BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

(13)

DA.NOs.386/90, 387/90, 388/90, 443/90, 449/90 & 610/90.

23rd this the fourth day of September 1997

CORAM: Hon'ble Shri B.S.Hegde, Member (J)
Hon'ble Shri P.P.Srivastava, Member (A)

Swamidass Abbel & Ors. (Applicants in OA.386/90)

Paniquasw amy Mayavan & Ors.( - do - 387/90)

Kuppaswamy Munnaswamy & Ors.(- do - 388/90)

Kamraj Kasi & Ors. ( - do - 443/90)

Ratnam Kashili & Ors. ( - do - 449/90)

Narhari Jagnath & Ors. ( - do - 610/90)

All working under P.W.I.,
Central Railway, Vashi, New Bombay.

By Advocate Shri D.V.Gangal

V/S.

1. The Chief Engineer,
(South Construction),
Central Railway,
Bombay V.T.

2. The Executive Engineer,
(Construction),
Central Railway,
Vashi, New Bombay.

3. Permanent Way Inspector,
Central Railway,
Vashi, New Bombay.

4. Permanent Way Inspector,
Central Railway,
Jasai,
Tal. Uran, Dist. Raigad.

By Advocate Shri S.C.Dhawan ... Respondents
C.G.S.C.

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O R D E R

(Per: Shri P.P.Srivastava, Member (A)

All the above OAs. are disposed of by a common order as the issue involved in all these OAs. is similar. For the sake of convenience, the facts as brought out in OA.NO.610/90 would be dealt with.

2. The applicants are working as Project Casual Labourers on Central Railway and through this OA. have approached for grant of temporary status after completion of six months of continuous service. The applicants have sought some other reliefs in this OA. and other OAs. concerning transfer grant of TA/DA etc., but the learned counsel for the applicant has submitted that he is not pressing for any other relief in these OAs. except that relating to grant of temporary status after completion of six months continuous service from the date of appointment. This OA. along with OA.388/90 had come up for hearing before this Bench of the Tribunal and an order was passed on 1.2.1995 by which the Tribunal had referred the matter to the Chairman for constitution of Full Bench of 5 Members. This reference had become necessary according to the order dated 1.2.1995 as the interpretation of Railway Board Circular dated 11.9.1986 was different than the one which was given in Rehmat Ulla Khan judgement which was a Full Bench judgement. After considering the reference the Hon'ble Chairman has decided that reference in this case to Full Bench of 5 Members is

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not necessary and the issue can be decided by a Division Bench. In this context OA.NO. 610/90 along with other OAs. have been placed before this Bench for final disposal. As we have already mentioned that the learned counsel for the applicant has pressed only one relief and therefore it will be treated that all other reliefs in this OA. and other OAs. are not pressed.

3. Learned counsel for the applicant has submitted that his claim to temporary status after completion of six months continuous service from the date of appointment is based on the judgement of Ahmedabad Bench in OA.NO. 451/86 decided on 17.10.1989. The decision in OA.NO. 451/86 Kalyan Sanyasi & Ors. Vs. Union of India & Ors. has been appended with the OA. as Annexure-'B'. Learned counsel for the applicant has argued that the Ahmedabad Bench of the Tribunal has mentioned in Para 12 that the casual labourer on work project acquired temporary status after completion of six months continuous service. Para 12 of the judgement reads as under :-

> "12. It is borne out from the Board's letter dated 12.7.73 that Government accepted the recommendations of the Railway Labour Tribunal - 1969 and accordingly, it was decided by the Railway Board that the casual labourer order on those employed on project should be treated as temporary after the expiry of four months continuous employment instead of 6 months. It has been further elucidated by the Railway Board's letter dated 6.6.1985 that even a casual labourer working in the project on the Railway continue to be daily rated works till they are granted 1/30 the scale rate of pay plus D.A. on completion of 180 days services. It is therefore obvious that the casual labourer on the open line who have been continuous service for 120 days acquired temporary status and such casual labourer working on project acquired such status after continuous service for 6 months (180 days)."

