

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIFUR BENCH,

J A I P U R.

O.A. No. 653/92

Date of decision: 24.3.94

BALBIR & ORS

: Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

Mr. J.K. Kaushik : Counsel for the applicants.

Mr. Manish Bhandari : Counsel for the respondents 1-3.

Mr. S.C. Sethi : Counsel for the respondents 4-9.

CORAM:

Hon'ble Mr. Gopal Krishna, Judicial Member.

Hon'ble Mr. O.P. Sharma, Administrative Member

PER HON'BLE MR. O.P. SHARMA, ADMINISTRATIVE MEMBER:

S/Shri Balbir, Kedar Nath, Vishya Ram, Chandan Singh, Bajruddin, Ram Prakash, Joel John, Nane Khan, Ali Mohammad, Sri Niwas and Ramesh Chandra, all working as Khalasis under Inspector of Works, Western Railway, Idgah, Agra have filed this/U/S 19 of the Administrative Tribunals Act, 1985 wherein they have prayed that the respondents may be restrained from declaring the result of the screening held on 23.6.87; the respondents nos. 1 to 3 may be directed to conduct screening on the basis of seniority list vide letter dated 23.4.87 (Annexure A-2) by including the name of the applicant, Sri Niwas at appropriate place and they may be directed to declare the result of the screening and to give all consequential benefits to the applicants.

2. The case of the applicants is that they were appointed as temporary Khalasis on various dates during 1973, 1979 and 1980. They have all been granted temporary status. They were employed in the unit of the Inspector of Works (Special), under whom they worked upto 11.10.80. Thereafter, their services were placed at the disposal of I.O.W., Idgah, without any interruption. For the purpose of screening, for absorption as regular employees, a seniority list was prepared showing the position as on 21.10.81 (Annexure A-1). The employees who

had put in a certain number of days were to be included in the said seniority list. The seniority of these employees is maintained unit-wise, such as, IOW (Special), IOW (Idgah) etc. and not Division-wise, for the purpose of their recruitment and retrenchment.

3. Subsequently, vide Annexure A-3, another seniority list was prepared. This seniority list was prepared by including even the number of those days on which the private respondents 4 to 9 had not worked. The private respondents 4 to 9 had been disengaged for some time and had been taken back in service thereafter. The period for which they remained disengaged was included in the total number of days for which they were supposed to have worked, on the ground that they have wrongly been disengaged. The grievance of the applicants is that this seniority list has been wrongly prepared in as much as days on which the private respondents had not actually put in service under the Railways has been added to the number of days on which they worked, for determining their seniority.

4. During the arguments, the learned counsel for the applicants explained that while for the purpose of recruitment, retrenchment etc, seniority of such labour was maintained unit-wise, a Division-wise seniority list on the basis of number of days actually worked was prepared for the purpose of screening for absorption against regular vacancies. It was this seniority list at Annexure A-3 which had been wrongly prepared by the respondents. He contended that when the private respondents were terminated, this action was taken by following the provisions of Industrial Disputes Act. Once they were taken back, the period during which they did not actually serve the Railways could not be added to their total length of their service for the purpose of their seniority. He added that in the case of applicants,

seniority had been claimed on the basis of actual number of days worked by them and offered that if it was found that if any days on which the applicants had actually not worked were added to the total number of days worked, the Administration was free to exclude such number of days for determining their seniority.

5. The respondents nos. 1,2 and 3, in their reply, have stated that screening is done on the basis of availability of regular vacancies and on the basis of seniority list prepared by taking "number of days working as criteria". They have added that injustice was done to respondents nos. 4 to 9 by terminating their services and, therefore, they are entitled to get benefit of seniority on re-employment.

6. The private respondents, in their reply, have not submitted that all the applicants were/in continuous service since their initial appointments, their services were also terminated from time to time and retrenchment compensation was paid to them. On the other hand, services of the respondents no. 4 to 9 were terminated irregularly and even thereafter, the applicants who were junior to the respondents were allowed to continue in service. On their representation, the revised seniority list was prepared, after adding the number of days on which they had been wrongly kept out of service. They have denied that any retrenchment compensation was paid to the respondents when their services were terminated. According to them, the seniority impugned list, Annexure A-3, has been correctly prepared.

7. We have heared the learned counsel for the parties and have gone throught the records.

8. Annexure R-1 is letter dated 28.11.85 from the Chief Engineer,(E), Western Railways HQrs to DRM(E), Kota which refers to the termination of services of the respondent and their re-engagement. In the said letter, it is stated,

(13)

- inter-alia, that their services were terminated after following the provisions of the Industrial Disputes Act. It has been accepted therein that their termination was incorrect. The limited question that we are called upon to decide now is whether after the respondents nos. 4 to 9 were re-engaged, after termination of their services which was termed as 'incorrect' or 'irregular'; the period spent by them outside service should be counted for the purpose of determination of the seniority on the basis of the number of days worked. The services of the respondents nos. 4 to 9 were terminated after following the provisions of Industrial Disputes Act as stated in Annexure E-1. Whatever benefits flow from the application of the Industrial Disputes Act would be available to these respondents. As far as the determination of seniority for the purpose of screening is concerned, it does not appear to us that even the period not spent on duty has to be added to the number of days actually worked.

9. In these circumstances, we hold that seniority shall be determined on the basis of the number of days on which the applicants as well as the respondents had actually worked. If any period during which even the applicants had not worked has been included in the number of days for the purpose of determining the seniority, such days shall be excluded while calculating the number of days on which they also had worked. If necessary, the seniority list shall be re-cast in the light of these directions within a period of four months from the date of the receipt of the copy of this order.

10. The O.A. is disposed of accordingly, with no order as to costs.

(O.P. SHARMA)
Administrative Member

(Gopal Krishna)
Judicial Member