

(7)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW BOMBAY BENCH, NEW BOMBAY

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O.A. Nos. 372/90, 375/90, 492/90, 622/90 & 697/90

1. OA 372/90

S. Swamy Durai & 50 others

... Applicants  
(Rs 2, 5 & 6)

2. OA 375/90

Kacsi Ammayaci & 8 others

... Applicants  
(Rs 1, 2, 4, 7, 8&9)

3. OA 492/90

S. Swamy Durai & 38 others

... Applicants  
(Rs 1 to 5)

4. OA 622/90

Perumal Kuppuswamy & 22 others

... Applicants  
(Rs 2, 5 & 6)

5. OA 697/90

Kuppuswamy Kaliyan

... Applicant  
(Rs 1 to 5)

v/s

Union of India through,

1. The General Manager,  
Central Railway,  
Bombay V.T.

2. The Chief Engineer (<sup>South</sup> Construction),  
Central Railway,  
Bombay V.T.

3. The Deputy Chief Executive Engineer,  
Central Railway, Panvel.

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

5. Permanent Way Inspector  
(Construction),  
Central Railway, Jasai.

6. The Executive Engineer  
(Construction),  
Central Railway, Panvel.

7. The Permanent Way Inspector,  
(Construction),  
Central Railway, Gulberga.

8. Assistant Engineer (Construction)  
Central Railway, Gulberga.

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

Appearances:

Mr. D.V.Gangal, Advocate  
for the applicants and  
Mr. J.G.Sawant, Advocate  
for the respondents.

JUDGEMENT:

Dated : 25.6.1971

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

In these five applications identical questions have been raised and that is why they are being disposed of together. Two cases viz. 372/90 & 375/90 were listed in this Court and the three cases viz. 492/90, 622/90 and 697/90 were listed in Court No. 2 and at the request of the parties those three cases listed in Court No. 2 were also called for and are being disposed of together. In all these petitions the number of applicants is quite large in every petition and a number of reliefs have also been claimed. But before arguments started learned counsel for the applicants, Mr. D.V.Gangal stated that so far as these applications are concerned he will confine them only to three reliefs and so far other reliefs are concerned the applicants will reserve their right to agitate the same in case they consider it necessary. The reliefs in respect of which the case was argued and on which the applications are confined are that the applicants who were appointed as casual labourers in the Railway and continued to work from the last four or five years under the relevant rules are

entitled to the status of temporary employee and secondly their services are not transferable and they are entitled to travelling allowance in case they are sent to work elsewhere.

2. Before the arguments started the learned counsel for the respondents stated that there is no denial of the fact that after working for six months they have attained temporary status and the Railway administration has also admitted the same in these cases and that is why they have also been screened. As such so far as the first question is concerned no adjudication in respect of the same is needed as it is an admitted fact. The learned counsel also contended that the applicants after attaining temporary status they are no longer casual labourers as such they cannot claim benefit of getting temporary status and casual labour both side by side.

3. The applicants were project casual labourers and the rules on which reliance has been placed by the parties are Rules 2501, 2508 & 2511 of the Indian Railway Establishment Manual. These rules are 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 recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) . . . . .

The following note <sup>here</sup> finds below this Rule:

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 the Departments concerned, in consultation with the F.A. & C.A.O. 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 running of the railway, as distinct from the provision of large-scale additional facilities to improve the carrying capacity of the railway.

2. Once any individual acquires temporary status, after fulfilling 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.
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. . . . .

2508. Travelling Allowance:- Ordinary payment of travelling allowance to casual labour should not arise as they are recruited locally where necessary and are not liable to transfer. However, when it is necessary to depute them on duty away from their headquarters, daily allowance will be paid to the skilled, semi-skilled and unskilled casual labour at the following rates: . . . . .  
• . . . .

2511. Rights and Privileges admissible to Casual Labour who are treated as temporary after completion of six months' continuous service:-

(a) Casual labour treated as temporary are entitled to all the rights and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. The rights and privileges admissible to such labour also include the benefits of the Discipline and Appeal Rules. Their service, prior to the date of completion of six months' continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc. Such casual labourers will, also, be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

(b) Such casual labour who acquire temporary status, will not, however, be brought on to the permanent establishment unless they are selected through regular Selection Board for Class IV staff. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchanges. Such of them who join as Casual Labourers before attaining the age of 25 years may be allowed relaxation of the maximum age limit prescribed for Class IV posts to the extent of their total service which may be either continuous or in broken periods.

