous service as per CPO's Estt. Srl. No.187/86. They have stated that the representation of the casual labourers dated 27.9.1994 had been replied to by vide office letter No.MW/EST-4 4579 dated 07.10.1994 and CPO/GRC's letter No.P/R/CL/Policy/Pt.losse/5530 dated 27.11.1995/9.12.1995 clarifying that as they are project casual labourer, they are not entitled to temporary status on completion of 120 days of continuous services. They have further stated that this organization is termed as Project under the administrative control of CAO(Project)/S.E. Railway/BBS. The respondents have therefore, prayed that the claim of the applicant should not be accepted.

4. Ld. Counsel for the applicant, Mr. A. Chakraborty has argued that the applicants were appointed as Casual Labourers in the Construction Unit not in the Project and therefore, they should be treated as Casual Labourers in the Construction Unit not as Casual Labourers in Project. He relied on the decision of the Hon'ble Supreme Court in case of *L Robert D' Souza v. The Executive Engineer, Southern Railway & Another*, (1979) 1 LLJ 2111 and the case of *Union of India & Others v. Basant Lal & Others*, AIR 1993 SC 188 in support of his contentions.

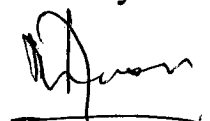
5. Ld. Counsel for the respondents Mr. S. Chowdhury has contended that the nature of work for which the applicants were engaged as casual labourers was under a Project and by no stretch of imagination they can be termed as



casual labourers under Construction Unit. He further argued that the Service Card issued to the Casual Labourers though does not bear the term 'Project' but it is implied to be so on the fact that the subordinate officer who issued the Service Card have been abolished and in the Project organization no subordinate officer are permanent. He has contended that the unit in which the applicants were engaged is a Project Construction, hence, the casual labourers are not entitled to temporary status on completion of 120 days of continuous service. Moreover, they have not worked in the open line. Ld. Counsel for the respondents further stated that the applicants are entitled to get the benefit of temporary status, if any, as per the rules applicable to the project casual labourers.

6. We have heard the Ld. Counsel for both sides and have gone through the records. Ld. Counsel for the applicant has relied on the judgment of the Hon'ble Supreme Court in the case of *L. Robert D' Souza*. In the said order it has been stated that the meaning of Casual Labourer has been explained in Rule 2501 of Chapter XXV of Indian Railway Establishment Manual. The nature of work which is to be performed by them has also been indicated. However, different types of casual labourers has been described in Chapter-XX under Rule 2001 of Indian Railway Establishment Manual, Vol.2(Revised Edition 1990). The nature of employment of Casual Labour(Open Line) and Casual Labour(Project) as mentioned in the Rule 2001(i) reads as follows:-

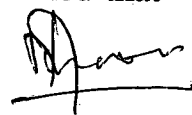
- (a) **Casual Labour (Open Line)** – Casual Labour are primarily engaged to supplement the regular staff in work of seasonal or sporadic nature which arises in the day-to-day working of the Railway



System. This includes labour required for unloading and loading of materials, special repair and maintenance of tracks and other structures, supplying drinking water to passengers during summer months (recoupment of days lost on account of absenteeism) patrolling of tracks, etc. Casual Labour so engaged in the operation and maintenance of railway system is referred to as open line Casual Labour as distinct from Project Casual Labour, described in Para (b) infra.

- (b) **Casual Labour (Project)** – Casual Labour are also engaged on Railways for execution of railway projects, such as new lines, doubling, conversion, construction of buildings, track renewals, Route Relay Interlocking Railway Electrification, setting up of new units etc. Casual Labour so engaged are referred to as 'Project Casual Labour'.

From the perusal of the above, we find that the work for which the applicants had been engaged was primarily of the Project type and as such they are to be governed by the rules applicable to the Project Casual Labours and they should be given the benefits as admissible to the Project Casual Labours as per the rules. As per Chapter XX of the Indian Railway Establishment Manual, Vol.2 (Revised Edition 1990) Casual Labour on projects who have put in 180 days of continuous employment on works of the same type are entitled for $1/30^{\text{th}}$ of the minimum of the appropriate scale of pay plus Dearness Allowance. Before giving regular scale of pay or $1/30^{\text{th}}$ of the minimum of the scale plus Dearness Allowance on completion of 120 days or 180 days continuous employment as the case may be, a preliminary verification in regard to age and completion of requisite number of days of continuous service should be done by the Assistant Officer and the person should also be got medically examined and only if found fit he should be granted regular scales of pay. It has further been mentioned that



grant of temporary status to project casual labour is regulated by instructions separately issued by the Railway Board.

7. In view of the facts mentioned above, we do not find any merit in the O.A. The O.A. is accordingly dismissed. No order as to cost.


MEMBER(A)


MEMBER(J)