

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

✓ OA/TA/RA/CP/MA/PT 261 of 20-90
Sudhakar Tiwari Applicant(S)

Versus
U. O. - 9. 4 etus Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects.

Signature of S.O.

Signature of Deal. Hand

B-C Reddy and
12-6-12

GENERAL ADMINISTRATIVE TRIBUNAL
CIRCULAR BENCH, LUCKNOW

General Administrative Tribunal:
Circuit Bench, Lucknow
Date of Filing: 21/8/90
Date of Receipt by Post: 21/8

714
Deputy Registrar (J)

Registration No. 261 of 1989 90 (L)

APPLICANT(S) Shri Sudhakar Tewari

RESPONDENT(S) U.O. 9

Particulars to be examined

Endorsement as to result of examination

- | | | |
|-----|--|-------------|
| 1. | Is the appeal competent ? | yes |
| 2. | a) Is the application in the prescribed form ? | yes |
| | b) Is the application in paper book form ? | yes |
| | c) Have six complete sets of the application been filed ? | yes |
| 3. | a) Is the appeal in time ? | No |
| | b) If not, by how many days it is beyond time? | Three weeks |
| | c) Has sufficient case for not making the application in time, been filed? | |
| 4. | Has the document of authorisation/ Wakalatnama been filed ? | yes |
| 5. | Is the application accompanied by B.D./Postal Order for Rs.50/- | yes |
| 6. | Has the certified copy/copies of the order(s) against which the application is made been filed? | yes |
| 7. | a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed? | yes |
| | b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ? | yes |
| | c) Are the documents referred to in (a) above neatly typed in double space ? | yes |
| 8. | Has the index of documents been filed and paging done properly ? | yes |
| 9. | Have the chronological details of representation made and the out come of such representation been indicated in the application? | yes |
| 10. | Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal? | NO |

Particulars to be Examined

Endorsement as to result of examination

- 11. Are the application/duplicate copy/spare copies signed? yes
- 12. Are extra copies of the application with Annexures filed? yes
 - a) Identical with the Original?
 - b) Defective?
 - c) Wanting in Annexures
- Nos. _____ pages Nos _____?
- 13. Have the file size envelopes bearing full addresses of the respondents been filed? N.A
- 14. Are the given address the registered address? yes
- 15. Do the names of the parties stated in the copies tally with those indicated in the application? yes
- 16. Are the translations certified to be true or supported by an Affidavit affirming that they are true? yes
- 17. Are the facts of the case mentioned in item no. 6 of the application? yes
 - a) Concise?
 - b) Under distinct heads?
 - c) Numbered consecutively
 - d) Typed in double space on one side of the paper? yes
- 18. Have the particulars for interim order prayed for indicated with reasons? yes
- 19. Whether all the remedies have been exhausted. yes

appeal is not in time

dinesh/

21/8

① 12/9/90

Hon. Mr. Justice K. Math, J.C.
Hon. Mr. M. M. Singh, A.M.

The learned Counsel for the applicant requests for and is allowed two weeks time to file a copy of the applicant's Labour Card. list for admission on 17/10/90.

M M L
A.M.

VC

Re

② 17.12.90

No sitting Adj to 8.11.90

③ 8.11.90

Hon. Mr. M. V. Pralhar A.M.
Hon. Mr. D. K. Agrawal J.M.

④

Due to resolution of Bar Association case is Adj

to 11.12.90

Re
4c for the applicant has filed supplementary affidavit S.F.A

⑤
R.O.C.

3
1/12

ORDER SHEET

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD/C.B. LUCKNOW

OA No. 261 OF 1990

Vs.

Sl.No.	Date	Office report	Orders
		<p>See original order on main Petition</p>	<p>7/3/91</p> <p>Hon. Justice K. Nath, VC Mr. A B. Gorkhi, AM</p> <p>Admitt. bit before DR (a) on 10/9/91.</p> <p>AM VC</p>
8	18.4.91	<p>D.R. Both the parties are present today No.C.A. has been filed. Respondent to file counter by 11/7/91 ✓</p>	
9	11.7.91	<p>D.R. Both the parties are present. counter has not been filed Respondent to file counter by 16/8/91. ✓</p>	

(14) 14.5.92
D.R.

Both the parties are present. Respondent to file counter by 28/7/92.

(15) 28.7.92
D.R.

Both the parties are absent. Respondents to file counter by 2.9.92.

(16) 2.9.92
D.R.

Both the parties are absent. No counter has been filed by the respondents. Honorable Court has given order to respondent for filing counter on 11.12.90. But respondent has not complied the Court's order, nor taken time for filing counter. List for final hearing on 2-11-92.

(17) 2.11.92

11/12/92 of D. B. ady
to 23.12.92

(18) 23.12.92

NO sitting order to 19.2.93

(23) 2.7.93
D.R

None present for the parties
Notices were issued on
23.6.93 in the compliance
of order dated 31.5.93
No R.A. filed, Applicant
is directed to file it
by. 3.8.93.

24

✓

(24) 03/8/93
D.R.

Counsel for the applicant
is present and files R.A.
Counter and rejoinder has
been exchanged. List this
case before the Hon'ble Bench
on 07/8/93 for hearing.

✓

OR
CALCULATED
S/N
7.9.93
25

No sitting of D.B. on
12.10.93
B.O.C.

26
12.10.93

No sitting of D.B.
adj.

B.O.C.

OR
CALCULATED
S/N
27
7
94
F.H.

at
Hon'ble VC
copy R.A. may
already been
exchanged
S.P. filed
as per order of
Hon'ble Bench
on 25/3/94

6A 261/90

16/2/95 HON.MR.JUSTICE B.C.SAKSENA, V.C.
HON.MR.V.K.SETH, A.M.

Learned counsel for the respondents prays for and he is granted 2 weeks to file supplementary C.A. The applicant will have one week thereafter to file supplementary R.A.

List on 2/3/95 for hearing.

Handwritten: N.S.R.R. Filed
S.P.P.
2/3/95

Handwritten: L K
MEMBER(A)

Handwritten: B.C.
VICE-CHAIRMAN.

2.3.95

Honble. Mr. V. K. Seth. A.M.
Honble. Mr. D. C. Verma J.M.

Handwritten: on the adjournment of applicant -
of Counsel the respondent - adjournment
26.4.95

Handwritten: L K
J.M.
D.M.

26.4.95

Honble. Mr. V. K. Seth. A.M.
Honble. Mr. D. C. Verma J.M.

Handwritten: on the request of Counsel
the applicant. adj. adjourn to 12.7.95
L K
J.M.
D.M.

Handwritten: on the request of
Counsel

12/7/95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Verma, J.M.

for applicant: Sh. R.K. Yadav
Sh. B.R. Shukla, counsel for
respondents has submitted
affidavit.

List on 25/8/95.

Handwritten: L K
J.M.
A.M.

Handwritten: on the request of
Counsel
25/8

Handwritten: L K

CA No. 261/90

29-2-96

Hon. Mr. V.K. Sethi, A.M.
Hon. Mr. D.C. Verma, J.M.

Learned Counsel for applicant has
prayed for adjournment.

list on 22-3-96 for
hearing.

J.M.

A.M.

22-3-96

Hon. Mr Justice B.C. Saxena, V.C.
Hon. Mr. V.K. Sethi, A.M.

learned Counsel for
applicant seeks adjournment.

list on 19-4-96 for

hearing.

A.M.

V.C.

19.4.96

Cor am - reasons apply to
09.7.96

Bae

9.7.96

110 Srinagar D. on adj. on
13.8.96

Bae

15.8.96

no fitting of D.B. at 2.30 P.M.

Case is adj. to 28.10.96

D.O.C.

CP/DA have been
each day of the
He supp. CA / Supp. DA
filed in Compliance
of HC's order -
13-12-95
S. Sethi
20/8/96

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

D.A.No. 261/90 1990 (L)

T.A.No. / 199 (TL)

Date of Decision - 4/11/90

..... Sudhakar Tewari Petitioner

..... Sh. R.K. Yadav Advocate for the
Petitioner(S)

V E R S U S

..... Union of India & Others Respondent.

..... / Advocate for the
Respondents.

C O R A M

Hon'ble Mr. V.K. Seth, Member (A)
Hon'ble Mr. D.C. Verma, Member (B)

1. Whether Reporter of local papers may be allowed to see the Judgment. ✓
2. To be referred to the reporter or not ? ✓
3. Whether their Lord Ships wish to see the fair copy of the Judgment ? ✓
4. Whether to be circulated to other benches ? ✓

Vice-Chairman/Member

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

LUCKNOW BENCH

LUCKNOW

.....

Original Application No. 261 of 1990

this the 04th day of Nov. 1996.

HON'BLE MR V.K. SETH, ADMN. MEMBER
HON'BLE MR D.C. VERMA, JUDICIAL MEMBER

Sudhakar Tewari, aged about 40 years, S/o Sri Shanker Dayal Tewari, R/o Gram Subhash Nagar, Post Subhash Nagar, District Nanital.

Applicant

By Advocate : Sri R.K. Yadav

Versus

Union of India through the Secretary Ministry of Railways
Rail Bhawan, New Delhi.

2. The ~~Chief~~ General Manager, N.E. Railway, Gorakhpur.
3. The Chief Engineer (B.G. Construction) N.E. Railway, Gorakhpur.
4. The P.W.I. (Construction) Badshah Nagar, Lucknow.

Respondents

By Advocate : None

O R D E R

D.C. VERMA, MEMBER(J)

By this O.A., the applicant has claimed appointment to the post of Casual Labour. The applicant claims to have worked as Casual Labour from 1976 till 16.9.1980 on which date he was retrenched from service. Now, the applicant has claimed appointment to the said post



and backwages since September, 1980 till the date of actual retrenchment.

2. The applicant has claimed that he had already acquired the status of permanent employee as he had completed more than 240 days regular service. The applicant's retrenchment, it has been urged, is violative of principle of natural justice.

3. We have heard the learned counsel for the applicant and as none has appeared on behalf of the respondents, we have ourselves perused the recital of the Counter affidavit and the other documents on record.

4. On behalf of the respondents the claim of the applicant has been resisted on the ground of limitation and also on the ground that about 20,000 Casual Labourers were retrenched due to greatly reduced work. Some of the retrenched Casual Labourers filed cases but they failed to succeed. However, the Hon'ble Supreme Court in S.L.P. Prahlad Singh & others Vs. Union of India & others and Indrapal Yadav & others Vs. Union of India & others (W.P. No. 147320/59 of 1983 issued directions to give relief/such retrenched employees who fulfil conditions laid down therein. The Railway Board, therefore, formulated a scheme and issued the order. The case of the respondents is, as stated in para 5 of the Counter affidavit, ^{that} the applicant had left the job on his own accord and had not



turned-up on duty w.e.f. 16.8.1980 and the name of the applicant was not on the live register. In the circumstances, the applicant dis-entitled himself from the benefit of Casual Service under the rules framed by the Railway Board.

5. In the Rejoinder affidavit, the applicant has denied that he left the job on his own accord and alleged that infact the work was not taken from him.

6. After the hearing the learned counsel for the applicant, we are of the view that the applicant has no case on merit and also due to lapse of period of limitation.

7. Admittedly, the applicant was retrenched on 15.9.1980 and he is not in job since then. The applicant should have made grievance to the proper authority and in the appropriate judicial forum within the limitation period at that time, but the applicant failed to do so. Under section 21 (2) of the Administrative Tribunals Act 1985 where the grievance in respect of which an application is made had arisen by reason of any order made at any time during the period of three years immediately preceding the date on which the jurisdiction, powers and authority of the Tribunal becomes exercisable under this Act in respect of the matter to which such order relates, is not entertainable by the Tribunal. The Administrative Tribunals Act 1985 came into force on 1st November, 1985. The cause of action arose to the applicant in September, 1980 i.e. more than 3 years prior to coming into force of the Administrative Tribunals Act 1985. The present



petition is not entertainable in view of the said provision.

8. In the case of Secretary to Govt. of India & others Vs. Shivram Mahadu Gaikwad (1995) 30 A.T.C. 635, the Hon'ble Supreme Court was dealing with similar case where the respondent was discharged from service on 7.10.1986 and did not turn-up thereafter on the ground of illness and filed the O.A. before the Tribunal in 1990. In that case also, the respondent claimed to be a workman under the Industrial Disputes Act 1947. The apex court turned down the claim of the respondent on the ground of limitation.

9. In the case before us also, there is no application for condonation of delay and the applicant while filing the O.A. claimed it within the period of limitation without giving any explanation and reason for delay in filing the O.A.

10. In the above circumstances, as the order disengaging the applicant from service w.e.f. 16.9.1980 was not challenged within the time, the O.A. is not maintainable, Besides this, O.A. lacks merit because the name of the applicant is not registered in the live register and he had on his own accord left the job and further as the applicant does not fulfil the conditions laid down in the Railway Board's scheme.

11. The O.A., therefore, lacks merit and is liable to be dismissed and is dismissed. Costs on the parties.

GIRISH/-

MEMBER (J)
LUCKNOW: DATED 04/11/96

MEMBER (A)

1

In the Central Administrative Tribunal
Additional Bench, Allahabad.
Circuit Bench, Lucknow.

O. A. No. 26/ of 1990 (2)

Sudhakar Tewari ... Applicant
Versus
The Union of India & others ... Respondants.

I N D E X

S. No.	Particulars Papers	Page No.	annex No.
1.	Petition in compliation 'A'	1-10	
2.	Vakalatnama	11	
3.	Compilation 'B' with 12 Annexures .	12-34	1-12

Filed today

21/8

Dated :- 20.8.90

Noted for

12/9/90

AK
21/8/90 Ad

(P.N. Bajpai)
Advocate
Counsel for the
applicant.

In the Central Administrative Tribunal
Additional Bench, Allahabad
Circuit Bench, Lucknow.

O. A. No. of 1990

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing ... 21/8/90
Date of Receipt by Post

[Signature]
Deputy Registrar (J)
21/8
Applicant.

~~Sudhakar Tewari~~
Sudhakar Tewari

...
Versus

The Union of India & others ... Respondants.

