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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL:HYDERABAD BENCH
AT HYDERABAD

ORIGINAL APPLICATION NO-769/89

DATE OF JUDGEMENT: 16-7- 1993

Between

1. Sri M.Narayana Reddy
2. " F.Louies
3. " S.K.Chinnavalli
4. " C.Panduranga
5. " V.Prabhudas
6. " Manohar Kalel
7. " K.Devadas
8. " SK Valli
9. " S.Dorairaj
10. " Sabjavali
11. " D.Siddhaiah
12. " A.Shaik Sha Vali
13. " S.Noor Ahmed
14. " Yellappa
15. " S.Susairaj
16. " K.Loganadham
17. " V.Subramanyam
18. " S.Zamila Begum
19. " N.Karthikeyan
20. " N.Varaprasad
21. " K.Rosario
22. " U.Prasad
23. " Sheik Abdulla Sahib
24. " M.Palani
25. " T.Sree Ramulu
26. " Y.Thimmappa

... Applicants

and

1. The Divisional Railway Manager,
South Central Railway, Guntakal.
2. The Senior Divisional Personnel Officer,
South Central Railway, Guntakal.
3. The Senior Divisional Signal and Telecommn.
Engineer(Works), South Central Railway
Guntakal
4. The Chief Personnel Officer,
South Central Railway, Railnilayam, Sec'bad.. Respondents

Counsel for the Applicant :: Mr GV Subba Rao
Counsel for the Respondents :: Mr NR Devraj, Sr.CGSC

CORAM:

HON'BLE SHRI A.B. GORTHY, MEMBER(ADMN)

HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER(JUDL.)

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JUDGEMENT OF THE DIVISION BENCH DELIVERED BY
HON'BLE SHRI T. CHANDRASEKHARA REDDY, MEMBER (JUDICIAL)

This application is filed by the applicants herein under Section 19 of the Administrative Tribunals Act, to direct the respondents to screen the senior most casual labourers in the order of their seniority for absorption against permanent vacancies in the Maintenance Department of Signals & Telecommn. Branch, Guntakal, and to hold that the action of the respondents in calling the juniors to the applicant for screening as per the respondent's letter dated 5.10.89 is illegal and arbitrary and pass such~~e~~ other order or orders as may deem fit and proper in the circumstances of the case.

2. The facts giving rise to this OA in brief may be stated as follows:

3. The applicants are 26 in number. All of them were appointed as Casual labourers and working for a number of years in the Works Branch under the Control of Sr.DSTE/GTL. The applicants ~~had~~ already been granted temporary status, as per the seniority list published by the Respondents as on 31.12.1988.

4. The Sr.DPO/GTL issued a circular dated 30.4.86 addressed to ^{the} officers of other departments in the Guntakal Division calling for volunteers from the retrenched/discharged candidates borne on the live registers of the departments as on 1.1.1986 and who ^{were} ~~was~~ eligible for re-engagement as casual labour on daily wages/last pay drawn duly accepting &

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bottom seniority on the date of enegagement in the S&T Construction wing of Guntakal and they were asked to furnish a list of such Casual labourers willing to join Signals & Telecom Department.

5. Twenty six ~~serving~~ casual labourers of other departments, namely, Civil Engineering, Traffic and Medical who were in ~~ent~~ continuous appointment and given temporary status and who have not been retrenched or discharged from the respective units applied for engagement as casual labourer in the construction wing of the S&T department, in two batches of 19 and 7. As per Sr DPO/GTL letter dated 16.7.87 ^{nineteen} ~~casual~~ labourers belonging to the Civil Engineering, Traffic and Medical departments were appointed with the condition that they should accept bottom seniority in the unit (Construction wing of S&T Deptt.) among the serving casual labourers ~~of~~ on the date of joining. The other ^{seven} ~~casual~~ labourers were also appointed likewise later on. According to the applicants herein, the casual labourers who were appointed from other departments ^{namely} civil engineering, traffic and medical are juniors to them. So the applicants contend that they have a right to be screened before the said ^{twenty-six} ~~incumbants~~ are screened for being appointed in regular post of Casual Labourers as the applicants herein are seniors in all respects.

6. The senior DPO vide his letter dated 25.9.89 asked the Sr.DSTE/GTL to submit a combined seniority list for screening on 5.10.89. The Sr.DSTE prepared a seniority list showing the seniority as on 31.12.1988. Out of the 26 candidates who were brought from other departments and were absorbed in the S&T department, 8 were shown as seniors to the applicants herein, even though they were juniors to

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the applicants and were included in the list of candidates declared as eligible to be screened and empanelled against unspecified number of ~~fx~~ vacancies for absorption on permanent basis. The attempt made by the Sr.DSTE & Sr DPO GTL to absorb the junior most casual labourers against the regular vacancies is contrary to the rules governing the seniority of the casual labourers who joined the S&T department from other departments accepting the bottom seniority. The representations made to the department for redressal of the grievances of the applicants to treat them as seniors to the casual ~~x~~ labourers who were recruited from outside units proved futile. So, the present OA is filed for the relief(s) as indicated above.

