

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,

PATNA BENCH : PATNA

Date of Order:- 7.3.2000
24.12.01

1. Registration No.OA-38 of 1994

1. Satyanarain Singh, Son of Sri Sarjug Singh, deceased, resident of village and P.O. Ismailpur, Police Station, Hajipur, District Vaishali.
2. Chandra Bhan, Son of Sri Ram Raj, resident of village Bijalpar, P.O. Backagon Pathak, P.S. Barhaj Bazar, District Deoria (U.P.).
3. Onkar Nath Yadav, Son of Shri Ramji Yadav, resident of village Belghat Khird, P.O. Turkaulia, P.S. P.P. Ganj, District Gorakhpur (U.P.).
4. Md. Munna Son of Md. Gulam Hussain, resident of Thana Road, Bhawan Bazar, District Saran.
5. Mahendra Thakur, Son of Shri Kali Charan Thakur, resident of village and P.O. Sikhrauli Bazar, P.S. Matha, District Deoria (U.P.)

... Applicants

- By Shri R.S. Prasad, Advocate

Versus

1. Union of India
2. General Manager, North Eastern Railway, Gorakhpur
3. ~~Chief Signals and Tele-communication Engineer, North~~
Eastern Railway, B.G., Gorakhpur.
4. Deputy Chief Signal & Telecommunication Engineer, B.G., North Eastern Railway, Samastipur.
5. District Signal & Tele-communication Engineer, B.G., North Eastern Railway, Samastipur (Barauni).
6. District/Divisional Officer, Incharge B.G., North Eastern Railway, Samastipur.
7. Assistant Signal Tele-communication Engineer, B.G. Construction, Barauni.

... Respondents

- By Shri A.B. Ojha, Advocate

2. Registration No.OA-537 of 1992

1. Yogendra Mahto, Son of Sri Sattan Mahto, resident of village and Post Office Mohanpur, Police Station Samastipur, District Samastipur.
2. Rajendra Singh, Son of Sri Kamaldhari Singh, resident of village Jahangir, Post Office Sonpur, P.S. Sonpur, District Chapra.
3. Sudhir Kumar, Son of Sri Sukhdeo Narain Singh, resident of village Amarpur, P.O. & P.S. Bihpur, District Bhagalpur, at present resident of village - Dhurlakh P.O. & P.S. and District Samastipur.

... Applicants.

- By Shri B.K.M. Tripathy, Advocate

Versus

1. Union of India through General Manager, North Eastern Railway, Gorakhpur (U.P.)
2. District Signal and Telecommunication Engineer(Construction) North Eastern Railway, Barauni.
3. General Manager, North Eastern Railway, Gorakhpur (U.P.).
4. Chief Signal and Telecommunication Engineer(Construction), North Eastern Railway, Gorakhpur (U.P.).
5. Md. Munna, Son of Gulam Hussain at present working as Khalasi in North Eastern Railway, Barauni Jn.
6. Onkar Nath Yadav, Son of Ramji Yadav, at present working as Khalasi, North Eastern Railway, Barauni Jn.
7. Chandra Bhan, Son of Ram Raj at present working as Khalasi in North Eastern Railway Barauni Junction.
8. Satya Narain Singh, Son of Saryug Singh, at present working as Khalasi in North Eastern Railway, Barauni Junction.

... Respondents

By 1. Shri A.B.Ojha, Advocate
2. Shri R.S. Prasad, Advocate

Coram:- Hon'ble Shri L.R.K. Prasad, Member (Administrative)
 Hon'ble Shri Lakshman Jha, Member (Judicial)

O R D E R

Hon'ble Shri Lakshman Jha, Member (Judicial):-

The common grievance of the applicants in both the aforesaid O.As. relates to their termination from the services as Khalasi under the District Signal and Telecommunication Engineer, BG, (Construction), North Eastern Railway, Samastipur/Barauni (Respondent No.5) vide Order dated 31.7.93 as at Annexure-A/1 to Annexure-A/5 of O.A. No.38/94 and the order dated 12.11.92 as at Annexure-A/4 (of O.A.No. 537/92). Accordingly, in both the O.As prayer has been made to quash their as contained in the aforesaid Annexures aforesaid termination order/and for direction to the Respondents to allow them to work as Khalasi with all consequential benefits. Hence both the O.As. are disposed of by this common order.

