

CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, P A T N A.

O.A.NO.583 of 1996.

DATE OF DECISION : 20-APR-99.

1. Nagendra, son of Gopal, resident of village Purainia, P.s.: Sikarpur, District West Champaran.
2. Janardan Mishra, son of Dayalu Mishra, resident of village Hardiya, P.S.: Sikarpur, District West Champaran.
3. Surendra Lal, son of Binda Lal, resident of village Bibi Bankatwa, P.S. Bathuwania, District West Champaran.
4. Panchanand Mishra, son of Ramjee Mishra, resident of village Bibi Bankatwa, P.S. Bathuwaria, District West Champaran.
5. Gokul Pandit, son of Pashpat Mishra, resident of Hardia, P.S. : Sikarpur, district West Champaran.
6. Brihaspati Mishra, son of Bhagesh Mishra, resident of village Semri, P.S. Sathi, District West Champaran.
7. Manager, son of Sadhu Sah, resident of village Semri Tola, P.S.: Sathi, District West Champaran.
8. Jeetan Mishra, son of Haridwar Mishra, resident of village Semri Tola P.S. Sathi, District West Champaran.
9. Surya Bhan Mishra, son of Dhruna Mishra, resident of village Semri Tola, P.S.: Sathi, District West Champaran.
10. Nand Kishore Tiwary, son of Paras Tiwary, resident of village Rani Pakri, P.S. Bettiah, District West Champaran.
11. Anwat, son of Lacchan, resident of village Dharampur, P.S. Sathi, District West Champaran.
12. Vindhyaachal, son of Bhukhal, resident of village Rai

Sanyam

Barwa, P.S. Lauria [Sathi], District West Champaran.

13. Saifulla, son of Mannaур, resident of village Dharampur, P.S. Sathi, District West Champaran.

14. Fariad, son of Jamdar, resident of village Tilakwa, P.S. Sikarpur, District West Champaran.

15. Mohan, son of Bharat, resident of village Dharampur, P.S. Sathi, District West Champaran.

16. Sahdoe, son of Prasad Sah, resident of village Jagirah, P.O. Purnamia Kothi, P.S. Ghorasahan, District West Champaran.

17. Jagar Nath Singh, son of Jamuna Singh, village Jagirah, P.O. Purnamia Kothi, P.S.: Ghorasahan, District West Champaran.

.....APPLICANTS.

Vrs.

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

2. The Divisional Railway Manager, North Eastern Railway, Samastipur.

3. The Chief Personnel Officer, North Eastern Railways.

4. The Senior Divisional Personnel Officer, North Eastern Railways.

5. The Assistant Engineer, North Eastern Railways, Narkatiyaganj.

.....RESPONDENTS.

Counsel for the applicants. : Shri [Dr.] Sadanand Jha
Shri M.P.Dixit.

Counsel for the respondents. : P.K.Verma.

C O R A M

HON'BLE MR. JUSTICE S.NARAYAN, VICE-CHAIRMAN.

O R D E R

S.NARAYAN, V.C.:- The applicants, being 17 in numbers, have come-up with this O.A. for a direction upon the respondents to re-engage them as Casual Labourers and

also to regularise their services with effect from the dates the services of some other Casual Labourers, junior to them [not impleaded in this case], have been regularised.

2. Admittedly, the applicants were engaged as Casual Labourers/Gangman on daily- wages basis under the respondent Railway authorities at Narkatiyaganj. All the applicants had worked for more than 120 days, and as such, barring applicant no.16 & 17, all those were granted temporary status in accordance with statutory instructions of the Railways. They have thus, asserted a right of being engaged as Casual Labourers in furtherance of the circular letters issued by the Railway Board from time to time, including one being no.E[NG]-II/80/CL/5, dated 04.09.1980. Here was a case in which instead of denying the claim of the applicants, as noted above, the respondent Railways have come up with a case that they were prepared to redeem their grievances and to provide them re-engagement, as claimed, but subject to the seniority list of seniority unit of Assistant Engineer, Narkatiyaganj. It was contended, interalia, in the written statement of the respondent Railways that the applicants were engaged in the past as Casual Laboureres [daily rated] against sanctioned ELR in the Maintenance Department of North Eastern Railways, Administration [Open Line] under Assistant Engineer, Narkatiyaganj, in broken spells, and further, that the names of all the applicants did appear in the seniority list of seniority unit of Assistant Engineer, Narkatiyaganj, and they were to be re-engaged as per their respective, ~~turn~~ in the aforesaid seniority list on availability of fresh work and posts. It was,



however, not possible for the present to engage all the applicants ignoring the candidates who are more than 100 in numbers listed in the seniority list at some higher position.

