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**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH; JODHPUR.**

Original Application No. 166/2003

Date of decision: 26.10.2004

Hon'ble Mr. Kuldip Singh, Vice Chairman

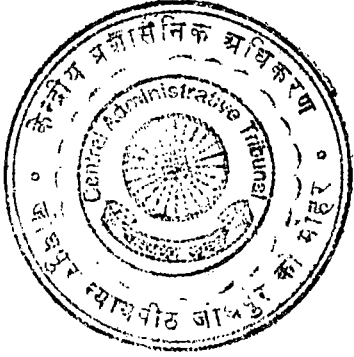
Hon'ble Mr. G.R.Patwardhan. Administrative Member.

1. Late Sh Kishna Ram through his LRs.

1/1 Smt. Soni Devi, w/o late Shri Kishna Ram aged 52 years.

1/2 Sh. Jhumar Ram, s/o late Shri Kishna ram aged 31 years.

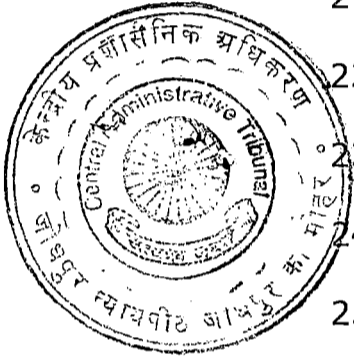
Both r/o village Mamroli, Teh. Makrana, Dist. Nagour (Rajasthan)



2. Sh. Narendra Kumar S/o Shri Mohan Lal Kapoor, r/o C/o Suraj Singh House No. 4 Gali No. 4 In Front of Kaprada House Rasala Road, Jodhpur.
3. Sh. Ram Gopal s/o Sh. Mirza R/o Village Purawa Post Barawa Dist. Hardoi (U.P.)
4. Sh. Mool Dan s/o Sh. Prabhudan R/o Plot No. 521 B.J.S. Colony, Jodhpur.
5. Sh. Ram Room s/o Sh. Ramnath R/o Joriyan Katui Post Sikandar Pur Dist. Ambedkar Nagar (U.P.).
6. Sh. Sarwan Kumar s/o Sh. Ram Jus R/o Village Mehdiya Kund Post Bharaw Pur Dist. Mahu (U.P.).
7. Sh. Rambilash S/o Sh. Chandra Bali Moriya R/o Village Bakshra (Sonvarsha) Post Kunjal Pur Dist. Gounda (U.P.).
8. Sh. Jitender Kumar S/o Sh. Ramsaran R/o Village Chitson Post Chitson Dist. Bulandsahar (U.P.).
9. Sh. Sukha Ram s/o Sh. Chotha Ram R/o Village Dattani Vaya Merta Road The. Merta City Dist. Nagour.
10. Sh. Surander Vikram s/o Sh. Shiv Kumar R/o Village Shiv Pur Kapoor Dipper Post Samriya Dist. Baliya (U.P.).
11. Sh. Inder Dev Goel S/o Sh. Roop Chand R/o Village Lal Kutti Post Meerut (U.P.).
12. Sh. Raj Kishore s/o Sh. Sukh Dev R/o Village Shiv Pur Kapoor Dipper Post Samriya Dist. Baliya (U.P.).
13. Sh. Permatma Pd. S/o Sh. Sudama Pd. R/o Village Bechan Chappra Post Bhagwanpur (Beriya) Dist. Baliya (U.P.).