2. Shorn of details, the relevant facts are that the applicants were working as Casual labour under the over all charge of the District Signal and Telecommunication Engineer, B.G. Construction, Samastipur. The details of their seniority position with the total number of working days and the actual working days which ought to have been shown as on 1.4.85 are as hereunder:-

Name of the applicants	Position of seniority	Total working days as shown on 1.4.85	Actual working days which ought to have been shown
1.	2.	3.	4.
1. Satnarain Singh	270	101	147
2. Chandra Bhan	274	95	167
3. Onkar Nath Yadav	391	57	206
4. Md. Muna	417	54	97

1.	2.	3.	4.
5. Mahendra Thakur	335	42	187
6. Yogendra Mahto	303	68	
7. Rajendra Singh	268	104	
8. Sudhir Kumar	267	105	

2. The aforesaid working days as mentioned in Col. No. 3^h are said to have been calculated ^{on} the basis of the entries in the casual labour cards popularly known as 'Red Cards' provided to them by the Respondents Department vide Annexure-A/6 series to Annexure-A/10 series. It is stated that the applicants Nos. 1 to 5 of OA No.38/94 were re-engaged with effect from 14.12.89, 8.10.90, 5.4.90, 29.12.89 and 3.4.90 respectively continuously till their services were terminated vide the impugned order dated 31.7.93, as at Annexure-A/1 to A/5 and the applicant of O.A. 537/92 (Sl.Nos. 6 to 8) were also re-engaged with effect from 5.1.90, 20.12.89 and from 20.12.89 respectively continuously till they were terminated by the impugned termination order dated 12.11.92 as Annexure-A/4 of OA-537/92.

3. It is stated that the Respondents Department is required to prepare the seniority list of Project casual labour at Divisional level on the basis of their working days in between 1.1.81 to 1.4.85 in the light of direction of the Hon'ble Supreme Court in Inderpal Yadav's case, and also, in the light of circular No.157 dated 30.6.92 issued by the Railway Board to all the General Managers as at Annexure-A/11 for the purpose of their engagement and disengagement. The Respondents Department, accordingly, prepared revised provisional seniority list of project labour as on 1.4.85 and published the same on 6.7.89 vide Annexure-A/13 of OA-38/94 and Annexure-A/2 of O.A.No.537/92 in compliance of the aforesaid directions

in Inderpal Yadav case.

4. It is the further case of the applicants of OA-537/92 that earlier the Respondents Department served them termination notice dated 12.9.91 on the ground that casual labour senior to them were available for engagement and one such Senior casual labour, namely, Shiv Jee Sharma represented for his engagement. Being aggrieved by the termination order they filed OA-539/91, which was decided by this Tribunal vide order dated 3.4.92 as at Annexure-A/12 of OA No. 38/94. This Tribunal in the aforesaid OA-539/91 found that the aforesaid three applicants of OA No. 537 of 1992 had worked for lesser number of days than the aforesaid Shiv Jee Sharma before 1.4.85 and, therefore, irrespectively of the fact that they had worked for more days subsequent to 1.4.85, declined to interfere with the termination order dated 12.9.91 and dismissed the O.A. However, the Tribunal observed that the seniority list dated 20.8.91 as filed by the applicants of OA No. 537/92 had not been correctly maintained and the juniors have been engaged ignoring the claim of the seniors. Pursuant to the aforesaid observation of this Tribunal in OA-539/91 the Respondent Department prepared the seniority list as on 31.7.93. It is said that Annexure-A/13 is the seniority list dated 31.7.93. (But, according to the admitted case of the applicants of both the O.As., the seniority list as Annexure-A/13 of OA-38/94, corresponding ^{to seniority} list as at Annexure-A/2 of OA-537/92, appears to be dated 6.7.89).

