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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL :: HYDERABAD BENCH :  
AT HYDERABAD.

O.A.Nos.60/95 & Batch.

Date of Judgment: 11/4/95

O.A.No.60/95.

Between:

B.Sarangapani

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Applicant

Vs.

1. Financial Advisor & Chief Accounts Officer, S.C.Railway, Sec'bad.
2. Sr.Divisional Accounts Officer, Hyderabad MG Division, S.C.Rly., Sec'bad.
3. The Divisional Cashier (Pay) HYB (MG) Division SC Rly., Statio Annex Sec'bad.

..

Respondents

O.A.No.61/95.

Between:

..v.Sadanand

..

Applicant

And

1. F.A. & C.A.O., SC Railway, Sec'bad.
2. Sr. Divisional Accounts Officer, Hyderabad MG Divn., S.C.Rly., Sec'bad.
3. The Divisional Cashier (Pay), Hyd. MG Division, SC Railway, Sec'bad., Railway Station Annexure, Sec'bad.

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Respondents

O.A.No.62/95.

between:

A.S.V.Aruna Kishore

..

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Applicant

And

1. Financial Advisor & Chief Accounts Officer (FA & CAO), S.C.Railway, Sec'bad.
2. Sr.Divisional Accounts Officer, Secunderabad BG Division, S.C.Railway, Sanchalam Bhavan, Sec'bad.
3. The Divisional Cashier (Pay) Secunderabad BG Division, SC Railway, Sec'bad Rly. Station, Annexure-Secunderabad.

..

Respondent

(22)

O.A.No.187/95.

Between:

P. Satyanarayana Niranjan .. ..

Applicant

And

1. The FA & CAO, S.C.Railway,  
Secunderabad.
2. Sr. Divisional Accounts Officer,  
Hyderabad MG Division, S.C.Rly.,  
Sec'bad.
3. The Divisional Cashier (Pay)  
Hyd. MG Division, SC Railway,  
Sec'bad Rly. Station Annexure, Sec'bad. .. Respondents

OA 1493/95.

G.S. Mohan Kumar ... ..

Applicant

And

1. The FA & CAO, S.C.Railway,  
Rail Nilayam, Sec'bad.
2. Sr. Divisional Accounts Officer,  
Sec'bad BG Division, SC Rly.,  
Secunderabad.
3. The Divisional Cashier (Pay)  
Hyderabad MG Division, SC Rly.,  
Sec'bad - Rly Station Annex.  
Secunderabad .. .. Respondents

O.A.No.1494/95.

K. Sudarshan .. ..

Applicant

And

1. The FA & CAO, S.C.Railway,  
Rail Nilayam, Sec'bad.
2. Sr. Divisional Accounts Officer,  
Sec'bad BG Division,  
SC Rly., Sec'bad.
3. The Divisional Cashier (Pay)  
Hyderabad MG Division, SC Rly.,  
Sec'bad - Rly Station Annex.,  
Secunderabad .. .. Respondents

...3/-

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Counsel for Applicants : Sri J.Lalitha Prasad,  
Advocate.

Counsel for Respondents : Sri N.R.Devaraj, Sr.CGSC  
(in OA No.187/95)

Sri V.Bhimanna, SC for Rly.  
(in OAs 60/95, 61/95, 62/95  
and 1493/95)

Sri D.Francis Paul, SC for  
Railways (in OA 1494/95)

C O R A M:

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI, VICE CHAIRMAN

THE HON'BLE MR. R. RANGARAJAN, MEMBER (ADMN.)

J U D G M E N T

{ per Hon'ble Sri R.Rangarajan, Member (Administrative) }

Heard Sri J.Lalitha Prasad, learned Counsel for applicants in all the OAs, Sri D.Francis Paul, learned Standing Counsel for the respondents in OA 1494/95, Sri V.Bhimanna, learned Standing Counsel for respondents in OAs 60/95 to 62/95 & 187/95; and Sri Satyanarayana for Sri N.R.Devaraj, Sr.CGSC for respondents in OA 187/95.

2. In all these applications the contentions are the same so also the relief asked for. Hence all these 6 OAs are disposed of by a common judgment.

3. The concise facts in these OAs are summarised below:

In OAs 60/96, 61/95, 62/95, 187/95, 1493/95 and 1494/95 the applicants are reported to be engaged as casual labour/hamal from the year 1988, 1981, 1981, 27.6.1984 8.5.1995 and May, 1982 onwards respectively. It is stated

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in all these OAs that they were performing the duties of the Peon and thereby they are to be treated as casual labour engaged to perform the regular duties attached to the category of a Peon. They rely on the decision of this Tribunal dated 29.6.1992 in OA No.226/91 (Sri D.Vishnu Vs. Sr. DAO(BG), S.C.Railway, Secunderabad and another) to state that their cases are covered by that judgment and hence they should also be treated as casual labour and temporary status had to be granted to them as was done in the case of Sri Vishnu. They further substantiate their case by enclosing the identity cards issued to them. Applicants in all these OAs represented to the FA& CAO or to the other concerned authorities for granting them temporary status and consequential regularisation. No reply has been reported to have been given to them for their representation except in the case of applicant in OA 62/95 where a reply dt. 26.9.1994 was given to the applicant by FA & CAO rejecting his request for granting temporary status etc. This rejection letter dt. 26.9.1994 is impugned in that OA. It is also seen from the enclosures to OA 61/95 and 62/95 that an office order No.8/81 dt. 6.1.1981 was issued engaging them as casual labour from the date they report for duty. However, that order has been cancelled by office order No.11 of 1981 dt. 17.1.81 which is enclosed as Annexure to the reply.