7. Counter is filed by the respondents opposing this OA.

8. We have heard in detail Mr GV Subba Rao, Counsel for the applicant and Mr NR Devraj, Standing Counsel for the respondents.

9. The fact that the applicants herein are all casual labourers working in the ~~Signals & Telecommn.~~ Signals & Telecommn. Department GTL for a long time is not in dispute in this OA. The fact that the applicants have also obtained temporary ^{has back} status is also not in dispute in this OA. It is also not in dispute that after the applicants acquired the temporary status that the Br.DPO Guntakal floated the circular dated 30.4.86 which reads as follows:

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South Central Railway
No.G/P.407/V/Vol.II

Divisional Office
Personnel Branch
Guntakkal:Dt.30.4.86

To

XX XX XX XX
XX XX XX XX

Sub:Recruitment of CLs in S&T Department

Casual labourers are required for engagement in Sr.DSTE/Works Unit of this division.

CLs whose names are borne in the Live Register of your unit as on 1.1.86 and who are eligible for re-engagement and who have passed 10th standard only are eligible for engagement as CL on daily rate of pay. CLs who were in receipt of monthly scale of pay at the time of their discharge and are eligible for re-engagement, will however, be eligible for the pay last drawn. They should take bottom seniority on the date of their engagement in the unit.

Please therefore, furnish a list of CLs who are on the live register of your unit as on 1.1.86 and who have passed 10th Standard and ~~wh~~ are willing for engagement as CL on bottom seniority to reach this office on or before 12.5.86 in a cover addre sed to Sri K.Venkateswarlu, APO/E/GTL along with their letter of willingness.

Sd/-
S.rDPO"

So, 26 casual labourers working in Civil Engineering, Traffic and medical departments had volunteered to be appointed as Casual labourers in the Signals & Telecommn. wing. As per the proceedings of the Sr.DPO/GTL dated 6.7.87, 19 casual labourers have been appointed subject to the following conditions.

"South CentralRailway
GP.407/V/Vol.2

Divisional Office
Personnel Branch
Guntakal Dt.6.7.87

Memorandum

XX XX XX XX
XX XX XX XX
XX XX XX XX

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Their engagement as CL in S&T/CN organisation is subject to the following conditions.

1. They should accept bottom seniority in the new unit among all the serving casual labourers on the date of their joining.

2. xx xx xx xx
 xx xx xx xx

Sd/-
Sr.DPO"

So, when 26 casual labourers from other units were appointed in S&T/CN organisation as per the proceedings of the Sr.DPO/GTL dated 30.4.86 and 6.7.87, it is ~~not~~ understandable how it is open for the respondents to treat the casual labourers of other departments as seniors to the existing casual labourers who are working in the S&T wing and ^{who} have obtained temporary status. This is a case where the casual labourers who have obtained temporary status in other departments had been transferred and appointed in S&T department. In this context, it would be worthy to note a decision reported in AIR 1983 SC 403 VS Murty Vs Dy.Chief Accounts Officer wherein at Page 409 it is held as follows:

"....."

If the transfer was on administrative ground from one department ^{or office} to another, the seniority of the transferred government servant shall be fixed with reference to the date of his first appointment in the former department or office from where he is transferred. If on the other hand, the transfer is ~~at~~ at the request of the concerned government servant, his seniority will be determined with reference to the date of his appointment in the department to which he is transferred....."

So, in view of the law laid down by the Supreme Court, it is ~~not~~ not open to the respondents to give seniority ^{on their request} to the casual labourers who had been brought from other

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units like civil engineering, traffic and medical.

We may also quote here rule 2004 from the Indian Railway Establishment Manual, where ~~ix~~ it is said casual labourers diverted from one unit to another will be junior most in the new unit. This is a case where the casual labourers from other departments had volunteered themselves to come to the new unit and get absorbed themselves in the new unit i.e. Signals & Telecommn. wing. They were perfectly aware of the conditions imposed by the Sr DPO in his letter dated 6.7.87 and circular dated 30.4.86 that they have to take bottom seniority after their absorption in the S&T wing. Rule 2004 of the Indian Railway Establishment manual/also makes it clear that casual labourer transferred from one unit to another will be junior most in the new unit. Further in view of the Supreme Court decision cited supra that when a Govt. servant is transferred on request or had volunteered for such transfer, that he has got to be put in the bottom seniority in that cadre in the unit where he is transferred, we do not have any doubt to come to the conclusion that the respondents are not justified in treating the casual labourers brought from other units as seniors to the applicants herein who had served in the S&T unit for a long time and have obtained temporary status. So, the action of the respondents in treating the casual labourers who had been brought from other departments and giving them seniority for regularisation of their service in preference to the applicants herein is arbitrary and the said action of the respondents is liable to be set aside.