It is said that the seniority list as at Annexure-A/13 does not contain the correct number of working days of the applicants of the O.A. No. 38/94 as on 1.4.85. They have been shown less working days than what they should have been shown as detailed in col. no. 4 above. The applicants of OA-38/94 had represented to amend their working days which was allowed by the competent authority, vide order dated 17.12.90, as at Annexure-A/14. Accordingly, working days of the applicants nos. 2, 3 & 5

of OA-38/94 should have been shown as 161, 206 and 187 days respectively and their seniority should be placed at sl.No.200, 199(ka) and 199(Kha). But, the Respondents Department could not carry out the aforesaid correction in the seniority list (Annexure-A-13 of OA-38/94) which resulted into showing their lower seniority position. In the meantime, the applicant of OA No.537/92, on being unsuccessful in their earlier OA No.539/91, and catching the thread of the observation in the aforesaid OA-539/91 filed this OA -537/92 arraying the applicants Nos. 1 to 4 of OA No.38/94 as Respondents Nos. 5 to 8, claiming seniority over them. It is said that the applicant of OA No. 537/92 have wrongly claimed seniority over them i.e. over the applicants of OA-38/94. In view of the fact that their correct number of working days have not been mentioned in the seniority list as at Annexure-A/13 of OA-38/94 and Annexure-A/2 of OA-537/92. The applicants nos. 1 & 2 of OA-38/94, again represented for necessary correction in the seniority list, vide their representation petition dated 9.2.93 & 14.8.93 as at Annexures-A/15 and A/16, but of no avail. The Respondents Department, as a matter of defence in the aforesaid OA No.537/92, conveniently dispensed with ^{the} services of the applicant of OA No.38/94, on the spacious plea of accommodating the seniors ~~_____~~ ~~_____~~ arbitrarily without indicating as to what happened to those who are at Sl.Nos.271 to 416 of the seniority as at Annexure-A-13. In other words, they have been victimised by not following the settled principle of "last come first go".

5. It is the further case of the applicants that as many as 35 casual labours who have lesser number of working days as at Annexure-A/17, are still working in Samastipur Division. They were not engaged by Respondent No.2 in Barauni Construction Division and were transferred from other signal

and Telecommunication Division in the year 1989, 1990 and 1991. Some casual labour of Lucknow Construction Division of the same Zone i.e. North Eastern Railway, who have put in even one day of work as on 1.4.85 are also still working as per details as at Annexure-A/18 and Annexure-A/19. But the applicants who had been working during the period between 18 to 20 years and continuously from 1989-90 till their termination in 1992-93, and had already been granted temporary status are being terminated by the impugned order without observing the settled principle of seniority as well as 'last come first go', and also, without complying the mandatory provision under the industrial disputes Act. It is stated that it is not known as to who are the senior, seeking engagement for whom the applicants have been picked up for being terminated. The Respondents Department have vast construction work and there are substantial scope for engaging/adjusting the applicants at any Division 1 and/or zonal level, according to the circular of the Railway Board, as contained in paras 7 : 6 of Annexure-A/11. The Respondents Department is required to prepare a consolidated list as on 1.4.85, covering the project casual labour in the employment on the zonal Railway of the construction organisation at any time from 1.1.81 onwards. The list so prepared will form the basis for conferment of temporary status, and also, for any subsequent/re-engagement/discharge. But the casual labour of one Division within the same zone with a few days of work are retained whereas the casual labour of another Division with greater number of working days, the working days are being terminated defeating the purpose behind the aforesaid circular and the spirit of Inderpal Yadav's case. In this connection, it is stated that casual labour of Lucknow Division of the same zone who worked for two days or so as at Annexure-A/17 to Annexure-A/19 are continuing whereas the applicants having greater number of working days are disengaged. Accordingly, prayer has been made for relief/s as stated above.