4. Aggrieved by the fact that no reply had been given to their representation and the rejection of his representation in OA 62/95, the applicants in all these

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*[Signature]*

OAs pray for a direction to the respondents to grant them temporary status and absorb them as Peons in the Accounts Department.

5. As stated earlier, since the contentions in all these OAs are same and also the relief asked for, the respondents have filed the reply statement only in OA 62/95 and submitted that this reply statement in OA 62/95 may be treated as reply in other OAs also. Hence, the OA 62/95 is taken as the leading OA for the purpose of analysis of the contentions in all these OAs.

6. In OA 62/95 the applicant as stated earlier was engaged as a Casual Labour hamal in Divisional Cashier, Pay office, Hyderabad, MG Division from Feb., 1981 to 1992 and from 1992 onwards, he is working as a Casual Labour hamal in Divisional Cashier (Pay) office, Secunderabad Division. He had thus put in a service of over 13 years in intermittent spells. It is stated that he is performing the duties of the Peons and the duties performed by him has been indicated in pages-6 & 7 of the OA to compare his duties with that of the Peon. It is stated that he is paid daily wages from 1981 onwards. The details of payments received by the applicant in this OA while working as a Casual Hamal in the office of the DCP/BG/S'bad has been enclosed as annexures 2, 3 & 4 to the rejoinder filed by the applicant. The learned counsel for the applicant submits that his case is same as that of Sri Vishnu, the applicant in OA 226/91 and his case is covered by that judgment in the above OA and hence this case may have to be disposed of on the same lines. His representation to

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F.A. & CAO (R-1 in the OA) for granting him temporary status and other consequential benefits vide his representation letter dt. 7.9.1994 had been turned down by the impugned reply No. AAD/M-53 dt. 26.9.1994 (Annexure A-1).

7. The contentions of the applicants in these OAs are as follows:

The applicants though termed as Casual Labour Hamal in the Divisional Cashiers performing the duties attached to the post of a peon and hence they are to be treated as casual labourers for purpose of granting temporary status and other consequential benefits.

By office order 8/81 dt. 6.1.81 (Annexure 2), the applicant in OA 62/95 states, that he was engaged as Casual Labour. In the rejoinder the applicant had submitted that though he was paid wages on the day-to-day basis, this practice is adopted for economising the expenditure as can be seen from the DO No. A/CO/0 dt. 13.7.71 (Annexure-1 to the rejoinder). He had also annexed details of the payments made to him from 1991 onwards as annexures 2, 3, and 4 to the rejoinder.

8. The respondents in their reply submitted that the applicant was not a casual labour and he was never engaged as a casual labour. But the Divisional Cashiers were permitted to utilise the services of the hamal like the applicants and when required for attending to the work of carrying cash boxes/ vouchers boxes etc. and they are paid hamalage charges

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and not wages for the days work or each peice of work from contingencies. Hamalage paid to the applicant is like portrage paid to the Railway porters by railway passengers. There is no muster roll or fixed timings. The hamals are under no obligation to attend the office every day. Whenever a hamal is available at the office and if there was work, then that hamal will be utilised for work on payment of hamalage.

9. In reply to the above averment of the respondents, the applicant in his rejoinder admits that his engagement as casual labour by office order dt. 6.1.81 (A.II of the application) was cancelled by office order dt. 17.1.81 (Annexure R-1 of the reply statement). There is no reason given by the applicant for not paying him at the rate applicable to the casual labour. Furthermore, he has also not denied the non-maintenance of records such as muster rolls, pay-sheets etc. except stating that the respondents were obtaining acknowledgement on the vouchers for payments made by them. No pay slip has been attached along with the rejoinder except attaching the details of payments received by him and that too during the period he worked under DCP(BG), Sec'bad.

10. From the above, it is clear that the applicant cannot claim that he had worked as casual labour as there are no records to prove his claim. When a casual labour is appointed, a service register has to be opened and they have to sign the muster rolls everyday as a token of having attended the duties in accordance with the rostered duty hours. In the absence of these essential records one cannot come to

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the conclusion that they were engaged as casual labour after obtaining necessary sanction from the competent authority. Whenever there is work, even if the work is in the nature of work to be performed by a Peon, the applicant was asked to carry out duties as a hamal/porter paying him from the contingency expenditure account under the control of the D.C.P. The statement showing the hamali charges paid enclosed as annexures 2, 3 & 4 to the rejoinder is to account for the expenditure and to recoup the contingency account. These statements of payments will <sup>in</sup> no way prove that the applicant was engaged as casual labour, taken on muster rolls and governed by the rules for treating him as a casual labour. The applicant is free to work elsewhere also as he was not engaged as a casual labour. Hence this contention cannot survive.

