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CAT/J/12

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW BOMBAY BENCH

O.A. Nos. 438, 439, 440, 445, 447, 506 & 509 of 1988
T.A. No.

DATE OF DECISION 2-5-1991

Ramshankar S. Ram and 6 others Petitioner

Mr. L.M. Nerlekar Advocate for the Petitioner(s)

Versus

Divisional Railway Manager, Respondent

Central Railway, Bombay V.T.

Mr. R.K. Shetty Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice U.C. Srivastava, Vice-Chairman

The Hon'ble Mr. M.Y. Priolkar, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

U.C. Srivastava
(U.C. SRIVASTAVA)
Vice-Chairman

(15)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH

O.A.Nos.438.439.440.445.447.506 & 509 of 1988

Ramshankar S.Ram	.. Applicant in O.A.438/88
Markandepasad H.Gupta	.. Applicant in O.A.439/88
Munnasingh R.Yadav	.. Applicant in O.A.440/88
Bhagwan Ram	.. Applicant in O.A.445/88
Indradeepsing B.Yadav	.. Applicant in O.A.447/88
Umeshkumar D.Ram	.. Applicant in O.A.506/88
Abhimanu B.Ram	.. Applicant in O.A.509/88

vs.

Divisional Railway Manager,
Central Railway,
Bombay V.T.

.. Respondent in
all the above
applications.

Coram: Hon'ble Shri Justice U.C.Srivastava, Vice-Chairman
Hon'ble Shri M.Y.Priolkar, Member(A)

Appearances:

1. Mr.L.M.Nerlekar
Advocate for the
Applicants.
2. Mr.R.K.Shetty
Advocate for the
Respondent.

JUDGMENT:
(Per U.C.Srivastava, Vice-Chairman)

Date: 2-5-1991.

In these seven connected cases the applicants who have been working as Casual Labour-Khalasi under Traction Foreman(Cable Construction) Kurla, Bombay V.T. since 15-10-1982 to 9-5-1985 have challenged the order dated 9-5-1985 by which their services were terminated with effect from that date. They had completed 120 days of continuous service when they became temporary employees. They were medically examined and their services were terminated. Even though assurance is stated to have been given to them that they will be taken

back to service they were not taken back. Their services were terminated on the ground that their work in the unit has come to an end. Although work in other units was available they were not appointed. They have also made reference to the Railway Board letter dated 22-10-1980 which provides that the casual labour whose employment is terminated due to break in the service because of non-availability of work should be given preference over his juniors. The applicant has furnished about 16 persons names who are junior to the applicant and have been given jobs in preference to the applicant. A reference has also been made to the Railway Board letter No.E(NG)II/72/CL/25 dtd. 3-5-1972 directing that the construction casual labour should be made eligible for appointment on any section of the open line of the Railway concerned and not only limited to the immediate area of the construction and total service as a casual labour/substitute should decide eligibility for appointment on open line as between open line casual labourers on substitute and construction casual labourer. A reference has also been made to Railway Board letter No.E(NG)/II/79/CD/16 of 27-4-1979 directing that on projects or otherwise casual workers who have completed four months continuous service should be considered for empanelment by the screening committee for absorption against regular class IV posts. The applicant also referred to Railway Board letter No.E(NG)/II/76/CL/67 dtd.5-1-1980 which directed that discharged casual labour having four months continuous service before discharge should be considered for screening. Reference to Railway Board's letter No.E(NG)II-79/CL-02 dt.3-3-1982 provides that unit for screening casual labour would be the unit for which recruitment is made, which is normally the Division. After working out vacancies

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for recruitment in the unit all casual labour who have put in a minimum of four months continuous service whether on open line in the Division or on adjacent construction projects should be listed for screening the seniority being based on the total days worked on the Railway. The applicants' complaint is that although they were not taken back to their service and given jobs in the other units in the same Division the Asstt. Personnel Officer (Electrical) Bombay V.T. issued the employment notice dated 29-8-1985 wherein it was stated that there are 300 vacancies in Khalasi category and the same are likely to go to 500 at later stages. The impugned order has been challenged under Section 25-F, 25-H of the Industrial Disputes Act. The applicants state that it is obligatory to prepare the seniority list of all workmen in the particular category from which retrenchment is contemplated arranged according to the seniority of their service in that category and a copy thereof is posted on a Notice Board. The applicants state that no such seniority list was prepared nor it was exhibited. The applicants also contend that there was breach of Section 25 of the Industrial Disputes Act and principle of last come first go was violated. Learned counsel for the applicants stated that he will not be pressing the plea regarding non-compliance of provision 25(F) of the Industrial Disputes Act but confine his grounds only to the violation of 25(G) and (H) of the Industrial Disputes Act.