C O M P I L A T I O N - A

S. No.	Particulars of papers	Page No.	Annex. No.
1.	Petition	1-11	
2.	Vakalatanama.	12	

Dated :- 20.8.90

[Signature]
(P.N. Bajpai)
Advocate
Counsel for the
applicant.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 ADDITIONAL BENCH : ALLAHABAD.
 CIRCUIT BENCH LUCKNOW.

O.A. No. of 1990.

NAMES OF PARTIES

~~Sukhakar~~

Sudhakar Tewari aged about 40 years son of
 Sri Shanker Dayal Tewari r/o Gram Subhash
 Nagar Post Subhash Nagar district Nainital.

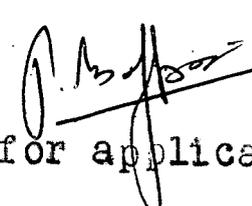
...Applicant.

Versus.

1. The Union of India through the Secretary
 Ministry of Railways Rail Bhawan New Delhi.
2. The General Manager, N.E. Railway
 Gorakhpur.
3. The Chief Engineer (B.G. Construction)
 N.E. Railway Gorakhpur.
4. The P.W.I. (Construction) Badshah Nagar
 Lucknow.

...Respondents.

DATED: 20-8-90


 Counsel for applicant.

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in the Central Administrative Tribunal
Additional Bench, Allahabad.
Circuit Bench, Lucknow.

Sudhakar Tewari aged about 40 years son of Sri
Shanker Dayal Tewari R/o Gram Subhssh Nagar
Post Subhash Nagar District Nainital.

..... Applicant.

Versus

1. The Union of India through the Secretary
Ministry of Railways, Rail Bhawan, New Delhi.
2. The General Manager, N.E. Railway ,
Gorakhpur.
3. The Chief Engineer (B.G. Construction)
N. E. Railway Gorakhpur.
4. The P. W.I. (Construction) Badshah
Nagar, Lucknow.

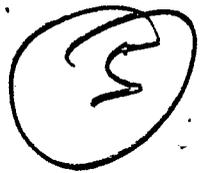
..... Respondants.

DETAILS OF APPLICATION

1. Particulars of the order against which the
application is made:

The application is not being made against
any order . It is being made issuing the
directions to the Opp. Parties to give the
appointment to the petitioner on the post of
casual labour like other perions mentioned in
para 4 of the application.

2. JURISDICTION OF THE TRINUNAL



The applicants declare that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

LIMITATION.

The applicants further declare that the application is within the limitation prescribed in section 21 of the Administrative Tribunal Act 1985.

4. Facts of the case:-

The facts of the case are given below:-

(1). That the applicant was engaged as casual labour by the I.O.W.(B.G.)N.E.Rly Gonda in the year 1976 and continued to work as such till the year 1978 when he was transferred under the O.P.no. 3. He had worked under the O.P.no.3 till 16.9.1980 when he was retrenched from the services.

(2). That the work and conduct of the applicant remained always satisfactory and there was no complaint against them, from any corner. The work has been appreciated by the authorities.

(3). That the N.E.Railway is an industry as defined under the Industrial dispute act 1947. The applicants are workmen as defined under this act.

(4). That the applicant was illegally retrenched due to the mala fide intention of the authorities. No written orders were given and

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no retrenchment compensation was paid. The juniors were retained and the provisions of Art. 14 and 16 of the Constitution of India have been violated. The applicant submitted the application for giving the duties in the month of Oct. 1980. The applicant continued to write regularly to the authorities for getting the duties, but no attention was paid. The request was also made through the Union. The General Secretary and the president of the Union had written to the O.P.No.2 & 3 on 8.5.81, 10.7.81 and on 22.1.82. These letters are filed herewith as Annexure 1,2 & 3 to this Petition.

5. That the Chief Engineer, construction Gorakhpur had asked the comments on the representation of Applicant vide letter dated 27.1.83 which is filed herewith as Annexure-4 to this Application.

6. That the Union of the Applicant had again written a letter to the Dy. Chief Engineer Construction B.G. Lucknow on 26.6.84. It was stated that the applicant is the dependent of Fighters of Freedom and the recommendations were made by the Dy. Chief Engineer on 3.7.84 to give the appointment to the Applicant, but the appointment was not given and it was stated that the appointment has been made amongs the persons, belonging to the Brauni Area. It was further stated that the applicant may be adjusted in the Lucknow Division. The copy of the letter is filed herewith as Annexure-5 to this petition.

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7. That the Union had further written to the Assistant Engineer (B.G. Construction) Lucknow to include the name of the applicant in the seniority list so that the applicant may get the appointment on his turn The application is filed herewith as Annexure-6 to this petition.

8. That several juniors to the applicant namely Sri Hardeo and Mohd. Jamid were taken in services, but the applicant was ignored.

9. That several writ Petitions and S.L.R. have been filed before the Hon'ble High Court and the Supreme Court. The decaising has been given on 18.4.85 in which the directions have been given to prepare a list of employees seniority wise and to make the appointments accordingly. The copy of judgement is Annexure.7 to the application..

10. That the Applicant requested to the O.P.No.2 through the Union and he was informed on 19.5.86 that the appointment is not possible as the clarification has been moved in the Supreme Court. The copy of the Application is Annexure-8 to this petition.

11. That the Applicant wants to point out that 4 employees who were also Casual Labour filed their cases before this Hon'ble Tribunal at Patna Bench, being T.A. No.341 of 1986 , 342 of 1987 , 344 of 1986, and 346 of 1986. All these petitions have been allowed by the Hon'ble Tribunal in favour of the Applicants, consequently

2/2/1987

or

the opp parties have taken in service to Sri Ram Badan Sharma Laxmi Narain Srivastava Sri Jagdish Chander Ishlarey and Sri Kameshwar Prasad.

(12). That the O.P.no. 2 had replied the application stating that it was not possible to take the petitioner in the employment The copy of the reply is filed herewith as Annexure 9 to this petition.

(13). That the Maha Mantri of the union of the applicant represented the case of the applicant ~~no. 1~~ to the General Manager of the N.E.Rly Gorakhpur on 29.3.89. The request was made to give the benefit to the applicant of the judgment of the Hon'ble Supreme court. The copy of the letter is filed herewith as Annexure no. 10 to this application.

(14). That the G.M. of the N.E.Rly Gorakhpur had replied the letter dated 29.3.89 stating that the reinstatement is not possible The copy of the letter dated 18.5.89 is filed herewith as Annexure 11 to this application.

(15). That the Patna Bench of the Hon'ble Tribunal had allowed the cases of two employees who were also retrenched in the month of Sept 1980 consequently Sri Siya Ram Pd Yadav and Sri Satya Narayan Singh have been reinstated The copy of the judgment is filed herewith as Annexure no. 12 to this application.

(16). That the applicants are entitled to

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get the ~~sa~~ benefit of the judgment of the Hon'ble Supreme court contained in Annexure 7 the judgment of the Patna Bench of the Central Administrative Tribunal contained in Annexure 12 and the judgment contained in Annexure 16 to this application.

(17). That the applicant is entitled to get the same benefits which have been allowed in the aforesaid judgment to other employees.

(18). That the discrimination had been done with the petitioner and the provisions of Art 14 and 16 of the constitution of India ha -ve been violated.

(19). That the applicant has been retrenched in violation of the provisions of industrial dispute act No compensation was paid to the applicant and no written orders of retrenchment were given to the applicants.

(20) That the applicant had already acquired the status of permanent employees and they have completed more than 240 days regular services.

(21). That the principles of natural justice have been violated in ousting the applicants from the services and giving the remployment to the persons of the similarly situated footings.

Ramachandran
(22). That the representations have been rejected through the non speaking orders.

Q3
(23). That the benefit of the judgment of

the Supreme court has been given to one Sri Kedarnath Chaubey who was also terminated in the month of Sept 1980 and was in the same circumstances in which the applicants were running. The applicant is entitled to get the same benefits which have been given to Sri Kedar Nath Chaney.

(24). That the applicants are liable to be taken on duty without any further delay.

(25). That another petition similar to this petition filed by Sri, Haribhan Singh being O.A.no. 37/I/1990 as already been admitted and is fixed for hearing on 10.9.90

5. GROUNDS FOR RELIEFS WITH LEGEL PROVISIONS

(a). That the applicants had completed more than 240 days regular services under the opp. parties and they have acquired the status of permanent employees.

(b). That the applicant is entitled to get the duty in the light of the judgment of Hon'ble ~~XXXXXX~~ supreme court and the judgment of the Patna Bench of the Hon'ble Tribunal.

(c). That the discrimination has been done done with the applicants and the provisions of Art. 14 and 16 of the constitution of India have been violated in terminating the services and also in not taking the applicants in the reemployment.

(d). That the posts of casual labours are still vacant and the applicants could ~~not~~ be

2/2/1991

72

absorbed on these posts.

(e). ~~That the posts of casual labourers are still vacant and the applicants could be absorbed on these posts.~~

(f). That the orders passed on the representations of the applicants are non speaking orders and they does not give the clean meaning.

(g). That the applicants had already suffered a great loss, but they may not suffer further.

6. DETAILS OF THE REMEDIES EXHAUSTED:

The applicant declare that the departmental remedies have already been vaviled The last order has been passed. on 18.5.39.

7. WHETHER THE MATTER IS PENDING OR THE SAME WAS FIELD PREVIOUSLY

The applicants further declare that the matter rega ding which this application has been moved is not pending before any court of law.

8. RELIEFS SOUGHT:

In view of facts mentioned in para 4 above and the grounds mentioned in para 5 above the applicants pray for the following reliefs:-

(a). That the opp. parties may kindly be difacted to give the appointment to the

Recommended

CP

applicant on the post of casual labour. They may be further directed to give the appointments to the applicants without any further delay.

(b). That the directions may be given to the opp. parties to reinstate the applicant in service and to allow the salary since Sept 1980 till the date of actual reinstatement in service.

(c). That the cost of the application may be awarded to the applicant.

(d). That the any other relief which this Hon'ble Tribunal deems fit and proper in the circumstances of the case may be allowed to the applicant.

(9) INTERIM PRAYER IF ANY

No interim relief is prayed for.

10. PARTICULARS OF BANK DRAFT/POSTAL ORDERS
ORDERS IN RESPECT OF THE APPLICATION
REF:

(a). Number of the Indian postal order: B 02 414758

(b) Name of the issuing post office: High Court Bank Ludhiana

(c). Date of issue of postal orders: 20-8-90

(d). Post office at which payable: G PO LKA

DATED: 20-8-90

[Signature]
Applicant.

VERIFICATION.

I Sudhakar Tewari the abovenamed deponent do hereby verify that the contents

[Handwritten signature]

13

10.

of paras 1 to 10 of the application are true to my personal knowledge and belief and that I have not suppressed any material facts.

Signed and verified today this the 20th day of August 1990 at Lucknow.

DATED: 20-8-90

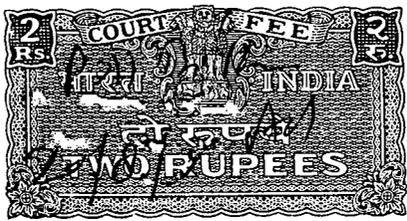
[Handwritten Signature]
Applicant.

[Handwritten Signature]

15

इ अदालत श्रीमान *In the Central Administration Tribunal*
वादी अपीलान्त *Add. Bench Allahabad (Circuit Bench)* महोदय
प्रतिवादी रेस्पाडेन्ट का *वकालतनामा*

Sudhakar



The Union of India & others
बनाम प्रतिवादी (रेस्पाडेन्ट)

नं० मुकद्दमा सन् पेशी की ता० १६ ई०

ऊपर लिखे मुकद्दमा में अपनी ओर से श्री प्रयाग नारायण बाजपेई
ऐडवोकेट एवं श्री कार्तिकेय बाजपेई ऐडवोकेट भैरो जी
रोड, लखनऊ महोदय

को अपना वकील नियुक्त करके प्रतिज्ञा (इकरार) करता हूँ और लिखे देता हूँ इस मुकद्दमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाबदेही व प्रश्नोत्तर करें या कोई कागज दाखिल करें या लौटावें या हमारी ओर से डिगरी जारी करावें और रुपया वसूल करें या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और तसदीक करें या हमारी विपक्षी (फरीकसानी) का दाखिल किया हुआ रुपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद से लेवे या पंच नियुक्त करें—वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगी मैं यह भी स्वीकार करता हूँ कि मैं हर पेशी पर स्वयं या अपने पैरोकार को भेजता रहूँगा अगर मुकद्दमा अदम पैरवी में एक तरफा मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी इसलिये यह वकालतनामा लिख दिया प्रमाण रहे और समय पर काम आये।

[Signature]
हस्ताक्षर

साक्षी (गवाह) साक्षी (गवाह)

दिनांक 20 महीना 8 सन १९१० ई०

Accepted.
[Signature]
25-8-10

In the Central Administrative Tribunal
Additional Bench, Allahabad
Circuit Bench, Lucknow.
Sudhakar Tewari
Varanasi
The Union of India & others
Annexure No. 1

12

17

Opp. Parties

UNITY

PEACE

PROGRESS

पूर्वोत्तर रेलवे कर्मचारी संघ
NORTH EASTERN RAILWAY EMPLOYEES UNION [PRKS]
(रजि. नं. १५५३)

Affiliated to INTUC and NFIR and Recognised by N. E. Rly. Administration

मंडल कार्यालय
लखनऊ

पत्र सं. PRKS/LSN/6099/81-

दिनांक 8-5-1990

Chief Engineer (con).
N.E. Rly. Gorakhpur
at Lucknow

Subj: - Order for duty to staff who took part
in demonstration at G.P. in the month of
September, 80

Dear Sir,

Enclosed please find herewith the
representation of the Construction Staff
who have not been allowed on duty
as yet.

They have preferred many appeals
to their concerning XEN'S but nothing so far
heard nor any reply have been received.