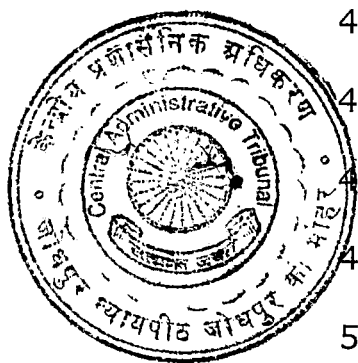
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14. Sh. Ram Chander S/o Sh. Baldev R/O In Front of Air Officer Mess Sher Vilas Colony Gali No. 4, Ratanada, Jodhpur.
15. Sh. Ramji Moriya S/o Sh. Vishnu Nath R/o Village Bechan Chappra Post Bhagwanpur (Beriya) Dist. Baliya (U.P.).
16. Sh. Baccha Lal S/o Sh. Muneshwar R/o Village Shiv Pur Kapoor Dipper Post Samriya Dist. Baliya (U.P.).
17. Sh. Girdhar Dutt S/o Sh. Dev Dutt R/o Talla Khatada Post Malla Khatada Dist. Champawat Uttaranchal Pradesh.
18. Sh. Jiwan Singh S/o Sh. Ratan Singh R/o Village & Post Ranipur Dist. Kapoorthala, Punjab.
19. Sh. Hema Ram S/o Sh. Shiv Nath Ram R/o Village Mamroli, Teh. Makarana, Distt. Nagour.
20. Sh. Mohd. Ahsan S/o Sh. Subhan R/o Village Sikander Pur Sihura Ji Ka Unav (U.P.).
21. Sh. Babulal S/o Sh. Chokay R/o Village Post Kaloli Dist. Hardoi (U.P.).
22. Sh. Inderjeet Pd. S/o Sh. Guru Pd. R/o Village Suggi Chori Post Duari Teh. Madhuban Dist. Mahu.
23. Sh. Dhanna Ram S/o Sh. Chotha Ram R/o Villae Rathi Post Harnava Vaya Baru, Parbatser Dist. Nagour.
24. Sh. Hanuman Ram S/o Sh. Mangla Ram R/o Village Dattani Vaya Merta Road Teh. Merta City Dist. Nagour.
25. Sh. Harish Dutt S/o Sh. Jiwanand R/o Talla Khatada Post Malla Khatada Dist. Champawat Uttaranchal Pradesh.
26. Sh. Dayal Singh S/o Sh. Hari Singh R/o Village Muraiya Khurd Post Sahbad Dist. Mathura.
27. Sh. Bhan Prakash S/o Sh. Ram Chander R/o Ramjan Ji Ka Hatta Laxman Nager C Block, Banar Road, Jodhpur.
28. Sh Ramu Ram S/o Choga Ram, r/o Village Post Villu, The Makarana Dist. Nagour.
29. Sh Sukh Lal Pd. S/o Sh Ram Vriksh R.o Village Suggi Chori Post Duari, The Madhuban Dist. Mahu.
30. Sh. Gama Yadav, S/o Shri Ram Pd. Yadav, r/o Village Shri Ram Pur Post Duari Distt. Mahu (UP)
31. Sh Raghbir Yadav, S/o sh. Munna Yadav r/o Village Shiv Pur Kapoor Dipper Post Samriya Dist. Baliya (UP)
32. Sh Gopal Dass S/o Sh Bajrang dass r/o Post Basani Iind Phase in front of Cattle Feed Plant Salawas Road, Jodhpur.
33. Sh Mohan Lal S/o Hira, R/o Kaloli Dist. Hardoi (UP)
34. Sh Govind dutt S/o Sh Mugha dut r/o 1063 Neharu park Rly quarters in front of Rail Sadan, Jodhpur.
35. Sh Bhawani dutt S/o Shri Prem Villabh, R/o Village Madlak post Madlak, Dist. Champawat Uttranchal Pradesh
36. Sh Karey Lal S/o Guru Pd r/o Income Puja Colony Gutta Factory Bai pass Road, Mathura.
37. Sh. Baldev Raj, S/o Sh Tulsi, r/o Quarter No. C 23 Rai Ka Bagh Jodhpur.
38. Sh Ganga Saran S/o Sh Man Singh r/o Village Chit Sone Post Chit Sone Dist. Bulandsaher (UP).