2. In the written statement by the respondents it has been stated that their services have been terminated as the cable laying work was completed and was given one month's notice. Retrenchment compensation was also paid to these persons.

The respondent has also stated that the act of the respondent in terminating the services of the applicants is not in contravention of Section 25-G of the Industrial Disputes Act and no fresh recruitment was made. Only surplus staff from other units were diverted for additional work. Regarding the 300 vacancies it has been stated that the vacancies of Khalasis in TRD branch are normally filled up by screening the existing casual labours working on open line establishments and various construction units coming within the geographical jurisdiction of Bombay Division. In fact, a screening of casual labour working in the open line establishment and construction units having 300 days or more of service as on 1-3-1981 was done. 924 casual labours were placed on panel for absorption against regular vacancies and around 200 screened casual labours who were appointed much earlier to the applicants are still on the panel waiting their turn for absorption. The applicants being much junior cannot claim absorption against regular vacancies in preference to their seniors.

3. The seniority list of skilled casual labour has also been filed and the applicants have pointed out that some who are junior to them have already been in service whose names have been given in the application. The seniority list of the casual labour Khalasi working under DEE(C) Dadar was also placed along with the written statement. Before going to any other question it will be proper to consider whether seniority list of absorption is to be made unitwise or division wise as much arguments in this behalf is made. In this connection reference is made to the Rule 2(g) of the Industrial Disputes(Central)Rules,1957 framed under the Act

which reads as follows:-


"(g) with reference to clause(g) of Section 2, it is hereby prescribed that:


.....
.....

- (ii) in relation to any industry concerning railways, carried on by or under the authority of a Department of the Central Government;
- (a) in the case of establishment of a Zonal Railway, the General Manager of that railway shall be the 'employer' in respect of regular railway servants other than casual labour;
- (b) in the case of an establishment independent of a Zonal Railway, the officer in charge of the establishment shall be the 'employer' in respect of regular railway servants other than casual labour; and
- (c) the District Officer in charge or the Divisional Personnel Officer or the Personnel Officer shall be the 'employer' in respect of casual labour employed of a Zonal Railway or any other railway establishment independent of a Zonal Railway."

Thus it is quite clear that employer for this railway administration will be the District Officer. The appointments in different units are made by the unit incharge but payment is made only under the authority of Divisional Officer. In respect of the complaint regarding payment of wages it is not the unit incharge to whom the application is made but it is the District Officer against whom the application can be made and he is given the direction to make payment.

4. From the above definition it is clear that it is the District Officer who will be appointing authority for casual labour within his Division. In fact all the appointments in different units are made by one who is in charge yet the employer will be District Officer who alone has got the authority of shifting or transferring of a person from one unit to another unit. Undoubtedly the principle of last come first go is ordinarily operated on reemployment of the retrenched workers. But in this case it is seen that some junior employees have been retained for which an explanation was given that they have been taken from another unit. The applicants could have also been sent to another units. From the written statement it appears that some 200 persons are still waiting and the turn of the applicants thus can come only thereafter. In these circumstances we direct that the respondents shall prepare a Division wise seniority list of such casual workers who attained temporary status by working the prescribed number of days, within a period of four months, and thereafter provide them with employment in accordance with the seniority, obviously after screening and also after exhausting the earlier list if it exists. The appointment is to be made taking into consideration the entire Division as one unit even though the work is going on separately. It may also be taken into account that those attained temporary status are selected accordingly. These applications are disposed of accordingly and but for this direction the applications are otherwise dismissed. There will be no order as to costs.


(M.Y. PRIOLKAR)
Member(A)


(U.C. SRIVASTAVA)
Vice-Chairman