6. The Respondents in their counter have stated that in compliance of the Hon'ble Supreme Court's judgment

in Inderpal Yadav's case, the seniority list of project casual labour, divisionwise, categorywise on the roll from 1.1.81 to 1.4.85, was published on 6.7.89. The seniority list was prepared on the basis of Red Cards provided to the casual labours. The absence of casual labour, for some personal reasons not exceeding 20 days only, is not treated as break in service, vide circular dt. 19.12.86, as at Annexure R-4 (OA No. 38/94). It is the further case of the respondents that the applicants have correctly been shown in the seniority list with their working days as detailed above. However, the period during which they absented for more than 20 days were not taken into consideration for reckoning the seniority as they had left the work on their own ^{assured} ~~assured~~. It is said that they were re-engaged with condition that their services would be terminated without any information on availability of Sr. ex-casual labour. The seniority list of the Signal and Telecommunication Department of Sonapur construction Division was reviewed in compliance of the Tribunal's judgement in OA-531/91, and the applicants were found ~~more~~ much juniors and many of their seniors were waiting for job. Therefore, their services were terminated by the impugned order after observing the formalities under the I.D. Act, and also, in accordance with the terms and conditions of their re-engagement. The issue of corrigendum of the seniority list dated 17.12.90 as at Annexure-14 (of OA-38/94) is said to have been wrongly issued, but, the applicants were granted temporary status before their termination on completion of 360 days continuous service in the seniority unit.

7. It is further stated that the applicants fall within the seniority unit of the District Signal and telecommunication Engineering/Construction/Barauni, which is within the geographical jurisdiction of the Sonapur Construction Engineering Department of Signal and Telecommunication. The names of the casual labours as shown at Annexure-A/17, of the

OA-38/94, belong to the seniority unit of Lucknow Construction Division of Signal and Telecommunication Department, which have no relevance with the seniority unit of Sonapur Construction Department of Signal and Telecommunication. The senior ex-casual labours have been re-engaged according to the seniority list of Sonapur Construction Division. The engagement of the project casual labours depends upon the availability of work in sanctioned project which fall under geographical jurisdiction of respective Division. It is said that the casual labours of Lucknow Construction Division have lesser number of working days than the casual labours of the Sonapur Construction Division. As the re-engagement and discharge of the project casual labour depends on geographical jurisdiction of the Division, the preparation of the seniority of the casual labours of Lucknow Construction Division was no relevance for the purpose. The seniority list is required to be recast by the Zonal Railway, divisionwise, department-wise and category-wise as on 1.4.85, to cover all the project casual labours who have been employed at any time from 1.1.81 onward. It is not required to be prepared at Zonal level. The applicants of OA No. 38/94, are juniors to the applicants of OA-537/92. They (the casual labour of OA-38/94) enjoyed the benefit of temporary status as per scheme. However, they cannot be treated at par with the temporary Railway servants. They were retrenched after observing all the formalities under I.B. Act. They did not turn up to receive retrenchment compensation on the date fixed for the purpose i.e. upto 13.8.93. However, they will be re-engaged as and when their term come in the seniority list on availability of fresh work in Sonapur Construction Division of Signal and Telecommunication Department.

8. Heard Shri B.K.M. Tripathy and Shri R.S. Prasad, counsel for the applicants and Shri A.B. Ojha, counsel for the respondents and perused the record carefully.

9. The applicants of OA No. 537/92, namely, Yogendra Mahto, Rajendra Singh and Sudhir Kumar had earlier challenged their termination order dt. 12.9.91 in OA No. 539/91. The services of all these three applicants had been terminated on the ground that the casual labour, senior to them were available for engagement in their places and their re-engagement was with the express condition that on availability of senior casual labours, they would be terminated from the services without prior notice. The basis for determining the seniority of the applicants was the number of working days as on 1.4.85, in term of the scheme of the respondents department formulated in the light of the direction of the order of the Hon'ble Supreme Court in Indrapal Yadav's case. This Tribunal in the aforesaid OA had found that the applicants namely, Yogendra Mahto, Shri Rajendra Singh and Shri Sudhir Kumar had 68,104 and 105 working days respectively with seniority position as at serial no. 303,268 and 267 respectively as on 1.4.85, whereas, one Shiv Jee Sharma had worked for 150 days upto 1.4.85, with seniority position as at serial no. 238. Shri Shiv Jee Sharma had filed representation claiming re-engagement on the basis of his above seniority position. The aforesaid three applicants had claimed to be senior to Shri Sharma on the basis of their seniority position as on 31.12.90, vide seniority list dt. 20.8.91. In the backdrop of the above seniority position this Tribunal held that the applicant and many others had been re-engaged without considering their relative seniority, vis-a-vis, ex-casual labour as on 1.4.85. However, the respondents, Railways had taken care to mention as a term of their re-engagement that on availability of ex-senior casual labour, their services would be terminated without notice to them. In view of such term of the re-engagement, their termination order was upheld and the stay of their termination order was vacated vide order dt. 3.4.92, as at Annexure A-3 to OA 537/92, but with observation that the casual labours as at Sl no. 191,192,194 to 200 and 202 to 222