3. The applicants are, however, not satisfied with the assurance of the Railway authorities, as given in the written statement, referred to above. During the course of hearing of the instant O.A., much emphasis was given on the time factor as also on the ground that some other candidates in the seniority list, being 32 in number, having their position in the seniority list much below, had already been engaged by the respondent Railways. Even on this factual score also, there was no controversy between the parties. The respondent Railways candidly admitted in paragraph no.12 of their written statement that some casual labourers, being junior to the applicants, have, of course, been re-engaged vide Assistant Engineer, Narkatiyaganj, letter no.W/16/NDLS/CAT/96/56, dated 08.08.1995.

4. Obviously, the hard fact that as many as 32 casual labourers, being junior to the applicants in the seniority list, have been re-engaged by giving a pass-over to the case of the applicants, did invite a special attention in the matter. In this context, there was, however, yet another admitted position on the record that those 32 casual labourers were re-engaged in compliance to the order, dated 16.09.1993, passed by the Principal Bench, New Delhi in O.A.No. 2939 of 1992. A question thus, arises whether simply because those 32 persons have been re-engaged, a rightful claim arises in favour of the applicants?



5. In order to better appreciate the issue, referred above, my attention was drawn to the order, dated 16th August, 1993, passed by the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. No.2939 of 1992. This was an ex-parte order passed in absence of any counter-affidavit filed on behalf of the respondents and even in absence of the counsel for the respondent Railways whose name, of course, finds mentioned in the order. The order speaks that in the absence of any counter-affidavit, the averments made in the O.A. are accepted as correct. Admittedly, the present applicants, who claimed seniority over the applicants of O.A. 2939 of 1992, were not the parties to the same and, therefore, the claim of their seniority was then not in picture. There was, of course, a straightway order upon the Railway respondents to offer appointment to the applicants of the said O.A., as casual labourers, in their respective Divisions in which they were originally working. A time limit was also given to carry out the directives given in the order.

6. Most certainly, the aforesaid order, besides being an ex-parte order, did not lay down any principle for employment of the applicants ⁱⁿ there nor any ratio was decided therein. In absence of any ratio or principles laid down, it would be really very difficult for this Tribunal to consider the case of the present applicants on the line of the applicants of the aforesaid case [O.A. No.2939/92]. It was further significant to note that neither the respondent Railways went in appeal against that order nor even the present applicants took any step for appeal by Special Leave [because of not being a party to the same]. The matter

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involved in the aforesaid O.A. thus, was set at rest by the order, dated 16.08.1993 of the Principal Bench, Central Administrative Tribunal, New Delhi.

7. The relevant facts and the legal proposition, as noticed in the preceding paragraph, were not sufficient in my opinion so as to invoke the discretion of this Tribunal to pass an order in favour of the applicants on that very line, more so, when it has been abundantly made clear that there were several other persons enlisted in the seniority list ranking higher to the present applicants for the purpose of re-engagement. Since, an attention has already been drawn to such a position on the record, it would not be desirable for the ends of justice that the applicants be given preference over those who stood senior to them in the list. The learned counsel, Shri [Dr.] Sadanand Jha, very emphatically urged that the present applicants should also be given the same treatment as given to those before the Central Administrative Tribunal, Principal Bench, New Delhi in O.A. 2939 of 1992 but, I find myself quite unable to agree with him for the simple reason that no ratio was decided in the aforesaid case so as to apply the same in the instant case and, furthermore, when some persons, ranking senior to the applicants, were already awaiting re-engagement as per their respective turn, I do not feel inclined to grant any relief to the applicants excepting, however, insisting upon the respondents to devise a suitable means so as to absorb the applicants on their respective turn in the seniority list at the earliest possible so that they may not feel discontented over some of their juniors having been already



engaged. This O.A. is thus, disposed of with the observations and directions, as noted above.

There shall be no order as to costs.

S. Narayan
[S.NARAYAN]
VICE-CHAIRMAN.

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