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In Paras 14 of the judgement the Ahmedabad Bench of the Tribunal has held as under :-

"14. In Rahamat Ulla Khan vs. Union of India (supra) it has been held by the Full Bench of our Tribunal that even after the scheme prepared by the Railway Board and approved by the Supreme Court in the case of Indrapal Yadav vs. Union of India & Ors. the defination of casual labourer in Rule 2501 was maintained except for the addition of one sentence at the end which reads as follows :- "They will be entitled only to these privileges as especially sanctioned to them."

15. It is further held in the said case that railways were engaging casual labourer on 'open line' projects and for other purposes. As far as the casual labour employed on 'open line', they would get a 'temporary status' when they completed 120 more days of continuous work as cuh. Similarly, those casual labourer who worked on 'projects' would also acquire a 'temporary status' if they worked continuously for 100 days. The remaining casual labourer in the railway i.e. whose services were utilised in other permissible branches would acquire 'temporary status' only after completing 360 days continuous employment. Even on perusal of para 5.2 of the scheme referred to above in our opinion the casual labourer on projects who had completed 180 days of continuous employment would continue to be entitled to the benefits admissible to them even after the scheme framed by the Railway Board. Thus the scheme as formulated and approved by the Supreme Court do not suggest even in remetest manner to deprive the benefits to a casual labourer who had acquired the rights and privileges much prior to the date of coming into force thereof. Thus, in the present case the petitioners'right to acquire temporary status on their completing 180 days of continuous employment is protected and accordingly, they would be entitled to enjoy such benefits from that date. However, as the petitioners themselves in the present application have preferred to claim temporary status after one year of their continuous employment as casual labourer, we would not like to enlarge their claims. Even admittedly the petitioners have put in 360 days of service and therefore they are entitled to claim benefits from 1981 as prayed for by them."

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4. The learned counsel for the applicant has argued that in view of the categorical finding in the Ahmedabad Bench judgement, this Tribunal is obliged to follow the law laid down by the Ahmedabad Bench and the applicants in this OA. as well as in other OAs. are entitled to grant of temporary status after 180 days of continuous service after their appointment.

5. The learned counsel for the applicant has also aruged that since the Full Bench and Ahmedabad Bench judgement had interpreted the Rule 2501 of IREM concerning casual labourer, this Bench is duty bound to follow the same interpretation. Rule 2501 of IREM reads as under :-

"2501. Definition :-

(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruitted from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff to not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely :-

(i) Staff paid from contingencies except those retained for more than six months continuously : such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

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(iii) Seasonal labour who are sanctioned for specific works of less than six months duration. If such labour is shifted from one work to another of the same type, e.g. , relaying and the total continuous period of such work at any one time is more than six months' duration, they should be treated as temporary after the expiry of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

NOTE - 1. A project should be taken as construction of new lines, major bridges, restoration of dismantled lines and other major important open line works like doubling widening of tunnels etc. which are completed within a definite time limit. The General Manager/Heads of Departments concerned, in consultation with the FA&CAO will decide whether a particular open line work is a "Project" or not. In deciding whether a particular open line work should be treated as a Project or not, the test to be applied will be whether the work is required for the day to day of the running, as distinct from the provision oflarge scale additional facilities to improve the carrying capacity of the Railway.

2. Once any individual acquires temporary status, after fulfiling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the Railways. In other words, even if he is transferred by the administration to work of a different nature, he does not lose his temporary status.

3. Labour employed against regular vacancies, whether permanent or temporary shall not be employed on casual labour terms. Casual labour should not be employed for work on construction of wagons and similar other work of a regular nature.

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4. Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

5. The term "Same type of work" should not be too regidly interpreted so as to cause undue suffering to casual labour by way of break in service because of a slight change in the type of work in the same unit. The various types of works to be considered as same type of work may be grouped as under :-

(1) Track renewals and linkings -- Ballasting, re-s-leepering, relaying etc.

(2) Masonry and concrete work -- Work on buildings, bridges, quarters, platforms etc.

(3) Steel work -- Erection of bridge girders, sheds, shelters etc.

(4) Earthwork -- Foundations, banks, platforms etc

(5) Fitting, smithy, carpentry and such other artisan work and helpers.