had been re-engaged even though they had not worked for a single day upto 1.4.85. This showed that the principle of seniority in the matter of re-engagement of ex-casual labours had not been followed. Accordingly, the respondents, Railways was required to re-examine the matter of their seniority on the basis of their working days in between 1.1.81 to 1.4.85, and to consider their re-engagement on the basis of their seniority.

10. It appears that the respondents Railways in the process re-examining the question of re-engagement of ex-casual labour on the basis of their seniority, found that the applicants, namely Yogendar Mahto, Rajendra Singh and Sudhir Kumar could not be retained if four senior casual labours as at Annexure A-5(B) namely, one Md. Irfan, Shivjee Sharma, Baidnath Raj, Pursottam Mal with 409,150,149 and working days as on 1.4.85 are re-engaged and, accordingly, a proposal to that effect was submitted to C.A.O (Cons.) Gorakhpur by District Signal and Telecommunication Engineer Construction, Barauni, vide Annexure A-5. The proposal could not find favour with the authority concerned, and accordingly, their services were ordered to be terminated with effect from 16.12.92, by the impugned order as at Annexure A-4 of OA 537/92. The applicant Shri Yogendra Mahto, Rajendra Singh and Sudhir Kumar have filed this OA 537/92 challenging the same on the aforesaid grounds as well as claiming seniority over respondents nos 5 to 8, i.e, Omkar Nath Yadav, Chandra Bham, Satyanarayan Singh who are applicants in OA No. 38/94. Subsequently, it further appears that the services of the applicants of OA No. 38/94 were also terminated, vide impugned orders dt. 14.8.93 (Annexure A-1 to Annexure A-5 of OA 38/94) on the ground that in their places senior casual labours are to be accommodated/re-engaged in compliance of the order passed in OA 539/91. They have also challenged their termination, amongst other on common grounds on the ground that they are senior to the applicants of OA 537/92

as per ~~seniority~~ position as on 1.4.85 in view of the correction order as at Annexure A-14 of OA 38/94, on the basis of the number of their working days.

11. Before we enter into discussion of the common grounds on which the impugned termination orders are assailed in both the OA's, we would like to point out that the disputed interse-seniority position of the applicants of both the OAs have got to be sorted out on the basis of their number of working days as on 1.4.85. The seniority list as at Annexure A-13(to of OA No. 38/94) and Annexure A-2 of OA 537/92) appears to have been prepared on 6.7.89, showing the number of working days between 1.1.81 to 1.4.85. The seniority list is claimed to have been prepared on re-examination of the working days of the casual labour in the light of the order passed in OA 539/91, also, but the same has not been brought on the record by the respondents Railways on the plea that it is a bulky document. However, the number of working days as shown in Column No. 3 of the above table as on 1.4.85 appear admitted, except with respect to the number of working days claimed by the applicants of OA 38/94, on the basis of a correction slip issued by the Railways Respondents vide Annexure A-14, on the basis of their red card entry. The actual number of working days claimed by them to have been shown in Col. 4 of the above table. According to the correction slip issued by the respondents, Railway on the representation of the applicants of OA 38/94, on 17.12.90, as at Annexure A-14, the applicants, namely, Chandrabhan, Omkar Nath Yadav and Mahendra Thakur have been corrected their number of the working days as 167206 and 187 with their seniority position as on 1.4.85, as 200, 199(Ka) and 199(Kha) respectively. The applicants Satya Narayan Singh and Md. Munna have claimed their number of working days as 147 and 97 days as on 1.4.85, on the basis of their red cards, issued by the respondents, Railways as at Annexure A-6 and Annexure A-9 series, but it appears from the averment in OA 38/94, that the applicant, Satya Narayan, had worked in Gorakhpur Division from 1.6.81 to 26.6.81, and the

applicant, Md. Munna had worked from 3.6.81 to 15.7.81 at Gorakhpur Division. There is no correction slip in respect of these two applicants. However, they have claimed that their representations in this regard, as at Annexure A-15 and Annexure A-16 are still pending with the respondents Railways. Thus, considering the aforesaid correction slip as at Annexure A-14 (of OA 38/94), the applicants have following numbers of working days as on 1.4.85:-