(c) It is not necessary to create temporary posts to accommodate casual labourers who acquire temporary status for the conferment of attendant benefits like regular scales of pay, increments etc. Service prior to absorption against a regular temporary/permanent post after requisite selection will, however, not constitute as qualifying service for pensionary benefits.

4. The learned counsel for the applicant made reference to the case of L. Robert D'souza vs. Executive Engineer, Southern Railway & Ors. 1982 SC 854 in which it was observed that "The definition of casual labour extracted by us above clearly indicates that persons belonging to casual labour is not liable to transfer". In support of his contention reference to the decision of the Ahmedabad Bench of this Tribunal in the case of Jivi Chaku vs. Union of India & Ors. and other 24 connected petitions (O.A. 1/86 & 24 others) decided on 30th January 1987 was also made. In the said case the question was whether casual labourers can be transferred.

terminate the service of the applicants. If the respondent can at least show that the applicants are junior to those who have been retained and there is no work that can be offered to the applicant in the whole division, he could be in a position to terminate the service.

(iii) Termination of casual labour requires the procedure under Section 25-F to be observed as they are workmen under that Act. Compensation accordingly and notice have to be given.

(iv) It is open to the respondents to offer a transfer to another division to casual labour as an alternative to resorting to termination of services and it is open to such casual labour to accept such transfer. This should, however, be done only on the basis of the seniority position of the casual labour in the originating division being first ascertained and then it has to be retained so that as and when work is available in the originating division, the casual labour accepting the transfer on a provisional basis retains his right to come back to the originating division.

(v) The casual labour accepting transfer to another division on a provisional basis as stated above will have to be furnished with railway pass . . . . .

Thus the Ahmedabad Bench itself also accepted that divisionwise list is to be prepared and that transfer can be offered to a casual labour from one division to another division as an alternative to resorting to termination of his service.) Thus the Ahmedabad Bench

did not hold that even transfer within the same division cannot be held. The parties made reference to the case of Inder Pal Yadav whereafter a Railway Board circular was issued which was accepted by the Supreme Court. The said circular dated 11.9.86 paras 5.2.1 and 5.2.3 read as under:-

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

(i) Project casual labour employed on works of each of the Department 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 department for which one seniority list will be prepared for each department. In this manner, for each of the Departments or 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) . . . . .
- b) . . . . .
- c) . . . . .

(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 in which the station where they were initially engaged is located. This will be covered by the directions of the Hon'ble Supreme Court that where the implementation of its direction involves some adjustment, the same must be done.

5.2.3 The seniority list of project casual labour engaged by project organisations will be recast by the Zonal/Construction Railway Administrations in the aforesaid manners as on the 1st April, 1985 to cover all project casual labour who have been in employment at any time

from 1.1.81, 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 or completion of work or for other administrative reasons will be effected after complying with the relevant provisions of the Industrial Disputes Act, 1947, the Industrial Disputes (Central) Rules, 1957 and the orders applicable to project casual labour."

The scheme which has been duly approved by the Supreme Court indicates that the present casual labour will be used for any subsequent engagement and will be entitled to get appointment in the same division in accordance with the provisions of the Industrial Disputes Act and the Rules framed thereunder meaning thereby that in the same division he has an entitlement to get a job. The appointing authority of a project labour is the Divisional Officer and the list is also prepared divisionwise. Obviously the Divisional Officer who can provide him alternate job after retrenchment or who can give him prior appointment in preference to others can do so in the same Division. When one can get appointment in the same division obviously one can be transferred in the same division by the Divisional Officer who in fact is the appointing authority concerned and who can also be subjected to legal proceedings under the Payment of Wages Act in case wages are not paid and deductions from the salary are made. Consequently we are of the opinion that a project labour as such cannot be transferred to another division without his consent but he can be transferred in the same division to other work places. For transferring to another division obviously his

consent is required and in case he consents to the same he could be transferred. Rule 2508 had already been extracted regarding travelling allowance. In case a project worker agrees to go on deputation elsewhere obviously he will be entitled to allowances mentioned in the said Rule. We, therefore, dispose of these five cases holding that after six months service when they acquire temporary status, they cannot be transferred out of the division without their consent and further in case they are transferred to other division or sent on deputation they will be entitled to travelling allowance at the rate mentioned in Rule 2508 of the Railway Board Manual. These applications stand disposed of.