(6) All work performed by the unskilled casual labourers working under the same I.C.W. P.W.I. and Bridge Inspector etc. should be treated as the same type of work.

(7) Casual labourers should not be employed/ retained in service beyond the age of 58 years.

(iv) On the open lines the trolleymen should not be casual labourers."

6. The reading of the above rule shows that the applicants belong to the category of 2501 (b)(ii), i.e. Labour on projects. The casual labour who are giverned by 2501 (b) (i) & (iii) acquired temporary status after six months of continuous service while casual labour who are governed by 2501 (b) (ii), there is no provision for grant of temporary status. The rule mentions "Labour on projects, irrespective of duration."

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The implication of this is that in rule there is no provision for grant of temporary status for the labour on projects who are governed by 2501 (b)(ii). Therefore, in our respectful submission, the reading of the provision of rule 2501 (b)(ii) is not correctly reflected in the Ahmedabad Bench judgement. Perhaps the rule was not properly placed before the Ahmedabad Bench. As far as the summary of provision of 2501 given in Full Bench Judgement of Liyakat Ali quoted in Ahmedabad Bench judgement is concerned, we notice that Full Bench was concerned with the question of jurisdiction of the Tribunal to deal with the cases of casual labour and was not dealing with the question of grant of temporary status to casual labour. The summary of Rule 2501 cannot be meant to interpret the rule for the purpose of grant of temporary status specially in the face of unambiguous provision under Rule 2501 (b)(ii) which reads : "Labour on projects, irrespective of duration". We are, therefore, of the view that the summary of the rule quoted in Full Bench judgement cannot be pressed in service for the purpose of deciding whether the project casual labourers are required to be granted temporary status after a period of six months. The Full Bench judgement of Liyakat Ali in our opinion is not applicable in the facts and circumstances of the present case. Since we have already held that the Ahmedabad Bench judgement had not correctly quoted Rule 2501 (b) (ii) and that the judgement cannot be an authority for grant of temporary status to project casual labour after a period of six months or even otherwise.

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7. The whole issue can also be considered from a different perspective. The project casual labourers, to which category the applicants belong, were agitating for grant of temporary status for long. The whole issue was resolved by the Hon'ble Supreme Court in Indrapal Yadav's case. The scheme which was submitted by the Railway Board was accepted by the Hon'ble Supreme Court in Indrapal Yadav's case with slight modification. Reading of Hon'ble Supreme Court judgement in Indrapal Yadav's case makes it quite clear that the casual labour employed on project would become entitled to grant of temporary status in terms of the scheme as brought out in the Hon'ble Supreme Court judgement. The Ministry of Railways after the Indrapal Yadav's judgement issued a Circular dated 11.9.1986 which is placed at Exhibit-'1' to the written statement. In this circular, the Railway Board has brought out the various dates from which the casual labour on project would be entitled to grant of temporary status. If the Ahmedabad Bench judgement is implemented, then the decision of the Hon'ble Supreme Court in Indrapal Yadav's case will become infructuous as all casual labourers on project who are governed by 2501 (b) (ii) would become entitled to grant of temporary status after completion of 180 days from 1.1.81. If the judgement of the Ahmedabad Bench is accepted that the casual labour be granted temporary status after completion of 180 days, there is no need of framing any scheme and there was no need for the Hon. Supreme Court to approve the scheme submitted by the Railway Board. This clearly shows that the reading of Rule 2501 (b) (ii) by the Ahmedabad

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Bench is erroneous. The Ahmedabad Bench judgement is, therefore required to be treated as per-incurim and cannot be treated as precedent to decide the present case.

8. Since the only argument is that applicants are entitled to grant of temporary status after a period of six months from the date of appointment in terms of the Ahmedabad Bench judgement and since we have already held that Ahmedabad Bench judgement is per-incurim, the OA. does not survive and is liable to be dismissed. It is accordingly dismissed. All other OAs. which are listed in this judgement for similar facts and the same arguments have been advanced for granting relief therein also therefore are dismissed. No order as to cost.

(P.P.SRIVASTAVA)
MEMBER (A)

(B.S.HEGDE)
MEMBER (J)

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