

CENTRAL ADMINISTRATIVE TRIBUNAL,

LUCKNOW BENCH,

LUCKNOW.

Original Application No.301 of 1992.

THIS THE 7 DAY OF OCTOBER, 1994.

HON'BLE MR. JUSTICE B.C. SAKSENA, VICE-CHAIRMAN.

HON'BLE MR. V. K. SETH, MEMBER(ADMINISTRATIVE).

1. Surya Pratap Lal,
aged about 36 years,
S/o. Sri Ram Naresh Lal.
2. James Susheel Barla,
aged about 35 years,
S/O Sri Saloman Barla.
3. Shiv Kumar aged about
34 years, S/O. Sri Inder
Pal Singh.
4. Tej Pal aged about 33 yrs.
S/O. Shri Chhote Lal.
5. Brij Kumar Singh,
aged about 39 years,
S/O. Sri Jagdish Singh.
6. Jai Lakhan Dixit,
aged about 36 years,
S/O. Sri Munna Lal
Dixit.
7. Rajendra Bahadur Singh,
aged about 32 years,
S/o. Sri Surya Pratap
Sihgh.
8. Hari Harendra Nath
Tripathi,
aged about 32 years,
S/o. Sri UPENDRA Nath
Tripathi.
9. Naresh Kumar Mehta,
aged about 31 years,
S/O. Sri D.P. Mehta.
10. Rakesh Kumar aged about
31 years, S/O Shri Tilak
Raj.

Cleaners, Loco Shed,
Northern Railway,
Faizabad.

::::::: Applicants.

BY ADVOCATE SHRI T.N. SAXENA

Vs.

1. Divisional Railway Manager,
Northern Railway,
Hazratganj, Lucknow.
2. Sr. Divisional
Personnel Officer,
Northern Railway,
Hazratganj, Lucknow.
3. Senior Divisional
Mechanical Engineer,
Northern Railway,
Hazratganj,
Lucknow.
4. Foreman,
Loco-Shed,
Northern Railway,
Faizabad.
5. Union of India,
through the
Secretary,
Ministry of Railway,
Northern Railway,
Baroda House,
New Delhi. : : : : : Respondents

BY ADVOCATE SHRI A.K.CHATURVEDI.

O R D E R.

JUSTICE B.C.SAKSENA, VICE-CHAIRMAN.

These 10 applicants, by means of this O.A.,
have, inter-alia, sought the following reliefs :-

For issue of directions in the nature of
mandamus commanding the opposite parties to assign
seniority and fix pay counting the service rendered
as Casual Labourers by them ~~on~~ the year 1979

along with other consequential benefits.

2. The facts in brief to support the claim for the said reliefs are that the applicants were engaged to work as Casual Labourers during the year 1979-80 and their services were terminated in the year 1981. Thereafter, by order dated 9-4-84, they were engaged as substitutes in the loco-shed in Northern Railway, Lucknow. On the analogy of certain decisions rendered by the High Court, as also by this Tribunal, the applicants claim that their services, rendered as Casual Labourers, are to be counted in fixing their pay and seniority. The applicants' claim is that from their initial engagement as casual labourers they had completed more than 120 days working and as such they should be deemed to have acquired temporary status and, therefore, termination of their services in the year 1981 was illegal. On this footing they claim that their services from the date of initial engagement should be treated as continuous ~~and~~ ^{of seniority and be} for the purpose ~~of~~ fixation of pay.

3. Counter affidavit was filed on behalf of the respondents and the applicants have filed their rejoinder-affidavit.

4. The first question, therefore, that arises is whether through this petition filed in the year 1992 the claim of the applicants that the termination of their service in the year 1981 is illegal, can be considered. The respondents, in their C.A. have taken a plea that this plea is barred by limitation. Admittedly the applicants, after termination of their services in the year 1981, have not challenged the same in any Court of law. We find merit in the plea taken by the respondents. The challenge to the termination order passed in the year 1981 is clearly time-barred. The applicants have filed copy of their representation dated 13-1-1992. In the O.A., in paragraph 6(2), it has been averred that the applicants have sent reminders on the previous representations on 27-12-84, 8/7/85, 26-11-86, 5-10-87, 19/4/88, 21-9-89, 12-12-90 and 1-6-1991. It has further been averred that a last representation dated 13-1-92 was sent under registered cover as a reminder to the earlier representations. In the counter affidavit the respondents have denied the allegations about the previous representations and reminders. It has been averred that wrong facts regards submissions of representations have been made so as to be entitled for grant of benefit of representations. Copy of neither of the initial representations nor any reminders have been adduced. Even if the bald allegation about the representations and reminders as made by the applicants is considered to be correct, it ^{will} _{is} still not be possible to entertain at this belated stage the challenge to the disengagement made in the year 1981. It is fairly well settled that repeated representations or reminders

will not ~~erase~~ ^{arrest} the limitation and it would run out.