Union. Therefore request to
you to kindly intervene in the matter and
action taken may kindly be intimated to
the undersigned. These employees are bonafide
members of this union.
with regards,

R. S. Awasthi

RA

R. S. Awasthi
Jr. General Secy

True copy
submitted

20-8-90

18

एन. ई. रेलवे इम्प्लॉयर्स यूनियन (PRKS) पूर्वांतर रेलवे कर्मचारी संघ

रेलवे प्रशासन से मान्यता प्राप्त तथा एन. एफ. आई. आर. एवं आई. एन. टी. यू. सी. से सम्बद्ध
रजिस्ट्रेशन नं० १८८३/५८

केन्द्रीय कार्यालय-गोरखपुर

महावीर राय
केन्द्रीय अध्यक्ष

ओ० पी० त्रिपाठी

महामंत्री

पत्रांक पी०आर०के०एस०/बी०जी०/८१

दिनांक 10-7-81

श्री सी० वी० स्वामीनाथन,
महा प्रबन्धक,
पूर्वांतर रेलवे गोरखपुर
उपस्थित लखनऊ
माननीय,

विषय:- सितम्बर, 80 में गोरखपुर में बड़ी लाइन के निर्माण
कार्य पर रत निकाले गये कर्मचारियों को डिगुटी देना ।

सितम्बर, 80 में बड़ी लाइन के निर्माण कार्य पर रत कर्मचारियों का एक
प्रदर्शन एवं अनशन गोरखपुर में हुआ था जिसमें कुछ कर्मचारियों को नौकरी से
अलग कर दिया गया था ।

उपरोक्त संबंध में हमारा संघ उनको इस रास्ते से अलग रख कर वार्ता
द्वारा रेल प्रशासन से समस्याओं का निराकरण करने पर जोर दिया था और हम
जोग इस विषय में कुछ हद तक कार्यवाही भी हासिल किये थे ।

उन हटाये गये कर्मचारियों में कुछ ऐसे भी लोग थे जो हमारे संघ के सक्रिय
सदस्य एवं कार्यकर्ता भी थे । परन्तु कुछ अराजक सत्तों के दबाव एवं भय में आकर
ये लोग भी इस भीड़ में शामिल थे और इन्हे भी नौकरी से हटा दिया गया । इस
संबंध में हमारा संगठन मुख्य इंजीनियर(बी०जी०) को एक पत्र दिनांक 8-5-81 को
दिया था और निवेदन किया था कि इनकी पिछली गलतियों को क्षमा करते हुए इन्हें
पुनः नौकरी पर बहाल किया जावे परन्तु अभी तक इस ओर कोई कार्यवाही
नहीं हुई है ।

अतः हमारा संघ आप से पुनः निवेदन करता है कि निम्नलिखित लोगों को
नौकरी पर बहाल करके अपनी महान उदारता का आदर्श प्रस्तुत करें । संघ आपका
हृदय से आभारी होगा ।

- 1- श्री सुधाकर तिवारी, स्विच जलासी, रेल पथ निरीक्षक (निर्माण)बादशाहनगर
- 2- श्री शिव कुमार श्रीवास्तव
- 3- श्री हरिमान सिंह
- 4- श्री धर्मनाथ सिंह कोमैन
- 5- श्री रण विजय सिंह, मेट

साथ ही निर्माण कार्य में संलग्न सारे कर्मचारियों को पक्का किया जाय ।

ससम्मान,

महावीर राय

केन्द्रीय अध्यक्ष

संयुक्त महा मंत्री

गोरखपुर

दिनांक 10/7/81

True copy
Attested

25-8-96

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पूर्वोत्तर रेलवे
=====

राम समुद्र
पदाधि/निर्माणा

कार्यालय, मुख्य इंजिनियर/नि०
भोरखपुर ।

सं० सं० पत्र सं० - ६ / 227/15/ वी० / एम ओ/ 501 दिनांक 27.1.03
प्रथम श्री बतोग्रा

विषय: - वी० जी० निर्माणा के टाइटम लेस लेवर्स की पुनः विमुक्ति ।
=====

श्री सुबेदारामप सिंह एम० वी० के पत्र तथा उसके संलग्नक की
प्रतिलिपि आप के पास टिप्पणी हेतु भेजी जा रही है । जो महा प्रवक्तृ (का०)
के माध्यम से मिली है । आप से अनुरोध है कि आप अपने अधीनस्थ अधिकारियों
के समक्ष में अपनी टिप्पणी जल्द से जल्द भेजवाते ही व्यवस्था करें ताकि
महा प्रवक्तृ (कार्मिक) को उत्तर दिया जा सके ।
इसे प्रति आवश्यक समझें ।

सं/ दो

भवदीय
ह: श्री रामसमुद्र 27.1.03
(राम समुद्र)

श्री वी० एम० बतोग्रा
पूर्वोत्तर रेलवे

यादव

True copy
attached
A. B. P.
20.8.90

रामसमुद्र

21

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...

UNITY

PEACE

PROGRESS

पूर्वोत्तर रेलवे कर्मचारी संघ NORTH EASTERN RAILWAY EMPLOYEES UNION [PRKS]

(रजि. नं. 1566)
Affiliated to INTUC and NFK Recognised by N. E. Rly. Administration

Phone No. 496

महान कार्यालय
लखनऊ

श्री. श्री. श्री. ए. ए. वि. वि. 1/84/2

*No can not
keep them
only of
C.L. of
Bansdram
I should be
utilized in
area of
after permission
from A.C.C.
has done*

सेवा में,

उप मुख्य इन्जिनियर (निर्माण),
पूर्वोत्तर रेलवे,
लखनऊ।
=====

प्रिय महोदय,

विषय: - स्वतंत्रता संग्राम सेनानियों के आश्रित
कर्मियों को नियुक्ति।
1307/90
A.C.C./8x

आपके पत्र का प्रस्ताव पत्र प्राप्त कर
श्री. श्री. श्री. ए. ए. वि. वि. 1/84/2
आपको तिवारी दिनांक 19-11-76 से 15-9-80 तक कार्य निरोधक (निर्माण)
गोंडा, रेल पथ निरोधक (निर्माण)/बुदकत (111) एवं सर्वोच्च रेल पथ निरोधक
(निर्माण)/बलहासनगर में लगभग 1022 दिन लगातार काम कर चुके हैं, जिसका
प्रमाण पत्र (फोटोस्टेट) आपके बिना हेतु संलग्न किया जा रहा है।
श्री. तिवारी सन् 1980 से बेकार है जबकि उनसे सेकड़ों युनिट का काम करा
रहे हैं जब कि वह एक स्वतंत्रता संग्राम सेनानी के आश्रित हैं।
अब काम से अनुरोध है कि श्री. सुधाकर तिवारी को उनके अर्जासि मिलने में
दृष्टी में रेल सेवा में काम करने का अवसर प्रदान करें।
आपको,
संलग्न/ 1. काम का प्रमाण पत्र
2. आवेदन पत्र
Sincerely,
for engagement
ACI/see for BTU-KAR
1307/90
A.C.C./8x

2/पूर्वोत्तर रेलवे

True copy
attached
P. Singh
20-8-90

22

UNITY PEACE PROGRESS

पूर्वोत्तर रेलवे कर्मचारी संघ NORTH EASTERN RAILWAY EMPLOYEES UNION (PRKS)

(रवि० नं० १८८३)

Affiliated to INTUC and NFIR and Recognised by N. E. Rly. Administration.

Phono No- : 495

मण्डल कार्यालय

लखनऊ

पत्र संख्या.....

पो. आर. के. २२२ / अ. क. २२२ / इ. जी. (वि. भा. ७) / १८९

दिनांक 12/7/85 १९८५

सहायक अभियन्ता वडी लाइन (ने. ई. ए.)

पूर्वोत्तर रेलवे

लखनऊ

प्रिय महोदय,

विषय:- भू. पू. काक अभिक वी. जी. (निर्माण)
श्री सुधाकर तिवारी के सम्बन्ध में

शुभभा उक्त श्री तिवारी का
संलग्न प्रेषित पत्र प्राप्त करे तथा श्री
आर एस आवली को दीप काक का पी. आर. के. सं. २२२
को ~~संबन्ध~~ ~~संबन्ध~~ ~~संबन्ध~~ श्री
तिवारी एवं उनके परिवार की ~~आर्थिक~~ ~~आर्थिक~~ ~~आर्थिक~~ स्थिति
का ख्याल रखते हुये तथा भू. पू. अभिक वी. जी.
ख्याल रखते हुये इनका नाम भू. आ. अभियन्ता
जोरखपुर को बारम्बार सूची में सम्मिलित करने
के आग्रह करते करके श्री शुभाकर तिवारी
इन्हे भी आवली के अपने परिवार के
भरण पोषण का सहारा हो सके।
सादर
संलग्नक - प्रेषण

सुधाकर तिवारी

True copy
Sunder
A. Mohan
26-8-90
मंडल मंत्री

23

18

Amrinder Singh

Certified to be a true copy
Assistant Registrar (Jud.)
1983
Supreme Court of India.

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION
WRIT PETITIONS NOS. 147, 320-69, 454,
4335-4434/83 etc. etc.

Indar Pal Yadav & Ors. etc. ... Petitioners
vs.
Union of India & Ors. etc. ... Respondents

J U D G M E N T

Dasaj, J.

Articles 41 and 42 of the Constitution notwithstanding, there are certain grey areas where the rule of hire and fire, a legacy of laissez-faire, even in Government employment still rules the roost. Casual labour employed on projects also known as 'project casual labour' is one such segment of employment where one may serve for years and remain a daily rated worker without a weekly off, without any security of service, without the protection of equal pay for equal work.

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True copy
Attested
J. B. Singh
22-8-90

24

In short at the sweet will and mercy of the local satraps. Even the formidable railwaymen's unions least cared for these helpless and hapless workmen. Suddenly a torrent of writ petitions and petitions ^{for} special leave awakened this Court to the plight of these workmen. In quick succession, 48 writ petitions and 32 petitions for special leave flooded this Court. In each writ petition/S.L.P., the grievance was that even though the workmen styled as 'project casual/labour' had put in continuous service for years on end to wit ranging from 1974 till 1985, yet their services were terminated with impunity under the specious plea that the project on which they were employed has been wound up on its completion and their services were no more needed. No one is unaware of the fact that Railway Ministry has a perspective plan spreading over years and decades and projects are waiting in queue for execution and yet these workmen were shunted out (to use a cliché from the railway vocabulary) without any chance of being re-employed. Some of them rushed to the court and obtained interim relief. Some were not so fortunate. At one stage some of these petitions were set down for final hearing and the judgment was reserved. When some other similar matters came up, Mr. E.G. Bhagat, the then learned Additional Solicitor General, requested the court not to render the judgment because he would

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[Signature]
 20-8-90

- 3 -

take up the matter with the Railway Ministry to find a just and humane solution affecting the livelihood of these unfortunate workmen. As the future of lakhs of workmen going under the label of casual project labour was likely to be affected, we repeatedly adjourned these matters to enable the Railway Ministry to work out a scientific scheme.

Railway Ministry framed a Scheme and circulated the same amongst others to all the General Managers of Indian Railways including production units as per its circular No. E(NG)II/84/CL/41 dated June 1, 1984. In the Scheme It was stated that all the General Managers were directed to implement the decision of the Railway Ministry by the target dates. It was further stated that a detailed letter regarding group 5.1(ii) would follow. Such a letter was issued on June 25, 1984. Thereafter, these matters were set out for examining the fairness and justness of the Scheme and whether the court would be in a position to dispose of these petitions in view of the Scheme. That is how these matters came up before us.

The relevant portions of the Scheme read as under:

"5.1: As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as 'project casual labour') may be treated as temporary on

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Attested -

P. B. G. [Signature]

20-8-90

[Handwritten signature]

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 as on 1.1.84; and
- (ii) Casual labour on projects who, though not in service on 1.1.84, 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:

Length of service (i.e. continuous employment).	Date from which may be treated as temporary	Date by which decision should be implemented
i) Those who have completed five years of service as on 1.1.84	1.1.1984	31.12.1984
ii) Those who have completed three years but less than five years of service as on 1.1.1984	1.1.1985	31.12.1985
iii) Those who have completed 360 days but less than three years of service on 1.1.1984	1.1.1986	31.12.1986
iv) Those who complete 360 days after 1.1.1984	1.1.1987 or the date on which 360 days are completed whichever is later.	31.3.1987

5.2. The Ministry would like to clarify here that casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits now admissible to them (so long as they fulfil the conditions in this regard) till they become due for the benefits mentioned in the preceding sub-paragraph.

Prayansh

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Atty RA
[Signature]
25-0-90

27

- 5 -

By and large the scheme certainly is an improvement on the present situation though not wholly satisfactory. However, the Railway being the biggest employer and having regard to the nature of its work, it would have to engage casual labour and therefore, as a preliminary step towards realisation of the ideal enshrined in Articles 41 and 42, we propose to put our stamp of approval on the scheme with one major variation which we proceed to herein set out.

The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from the fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to

[Handwritten signature]

*True copy
 Accepted
 J. S. [Signature]
 20-8-90*

- 6 -

court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. 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 a 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 anyone 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 1.1.1981. 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 re-casting the stages consistent with the change in the date as herein directed.

To avoid violation of Art. 14, the scientific and equitable way of implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each

Quarantined

True copy

Attst of

J. Narayan

20-8-90

- 8 -

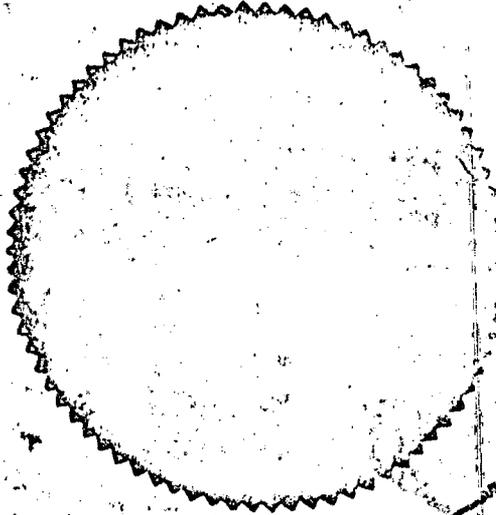
Therefore, we direct the Union of India to pay Rs.5,000/- as and by way of costs to Shri Anis Suhrawardy, advocate, Supreme Court.