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39. Sh Jagdish Parihar s/o Ram Chandar, r/o Bel Patra Ka Bera Behind Chen Pura, Hr Secondry School, Chen Pura Mandore, Jodhpur.
40. Sh Hanuman Dass S/o Shri Jaskaran dass r/o Village Khiv Tana, The Degana Dist. Nagour.
41. Sh Manbir Singh S/o Sh Ram Kumar r/o C/o Bhati Misthan Bhandar, Rasala Road, Jodhpur.
42. Sh Baldev S/o Shri Ram Saran r/o Village Shiv Pur Kapoor Dipper Post Samariya Dist. Baliya (P)
43. Sh Lladu Ram S/o Sh Goverdhanji, R/o Village Ram Nagar, Naylon Ki Jaleli Teh & Dist. Jodhpur.
44. Sh Pyarelal S/o Chotey lal r/o Village Nakuda Post Bagoli Dist. Hardoi (UP)
45. Sh Babu lal S/o Sh Dina Ram r/o Village Rakuri Khurd Post Rakuri Kala The Degana, Dist. Nagour.
46. Sh Parmeshwar S/o sh Madari r/o Village Kahali post Gaus Gunj Dist. Hardoi UP.
47. Sh Bhanwari, S/o Shoba r/o village & Post Kaloli The Sandela Dist. Hardoi (UP)
48. Sh Mandroop S/o Sh Hira r/o Village Datani vaya Merta Road, Dist. Nagour.
49. Sh Puran Chand s/o Shri Milki Ram r/o village Bari Post Dehara Gopi Pur Dist. Kangada (HP)
50. Sh Tej Singh S/o Sh Ram Singh, r/o Village Kaloli Post Kaloli Tehe. Sandila Dist. Hardoi (UP)
51. Sh Prema Ram S/o Sh Nima Ram r/o village Polash Vaya Ren Dist. Nagour.
52. Sh Sataya Narayan, s/o Sh Mangli Pd. R/o Village Bineka post Hyderabad Dist. Unav. UP
53. Sh Balu Ram S/o sh Mata Saran r/o Mahadev Ji Ki Bawari Rasala Road, Jodhpur.
54. Sh Prahalad Ram S/o Sh Bholu Ram r/o Village Punas Vaya Ren Dist Nagour.
55. Sh Prahalad Ram S/o Sh Nand Kishore r/o Purma Vijay Nagar Dist Gaziabad.



All at present working as Kh.Helper in the office of the Section Engineer (Bridge) Maint, Northern Western Railway, Jodhpur. Also present address C/o shri Harish Dutt, Branch Counsel Member Uttriya Railway Mazdoor Union, Rai Ka Bagh Railway Station Jodhpur.

Applicants.

Rep. By Mr. C.P. Soni: Counsel for the applicants.

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1. Union of India through the General Manager, Northern Western Railway, Jaipur.

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2. The Senior Civil Engineer (Bridge), Northern Western Railway, Jaipur.
3. The Section Engineer (Bridge) Maintenance Northern Western Railway, Jaipur.
4. The Chairman, Railway Board, Ministry of Railway New Delhi.
5. The Director Pay Commission Railway, Board, Ministry Of Railway. New Delhi.

: Respondents.

Mr. Kamal Dave : Counsel for the respondents.



ORDER (ORAL)

Per Mr. Kuldip Singh, Vice Chairman.

This joint application has been filed by number of persons who have been permitted to file a single application vide order dated 11.09.2003 in M.A. No. 87/2003.

2. The applicants seek the following reliefs:

- 8.1 That by appropriate order or direction the provision contained in para 3.1 of the ACP Scheme be declared ultra vires and same be struck down and
- 8.2 That the respondents be directed to release the benefit of ACP Scheme to the deceased Kishna Ram and rest of the applicants counting their services from the date of attaining the temporary status and

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- 8.3 That by appropriate order or direction the respondents be directed to release the actual payment of arrears to the deceased Kishna Ram for the services rendered by him till his cessation of duty by efflux of his death and rest of the applicants. And
- 8.4 Any other appropriate relief which this Hon'ble Tribunal deems it proper in the facts and circumstances of the case, found favourable to the LRs of the deceased Kishna Ram and rest of the applicants may kindly be granted to the applicants.
- 8.5 Cost of this application be allowed to the applicants."

3. The facts as alleged by the applicants in the O.A are that all the applicants had been initially appointed as Casual Labour under the respondents and after completion of requisite period of 120 days of casual service, they were conferred with temporary status and are being paid in the graded scale of pay as per the scheme of temporary status. As per the Railway Board's Order dated 01.10.99, the Railways came out with a scheme called Assured Career Progression Scheme (for short the Scheme) for the Railway servants. The applicants claim that they are also entitled to the benefits under the said scheme. Since para 3.1 of the said Scheme does not give any benefit to the casual employees, the applicants are challenging the said para 3.1. of the ACP Scheme. Para 3.1 and 3.2 of the said scheme are reproduced hereunder for ready reference:

" 3.1. While in respect of these categories also promotion shall continue to be duly earned, it is proposed to adopt also the ACP scheme in a modified form to mitigate hardship in cases of acute stagnation either in a cadre or in an isolated post. Keeping in view all relevant factors, it has, therefore, been decided to grant two financial upgradations[as recommended by the Fifth Central Pay Commission and also in accordance with the Agreed Settlement dated September 11, 1997 (in relation to Group 'C' and 'D' employees) entered into with the Staff Side of the National Council (JCM)] under the ACP Scheme to Group 'B', 'C' and 'D' employees on completion of 12 years and 24, of regular service respectively years (subject to condition No. 4 in Annex. I) Isolated posts in Group 'A' 'B', 'C' and 'D' categories which have no promotional avenues shall also qualify for similar benefits on the pattern indicated above.

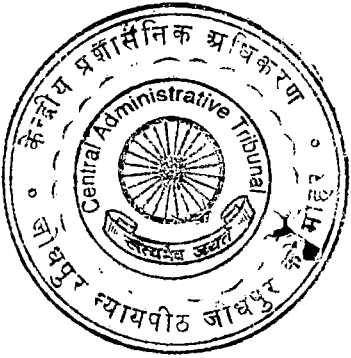
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Certain categories of employees such as casual employees (including those with temporary status) substitutes, Adhoc and contract employees shall not qualify for benefits under the aforesaid Scheme. Grant of financial upgradations under the ACP Scheme shall, however, be subject to the conditions mentioned in Annex. A.I.

3.2 'Regular Service' for purpose of the ACP Scheme shall be interpreted to mean the eligibility service counted for regular promotion in terms of relevant Recruitment/Promotion Rules."

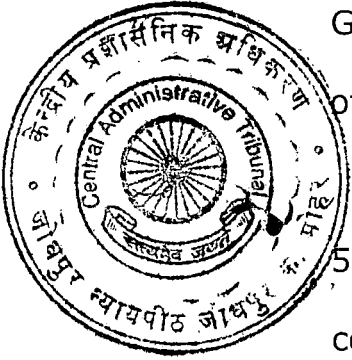
The applicants have alleged that even in casual service, seniority list is to be maintained and casual service should also be counted for further promotion i.e. from Casual Service to regular Group 'D' posts. It is also stated that according to the Railway rules, railways are required to maintain register to indicate the names of the casual labour, substitute and temporary workmen for the purpose of future employment which are to be made strictly by taking their casual employment at the initial stage. It is further stated casual service should also be taken into consideration for the purposes of promotion. By introducing para 3.1 in the ACP scheme, persons working in specified category of casual labour were not given the benefits of the said scheme, whereas persons who have been promoted from casual labour to Group D posts were being given the benefit of the said scheme. Thus the denial of the said ACP scheme to casual labourers cannot be permitted to stand. It is further stated that para 3.1 of the ACP scheme is contrary to the earlier provision of the scheme. Therefore it is violative of equality rights granted under Art. 14 and 16 of the Constitution of India in as much as it denies the equal protection of law as envisaged in Paras 622, 625, 630 (f)



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and 1503 of IREM. Thus the respondents cannot be permitted to deny the benefits of ACP scheme to the applicants.

4. The respondents are contesting the O.A. The respondents in their reply pleaded that though the applicants after having been engaged as Casual labourers had been granted temporary status and some of the applicants have also been regularised as Group D after adopting the required procedure along with all other bridge staff of Northern Railway.



5. As regards the granting of benefits of the ACP are concerned, it is stated that the said Scheme has been introduced recently in order to give some relief to the employees who are facing stagnation and were not promoted to the next higher post and the benefit is granted to only those employees who are in regular service and the eligibility is to be counted as per the relevant rules applicable for promotion in respect of the posts. It is stated that in this case the applicants are claiming the benefits of the scheme even without holding cadre posts and they prayed that they should be granted the benefit of the scheme which is neither the foundation for framing of the scheme nor was the object of the framer of the scheme. It is also stated that para 2005 of IREM vol. II does not cover the grant of seniority from the date of grant of temporary status. It is further stated that the question of promotion and stagnation would arise only in the

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case of regular employees and the applicants being the holder of temporary status at the point of time are not entitled to claim equality with the rights of cadres/regular employee for promotion within their available avenue. Lastly it is submitted that no discrimination is being made and the benefits have been given to all the employees who are absorbed in the regular cadre. It is categorically stated that the applicants being temporary status employees cannot be extended the benefits of the scheme. Thus it is stated that the applicants having no prima facie case, the O.A deserves to be dismissed.