<u>Name of the Applicant</u>	<u>No. of working days</u>
Omkar Nath Yadav	206
Md. Munna	187
Chandra Bhan	161
Sudhir Kumar	105
Rajendra Singh	104
Satya Narayan Singh	101
Yogendra Mahto	68
Mahendra Talwar	42

12. As said above, the seniority position of the aforesaid 3 applicants, namely, Omkar Nath Yadav, Md. Munna and Chandra Bhan have also been ordered to be corrected as 199(Ka), 199(Kha) and 200 respectively, vide Annexure A-14 of OA 38/94. But, it is contended that the correction has not been carried on in the seniority list as at Annexure A-13 of OA 38/94 and Annexure A-2 of OA 537/92. If the correction slip is taken into consideration, the claim of the applicants of OA 537/92, namely, Yogendra Mahto, Rajendra Singh and Sudhir Kumar of their being senior to all the applicants of OA 38/94 does not stand. The learned counsel for the respondents, on the other hand, contended that the correction slip as at Annexure A-14 in OA 38/94, was wrongly issued by the Railway administration, as unauthorised absence for more than 20 days should not have been taken into account according to the circular ~~issued~~ issued by the department. The contention of the learned counsel for the respondents does not appear convincing. The aforesaid

correction order (A-14) was issued as far back as on 17.12.90, without any objection from any quarter, by the competent authority on the basis of their casual labour card(Red Card). Therefore, at this stage, the contention of the learned counsel for the respondents Railways that correction was made wrongly does not appear acceptable. Accordingly, we are of the opinion that the respondents Railways should have prepared the seniority list on the basis of the aforesaid working days of the applicants as on 1.4.85, to give effect to the principle of seniority in the matter of their engagement/re-engagement and discharge.

13. The next serious lacuna in the impugned orders of termination of the applicant, is non observance of the settled principle of 'last-cum-first-go'. This Tribunal in the aforesaid order passed in OA 539/91, pointed out that Shri Shivjee Sharma, having 150 working days as on 1.4.85, was senior to the applicants of OA 537/92, and, hence, their termination order was upheld, but with the observation as said above, to prepare the seniority list after re-examining the working days and to pass appropriate order in the matter of re-engagement in order of seniority. The Railways respondents took the aforesaid order dt. 3.4.92 passed in OA 531/91, as a blanket order for terminating the services of the applicants on the spacious plea of availability of senior casual labours for work. It is pertinent to point out that respondents railways has brought only one such claimant, senior casual labour, namely, Sheo Jee Singh, vide Annexure A-1 of OA 537/92 on the record. It is the clear and specific case of the applicant, that there was no other senior casual labour claiming re-engagement except the aforesaid Shwo Jee Sharma. It appears from the impugned order, as at Annexure A-1 to Annexure A-5 of OA 38/94 and Annexure A-1 of 537/92, that the applicants have been terminated on the ground that there are many senior casual labours available for re-engagement and to accommodate them their services are being terminated. There is no mention as to for

accommodating whom, the services of the applicants were terminated. In other words, the impugned order does not indicate as to whether the principle of 'last-come-first-go' has been followed or not which is one of the essential requirements of Indrapal Yadav's case. This could have ^{been} done only by showing the chain of vacancies with Sl. Nos of the ex-casual labour for accommodating whom, the ~~applicants~~ applicants were terminated. The respondents having not done so, appears to have violated the principle of 'last-come-first-go'.