.....Sd/.....J.
(D.A. Desai)

New Delhi,
April 18, 1985

.....Sd/.....J.
(Ranganath Misra)

SERIAL NO. 1616 OF 1985
No. of Pils (of)
Costs Including
Children
P. No. Number



Date of application for copy
Date of order of costs
Date of delivery of copy
Date of copy of the copy
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Section Officer
Supreme Court of India

CLAIMED BY
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20-8-90

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court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. 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 a 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 anyone 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 1.1.1981. 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 re-casting the stages consistent with the change in the date as herein directed.

To avoid violation of Art. 14, the scientific and equitable way of implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each

Prasad

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 J. B. [Signature]
 20-8-90*

- 5 -

By and large the scheme certainly is an improvement on the present situation though not wholly satisfactory. However, the Railway being the biggest employer and having regard to the nature of its work, it would have to engage casual labour and therefore, as a preliminary step towards realisation of the ideal enshrined in Articles 41 and 42, we propose to put our stamp of approval on the scheme with one major variation which we proceed to herein set out.

The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from the fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief by stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to

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32



पूर्वोत्तर रेलवे कार्यालय मध्य इन्जीनियर (निर्माण)
 सर्वेक्षण एवं निर्माण विभाग मोरखपुर
 NORTH EASTERN RAILWAY OFFICE OF THE CHIEF ENGINEER/CONS.
 (SURVEY & CONSTRUCTION ORGANISATION) GORAKHPUR

No. KA/227/5/BG Pt. II / 158 दिनांक 16.5.1986 1986
 Date 19

Shri R. S. Awasthi,
 General Secretary,
 N. E. Railway Employees Union (PRKS),
 Near Parcel Office,
 Gorakhpur.

Dear Sir,

Subj: - Engagement of Shri Sudhakar
 Tiwari, Ex. Casual laboura/BG/
 Lucknow Jn.

Ref: - Your letter No. PRKS/C/BG/LJH/
 86-19 dated 7.5.1986.

In connection with Hon'ble Supreme Court's
 decision in the matter of retrenched casual
 labours, Railway Board have filed a clarifica-
 tory/confirmatory petition regarding the mode of
 implementation of the decision of the Hon'ble
 Supreme Court. Besides, the retrenched casual
 labours have also gone before the Tribunal.
 Pending the above mentioned court cases, re-
 engagement of any casual labour at this stage
 is not possible.

Yours faithfully,

[Signature]
 for CHIEF ENGINEER/CON.

*Give copy to Shri R. S. Awasthi, G.S.
 for his reference*

15/5

[Signature]

*True copy
 attached
 P. S. [Signature]
 20.8.90*

/रिप/89

31-3-1989

सेवा में,
महाप्रबंधक
पूर्वांचल रेलवे/गोरखपुर।

भवदीय,

विषय: - श्री सुधाकर तिवारी भू0पू0 परियोजना ^{सुधकर} आकस्मिक अधिक को रेल सेवा में लाया जाना।

संदर्भ: - मुर्/निमणि का पत्र सं0 रं/227/5/बो.जी./भाग-11 दि0 10-10-87

24/11/87 24/11/87 4-11-87

कृपया सुधकर के संदर्भित पत्रों का अवलोकन करें :-

उक्त संबंध में रेल परिषद के पत्र सं0 रं(एनजी) 11/84/सीएल/81 दि0 2-3-87 को सम्बद्ध किया जाय जो महाप्रबंधक (का) गोरखपुर द्वारा 11-3-87 को परिपत्रित किया गया तथा निमणि संगठन में दि0 19-3-87 को प्राप्त हुआ था, किंतु निमणि संगठन ने न तो एष पत्र को परिपत्रित किया और न ही इसकी प्रति मन्विता प्राप्त युनियन को दी गयी जिससे प्रभावी अधिकारियों को एका जानकारी हो सके, किंतु जिन कर्मचारियों का अभिवेदन अन्तिम निमण-एतु मापके कार्यालय में लभित था उस पर विचार न करना न्यायोचित नहीं प्रतीत होता और मात्र 11 दिन की अवधि में निहाले गये नै अधिको किस प्रकार इस परिपत्र का लाभ उठा पाए, जो मात्र मापके प्रशासनिक कार्यालय में ही भसिल बंद रह गयी। उसका कोई स्पष्टीकरण नहीं भिला। इसके अतिरिक्त हमारे समसंख्यक सं दि0 5-8-87 द्वारा कतिपय अधिकों का जी समस्त परिस्थिति में पुनः भर्ती कर लिए जाने से स्पष्ट है कि मात्र श्री सुधाकर तिवारी के ही तैनात करने में स्थी एचक है। एना ही नहीं निम्नांकित अधिकों को जो 1-1-81 के बाद नौकरी में नहीं थे, की ठान परीक्षा लेकर उन्हें निभमित कर दिया गया। उदाहरणार्थ श्री एम विजय सिंह, कापार/नि0/गोरखपुर तथा श्री कृष्ण, कापार/नि0 वाराणसी का नाम उल्लेखनीय है। जबकि श्री तिवारी को जिनके बारे में संघ ने बार बार अनुरोध किया है कि उनको तैनात किया जाय कि पूर्णबहाली नहीं की गयी।

उक्त तथ्यों के आधार पर यह स्पष्ट है कि रेल परिषद के आदेशों की अवहेलना करके श्री सुधाकर तिवारी भू0पू0 आकस्मिक अधिक को पुर्नबहाली नहीं और सुकाधि/मराज को भी सही तथ्यों से अवगत नहीं कराया गया।

श्री तिवारी 16-9-80 से बेकार बैठे है जब कि उनसे जुनियर करीब सैकड़ी आदमी एष समय कार्यरत है।

अतः यापसै अनुरोध है कि ट्रीबुनल और सुप्रीमकोर्ट के निर्णय के आधार पर सहानुभूति पूर्वक विचार कर ऊंचे रेल सेवा में पुनः बहाली की आज्ञा प्रदान करे जिसे श्री तिवारी अपने परिवार को भूधमरी से बचा ठ सके।

भवदीय

(आर0 एस0 अक्थी)
महा मंत्री/ पी.आर.के.एस.

(Handwritten signature)

True copy
Attested
P. J. [Signature]
20/8/90

35

Sudhakar Tewari

The Union of India & others

Opp. Parties

Annexure No. 11



कार्यालय महाप्रबन्धक (का)

पूर्वोत्तर रेलवे, गोरखपुर

OFFICE OF THE GENERAL MANAGER (P)

N. E. RAILWAY

GORAKHPUR

सं० ई/301/41/5/13(II)

दिनांक 18.5.1989

महामंत्री,

एन०ई०रेलवे इम्पलाइज यूनियन,

(पो०आर०के०एस०),

गोरखपुर ।

भरोदय,

विषय :- श्री सुधाकर तिवारी भू०पू० परियोजना आकस्मिक
दुर्घटन श्रमिक को रेल सेवा में लिया जाना ।

सन्दर्भ :- आणका पत्र सं० पो आर के एस/सी/89/1ष
/II दिनांक 29.3.89.

18/5/89

सर्वश्री श्रीकृष्ण एवं रणविजय सिंह की बान परीक्षा क्रमशः दिनांक
26.2.1983 एवं 7.12.84 को 1.1.78 को तीन वर्ष या उससे अधिक
के आधार पर वरियतानुसार की गयी थी । जब इन लोगों को बान-
परीक्षा हुई थी उन दिनों 1.1.1981 के आधार पर 1.4.85 को
वरियता सूची बनाने का रेल परिषद का कोई आदेश नहीं था । जब
उपरोक्त कर्मचारियों को बान परीक्षा हुई थी उन दिनों 1.1.1978 को (1.1.1978)
श्री सुधाकर तिवारी का कुल कार्यकाल उनके प्रथम नियुक्ति तिथि दिनांक
26.11.76 के अनुसार तीन वर्ष से कम था जबकि इन लोगों को प्रथम
नियुक्ति तिथि 13.11.1972 एवं 12.7.73 के अनुसार 1.1.78 को
कार्यविधि तीन वर्ष से अधिक थी तथा ये लोग वरियता क्रम में आ गये ।
अगर श्री तिवारी भी 1.1.78 के आधार पर वरियता क्रम में आते तो
इनकी भी उन दिनों बान परीक्षा एवं तैनाती कर ली जाती ।

दुर्नवहलो के संबंध में सु०ई०/नि० का पत्र सं० सु/227/5/
बोजो/भाफ३ दिनांक 19.10.87 जो अध्याय, पो०आर०के०एस०को संबोधित
है, को प्रतिलिपि संलग्न है ।

संलग्नक - 2थीपारि

भवदीय'

[Signature]

कृते महाप्रबन्धक (कार्मिक)

[Signature]
24-5-89

22-8-90

इसको श्री महामंत्री के
आदेशानुसार किया गया।

[Signature]

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA

Registration No. CA-458 of 1987

Biyaram Prasad Yadav & another Applicants
Versus

1. Union of India through the Chairman, Railway Board, Rail Bhavan, New Delhi.
2. General Manager, N.E. Railway, Gorakhpur.
3. P.W.I (Permanent Way Inspector), N.E. Railway, Sonapur.
4. A.E.N. (Assistant Engineer) S.G./Construction - N.E. Ry. Sonapur.
5. E.E.N. (Executive Engineer), N.E. Ry. Barauni Junction, Nirmal S.G./con. Barauni.
6. Chief Engineer D/G/Con. N.E. Ry. Gorakhpur.
7. Divisional Manager, N.E. Railway, Sonapur, Dt. Saran.

..... Respondents



Advocates for Applicants (1) Mr. S.C. Sanyal
(2) Mr. R.K. Verma
Advocates for Respondents Mr. A.D. Ojha.

For: Hon'ble Shri G. Brodharan Nair, Vice-Chairman
Hon'ble Shri P.S. Habeeb Mohamed, Member(A)

ORDER

Hon'ble Shri G. Brodharan Nair, Vice-Chairman:- The Applicants who were casual labourers did not appear for work during the period from 12.9.1980 to 29.9.1980. They had applied for leave for the said period, for the purpose of participating in the rally before the Chief Engineer's Office, Gorakhpur to ventilate some of their

Supra

*True copy
Attorney
A. K. Ojha
20-8-90*

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... when they reported on
 day on 20.6.1980, ...
 communication filed by ... of no avail, this
 application is filed to quash verbal order of termination
 of their services and for a direction to the respondents
 to allow them to work as usual. Back wages for the period
 they were not engaged is also ^{claimed} prayed. The applicants have
 pointed out that this Tribunal has allowed similar reliefs
 to certain others identically placed.

2. In the reply filed on behalf of the respondents
 it is stated that the applicants have never been retrenched
 but they left the job on their own, and as there was no
 justification for extra labour, they were not taken to
 work. It is stated that in pursuance to the judgment of
 the Supreme Court in Inder Pal Yadav's case, the applicants
 fall in the second category of those who were not in
 employment on 1.1.1981, having ^{not} ~~been retrenched before that~~
 date, and as such their claim for a re-engagement can be
 considered only after exhausting the cases of persons
 who fall within ^{1st} ~~1st~~ category, namely, those casual labourers
 who were in employment on 1.1.1981.



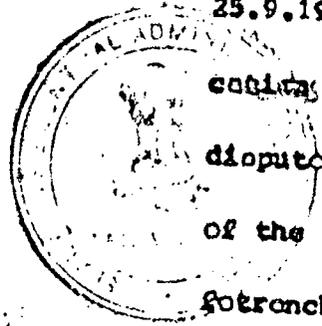
3. It is not in dispute that the applicants are
 casual labourers having been ^{employed} ~~disengaged of their~~ temporary
 status though they were working on projects. According to
 the decision of the Supreme Court in Inder Pal Yadav's
 case, Railway Administration has been directed to frame
 a scheme regarding such labourers who have not been given
 engagement after 1.1.1981. The stand taken by the respondents

Signature

*True copy
 Atty Gen
 P. M. G. J.
 2-28-90*

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is that since the applicants were not in engagement from 26.9.1980, they cannot claim the benefit of the aforesaid judgment and as such, cannot compel the administration to engage them. This statement can be accepted only if the non-engagement of these applicants from 26.9.1980 has been as a result of retrenchment. When the respondents have admitted in the reply that no retrenchment has been effected as far as the applicants are concerned, what follows is that they have not been given work from 26.9.1980 just because they took part in a rally to ventilate their grievances. The applicants do not dispute that they were absent from 12.9.1980 to 25.9.1980 but they have stated that the necessary applications for leave were submitted, which statement is not disputed by the respondents. As such, the non-engagement of the applicants from 26.9.1980 does not amount to retrenchment. According to the respondents there was no work thereafter, which statement cannot be accepted on its face value. So much so this is a case where the applicants who were engaged as casual labourers on projects have to be deemed as in service on 1.1.1981 so that they are entitled to the benefit of the decision of the Supreme Court in Indor Pal Yadav's case.



Original

*True Copy
 Attached
 D. B. [Signature]
 20-8-90*

VAKALATNAMA

90

Before IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
In the Court of CIRCUIT BENCH, LUCKNOW.

Reg. No. O.A. No. 261 (C) of 1980

Sudhakar Tiwari Applicant

Versus

Union of India and others Respondants

I/We Ram Deo; P.W.S. Cane Muehan, N.E. Railway, Badeshah Nagar, Gorakhpur, Lucknow.

do hereby appoint, and authorise Shri B.K. Shukla

Railway Advocate, Lucknow, to appear, act apply and prosecute the above described Writ/Civil Revision/Case/Suit/Application/Appcal on my/our behalf, to file and take back documents, to accept processes of the Court, to deposit moneys and generally to represent myself/ourselves in the above proceeding and to do all things incidental to such appearing, acting, applying, pleading and prosecuting for myself/ourselves.

I/We hereby agree to ratify all acts done by the aforesaid Shri B.K. Shukla, Railway Advocate, Lucknow, in pursuance of this authority.

IN WITNESS WHERE OF these presents are duly executed by me/us this

day of 1980

Accepted
B. Shukla
Advocate

(Ram Deo)

P.W.S. Cane Muehan, Badeshah Nagar, N.E. Railway, Lucknow.

In the Central Administrative Tribunal
Additional Bench, Allahabd.
Circuit Bench, Lucknow.