6. We have heard the learned counsel for the parties and perused the documents. It is seen that during the pendency of the O.A, the Railway Board had issued another letter dated 31.03.2004, which deals with financial upgradation under the ACP scheme and the clarification there of. A perusal of the said letter would go to show that 50% temporary status casual labour service on absorption in regular employment would count for the purpose of grant of benefits under ACP scheme. Para 2 and 3 of the letter reads as under:

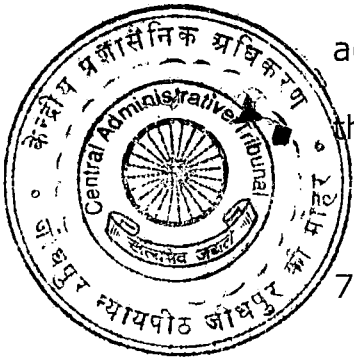
"2. The issue regarding extension of the scope of the ACP scheme as to count 50% of temporary status casual labour service on absorption in regular employment for the purpose of grant of benefit under the ACP scheme was raised by Staff side in the forum of DC/JCM

3. The matter has been examined and it has been decided that 50% of temporary status casual labour service on absorption in regular employment may be taken into account towards the minimum service of 12/24 years for the grant of benefit under the ACP scheme on the analogy that the same is also reckoned as qualifying service for pension."

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Thus by issuing the said clarification to the ACP scheme, the Railway Board has granted relief in part to the applicants that 50% of temporary status casual labour service on absorption in regular employment would be taken into account for the purpose of grant of benefit of ACP scheme. The learned counsel for the Railways also made a statement across the bar that after the issue of this letter, those casual employees who were holding the temporary status, 50% of their such services were taken into account for granting the benefits under the ACP scheme and thus part of relief had already been granted.



7. However, the learned counsel for the applicants was still not satisfied with para 3.1. and he prayed that the same should be quashed and the entire period of casual service with temporary status should be counted for the purpose of granting of benefits under the ACP scheme. The learned counsel for the applicants in support of this contention relied on para 2005 of IREM Vol. II and certain other paragraphs of IREM Vol. I. He contended that the respondents are required to maintain a register of seniority inter se of casual labours for the purpose of conferring temporary status and since the seniority is being maintained para 3.1 of the ACP scheme is repugnant to the provisions of IREM and therefore it should be quashed.

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8. We have considered this contention also. We are unable to agree with the said contention of the learned counsel for the applicants since under the scheme which has been promulgated as ACP scheme did not envisage at all the grant of benefit under the scheme to casual employees who are conferred with temporary status. It is only after negotiations with the Railway Board, that 50 % of such service had been allowed to be counted towards the qualifying service for the purpose of granting benefit under the ACP scheme. As regards the provisions of IREM for maintaining seniority list of casual labour is concerned, it is only for the purpose of future appointment/regularisation etc so that no one could take undue benefit and get regularised earlier by jumping the seniority list of casual worker interse. Even otherwise, the granting of benefits under ACP scheme has nothing to do with the seniority or with regularisation of service because every one is regularised only after the screening test and that too only in their turn i.e. only from the date of their appointment as casual labour and no other benefits accrues from these rules to the employees and their status remain that of casual labour.



9. In these circumstances, we find no reason to declare that para 3.1 of the ACP scheme are contrary to the earlier scheme. In fact there was no earlier scheme before the introduction of the impugned ACP scheme. The concept of ACP scheme had

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been introduced only after the 5th Central Pay Commissions recommendations came into effect. Hence there is no question of any repugnancy with any order or earlier scheme. The learned counsel for the applicants is also unable to show any earlier scheme which is in pari materia with the ACP scheme. We also do not find that there is any discrimination or violation of any right enshrined under Art. 14 and 16 of the Constitution of India, because casual labourers with temporary status are forming a class by itself and they cannot compare themselves with that of regular employees.



10. Thus we are of the considered opinion that the O.A is bereft of merits and it has to be dismissed. Accordingly, we dismiss the same. No order as to costs.


(G.R. Patwardhan)
Administrative Member.


(Kuldip Singh)
Vice Chairman

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