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7/10/87

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10. Shri NR Devraj, Standing Counsel for the respondents strongly contended that the said twenty six casual labourers had worked more number of days in their respective units namely Civil Engineering, Medical and Traffic divisions and if the total number of working days are taken into consideration for the purpose of giving seniority that the twenty six transferee casual labourers will be seniors to the applicants herein, and, hence, they were empanelled by respondents for regularisation and thus, the action of the respondents is legal. The learned counsel for the respondents relied on para 5 of the Railway Board's letter dated 8.6.81 which reads as follows:

"After working out vacancies for recruitment in this unit, all casual labourers who have put in a minimum of 120 days continuous service whether on the open line in the Division or an adjacent construction projects, should be listed for screening the seniority being fixed by reckoning their previous spells of employment on the basis of such cumulative aggregate service. Casual labourer who have not been re-engaged will also be considered for empanelment/screening based on the length of their employment prior to the date of discharge if such discharged casual labourer who had completed 120 days continuous service and had been discharged due to the completion of work and has not been offered further engagement approach the Administration at the time of screening."

It is the contention of the learned counsel for the respondents that in accordance with the principle laid therein that the senior most 16 casual labourers were called for screening as per the letter dated 25.9.89 of Sr.DPO/GTL addressed to Sr.DSTE/GTL against the existing thirteen vacancies that were available as on 31.12.1988 and so

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the action of the respondents is legal. Para 5 of the Railway Board's letter dated 8.6.81 has no relevance to the facts and circumstances of this case, as the same does not deal with the case of transferee casual labourers who came on transfer from one unit to another on their request or volunteered for the same.

12. As per the interim orders dated 3.10.89, at the time of admission of this OA, it has been made clear by this Tribunal that, any appointment of casual labourer transferees to the S&T/construction unit as regular khalasis will be subject to the result of this application. It had also been ordered to make all such casual labourer transferees as parties to this application. Even though a direction had been given by this Bench to add the transferee casual labourers as parties to this OA, the learned counsel for the applicant does not appear to have taken any steps for adding. No doubt, when a direction is given and the same is not complied with, the OA in the normal circumstances had to be met with dismissal. But, after thinking the issue carefully, we are not resorting to the same as dismissal of this OA will not serve the interests of justice. Nor giving any opportunity to the applicant at this stage that is after three and half years after this OA is filed, to bring casual transferee labourers on record as respondents will serve any purpose

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To

1. The Divisional Railway Manager, S.C.Rly, Guntakal.
2. The Senior Divisional Personnel Officer,
S.C.Rly, Guntakal.
3. The Senior Divisional Signal and Telecom., Engineer (Works)
S.C.Rly, Guntakal.
4. The Chief Personnel Officer, S.C.Rly, Railnilayam,
Secunderabad.
5. One copy to Mr.G.V.Subba Rao, Advocate, CAT.Hyd.
6. One copy to Mr.N.R.Devraj, Sr.CGSC.CAT.Hyd.
7. One copy to Library, CAT.Hyd.
8. One spare copy.

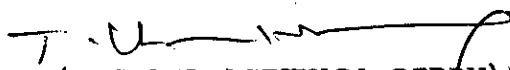
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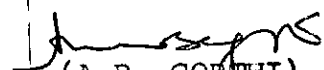
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as the casual x labour transferees may only be proper parties to this OA but not necessary parties. It is needless to point out, that a OA cannot be adjudicated in the absence of necessary parties. But the OA can certainly be adjudicated in the absence of proper parties. The presence of casual labour transferees would not make the position different as by no stretch of imagination the casual labour transferees can claim seniority over the applicants herein. So, the OA is not bad for non-joining of proper parties that is casual labour transferees. So this OA is maintainable and is adjudicated on merits in the absence of proper parties.


13. In the result, the respondents are directed to give bottom seniority to the casual labour transferees in the S&T/construction wing in the revised seniority list to be prepared as a consequence of this order, and screen the casual labourers according to the revised seniority in the S&T/construction wing for absorption against permanent vacancies in the S&T/construction wing. We also direct the respondents that while screening the x casual labourers of the S&T/construction wing according to the revised seniority list, if anybody had already been screened and found eligible for regularisation, the respondents shall not subject such person(s) for a second screening. With the above direction, the OA is allowed leaving the parties to bear their own costs.


(T. CHANDRASEKHARA REDDY)
Member (Judl.)


(A.B. GORTHI)
Member (Admn)

Dated: 16-7-1993

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Deputy Registrar

10th July 1993