O. A. No. 261 of 1990

F.F. :- 17.10.90

1990
AFFIDAVIT
88
HIGH COURT
ALLAHABAD



Sudhakar Tewari

..... Petitioner

Versus

Union of India & others Respondants.

Supplimentary Affidavit.

I, Sudhakar Tewari aged about 40 years son of Sri Shankar Daul Tewari R/o Gram Subhas Nagar Post Subjash Nagar Distt. Nainital do hereby solemnly affirm as under :-

1. That the above noted application had been filed for getting the job under the Opp. Parties.
2. That the Hon'ble court had directed to the petitioner to produce the service card which is filed herewith as annexure No. 'a' to this affidavit.
3. That the deponent remained in services from 1976 till 15.9.80.

Dat-ed :- 10.10.90

Sudhakar
Deponent.

Verification

I, the above named deponent do hereby verify ~~and~~ that the contents of para 1 to 3 of this affidagit are true to my knowledge.



17
10/10/90

GR

Nothing has been concealed and no part of it is false so help me God.

Signed and verified today this 10th day of October 1990 in the compound of the Hon'ble High Court at Lucknow.

[Signature]

Deponent.

I identify the deponent who has signed before me.

[Signature]
(P.N. Bajpai)
Advocate.
10.10.90

Solemnly affirmed before me on 10.10.90 at 8.40 A.M./P.M. by Sri Sudhakar Tewari the deponent who is identified by Sri P.N. Bajpai, Advocate, High Court Allahabad (Lucknow Bench) Lucknow.

I have satisfied myself by examining the deponent who understands the contents of this affidavit which has been read over and explained by me.



88/1364
[Signature]
Jyagan Nara
DEPUTY COMMISSIONER
of the District
Lucknow Bench
No. 00/1364/90
Date 10/10/90

43

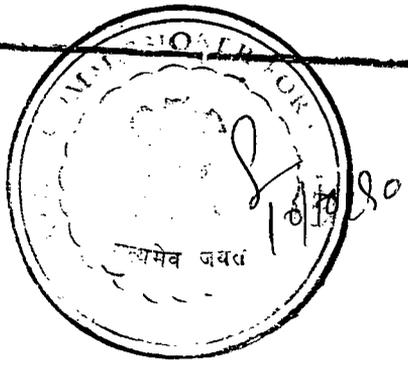
In the Central Administrative Tribunal Addl. Bench
Allahabad Circuit Bench, Lucknow.
Sudhakar Tewari Applicant.
Versus
The Union of India & others Respondants
Annexure No. 'A'.

N. E.—G. 34 A



पूर्वांतर रेलवे
NORTH EASTERN RAILWAY

नैमित्तिक श्रमिक के रूप में सेवा-वृत्त
RECORD OF SERVICE
AS
CASUAL LABOUR

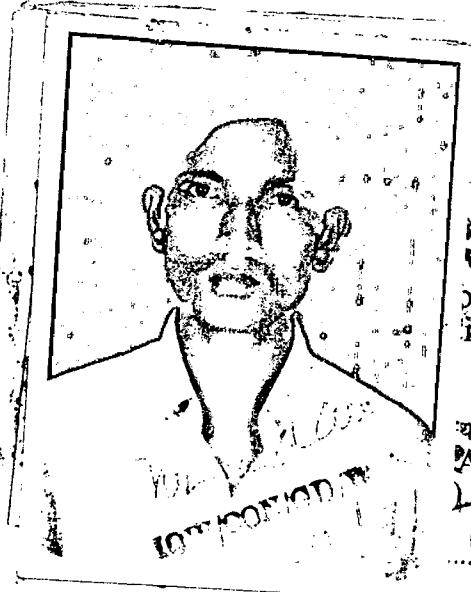


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नोट
Instructions

1. जिस व्यक्ति के नाम यह कार्ड जारी किया गया है, इसे सुरक्षित रखने की जिम्मेदारी भी उसी की है।
The person to whom this card is issued is responsible for its safe custody.
2. किसी भी स्थिति में इस कार्ड की अनुलिपि (डुप्लीकेट) जारी नहीं की जा सकती।
No duplicate card can be issued under any circumstances.
3. इसके खो जाने पर, फौरन रिपोर्ट करनी चाहिए।
In case of loss, the fact should immediately be reported.
4. प्रत्येक नई नियुक्ति के समय इस कार्ड को अवश्य ही प्रस्तुत करना चाहिए।
This card should invariably be produced at the time of every fresh appointment.
5. इस कार्ड के बिना स्थायी नियुक्ति के लिये किए गए दाव पर विचार नहीं किया जायगा।
No claim for permanent absorption will be entertained without this card.
6. नियुक्ति के समर्थन में प्रस्तुत किये गये किसी अन्य प्रकार के प्रमाण को नहीं माना जायगा।
Any other form of evidence in support of his employment will not be taken cognisance of.
7. इस कार्ड के दुरुपयोग होने पर धारक रेल की सभी तरह की नौकरियों के लिए अयोग्य कर दिये जाने का भागी होगा।
Any misuse of this card shall render its owner liable for being disqualified from railway service of all kinds.



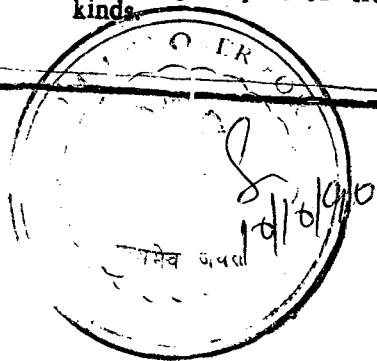
ilway
समय पर जाने वाले
द्वारा
to be filled in on
ment.

य द्वारा सांख्यिकित)
Attested by the

77

1. पूरा नाम
Name in full... श्री सुधाकर निवारी
(in block letter)
2. पिता का नाम
Father's name... श्री शंकर दयाल निवारी
3. क्या अनुसूचित जाति के हैं
Scheduled Caste or not...

अधीनस्थ कार्यभारी के द्वारा
एवं पदनाम
Signature & Designation
of Subordinate incharge
10W/CON/GD/W



Pranavadi

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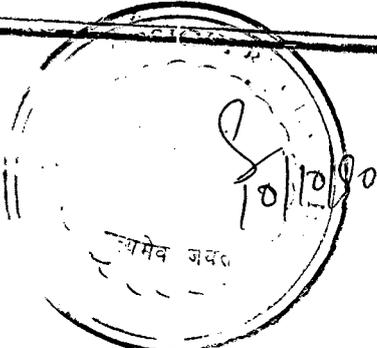
प्रथम नियुक्ति के समय भरे जाने वाले
व्यक्तिगत ब्योरे
Personal details to be filled in on
first appointment

- 1. पूरा नाम
Name in full श्री. सुधाकर विजारे
(in Block letters)
- 2. पिता का नाम
Father's name श्री. शं. ह. दयाल विजारे
- 3. जन्म-तिथि
Date of birth 1-1-1955
- 4. नैमित्तिक नियुक्ति के समय आयु
Age at initial Casual Employment 20.11.1973 (वर्ष 18)
- 5. शैक्षिक योग्यता
Educational Qualification ब. ए. ए. (ग्राम्य)
- 6. पहचान के व्यक्तिगत चिह्न
Personal marks of identification:
(i) दाहिने हाथ की उंगली पर 557 10419
(ii) X
- 7. प्रारम्भिक नियुक्ति किस प्रकार की
Nature of employment on initial employment कु. श्रमिक

- 8. स्थाई पता
Permanent address: गा. नं. - ता. मी. बु. पु.
डाकघर सु. र. म. पु. पो. वे. री. म. पु.
Post office Police Station
तहसील जिला एवं राज्य
Tahsil Distt. & State
- 9. वारिस का पूरा नाम
Name in full of heir
- 10. सम्बन्ध
Relationship
- 11. वारिस का स्थायी पता
Permanent address of heir



नैमित्तिक श्रमिक के हस्ताक्षर अथवा
बायें चंगठ का निशान
Signature or LTI of the Casual Labourer



सुधाकर विजारे

46

नैमित्तिक श्रमिक के रूप में सेवा-वृत्त.
Record of Service As Casual Labour

प्रारम्भिक नियुक्ति की तिथि
Date of initial employment 19-11-76

नियुक्ति की अवधि Period of employment		कार्यभार की किस्म Nature of Assignment.	पर्यवेक्षक के हस्ताक्षर पदनाम एवं तिथि सहित Signature and designation of the supervisor with date.
किस तिथि से From	किस तिथि तक To		
19-11-76	15-4-78	कु. श्रमिक	<i>[Signature]</i> LOW/CON/GD/W 9/9 2/9/78
(L 6/12/78 to 8/12/78) (L 16/1/79 to 3/2/79)			
16-4-77	15-7-77	कु. श्रमिक	<i>[Signature]</i>
(L on 20/5/77 to 30/5/77)			
16-7-77	15-8-77	खलासी	Worked Under
16-8-77	30-9-77	ब्रेट	P.W. Inspector
1-10-77	30-11-77	"	N. E. Insp. (Gen.) BSW
(L from 25/11/77 to 30/11/77)			
1-12-77	31-12-77	"	
(L from 27/12/77 to 31/12/77)			

नैमित्तिक श्रमिक के रूप में सेवा-वृत्त
Record of Service As Casual Labour

प्रारम्भिक नियुक्ति की तिथि
Date of initial employment

नियुक्ति की अवधि Period of employment		कार्यभार की किस्म Nature of Assignment.	पर्यवेक्षक के हस्ताक्षर पदनाम एवं तिथि सहित Signature and designation of the supervisor with date.
किस तिथि से From	किस तिथि तक To		
1-1-78	15-2-78	ब्रेट	
16-2-78	28-2-78	खलासी	
1-3-78	30-6-78		
1-7-78	31-7-78		
(L on 28/5, 29/5, 30/5/78 respectively)			
1-8-78	31-8-78		
1-9-78	30-9-78		
1-10-78	31-10-78		
1-11-78	15-11-78		
16-11-78	31-12-78		
1-1-79	30-4-79	@ 10-5) Pandey	<i>[Signature]</i> P. W. Inspector Soo/Gonda (V) E. B. R.
(L on 29/4 & 30/4/79 respectively)			



शुद्धाचार्य

(5)

48

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, AT LUCKNOW.

REG. NO. O.A. 261 of 1990

PT
Jaya

Sudhakar Tiwari ... Applicant
Vs.
Union of India & others ... Opp..Parties.

WRITTEN STATEMENT ON BEHALF OF THE
RESPONDENTS MOST RESPECTFULLY SHOWETH
AS UNDER:

I, P. N. Sharma, Executive Engineer,
Construction, North-Eastern Railway, Lucknow,
do hereby solemnly affirm and state as under.
I have been duly authorised by the opposite
parties to file the instant reply on their
behalf:


Executive Engineer (Con)
N. E. Railway
Lucknow. Jn.

1. That the contents of Para- 1 of the application are not admitted. It is stated

2.

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that the applicant has no cause of action to file the present application and there is no ground to issue a direction to the respondents by this Hon'ble Tribunal as the reasons given in subsequent paras of the instant reply.

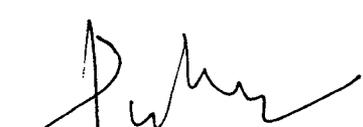
2. That the contents of Para- 2 of the application are not admitted.

3. That with regard to the contents of Para- 3 of the application, it is stated that the instant application is not within the period of limitation, as prescribed under ~~the~~ section 21 of Act No. 13 of 1985, as such the same is ~~not~~ liable to be dismissed on this score alone.

4. That ~~before~~ giving the para-wise reply to the facts of the case, this answering respondent crave to leave of this Hon'ble Tribunal to state certain relevant facts which are necessary and essential to appreciate the controversy involved in the instant case.

They are as under:-

(a) It was decided by the Government of India


Executive Engineer (Con),
N.E. Railway
Lucknow Jn.

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to convert 587 Km. long Barabanki to Samastipur Metre Gauge Railway Line to Broad Gauge Railway Line and accordingly the work of conversion of Barabanki Samastipur Project was sanctioned by the President of India which was communicated by the Railway Board, New Delhi vide their letter no. 71/W-4/COML/NE/9 dated 25th April, 1992.

(b) That the work of conversion was started in the year 1972 and after opening of Barabanki-Samastipur Railway Line on 8th day of July, 1981, the work load was greatly reduced and approximately 20,000 casual labours were retrenched in the month of August/ September, 1981 and April/ May, 1982. Before retrenching the casual labour by the Railway Administration in the year 1981-82 on account of reduction in work load and paucity of funds, all the formalities of Industrial Dispute Act, 1947 and Industrial Dispute Rules, 1957 and other rules were strictly observed.


Executive Engineer (Gen)
N. E. Railway
Lucknow Jn.

(c) That against the above mentioned retrenchment, the number of writ/ special leave petitions were filed by the retrenched casual labours of B. G. Construction Organisation of North

Eastern Railway before the Hon'ble Supreme Court, mostly against the judgment of High Court, Patna, Allahabad and Lucknow High Courts where the claims of the petitioners for their reinstatements and arrears of salaries were not allowed. Pending decision of Hon'ble Supreme Court, the Railway Board have decided in principle that the casual labours employed in project may be treated as temporary on completion of ~~the~~ 360 days of continuous employment with certain conditions which was communicated by the Railway Board's letter no. E(NG)II/CL/ 41 dated 1.6.84 and 25.6.1984. The photocopies of the said letters are enclosed herewith and marked as Annexure Nos. C.A.-1 and C.A.-2.

(d) That the Hon'ble Supreme Court decided the said S.L.P. /Writspetitions in Prahlad Singh & others Vs. Union of India and others, as a leading case of B. G. Construction Organisation and issued direction on 23.4.1985 in terms of their earlier judgment dated 18.4.1985 in Indrapal Yadav & others Vs. Union of India & others (W.P. No. 147320/59 of 1983.


Executive Engineer (Con.
N. E. Railway
Lucknow. Jn.