14. The admitted position is that the applicants were re-engaged in between 14.12.89 to 19.2.90 and were also granted temporary status much before the impugned termination order was passed on 12.11.92 and 31.7.93. They appeared to have been granted temporary ~~status~~ status in terms of the scheme as framed by the respondents department in the light of the directions of the Hon'ble Supreme Court in Indrapal Yadav's case. It is settled law that the casual labours who have acquired temporary status which entitled to rights and privileges admissible to temporary railway servants under Chapter XXIII of the Railway Estt. Manual Rule 25. The Central Administrative Tribunal, Ahmedabad Bench in a case (as reported in 1988(8) Administrative Tribunal case page-725 held that the termination of casual labours who already acquired temporary status without observing the principles of 'last-come-first-go' was unsustainable. The Ernakulam Bench of the Central Administrative Tribunal in a case as reported ~~128~~ in 1980(13) Central Administrative Tribunal Cases Page-99 held the termination of services of casual labours who have acquired temporary status without notice as bad, and, accordingly, ordered ~~reinstatement~~ reinstatement with consequential benefits of seniority/absorption and promotion ~~but without back wages.~~ but without back wages. This aspect of the matter i.e., ~~the~~ the acquiring of temporary status by the applicant subsequent to their re-engagement was not under consideration before this Tribunal in

OA 539/91 and 537/92. In other words, the granting of temporary status to the applicant is a subsequent development and termination of the services of the applicants without notice to them, ~~does not~~ appear sustainable.

15. In the next place, the impugned termination orders are challenged on the common ground that as many as 35 casual labours who have lesser number of working days as at Annexure A-17 are still working in Samastipur Division. They were not engaged by respondents no. 2 in Barauni Construction Division and were transferred from other signal and Tele-communication Division in the year 1989, 1990 and 1991. It is also stated that some casual labours of Lucknow construction Division of the same North Eastern Railway Zone, who have put in even one day of work as on 1.4.85 are still working as per details as at Annexure A-18 and A-19 of OA 38/94. The learned counsel for the applicant contended that the applicants have been working for the past 18 to 20 years and continuously from 1989-90 till their termination in 1993. The respondents Railways are required to prepare consolidated seniority list covering all projected casual labours on the Zonal Railway at any time from 1.1.81 onwards. The list so prepared would ~~fall~~ be the basis for confirmation of temporary status and also for any subsequent engagement/re-engagement and discharge. In this connection, Railways Board master circular 6.7 as at Annexure -11 reads as follows:-

" for the purpose of implementing the scheme, each Zonal Railway should prepare a list showing the project casual labours for each Division on the basis of length of service and thereafter prepare a consolidated list as on 1.4.85 covering all projected casual labour in employment on the Zonal Railway/Construction organisation at any time from 1.1.81 onwards. The list so prepared will ^{from} ~~fall~~ be the basis for confirmation of temporary status and also for any subsequent engagement/re-engagement/discharge."

16. The learned counsel for the respondents Railways contended that ~~Indrapal~~ Indrapal Yadav's case contemplates preparation of Division-wise as distinguished from project-wise seniority of the casual labours. He further contended that the casual labours as shown at Annexure A-19 of OA 38/94 belong to the seniority unit of the Lucknow Construction Division of Signal and Telecommunication department which has no relevance with the seniority units of Sonapur Construction department of Signal and Telecommunication. The senior casual labours have been re-engaged according to the seniority list of Sonapur Construction Division.

17. The contention of the learned counsel for respondents Railways does not appear sound. In view of the requirement as per the aforesaid schemes of preparing division-wise seniority list and thereafter preparing a consolidated list on the Zonal Railway/Construction organisation level. This requirement appears to be in order to facilitate the regulation of retrenchment by means of inter-project transfers. In other words, the casual labours can be offered transfer to another division as an alternative to resorting to termination of services. However, such transfer can be affected if the concerned employees ~~do~~ opt and the transferred employees will continue to have a scheme of seniority in the originating division. Admittedly, the services of the applicants have been terminated while ~~of~~ the services of the aforesaid transferred casual labours from other division are retained. There is nothing in the record to show that the respondents Railways prepared consolidated Zonal list covering all project labours in employment in order to regulating their engagement or re-engagement by ~~means~~ means of inter-project transfers. Thus, the retention of the transferred casual labours from other division having lesser number of working days as at Annexure A-17 to A-19 than the applicants falling within the same Railway Zone appears unsound and discriminatory. If the casual labours from other divisions who are engaged in the exigencies

of the circumstances, the railway authorities are required to let the transferred casual labours know their fate that their seniority will be governed by their position in the originating division and that they are liable to be terminated on the availability of senior casual labours in the division to which they are transferred in accordance with the principle of 'last-come-first-go'. What we want to emphasise is that the retention of the transferred casual labours from other divisions having lesser number of working days than the senior casual labour of the division, including the applicants, is not the spirit of the aforesaid scheme framed by the respondents department in the light of Indrapal Yadav's case.

