

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR

Date of Order: January 21, 1992

O.A.No.581/88

Om Prakash & ors. - Applicant

Versus

Union of India - Respondents.  
& others.

Mr. J.K. Kaushik - Counsel for the  
applicant.

Mr. D.M. Lodha - Counsel for the  
respondents.

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1. To be referred to the Reporter or not? Yes.
2. Whether it needs to be circulated to other Benches of the Tribunal? Yes.

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CORAM :

Hon'ble Mr. B.B. Mahajan, Adm. Member

Hon'ble Mr. Maharaj Din, Judl. Member

Mr. B.B. Mahajan, Adm. Member :

Om Prakash and 21 other labourers have filed this application under section 19 of the Administrative Tribunals Act, 1985 for issue of direction to the General Manager, Western Railways, and other respondents for their treatment as all Railway employees and giving/benefits available

*Prakash*

to ~~casual~~ casual labours under various rules and payment at rates not less than minimum wages.

2. The applicants have been engaged for unloading coal from trains and staking coal so unloaded in Jaipur Division of Western Railways. They have alleged that they had started working from various dates between 12.8.83 and March, 1988 and they have been paid for unloading coal at the rate of 175 paise per ton (now revised to 230 paise per ton), and staking of coal at the rate of 75 paise per ton (now revised to Rs.1.00 per ton). They have alleged that they are required to attend their duty every day in the morning and have to remain there upto evening and whenever there is no coal unloading/staking work they are employed on other jobs like duck cleaning, cleaning of lines etc. They have not been issued service cards except Mahendra Singh applicant, who <sup>has</sup> ~~have~~ been issued such cards showing the entries from 12.8.83 to 14.4.84. They have not been treated as Casual labour and have been paid on muster rolls on the basis of coal unloading and staking done. No payment is made for other work done by them. They are not treated railway employees for any purpose. None of the benefits available under Industrial/Railway laws e.g. grant of temporary status, leave and passes, regularisation without



*Dr. M. S. Singh*

and unloading of the coal can come and do the job on any particular day when the same is required, and therefore the applicants are not <sup>only</sup> the persons who do this job, whenever required by the administration. No service cards are issued to such persons and the service card to applicant Mahendra Singh was wrongly issued. There is no procedure for maintaining attendance register for such persons who work on contract basis. They are simply paid for the work done by them on tonnage basis for unloading and staking of coal. They have not admitted that the applicants are utilised for other work than unloading and staking of coal. They have thus taken the plea that the applicants are not in the employment of the railways and they are therefore, not entitled to any of the privileges and facilities like issue of passes, acquiring of temporary status etc. In regard to the persons mentioned in para 6(12) of the application they had stated that the averments have not been supported by any of the documents and complete reply cannot be submitted. With their rejoinder the applicants have submitted the copy of the service cards for casual labourer in respect of S/Sh. Kadar Bux and Mumtaz Hussain at Annex. A-7 and A-8 respectively.



*Mumtaz*

3. We have heard the learned counsel for parties. The respondents have taken the plea that the applicants are engaged on contract basis. No copy of the contract has been filed nor any condition of the contract mentioned. They are referring to the applicants as engaged on contract presumably because they are paid on piece rate basis according to the quantity of work done and not on daily or monthly wages. It is common ground between the parties that the work is of intermittent nature and the applicants get job when the trains arrive and they have to unload or stake the coal. The term casual labour has been defined in para 2001 of Indian Railway Establishment Manual Vol.II, 1990 edition as under :



"2001. (i) Definition of Casual Labour.- Casual Labour refers to labour whose employment is intermittent, sporadic or extends over short periods or continued from one work to another....."

The second sub para of this definition indicates the types of cases in which casual labour on Railways should ordinarily be employed. The labour required for unloading and loading of materials is mentioned as one of such cases. The definition clearly relates to the nature of work and it does not exclude the work which is paid on piece rate basis. Since the applicants had been admittedly

*M. M. Singh*

performing the work for the railways and their employment has been intermittent or sporadic they are squarely covered by the definition of casual labour.

4. In so far as the preliminary objection regarding jurisdiction is concerned, it has been held by the Full Bench of the Tribunal in Rehmatullah Khan v. Union of India (1989) (2) ~~(2)~~ (CAT) 293 ~~(2)~~ (para 32) that "although a casual labourer does not hold a civil post, he is in the service of the Union" and that the Tribunal has jurisdiction to entertain the cases of casual labourer/daily rated/~~daily~~ daily wage under section 19 of the Act. This ruling will obviously apply even where a casual labour is paid on piece rate basis. The preliminary objection is therefore, rejected.



5. The various benefits available to the casual labourer are listed in paras 2001 to 2007 of the Indian Railway Establishment Manual, Vol.II 1990 edition. No distinction in these paras has been made between the casual labour paid on daily or monthly basis and those paid on piece rate basis. Para 2001 ibid provides that casual labour engaged in open works, who continue to do the same work or other work of the same type for more than 120 days without a break, shall be given temporary status on completion of 120 days of continuous employment. One of the privilege

*may*

available to the workers with temporary status is that they are entitled to 1/30th of the minimum of the appropriate scale of the pay plus Dearness Allowance. This benefit will obviously not be admissible to the workers paid on piece rate basis unless they are changed over as daily rated workers. We are reluctant to issue a direction for such a change over in view of the observations of the Hon'ble Supreme Court in 1991 SCC (L&S) 809 Union of India v. Tejram Parasramji Bombhate (para 4) that "no court or Tribunal could compel the Government to change its policy involving expenditure without support of law." In the present case, the switch over from piece rate to daily rate may involve considerable financial implications, if the work is of sporadic nature as contended by the respondents, and no statutory provisions has been shown under which Railways can be compelled to discontinue the engagement of workers on piece rate basis. However, there are other facilities and benefits which can be afforded to the applicants without converting the applicants from piece rate to daily rated workers. Since these workers may on many days be performing work only for a few hours, separate criteria for acquisition of temporary status by them may perhaps be necessary. In the absence of any specific directions from the Railway Board, however, the applicants have been denied of all




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the benefits available to other casual workers, particularly after acquisition of temporary status, which is violation of the Article 14 and 16 of the Constitution.

6. The applicants have alleged that they are not paid minimum wages. They have however, not supported this averment with any evidence in regard to minimum wage fixed by the appropriate government for the category of work performed by them. No relief on that account, therefore, can be given.

7. In view of the above, we allow the application partly and direct the Railway Board to issue appropriate instructions within 6 months of this order in regard to the benefits to be allowed to casual labourers, who are paid on piece rate basis, including temporary status, regularisation etc. No order as to costs.



  
(Maharaj Din)  
Judl. Member

  
(B.B. Mahajan)  
Adm. Member.

21/1/92

Mathur.