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(e) That Hon'ble Supreme Court in case of Indrapal Yadav and others Vs. Union of India & others has accepted the scheme presented by the Railway Board with certain modification. Accordingly, the casual labours who satisfy the conditions as laid down in the judgment in general will get:-

- (i) Temporary status as per scheme.
- (ii) Those retrenched casual labours who could not come in the court need not to be at a comparative disadvantages to those who rushed in the court if they are otherwise, similarly situated, they are entitled to similar treatment.
- (iii) The Railway Administration should prepare a list of project casual labours with refernece to each division of each Railway and then start absorbing them with longest service.
- (iv) That those who put in longer service shall have the higher priority and those are juniors and are yet holding the posts will have to make room for those seniors.
- (v) That immediately after the receipt of the Hon'ble Supreme Court judgment, the matter was examined in detailed by the Ministry of Railways to consider the methodology to be adopted for implementation of Hon'ble Supreme Court judgment. A number of issues involved required clarification to avoid in-correct imlementation of Hon'ble Supreme


 Executive Engineer (Gen)
 N. E. Railway
 Lucknow Jn.

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Supreme Court judgment. After detailed examination, instruction proposed to be issued by the Ministry of Railway to all the zonal railways for implementation of Hon'ble Supreme Court judgment were drafted and accordingly an application for clarification and confirmation of the methodology to be adopted was moved on 17th day of September, 1985 before the Hon'ble Supreme Court by the Ministry of Railway vide CMP/No. 40897 of 1985.

(vi) That the Hon'ble Supreme Court was pleased to issue direction on 11th day of August, 1986 on the above mentioned CMP. A photo copy of which is enclosed herewith as marked as Annexure No. C-3.

(vii) That on receipt of Hon'ble Supreme Court order dated 11th day of August, 1986 confirming the methodology proposed to be adopted the Ministry of Railways issued instructions/modification scheme vide their letter no. E(NG)/II/84/CL/41 dated 11th day of September, 1986, clarifying the procedure to be adopted for implementation of Supreme Court's Judgment.

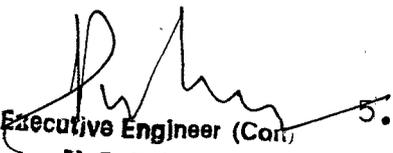
A photostat copy of the said circular dated 11.9.1986 is enclosed herewith and marked as Annexure No. C-4.


Executive Engineer (Con),
N. E. Railway
Lucknow Jn.

(viii) That soon after receipt of the instructions this answering Railway has initiated action for preparing the seniority list of project

casual labour as on 1st day of 1985 covering all project's casual labours who have been in employment as on 1.1.1981 and onward department-wise, division-wise and category-wise.

(f) That as per direction of Hon'ble Supreme Court, the seniority list of casual labours within the geographical jurisdiction of Lucknow Construction Division has been prepared department-wise, category-wise and ~~division~~ division-wise. After publication of the seniority list of Lucknow Construction Division, of which the petitioners belong, the seniors casual labours who were out of employment, were offered job and were re-engaged creating vacancies by retrenching juniors casual labours and adjusting in other division and department. The name of the petitioner is not legally permissible to include in the said Seniority List. In fact as per extent rules such casual labours who have left the job, are not entitled to be included in the life register and cannot avail the benefit of re-engagement in ~~view~~ view of Indrapal Yadav case.

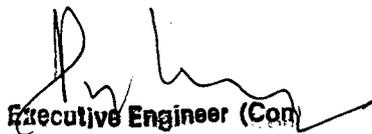

Executive Engineer (Contract)
N. E. Railway
Lucknow Jn

5. That the contents of Para- 1 of the application are not admitted as stated. It is further stated that the applicant was engaged as Project Casual Labour in Barabanki-Samastipur Metre Gauge Railway

SS

अखरप्रोजेक्ट कसमल लभोर

Line into B. G. Railway Line Conversion Project on daily rated basis on 19.11.1976 under Executive Engineer, Construction North Eastern Railway Gonda which was a work charge establishment and worked as such upto 30.4.1979 in the same seniority list unit thereafter re-engaged under Executive Engineer Construction North Eastern Railway, Lucknow as Project Casual Labour and worked as such upto 15.9.1980. The applicant left his job on his own accord and did not turn up on duty w.e.f. 16.8.1980 and got himself disentified from benefit of Casual Service due to leaving his job voluntarily. A photo copy of the muster sheet for the month of September, 1980 is enclosed herewith and marked as Annexure No. C.4-6. It is further submitted that the applicant was never retrenched rather left the job on his own accord, the allegations contrary to above, are not admitted and are denied.


Executive Engineer (Con)
N. E. Railway
Lucknow In.

2. That the contents of Para 4(2) of the application are not admitted. The applicant is put to strict proof of his allegations.

3. That the contents of Para 4(3) of the application are not disputed.

4. That the allegations made in Para- 4(4) of the application are not admitted as alleged and are denied. It is, however, submitted that the applicant left his job voluntarily, hence, question of his retrenchment ~~is~~ writing or verbal does not arise, as such no retrenchment compensation was paid to him. It is submitted that no junior similarly situated like applicant has been retained in service, as such the provision of Article 14, 16 of the Constitution has not been violated. It is further submitted that no representation as alleged, to have been served, is available on record.

5. That the allegations contained in Para- 4(5) of the application, are not admitted as stated. It is submitted that the Chief Engineer, Construction, North-Eastern Railway Gorakhpur had gathered the informations on the letter of the then M. P., Sri Surya Narain Singh regarding another casual labour of Store unit of B. G. Organisation of North-Eastern


Executive Engineer (Gen),
N. E. Railw
Lucknow Jn.

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7. That the allegations contained in Para- 4(7) & (8) of the application are not admitted, as stated. The applicant is put to strict proof of his allegations. It is submitted that no representation as alleged to ~~be~~ has been served, is available on record. However, it is submitted that the applicant left his job on his own accord, hence, his name was not forwarded for inclusion in the seniority list of Lucknow Construction Division. It is further submitted that the example set forth in the instant para of the application does not belong to Seniority List of Lucknow Construction Division. However their services ~~particulars~~ are also not given in the instant ~~para~~.para.

8. That the contents of Para- 4(9) of the application are not admitted as stated. It is submitted that Hon'ble Supreme Court decided the case of Indrapal Yadav . In compliance of the Hon'ble Supreme Court's judgment Railway Board issued a Circular dated 11.9.1986 to all Zonal Railways to prepare a list of Project Casual Labour division-wise, department-wise and category-wise who were enrolled on 1.1.81


Executive Engineer (Gen)
N. E. Railway
Lucknow, Jn.

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and onward upto 1.4.1985. The applicant left his job on 16.9.1980 on his own accord, hence, the benefit of Hon'ble Supreme Court's Judgment has not been extended to the applicant.

9. That the contents of Para- 4 (10) of the application are not admitted.

10. That the contents of Para- 4 (11) of the Application are not admitted. In reply thereto, it is stated that the applicant's case is not identical with the cases of the Casual Labours whose names are given in the instant para of the application. The petitioners of noted T.A. cases applied leave for the period from 12.9.1980 to 25.9.1980 but the applicant left his job on his own accord without any information, hence, his case may not be compared with the other cases.

11. That the contents of Para- 12 of the application are not admitted, as alleged. It is submitted that the applicant submitted his representation through Union for regularisation of his service. His representation was ~~been~~ considered and decided that the applicant had not completed his three years of continuous


Executive Engineer (Genl)
N. E. Railway
Lucknow Jn.

13.

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service as on 1.1.78 and did not come in eligibility ~~none~~ of regularisation, hence, his case was not considered for Screening.

12. That the contents of Para- 4 (13) of the application are not admitted as alleged.

In reply thereto, it is stated that the representation of the applicant has been considered by the Competent Authority and replied accordingly that his case does not come in ~~ex~~ per view of Hon'ble Supreme Court's judgment in case of Indrap-al Yadav.

13. That the contents of Para-4 (15) of the Application are not admitted as alleged. It is stated that it is evident from the perusal of the judgment of Hon'ble Tribunal as referred in the instant parass that the petitioner applied for leave w.e.f. 12.9.80 to 25.9.80 but in this case the applicant has left his job on his own accord, hence, benefit of Hon'ble ^{Central Administration} ~~Supreme Court~~ Tribunal ~~Patna~~ was not extended to the applicant.


Executive Engineer (Gen)
N. E. Railway
Lucknow Jn.

14. That the contents of Paras 4 (16), (17) & (18) of the application, are not admitted. It is stated that the applicant was neither

14.

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retrenched nor applied for leave rather left his job on his own accord, hence, benefit of Hon'ble Supreme Court's judgment and Hon'ble Central Administrative Tribunal/Patna judgment was not extended to the applicant, hence, no discrimination has been made by the respondents.

15. That the contents of Para 4(19) are not admitted, as alleged. It is submitted that the applicant left his job on his own accord, hence, no retrenchment benefits were given to him as prescribed in Industrial Disputes Act.

16. That the contents of Para- 4 (2D) are of the application are not admitted, as alleged. It is submitted that the Project Casual Labours were not entitled to get the benefit of temporary status in view of para 2501(b) (ii) of Railway Establishment Manual and Para-4 of Railway Board Circular Establishment Manual and Para-4 of Railway Board's Circular No. P.C.-72/RLT/69-3 dated 12.6.1974. A photostat copy of the said Circular is enclosed herewith and marked as Annexure No. C-A-7. It is further submitted


Executive Engineer (Cont)
N. E. Railway
Lucknow

that Hon'ble Supreme Court in case of Indrapal Yadav delivered the judgment and granted benefit of ~~अस्थायी~~ Temporary Status to the Project Casual Labours w.e.f. 1.1.1981 in a phased manner. The applicant was engaged as Project Casual Labour. He never acquired the status of regular or ~~स्थायी कर्मचारी~~ permanent employee even the status of temporary Railway Servant irrespective of his duration in casual employment.

17. That the contents of paras 4(21) &(22) of the application are not admitted. It is submitted that neither principle of natural justice has been violated nor any discrimination has been done by the respondents with the applicant and his representations have been decided by the Speaking order.

18. That the contents of Para 4 (23) of the application are not admitted. It is however submitted that Kedar Nath Chaubey & others had filed a writ petition for inclusion of the period in the seniority list. They were not absconded from their duty as such the case of the applicant may not be compared with the case of K.N.Chaubey & others.


Executive Engineer (Com)
N. E. Railway
Lucknow Jn.

16.

19. That the contents of Para 4(24) of the application are not admitted. The applicant is not entitled to get the job as has not approached to the competent authorities within time.

20. That the contents of Para 4(25) of the application need no comments being matter of record.

6. That the contents of Para-5 of the application are vehemently denied. In reply thereto, it is stated that the grounds put forth are not only devoid of any ~~merit~~^{merit} but also not sustainable in the eyes of law, as such they are liable to be rejected.

7. That in reply to the contents of Paras 6 and 7 of the application, it is stated that the applicant is put to strict proof regarding averments made therein ~~and~~

Anything contrary to ~~it~~^{above}, is denied.

8. That the contents of Paras 8 and 9 of the application are vehemently denied. In reply thereto, it is stated that the applicant is not

Executive Engineer (Con.)
N. E. Railway
Lucknow JA.

entitled to get any relief/ reliefs as claimed as such the instant application is liable to be dismissed with cost throughout.

9. That the contents of para 10 of the application being matter of records, need no comments.


 P. N. SHARMA)
 Executive Engineer (Con)
 Respondent
 Lucknow. Jc.

V E R I F I C A T I O N

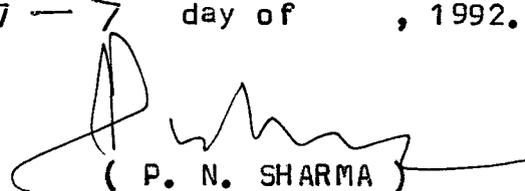
I, P. N. Sharma, Executive Engineer, Construction, North-Eastern Railway, Lucknow do hereby verify on behalf of the respondents that the contents of paras 1 to 9 and sub paras of the instants reply are based on knowledge derived from perusal of records of the instant case kept within official custody of the answering respondent. Nothing material has been canceled and no part of it is false.

Verified on 7-7 day of , 1992.

at Lucknow.

LUCKNOW

DATED: 7/7/92


 (P. N. SHARMA)
 EXECUTIVE ENGINEER,
 Construction,
 N. E. Railway, Lucknow
 Executive Engineer (Con)
 N. E. Railway
 Lucknow. Jc.

Copy of Railway Board's letter No.E(NG) II/84/CL/41 dated 1.6.1984 addressed to the General Managers, All Indian Railways and others.

Sub:-Project Casual Labour-Terms of Employment of-

Attention is invited to this Ministry's letter No.E(NG) II/82/LG-5/4 dated 6.6.83 in which it was laid down that on completion of 180 days of continuous employment casual labour employed on projects on the Railways should be given consolidated monthly wages at the rate of the minimum of the scale plus Dearness Allowance thereon instead of only daily rates at 1/30th of the scale rate of pay as was the case till then. Further such casual labour were granted nine holidays on per with open line casual labour instead of only the three national holidays admissible to them earlier.

2. Representations, however, continued to be made in Parliament as well as outside for further amelioration in the terms of employment of project casual labour. A number of writ petitions relating to the terms of employment of casual labour are currently pending in the Hon'ble Supreme Court. While hearing the petitions the Hon'ble Court had occasion to make certain observations and suggestions.

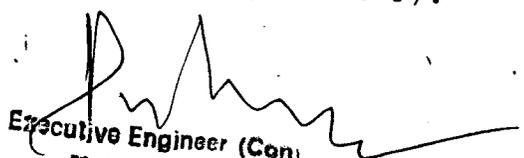
3. The two recognised Federations of Railwaymen have been making persistent representations in the PNM and JCM/DC meetings and otherwise that the benefits admissible to casual labour on the open line should be extended to casual labour employed on railway projects too.

4. The Ministry of Railways have reviewed the matter in depth in the light of the aforesaid representations and demands of the recognised Federations. In doing so they have had necessarily to keep in view the financial and other constraints under which the Indian Railways have to operate.

5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that 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 as on 1.1.84 and
- (ii) Casual Labour on projects who, though not in service on 1.1.84 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 under-engagement in future (A detailed letter regarding this group follows).