We, therefore, hold that the challenge against the order of termination of their services made in the year 1981 is clearly barred by limitation and cannot be entertained. Significantly, the applicants have also not sought any positive relief against their disengagement in the year 1981.

5. The next question to be considered is the plea of the applicants that they had completed 120 days of working prior to their disengagement in 1981 and thus they had acquired temporary status and as such they are entitled to count the period of service from the date of their initial engagement as Casual Labourers for the purpose of assigning of seniority and fixation of pay. In view of our finding herein above that the challenge to the action of disengagement of the applicants in 1981 cannot be questioned at this belated stage, there is no other alternative but to consider the applicants claim from the date of their reengagement as substitutes in the year 1984. The applicants are under erroneous impression that their reengagement in the year 1984 was on regular basis. Five of the applicants were reengaged as substitutes by order dated 9-4-84 (Annexure-2) and three by order dated 18-6-84 (Annexure-3).

6. In the counter-affidavit it has been indicated that the applicants were reengaged and reappointed as per the need, against the casual vacancies, and they were not engaged as regular railway employees by the aforesaid 2 orders (Annexure-2 & 3).

7. The stand of the respondents is fortified by the provisions of Indian Railway Establishment Manual. It has further been indicated in the counter affidavit that the applicants were screened in the year 1990 and

empanelled on 25-2-93 and thereafter absorbed/regularised with effect from the date of the issue of panel.

The applicants were, thereafter assigned seniority below the loco-shed employees who were already working prior to 25-2-93. A copy of the panel has been annexed as Annexure C-1.

8. The main plank for the claim of the applicants is based on Railway Board's Circular dated 12-7-73 contained in B.S. ~~Manne's~~ Railway Establishment Rules & Labour Laws 1988 Edition, pages 417 & 418. The relevant provision was quoted in paragraph 4.7 of the O.A. :-

"Temporary Status: Casual Labourer other than that employed on projects..... shall be considered to have acquired temporary status on completion of 4 months' continuous service either in the same work or any other work of the same type, to which they may be shifted..... Casual Labourer acquiring temporary status shall be entitled to all the rights and privileges admissible to Railway Servants, for example, ~~authorised~~ pay scale, ^{and} compensatory ^{and} local allowances, dearness allowances, medical facilities, etc....."

The relevant provisions are contained in Chapter XX of the Indian Railway Establishment Manual, Vol.II, 1990 Edition. Paragraph 2005 of the said manual is relevant for our purpose. In clause (a) of the said paragraph reads as :-

" Casual Labourer treated as temporary, are entitled to the rights and benefits admissible to temporary Railway Servants, as laid down in Chapter XXIII of this Manual. Rights and privileges admissible to such labourers also includes benefits of the ~~(~~ ^{D + Appeal} ~~)~~ rules. Their services prior to absorption in temporary/permanent/regular cadre after

X

the required selection/screening, will not count for the purpose of seniority and the date of their regular appointment after scrutiny/selection shall determine their seniority vis-a-vis other regular/temporary employees."

9. Clause (b) of paragraph 2005, inter-alia, provides that such Casual Labourer who acquired temporary status ~~brought~~ will not, however, be ~~provided~~ on the permanent or regular establishment or treated as in regular employment on Railways until and unless they are selected through regular Selection Board for group 'D' posts in the manner laid down from time-to-time. ~~The various other~~ provisions in the said Chapter are not required to be noted. Sub-para (a) of paragraph 2005 is a complete reply to the claim made in this O.A. As noted herein above, the period of service rendered as Casual Labourer even after being given temporary status will not be counted for the purpose of seniority, and their seniority would be reckoned only from the date of their absorption on regular appointment, after screening/selection.

10. Another provision which is relevant and ^{to be b/w} taken note of is para 1501 contained in Chapter XXV of the Indian Railway Establishment Manual, Vol. I. The term 'temporary Railway Servant' has been defined in the said paragraph and it reads as under:-

" A 'temporary Railway Servant' means a Railway-servant, who has a lien on a permanent post of a Railway or other administration or office under the Railway Board. The term does not include 'Casual Labourer' including 'Casual Labourer with temporary status'...
....."

Evidently a casual labourer with temporary status is not a railway-servant.

11. The next question arises is ^{the} status and the rights to which the applicants can be considered entitled after their engagement in 1984. The orders for the engagement have been annexed as Annexure A-2. The said order provides that they may be engaged as substitutes after following all the formalities i.e. medical examination etc. Paragraph 1515 of the Railway Establishment Manual, Vol. I, Chapter XV, indicates the rights and privileges admissible to the substitutes. It states substitutes should be afforded all the rights and privileges as may be found admissible to temporary railway-servants from-time-to-time on completion of 4 months' continuous service. A note to the said paragraph says, conferment of temporary status on the substitutes on completion of 4 months' continuous service will not ~~be~~ entitle them to ~~be~~ automatic absorption/appointment under railway-service unless they are in turn for such appointment on the basis of their position in select list or their selection in the approved manner for appointment to the regular posts. For our purpose, a further provision, contained in para 1515 would be relevant. It, inter-alia, states that substitute School Teachers may, however, be accorded temporary status after having put in continuous service of 3 months and their service should be treated as continuous for all purposes except seniority on their eventual absorption against regular posts after selection. This provision clearly says that in respect of substitute school teachers, conferment of temporary status is after three months' continuous service. As far as other

substitutes are concerned, as per the provisions of paragraph 1515, as stated herein above, the conferment of temporary status would be only after completion of 4 months' continuous service. The same condition that their continuous service should be treated as continuous for all purposes, except seniority, will cover substitutes other than substitute teachers.

