

CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA.

DATE OF ORDER : 16.04.2002.

1. Original Application No. 437 of 1996

Raghuni Rai and 31 others Applicants.
Versus

Union of India and others Respondents.
With

2. Original Application No. 330 of 1997

Kanhaiya Singh and 4 others Applicants.
Versus

Union of India and others Respondents.

COUNSEL FOR THE APPLICANT : Shri R.N. Mukhopadhyaya, R. Sahai
D.G. Dastidar.

COUNSEL FOR THE RESPONDENTS: Shri Shekhar Singh.

C O R A M

Hon'ble Shri L.R.K. Prasad, Member (A)

Hon'ble Smt. Shyama Dogra, Member (J)

O R D E R

(Dictated in court)

no. 60
By L.R.K. Prasad, M(A):- The OAs 437/96 and 330/97 have been heard separately. However, after going through the records, we find that the issues and the reliefs claimed by the applicants are substantially similar. Therefore, we propose to dispose of these OAs by a common order.

2. OA 437 of 1996:- This OA has been filed by the 32 applicants with the prayer that the respondents be directed

to absorb them immediately against the appropriate posts and allow them to work in the Railway on the grounds as stated in the OA and the rejoinder to the Written statement. The details about the applicants are given in para 4.1 of the OA , which indicate the names of the applicants, number of working days, date of appointment, date of retrenchment. The factual position can well be checked up from the official records in order to ascertain the correct status of the applicants.

3. It is stated that the applicants were engaged as casual labourers on various dates , as stated in para 4.1 of the OA 437/96. It is the stand of the applicant that their case is fully covered by the order of the Hon'ble Supreme Court passed in Indra Pal Singh Yadav case (1985 PLJR SC page 36). It appears that the Railway Ministry has framed a scheme and circulated the same amongst the General Manager of the Indian Railways on 1.6.1984. The said scheme reads as under:-

ccd

"5-1. As a result of such deliberations, the Ministry of Railways have now decided in principle that the casual labour employed on projects (also known as Project Casual Labour) may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under;

- (a) These orders will cover;
- (i) Casual labour on projects who are in service on 1.1.1984 ; and
- (ii) Casual labour on projects who though not in service on 1.1.1984, had been in service on Railways earlier and had already

completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future (a detailed letter regarding this group follows).

(b) The decision should be implemented in phases according to the schedule given below;

- (i) Those who have completed - (1.1.1984)-1.1.81-31.12.81 five years of service as on 1.1.1984.
- (ii) Those who have completed -(1.1.1985)-1.1.82-31.12.85 3 years but less than 5 years of services as on 1.1.1984.
- (iii) Those who have completed -(1.1.1986)-1.1.83- 31.12.83 360 days but less than 3 years of service on 1.1.1984.
- (iv) Those who complete 360 -(1.1.1978)-1.1.84-31.3.1984 360 days after 1.1.1984 or the date on which 360 days are completed whichever is later.

The scheme envisages that it will be applicable to casual labour on projects who were in service on 1.1.1984. On the said scheme, the Hon'ble Supreme Court made the following observations :-

" Therefore, some of the retrenched workmen failed to knock at the doors of the court of Justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is Hobson's choice Therefore, those who could not come to the Court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated ,



they are entitled to similar treatment, if not by any one else at the hands of this Court burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part 5.1 (a)(i) by modifying the date from 1.1.1984 to 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by recasting the stages consistent with the change in the date as herein directed."

4. The Court was further pleased to observe that to avoid violation of Article 14, a scientific and an equitable way of implementing the scheme is for the railway administration to prepare the list of project casual labours with reference to each division of each railway and then start absorbing those with longest service. The man with the longest service shall have priority over those who have joined later on. In other words, the principle of last come first go or to reverse it first come last go, as enunciated in Section 25 G of the Industrial Disputes Act, 1947 has been accepted. The respondents were directed accordingly. The scheme stood modified by the direction given above. In support of their claims, the applicants have also filed order of this Tribunal dated 31.7.1990 passed in OA 290/89 (Annexure A/1) / it was submitted by the learned counsel for respondents that in which it was observed that / the benefits of the decision of the decision of the Supreme Court in Indra Pal Singh

Yadav case will be extended to the applicants , and that they will be engaged as and when their terms arise in accordance with their seniority position in the division. The respondents were directed to do so. They have also relied on the order of the Allahabad Bench of C.A.T. passed in TA 1178/86 (Annexure A/2).