18. Lastly, it appears from the impugned termination orders that retrenchment compensation as required under the Industrial Disputes Act, 1947 has not been offered to the applicants, and, therefore, the termination order suffers from the defect of non-compliance of aforesaid mandatory provision of law also.

19. In view of the aforesaid discussions, we find and hold that the impugned termination orders dt. 31.7.93 and dt. 12.11.92 as contained in A-1 to A-5 of OA No. 38/94 and Annexure-4 of OA No. 537/92, are not sustainable, and, accordingly, they are quashed. The termination orders shall be deemed non-est. The applicants are ~~held~~ entitled to be engaged and also for consideration for regularisation/absorption on the basis of the temporary status already confirmed by the respondents department upon them in accordance with law. The respondents department is at liberty to ascertain and assign the seniority position to the applicants vis-a-vis the casual labours, if any, engaged in their places following ^{the} principles of seniority and 'last-come-first-go' and to take appropriate action accordingly. With the aforesaid direction, the OA's are allowed with no order as to costs.

Lakshman Jha
7.3.2000
24.12.01
(LAKSHMAN JHA)
MEMBER(J)

L.R.K. Prasad
24/12/01
(L.R.K. Prasad)
MEMBER(A)

20. While examining an application, two basic points are required to be taken into consideration. The first basic point for consideration in all such cases is the question of limitation and jurisdiction in terms of provisions of A.T. Act. The other basic point relates to consideration of the case on merit with reference to prescribed relevant service rules/regulations/instructions. Only when the first basic point is cleared, the second point has to be taken up for consideration. In the instant OAs, it is observed that these cases relate to status of Casual Labourer and grant of temporary status on them. They were all working with the Railway Administration, which has already been declared as "Industry". Therefore, the basic point for consideration in these cases is whether this Tribunal has jurisdiction to consider the prayer of the applicants which basically relate to the status of the applicants as Casual workers and their demand for conferment of temporary status. On the question of jurisdiction in similarly situated cases, necessary orders have been passed in O.A.22/99 on 22.7.1999 and in bunch of cases relating to Telecom Department on 7.2.2000 in O.A.677/98, O.A. 839/98, etc. In most of the aforesaid cases the applications have been dismissed for lack of jurisdiction. However, on the prayer of the applicants for regularisation against Group 'D' post, notices have been issued to Railway-respondents in O.A.20/98 and O.A.466/98.


As the cases of the applicants are similarly situated on the question of jurisdiction, the orders passed in OAs referred to above in this regard are also applicable in the case of the applicants in the instant OAs.

21. In view of the above position, I am of the considered opinion that this Tribunal has no jurisdiction to consider the prayers of the applicants for re-engagement as Casual Labourers as well as for grant of as well as for grant of temporary status on them and they are to be disposed of accordingly, but without prejudice to the rights and contentions of the applicants to approach appropriate forum for redressal of their grievances. I have not expressed any opinion on the merit of the case.

22. As there is a difference of opinion between us on the question of jurisdiction, it would be appropriate that a reference may be made to the Hon'ble Chairman under section 26 of the Administrative Tribunals Act, 1985 for hearing of these cases by a Larger Bench on the question whether this Tribunal has jurisdiction to consider such cases in view of alternative remedies available under the I.D. Act, to the applicants.

23. In view of the above, following issue is required to be placed before a Larger Bench for decision:-

Whether, this Tribunal has jurisdiction to consider the cases of Casual Labourers relating to termination/retr-
enchment of their services, grant of temporary status and subsequent regularisation in view of the alternative remedy available to the applicants under I.D. Act.


(L.R.K. Prasad)
Member (Admn.)

Mahto/MRS.