.....2.


Executive Engineer (Con)
N. E. Railway
Lucknow. Jn.

Copy of Railway Board's letter No.E(NG)II/84/CL/41 dt. 25.6.1984 addressed to the General Managers, All Indian Railways and others.

Subj:- Project Casual Labour-Terms of employment of.

Attention is invited to sub para 5.1(a)(ii) of the Ministry of Rlys letter of even number dated 1st June 1984, on the above subject. It has been stated therein that a detailed letter would follow, regarding the application of the orders contained in the letter of 1.6.84 to casual labour on projects, who had been in service on Railways prior to 1.1.84.

2. It may be observed from the provisions of para 5.1 ibid that the benefit of being treated as temporary will be admissible also to the project casual labour who, though not in service as casual labour on Railways on 1.1.84, had been in the employ of the Railways prior to 1.1.84 and have been re-engaged after that date (1.1.84). The date from which the benefit will be admissible to them will be the same as in the case of project labour in service on the Railways on 1st January, 1984.

3. The position in this regard would be clear from the hypothetical illustrations given below :-

(i) 'A' was engaged as project labour on the Railways prior to 31.12.1983. His services were terminated say on 31.8.83 on completion of work. On availability of fresh work he was re-engaged as project casual labour on 1.3.84, and continues to work as such. Thus 'A' was not in the employ of the Railways on 1.1.84. At the time of his discharge on 31.8.83 he had been in 'continuous employment' for say two years. The case of 'A' will fall under sub item (iii) in para 5.1(b) of the letter of 1st June, 1984. Thus, 'A' will be treated as temporary from 1.1.86.

(ii) 'B' was engaged as project casual labour prior to 31.12.83. His services were terminated on 30.6.83 due to completion of work or for want of other productive work. At that time, he had to his credit 'continuous employment' of three years and three months. If 'B' is re-engaged as project casual labour on availability of fresh work, on say, 1st April, 84 and continues to work as such, his case will fall under sub item (ii) of para 5.1(b) ibid. Thus, he will be entitled to be treated as temporary from 1st January '85.

(iii) 'C' was working as project casual labour prior to 31.12.83. He was discharged say, on 30.11.83 after putting in 300 days of 'continuous employment'. If he is re-engaged as project casual labour say from 1st June, 84 and puts in 'continuous service' thereafter, he will be entitled to be treated as temporary from 1.1.87, as his case will come under sub item (iv) of para 5.1(b) of the letter of 1st June, 1984.

4. It is reiterated that for purpose of applicability of the provisions of the letter of 1.6.84 the employment as casual labour should be 'continuous employment', as defined in the orders on the subject issued from time to time.

5. The Ministry of Railways trust that the position is clear to the Railway Administrations etc. and that there will be no difficulty in implementing the orders contained in their letter of 1st June, 1984.

Hindi version will follow.

Executive Engineer (Com)
N. E. Railway
Lucknow

BY: CE/CON/SPJ

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Civil Miscellaneous Petition Nos. 40997/85 (In WP. Nos. 147 & 320-89 of 1983)
WITH SLP (CvL.) Nos. 4777-80/82 A/N

1) Inder Pal Yadav & Ors.
2) Ramesh Prasad *etc. etc.*

PETITIONERS/APPELLANTS

VERSUS

Union of India & Ors.
1) (For Clarification)
2) (With office report)

RESPONDENTS

Date: 11.8.1986 : This matter was called on for hearing today.

CORAM:

Hon'ble the Chief Justice
Hon'ble Mr. Justice V. Balakrishna Eradi
Hon'ble Mr. Justice Ranganath Misra

For the Petitioners/Appellants: Mr Anis Suhrawardy, C.P. Pandey, ASUs.
Mr MP Gha, ASV.
Mr L N Srinivas, Sr. ASV.

For the Respondents: Mr TS K Iyer, Sr. Ms H. Lakshmi, CWS Rao, ASUs.
Mr VC Mahajan, Sr. ASV. Mr J Bhandari, ASV.

UPON hearing counsel the Court made the following
ORDER

/project

We are of the view that the Scheme prepared by the Railways setting out the list of casual labour with reference to each department in each Division and also in regard to each category, namely skilled, semi-skilled and unskilled, is in compliance with the judgment and order dated 18.4.85 given by this court and that ~~absorption~~ absorption of those with the longest service be made in accordance with such list. Mr. Krishnamurti Iyer states that this process will be completed within two months from today. The ~~above~~ matter is disposed of in these terms.

J.S. Bahri
(J.S. BAHRI)
COURT MASTER

[Signature]
Executive Engineer (Gen)
N. E. Railway
Lucknow. Jn.

R.B.No.167/86

Government of India
Ministry of Transport
Department of Railways,
(Railway Board).

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No.S(NG)II/84/CL/41

New Delhi, dated 11.9.86

The General Managers,
All Indian Railways,
Including Production Units.

The General Manager,
Metro Railway,
Calcutta.

The Chief Administrative Officers,
MIP, Bombay, New Delhi, Madras.

The General Manager,
Wheel & Axle Plant,
Bangalore.

The Director General,
R.D.S.SO.,
Lucknow.

The Chief Engineer,
Railway Electrification,
Allahabad.

The General Manager(Const.),
Southern Railway,
Bangalore.

The General Manager(Const.),
N.F.Railway, Gauhati.

Sub: Project casual labour-terms of employment of.
....

Reference Ministry of Railways new Department of
Railways letters of even number dated 1.6.84 and 25.6.84
on the above subject.

2. The scheme outlined in para 5.1 of the Ministry of Railways letter of even number dated 1.6.84 read with the letter dated 25.6.84 for treating project casual labour as temporary, was placed before the Hon'ble Supreme Court in Writ Petition No.147, 320-69, 454, 4335-4434/83 etc. Inder Pal Yadav & ors. etc. versus Union of India & Ors. etc. The Supreme Court has approved the scheme subject to modifications indicated in the judgement dated 18.4.85, a copy of which is enclosed.

3. Keeping in view the direction given by the Supreme Court in the said judgement and in their orders dated 11.8.86 (copy enclosed) para 5.1 of the aforesaid letter of 1.6.84 should be substituted by the following, the other provision of the same remaining unaltered:

"5.1 As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on projects (also known as "project casual labour") may be treated as temporary (temporary

Executive Engineer (Core)

M. E. Railway

Lucknow

status) on completion of 360 days of continuous employment. The Ministry have decided further as under:-

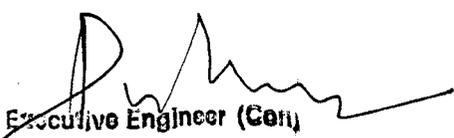
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- (a) These orders will cover:-
 - (i) Casual labour on projects who were in service as on 1.1.1981, and
 - (ii) Casual labour on projects, who though not in service on 1.1.81, had been in service on Rly. earlier and had already completed the above prescribed period (360 days) of continuous employment or have since completed or will complete the said prescribed period of continuous employment on re-engagement after 1.1.1981.
- (b) The decision should be implemented in a phased manner according to the schedule given below:-

Length of Service (i.e. continuous employment)	Date from which may be treated as temporary (temporary status).
i) Those who have completed five years of service as on 1.1.1981	1.1.1981
ii) Those who have completed three years but less than five years of service as on 1.1.1981.	1.1.1982
iii) Those who have completed 360 days but less than three years of service as on 1.1.1981	1.1.1983
iv) Those who complete 360 days after 1.1.1981	1.1.1984
	Or the date on which 360 days are completed whichever is later.

4. Accordingly, in paras 1 and 2 of the Ministry of Railways letter dated 25.6.84, the date "1.1.84" may be read as "1.1.81" the dates occurring in hypothetical illustrations given in para 3 thereof would stand modified correspondingly.

5.1 As directed by the Supreme Court for implementation of the above scheme, each zonal railway should prepare a list of project casual labour with reference to each Division of each Railway on the basis of length of service. The men with 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 and last go) as enunciated in section 25G of the Industrial Dispute Act, 1947 should be followed.


 Executive Engineer (Genl)
 N. E. Railway
 Lucknow Jn.

5.2 The following instructions are given in this regard for guidance of the Zonal Railways.

5.2.1 On each Zonal Railways, the list of project casual labour will be prepared for each Division, as under:-

- 1) Project casual labour employed on works of each of the Departments like Civil Engineering, Signal & Telecommunication, Electrical, etc. within the geographical boundaries of a Division (irrespective of whether the works are executed by a Division/or/by the Construction Organisation or by the Chief Project Manager/Railway Electrification reporting to the General Manager of a Zonal Railway) will form the unit (separately for each Department) for which one seniority list will be prepared for each department. In this manner, for each of the Departments on each Division, there will be one separate list of project casual labour employed on works executed within that Division.
- ii) Within each Department, the seniority list will be prepared according to categories, as under:-
 - (a) All unskilled casual labour will be treated as one category.
 - (b) Semi-skilled casual labour will be treated trade-wise.
 - (c) Skilled casual labour will be treated trade-wise.
- iii) In cases where the execution of a project spreads over more than one Division, the guiding principle will be that all the project casual labour will be assigned to the Division on which the station where they were initially engaged as located. This will be covered by the directions of the Hon'ble Supreme Court that where the implementation of its direction involved some adjustment, the same must be done.

5.2.2 It is hereby clarified that extra-zonal Railway organisation like Metro Railway would continue to maintain the seniority lists of project casual labour as before, without taking a Division of a Zonal Railway as a reference point. In doing so, they should comply with, among other things, the relevant provisions of the Industrial Disputes Act, 1947 and the rules made thereunder.

5.2.3. The seniority list of project casual labour engaged on project organisations will be recast by the Zonal/Construction Railway Administrations in the aforesaid manner as on the 1st April, 1985 to cover all project casual labour who have been in employment at any time from 1.1.1981, onwards. The lists so prepared will be used for any subsequent engagement re-engagement/discharge of project casual labour. Any such discharge, where so warranted, due to reduction of completion of work or for the administrative reasons will be effected after complying with the relevant provisions of the Industrial Dispute Act, 1947, the Industrial Dispute (Central) Rules and the orders applicable to project casual labour.

6. Steps may be taken immediately for implementation of

Executive Engineer (Genl)

M. E. Railway

Lucknow. Jn.

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the orders contained in the Deptt. of Railways's letters of 1.6.84 and 25.6.84 aforesaid as modified above on the basis of the judgement of the Supreme Court. Due verification or claims in each individual case will, no doubt, be done by the respective Railway Administrations.

7.1 The process of preparation of seniority list and action as directed above, must be completed within two months from 11th August, 1986, as per orders dated 11.8.86 of the Hon'ble Supreme Court. To ensure full implementation of the orders of the Supreme Court, a committee comprising a D.P.O., a DEN, DEN (Const.) on each Division will meet and review the implementation on every week. Similar Committee should function for each of other Departments engaging project casual labour. Similar in the Headquarters of each Zonal Railway, a committee comprising the CPO, the C.E., C.E. (Const.) CSIE and C.E should review the implementation of these orders each fortnight till the courts decision is implemented. The personnel officer on these committees will act as the coordinating officer of the respective committee for the purpose of monitoring the progress of implementation. A detailed report in this regard should be sent to the Board in phases, the first by 30th September, 1986 and the second by 15th October, 1986.

7.2 The Department of Railways also desire that in every Department engaging project casual labour in each Division of each Railway, an officer, not lower in rank than senior scale must be nominated who will be responsible for maintaining the combined seniority list of project casual labour of his Department and for coordinating with other officers of that department so as to ensure proper operation of the list in the manner detailed in para 5.2.3 supra in terms of these orders. This list must be reviewed by the said officer at least once a year before 30th September of every year. The officer so nominated should be one suitable to handle a task of this type.

8. This issues with the concurrence of the Finance Directorate of the Department of Railways.

9. Please acknowledge receipt.

D.A.:—As above

Sd/-
(M. Kujur)
Deputy Director Establishment(N)
Railway Board.

NO.E(NG)II/84/CL/41

New Delhi dated 11.9.86

Copy to:

The FA & CAO, All Indian Railways, CLW, DLW & ICF.

Sd/-
(M. Kujur)
Deputy Director Establishment(N)
Railway Board

Executive Engineer (E&M)

E. Railway

Lucknow

No.E(NG)II/84/CL/41 New Delhi dated 11.9.86

Copy (with 40 spares) to the ADAI (Railways).

Sd/-
for Finance Commissioner, Railways

No.E(NG)II/84/CL/41 New Delhi dated 11-9-86

Copy with 25 spares forwarded to:

1. General Secretary, NEIR, Chelmsford Road, New Delhi.
2. GENERAL Secretary, AIRF, 4, State Entry Road, New Delhi.

Copy to all Members for the National Council/Departmental Council and Secretary, Staff side, National Council, 13-C Ferozeshah Road, New Delhi.

Sd/-
for SECRETARY, RAILWAYS BOARD

Copies to M.S., M.E., Adv. (IR)
Sr.P.As to EDCE, EDW, ED(SRT), EDEE, E.E., ALDPC,
AEDE(R), DE(N), DE(C), DE(I&MPP), DE(P&A), JDE(R) I,
JDE(R) II, JDFE, JDE(N), DDC(R) I, DDE(R) II, DDE(R) III,
DDE(SCT).


Executive Engineer (Con)
P. E. Railway
Lucknow Jn.

Item No. 1

Annexure CA-5

Court No. 6

Section

XI

SUPREME COURT OF INDIA

RECORD OF PROCEEDINGS

C.M.P. Nos. ~~XXXXX~~ 9409-16/87 (In C.A. Nos. 4339-46 of 1983) A/N

Vishnu Kumar Srivastava and ors.

PETITIONER(S)/APPELLANT(S)

VERSUS

Union of India and ors.

RESPONDENT(S)

(for contempt)

Date: 27.8.1987 : This matter was called on for hearing today.

CORAM:

Hon'ble
Hon'ble Mr. Justice Rajagadh Misra
Hon'ble Mr. Justice M. A. Dutt

For the Petitioner(s)/Appellant(s): Mrs. Chandan Ramaswamy, & Mr. M.A. Krishnamurthy, Advs.