It is stated that the applicants have continuously worked for a very long time, and therefore, they are entitled for the benefits of the judgement of Indra Pal Singh Yadav case, as referred to above. Our attention was drawn to para 4.13 of the OA , which contains certain names , which, according to the applicants, are junior to them, and they have already been appointed against suitable post on the basis of court's order. If on verification of facts , it is found that the persons mentioned in para 4.13 of the OA 437/96 have already been given the benefits of the judgement of Indra Pal Singh Yadav case, there is no reason why the same benefits should not be extended to the applicants of the instant case, if they are senior to the persons mentioned in para 4.13 of the OA.

5. While opposing the above application, the respondents have stated that the case is hit by the provisions of Section 21 and 22 of the Administrative Tribunals Act, It is also hit by the principle of

res-judicata since many of the applicants had filed similar OAs earlier, and they have already been disposed of. So far as limitation angle is concerned, we feel that the same should not stand in the way if the applicants ~~case~~ are covered by the scheme approved by the Apex Court in Indra Pal Singh Yadav case, and the matter has been considered accordingly. The respondents have also given certain reasons in the written statement for opposing the instant OA. In this regard, they have drawn our attention to para 2, 4 and 7 of the written statement. They have stated that the name of the applicants 20 and 21 are not found in any of the live register of the project labour of the division. On the other hand, photo copy of casual labour card, in respect of applicants No. 1 and 20 and 21, have been submitted, which are referred to in para 8 of the rejoinder.

(applicants 5 in No. 8)

6. OA 330 of 1997:- This application has been filed with the prayer that the respondents be directed to absorb the applicants immediately against the appropriate posts and allow them to work in the railway on the grounds as stated in the OA as well as rejoinder to the written statement. Working details of the five applicants as casual worker are given in para 4.7 of the OA. These applicants have also relied on the order of the Hon'ble Supreme Court passed in Indra Pal Singh Yadav case (supra) as referred to above. They

have also placed reliance on the orders passed in certain other OAs as at Annexure A/3 and A/4 etc. It is the stand of the applicants that the benefits arising out of the order of Indra Pal Singh Yadav case should also be extended to them. It is also alleged by them that the persons junior to them have already been given appointment against the suitable post ignoring their claims. This application has also been opposed by the respondents on the grounds as stated in the written statement.

7. We have considered the above cases in the light of the submissions made on behalf of the parties and the materials on record. So far as limitation aspect is concerned, we have taken a lenient view, and the matter has been considered accordingly so that the matter can be examined by the respondents in the light of the principles laid down by the Hon'ble Apex Court in  Indra Pal Singh Yadav case. We feel that these cases require to be considered on merit, and the limitation should not stand on its way. Of course, the factual positions are required to be verified from the records of the department so as to ascertain the correct status of the applicants in order to examine their cases in the light of the principles laid down by the Hon'ble  Apex Court in Indra Pal Singh Yadav case.

8. In view of the above position, we dispose of the aforesaid OAs by directing the concerned respondents to examine and consider (after due verification of the factual status of the applicants) the prayers of the applicant for their absorption against the suitable post in the railway in the light of the principles laid down by the Hon'ble Apex Court in Indra Pal Singh Yadav case, and thereafter pass appropriate orders in respect of the applicants, whose cases are covered by the aforesaid orders of the Hon'ble Supreme Court, against existing/ future vacancies. No order as to costs.

/CBS/

Shyam Deo
(SHYAMA DOGRA)

MEMBER (J)

SoS
(L.R.K. PRASAD)

MEMBER (A)

16.4.02