12. In view of what has been indicated herein above, we have no manner of doubt that the status of the applicants, after re-engagement in the year 1984, was not of a temporary railway servant~~s~~ as defined in paragraph 1501 of the Indian Railway Establishment Manual, Volume-I. Seniority ~~is~~ as a concept confined to regular employees. The applicants have been appointed on regular posts after their ~~employment~~ ^{empanelment} on 25-2-93. They are, therefore, entitled to seniority with effect from the said date only. This plea, taken on behalf of the respondents has, therefore, force and is accepted.

13. The applicants, as noted herein above, claim the benefit of ~~their~~ past services, rendered by them, as casual labourers, on the basis of parity with certain casual employees in whose favour decisions have been given by the Courts. The first decision on which reliance ^{is} placed, has been annexed as Annexure-A-9. This is a judgment dated 5-2-1990 passed in Civil Misc. Writ Petition No.12743 of 1987, Divisional Railway Manager, Northern Railway, Lucknow Vs. Zonal working, Uttar Railway, Kanpur, and another. A perusal of the said decision shows that the services of a total number

of 207 workers of the loco-shed, Northern Railway, Lucknow, were terminated. The Central Government referred the dispute to Labour Tribunal for adjudication. The case of the workers before the Labour Tribunal was that they had worked for more than 240 days and their services had been terminated without complying with the provisions of section 25(f) of the Central Industrial Dispute Act. The Labour Tribunal held that 28 out of 207 workers have worked for more than 240 days. In respect of others it was held, for want of necessary material, that it was not possible to give any categorical finding. In the Writ Petition filed by the Railway Authorities, the learned Single Judge held that the finding, with respect to 28 workmen was a finding of fact, ^{and} cannot be interfered. In respect of the remaining workers, the award was set aside and the matter was remitted back to Labour Court for deciding it afresh. The applicants urge that since on the basis of the said decision, the Railway Administration, by order dated 20-4-91, had given the 28 workmen incremental benefits from the date of their termination, keeping ⁱⁿ view that they had completed 120 days' continuous service, they should also be given the benefit of pay fixation under the new Pay Scale effective from 1-1-1986. Copy of the said order is annexed as Annexure A-IV. The same was passed in compliance with the judgment of the High Court in the aforesaid case. Obviously, the workmen concerned, had challenged the order of their termination. There is no parity in facts. The present applicants before us

had not challenged the order of their termination passed in the year 1981.

14. The next decision on which reliance ^{is} placed has been filed along with R.A. The said decision has been rendered by this Tribunal in O.A.No.466/91(L), decided on 26-4-93, Amarjeet Singh Vs. U.O.I. & others. The applicant of the said O.A. was appointed as casual labour/substitute and continued to work upto 3-10-81. He was not allowed to work after the said date. He filed a Civil Suit against the order of oral termination. The Suit was transferred to this Tribunal and was registered as T.A. No.793/86 (O.S.No.97 of 1982) and was dismissed by an order dated 13-7-89. Thereafter a Review Application No.52/B/T/89 of 1989 was filed. A Division Bench of the Tribunal, by order dated 12-2-91 allowed the said Review Petition, and the order dated 13-7-89 in the original case was set aside and T.A.No.793 was allowed with a declaration that the plaintiff-applicant Amarjeet Singh shall be deemed to have continued in service of the respondents from 4-10-81 in continuation of his previous employment and the respondents shall pay his backwages from 4-10-81 till the period he was re-engaged. From the order passed in the Review, it appears that Shri Amarjeet Singh was ~~on~~ engaged ^{on} 4-10-81. The Review petition had been allowed on the basis that the provisions of section 25(b) of the Industrial Disputes Act had not been correctly interpreted while deciding the T.A. That being so, it was further held that since the applicant had worked for a period of 240 days, his termination was violative of section 25(f) of the Industrial Disputes Act.

15. The facts of the said case are also different. A termination order has been challenged and it was set aside and the natural consequence thereof was that the applicant therein was given the benefit of continuity in service and backwages.

16. There was no claim for seniority in any of the two decisions referred to herein above. In view of the discussions herein above, there is no merit in the O.A. and the same is accordingly dismissed. The parties shall bear their own costs.

V.K. SETH
(V.K. SETH)
MEMBER (ADMN.)

B.C. SAKSENA
(B.C. SAKSENA)
VICE- CHAIRMAN.