For the Respondent(s): Mr. G. Ramaswamy, ASS., Mr. A. Subba Rao, Mr. C.V. Subba Rao, Advs.
,, Mrs. Indra Jawhney, Adv.

UPON hearing counsel the Court made the following
ORDER

Counsel for the Union of India points out that in terms of the Scheme of this Court which the Railways Authorities have accepted, steps have been taken to absorb. It is difficult to indicate as to when the petitioners can be absorbed but there has been no violation of the Scheme. In the facts and circumstances of the case, no contempt is committed.

Counsel for the Union of India has agreed to communicate to the petitioners their exact position in the seniority list within three weeks from today. C.M.P.s. are disposed of accordingly.

Executive Engineer (Gen.
N. E. Railway
Lucknow Jr.

(H.S. Kaicker)
Court Master

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ANNEXURE R-7

Copy of the Railway Board's letter No. PC-72/RIIT/69-3 dated 12-6-74 addressed to the General Managers, All Indian Railways and others issued vide GM(P)/NER/GKP's No. E/57/1/(IV) dated 18-6-74 (S.No. 3170).

Sub:- Wages of Casual Labour employed on Railway Projects - Railway Labour Tribunal, 1969.

The Railway Labour Tribunal, 1969 has inter-alia recorded following decision in respect of issue relating to wages of Casual Labour employed on Railway Projects under the Term of Reference No.3 via, payment of wages to Casual Labour :-

"4.26(6) - The provision contained in the Manual in regard to project casual labour should be so amended as to provide that such casual labour will also be paid the scale rate if the same happens to be higher than the local rate, if the project casual labour is employed for a continuous period of six months in the same type of work. It may be clarified that as a result of this decision, a project casual labour will not acquire the status of temporary servant nor will he get the benefit of any future increments."

2. The Govt. have accepted the above recommendation. Accordingly it has been decided by Railway Board in modification of the provisions contained in Para 2502 of Indian Railway Establishment Manual as introduced vide their letter No. E(NG) 60/L 12 dated 22-8-62 that casual labour employed on Railway Project will be paid 1/30th of the appropriate scale rate i.e. Allowance, if the same happens to be higher than the local market rate of daily wages in respect of such casual labour, on completion of six months continuous service in the same type of work with effect from 1-6-1974 or on the date from which the six months service is completed whichever is later.

3. Casual labour on scheduled employments who are governed by the provisions of the Minimum Wages fixed under the Minimum Wages Act, will also be paid 1/30th of the appropriate revised scale plus Dearness Allowance, if the same happens to be higher than the minimum wages fixed under the said Act subject however to their fulfilling the conditions laid down in para 2 above.

Executive Engineer (Gen)

N. E. Railway

Lucknow, Jn.

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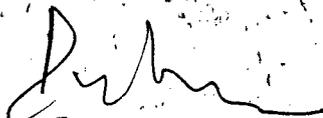
ANNEXURE R-3

-: 2 :-

4. It has also been decided that the casual labour employed on 'Projects' paid on the basis of 1/30th of the scale rate will not be entitled to rights and privileges as admissible to temporary employees or to such of those casual labour who acquire temporary status on completion of 4 months service in terms of Board's letter No. PC 72/RIT/69-3 (1) Dated 12-7-1972.

5. These orders will take effect from 1-6-1974.

6. Railway Administrations should meet the increased cost of Project casual labour from within the sanctioned budget allocation for 1974-75. They should, however, work out an estimate of plan head/allocation-wise and furnish the figures to the Board by 30-6-1974 certain.



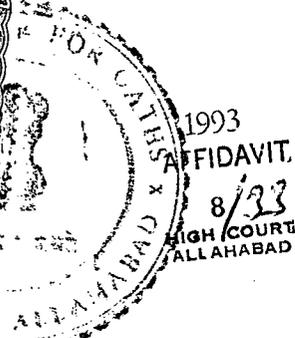
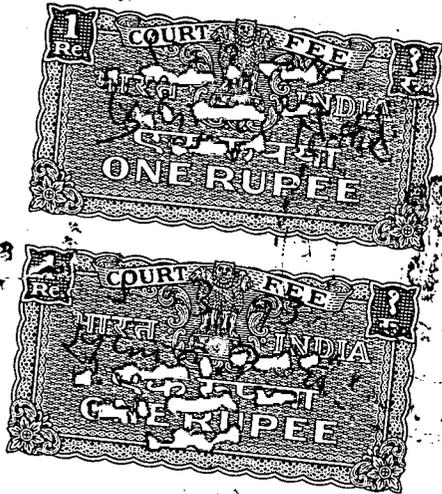
Exec. Engineer (Con)
Railway
Bhopal

844

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In the Central Administrative Tribunal;
Additional Bench Allahabad.
Circuit Bench: Lucknow.

O.A.No. 261 of 1990. (L).



Sudhakar Tewari,

Applicant.

vs.

Union of India and ors.

Respondents.

Rejoinder Affidavit.

F 7
03/08/93

I Sudhakar Tewari aged about 42 years son of Sri Shanker Dayal Tewari r/o Vill. Subhash Nagar Post Subhash Nagar District Nainital do hereby solemnly affirmed as under:-

1. That the contents of para 1 of the W.S. are denied. The deponent has the good cause of action for the petition. The directions are liable to be issued as prayed in the application.
2. That the contents of para 2 of the W.S. are denied. The Hon'ble Tribunal has jurisdiction to decide the application.
3. That the contents of para 3 of the W.S. are denied. The application is well within time as the deponent has day to day cause of action. Further the parity of the judgments of the Hon'ble supreme court and the other benches of this Hon'ble



Generalised

Truthful has been claimed.

4. That the contents of para 4 of the I.D. are denied. The opp. parties should give the facts mentioned in sub para of this para in the addl. pleas, ~~XX~~ Moreover the sub paras are being replied as under:

(a). It is admitted that the Badabanki to Samstipur railway line was ordered to be converted in the broad gudgeas vide order dated 25.4. 1972 and not 25.4.1991

(b). It is pointed out that the provision of I.D. Act has not been followed. No retro-actment compensation has been paid, which was necessary as per sec 25 F of the Act. The services were terminated by way of punishment. A letter was issued by the Chief Engineer (Construction) directing the his subordinate authorities not to take the work from those labours who participated in the strike. The opp. parties are required to prove that the provisions of I.D. Act were followed. The copy of the letter dated 25.9.1980 is filed herewith as Annexure R-1 to this affidavit.

(c). That the directions given in the judgment of the Hon'ble supreme court were fully applicable in case of the deponent. but nothing was done and the name of the deponent was not included in the list.

(d). That the judgment of the Hon'ble



General

supreme court will speak the truth itself .

(e). That the as already stated above the judgment of the Hon'ble supreme court is fully applicable in case of the petitioner. The case of the deponent was liable to be considered for reappointment but it has not been considered. Further the point is argumentative which will be argued at the time of final hearing.

(f). That the name of the deponent has not been included in the list prepared . in fact the name of the deponent was not considered for regularisation. No job has been offered to the deponent. Hundreds of juniors to the petitioner has also given to the appointment. It is wrong to say that the deponent left the job In fact the work was not taken from the deponent.

(g). That the It is true that the deponent was initially engaged as casual labour on 19.11.1976 and continued as such and worked as such till 15.9.1980. It is wrong to say that the deponent had left the job on his own accord. The work was not taken from the deponent. As per directions contained in Annexure R-1 The op. parties wants to conceal the correct facts. The deponent shall be treated as a retrenched employee.



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5. That the contents of para 2 of the W.S. are denied. The contents of para 4(2) of the application are reiterated.

6. That the contents of para 3 of the W.S. passes no reply;

7. That the contents of para 4 of the W.S. are denied. As already stated above the work was not taken from the deponent and it is wrong to say that he had left the job at his own accord. The deponent shall be treated as a re-employed employee. The retrenchment compensation was condition precedent for retrenchment which was not paid. In these circumstances the deponent shall be deemed in continuous services and is entitled to be regularised like other juniors. The representation was made and the reminders were given. The copies are already on record as annexure 1, 2 and 3 of the application.

8. That the contents of para 5 of the W.S. are denied. The contents of para 4(c) of the application are reiterated. The Annexure 4 is fully applicable in case of the deponent. The facts mentioned in para under reply have no concern with the present petition.

9. That the contents of para 6 of the W.S. are denied. The contents of para 4(6)



General Manager

5.

of the application are reiterated. The certificate was submitted by the deponent at time of his appointment which must be on the record. It is true that the recommendations have been made in favor of the deponent. The decision taken on the recommendations were never communicated to the deponent. The facts stated in para under reply have been concocted for purposes of the W.S. Further It is clear that the deponent was not given the appointment intentionally there was no prohibition to the give the to the petitioner in Bareilly Katinar Project.

10. That the contents of para 7 of the W.S. are denied. The contents of para 4 (7) (8) of the application are reiterated. The representation was made which must be on the record. It appears that the representation has been concealed as no orders has been passed. As already stated above the deponent had not left the job as alleged. The contents of para 6 of the W.S. clearly shows that the deponent has not been given the reappointment knowingly. The name of the deponent must be included in the security list of Lucknow construction division but it was not included due to the mala fide intention.



Z. Ahmad

11. That the contents of para 8 of the W.S. are denied. The contents of para 4(9)

of the Application are reiterated. The Judgment of the Hon'ble Supreme Court will speak the truth itself. It is wrong to say that the deponent has left the job on his own accord. The deponent is entitled to get the benefit of the judgment of the Hon'ble Supreme Court.

12. That the contents of para 9 of the U.S. are denied. The contents of para 4 (10) of the application are reiterated.

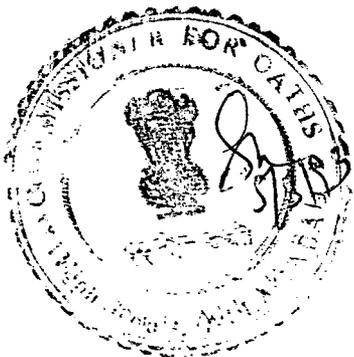
13. That the contents of para 10 of the U.S. are denied. The case of the deponent as on the same footings on which the case of the petitioners in the cases referred to para 11 of the applications. The deponent has not left the job. In fact the work has not been taken from him.

14. That the contents of para 11 of the U.S. are denied. The deponent has completed more than 3 years services on the date of retrenchment. The deponent could not be ignored in the manners adopted by the Opp. parties.

15. That the contents of para 12 of the U.S. are denied. The case of the deponent is within the scope of the directions given by the Hon'ble Supreme Court.

16. That the contents of para 13 of the U.S. are denied. The deponent was not taken on duty hence there was no question to apply for the leave. The case of the deponent must be considered.

17. That the contents of para 14 of the



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U.S. are denied. The contents of para 4 (16) to (18) of the application are reiterated. As already stated above the deponent was not taken on duty. The deponent is entitled to get the parity according to the judgment of the Hon'ble Supreme Court.

18. That the contents of para 15 of the U.S. are denied. As already stated above the work was not taken from the deponent. Further the contents of para 19 of the application are reiterated.

19. That the contents of para 16 of the U.S. are denied. The deponent was entitled to get the temporary status in the light of the provisions of I.D. Act.

20. That the contents of para 17 of the U.S. are denied. The contents of para 4 (21) and (22) of the application are reiterated. The principles of natural Justice have been violated and the discrimination have been done with the petitioner.

21. That the contents of para 18 of the U.S. are denied. The case of the deponent is similar to the case of the Sri Kesar Nath Chaubey. It is wrong to say that the deponent has left the job at his own accord. Further the contents of para 4



Zyellaxidaxid

(23) of the application are reiterated.

22. That the contents of para 19 of the W.S. are denied. The deponent is entitled to get the reliefs claimed.

23. That the contents of para 20 of the W.S. are admitted.

24. That the contents of para ~~19~~ 6 of the W.S. are denied. The contents of para 5 alongwith the grounds are reiterated.

25. That the contents of para 7 of the W.S. are denied. The departmental remedy have been exhausted.

26. That the contents of para 8 of the W.S. are denied. The deponent is entitled to get the reliefs claimed. The application is liable to be allowed with costs.

27. That the contents of para 9 of the W.S. are admitted.

DATED: 5-3-1993.

(Signature)
Deponent.

Verification.

I the abovesaid deponent do hereby verify that the contents of paras 1 to 27 of the Rejoinder Affidavit are true to my knowledge and belief. No part of it is false and nothing material has been



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9.

concealed so help me God.

Signed and verified today the 5th day of March, 1993 at Lucknow.

[Signature]
Deponent.

I identify the deponent who has signed before me.

[Signature]
(P.N. Bajpai).
Advocate.



Solemnly affirmed before me on 5-3-93 *[Signature]*
at 7:20 *[Signature]* P.M. by Sri Sudhakar Tewari the
the deponent who is identified by Sri P.N.
Bajpai, Advocate High Court Lucknow Bench
Lucknow.

I have satisfied myself by examining the
deponent who understands the contents of
this affidavit which has been read over and
explained by me.

[Signature]
Shyam Lal Jais
OATH COMMISSIONER
High Court, Allahabad
Lucknow Bench
No. 8/33
Date 5/3/93

In The Court of Central Administrative Tribunal.

Lucknow Bench.

65

O.A No. 261 of 1990. (D.B)

Central Administrative Tribunal
Lucknow Bench
Date of filing - 11-11-2001
Date of receipt by post - 11-11-2001

Secretary
Deputy Registrar
Lucknow

Applicant

Union of India ^{Vs.} and others — opp. Party.

1262

Application for grant of certified copy.

1. Name and address of the applicant. P. C. Khare Advocate

2. Whether the applicant is party to the case if not whether an application under rule 119 is filed. Yes

3. Whether the case is pending or disposed of. disposed of.

4. Description with date of documents of which copy is applied. Order dated. 4-11-96.

5. No. of copy required and nature of application. whether urgent or ordinary. 1. Certified copy

6. Details of fee remitted along with the application. Rs 5/- Indian Postal order No. J8C590050 dt 26/2

Received
A.P. 8/11/96

Received
A.K. 21/6/2001

Lucknow
Dated 4-4-2001

(P.C. Khare)
Adv.
Counsel for Respondent.