11. The applicant submits that he was given an identity card and that he was also given medical facilities in the Railway hospital and from the above it can be reasonably concluded that he was engaged as a casual labour as these facilities are extended only to the casual labourers.

Issuing an identity card is for purposes of security if anybody has to visit the Railway work places frequently. In the case of the applicant, it is more so essential as he has to enter the cash and pay office. Hence issue of identity card is not a document to prove his case, which is the stand taken by the respondents also. Even the porters in the railway stations, get some medical facilities from the Railway Hospital. Hence, extension of medical facilities in



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the Railway hospitals to the applicants cannot be a reason to state that they are engaged as casual labour.

12. The applicant relies on the judgment of this Tribunal in OA 226/91 decided on 29.6.92. He submits that the applicant in that OA was also a casual labour hamal engaged much after the engagement of the applicant. He was also paid similar to that applicant and in view of that he is also entitled for the same benefit as granted to the applicant in the above referred O.A.

We gave our anxious consideration to this contention. The cases of casual labour in each case differs in some aspects. Hence each case has to be considered on its own merit. In the reply statement, the respondents submit that the applicant in that OA submitted pay slips as a token of proof that he was paid hamali charges as daily wages. In the present case, the applicant was paid on the spot like other coolies/porters etc. for doing petty works and disposed off then and there itself. In the rejoinder the applicant only submit that he is similarly placed as that of the applicant in OA 226/91 and does not comment anything regarding issue of pay slips to the applicant in that OA. Hence, on that consideration, the applicant in that OA would have been treated as a casual labour. In the absence of any proper rebuttal in the rejoinder the present case of the applicant cannot be equated to that of the applicant in OA 226/91.

13. The next contention of the applicant is that even those engaged in hot weather establishment were given the status of a casual labour. Hence ~~in~~ his case also should be treated in the same footing. If the hot weather establishment staff were engaged as a departmental casual labour, the applicant herein cannot equate himself with them being paid only hamali charges. The applicant having been paid only hamali charges, <sup>also</sup> cannot/claim to be treated as workman under sec. (2) s of the I.D.Act, 1947.

14. The apex court in X 1985 SCC(L&S) 526 - Inderpal Yadav and others Vs. Union of India and Ors. X had approved the Railway Board scheme <sup>to</sup> bring the casual labourers who were in service as on 1.1.1981 on temporary status. This would mean that there is no scheme for those casual labourers who were not in service as on 1.1.1981. As a matter of fact, there was a complete ban for engagement of casual labour after that date. This is evident from the fact that the engagement of the applicant as casual labour by office order 8 of 1981 dt. 6.1.1981 after the cut off date of 1.1.1981 was cancelled within 11 days by the office order No.11 of 1981 dt. 17.1.1981 as there was a ban on engagement as casual labour. The order No.8 of 81 was cancelled obviously Order No.11 of 1981 as the applicant by was engaged irregularly as a casual labour while the ban order is in operation.

16 This Tribunal had disposed of OAS 690, 707, 722  
and 773 of 1992 by the order dt. 28.6.93. The applicants  
in these OAs were casual artists of Door Darshan Kendra,  
Hyderabad. Their claim for regularisation was rejected  
by the department as they were found ineligible on account  
of not fulfilling certain ~~xxxxxxxxxxxxxx~~  
~~relaxationxxxper~~ provisions contained in the scheme  
notified vide O.M.dt. 9.6.1992. This Tribunal by its  
order dt. 28.6.93 further relaxed the conditions which  
were not contemplated in the O.M. dt. 9.6.92 and further  
directed the concerned authority to consider the cases of  
the applicants in whose OAs on that basis for regularisation.  
The judgment was appealed against in Civil Appeal Nos. 4787-4794  
of 1996 arising out of SLP (Civil) No. 4950-57 of 1994 in  
those OAs which were disposed of by the apex court by its  
judgment dt. 14.3.1996. The apex court in that context held

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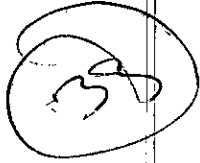
that any relaxation granted by the Tribunal should be in accordance with the provisions contained in the scheme notified on 9.6.1992 and as the directions of this Tribunal contravened that O.M., the impugned judgment of this Tribunal was set aside and the respondents were directed to consider the cases of the casual artists for regularisation in accordance with the notified scheme.

17. In the present case, a scheme had been formulated by the Railway Board and approved by the apex court. The live registers have been created on the basis of the notified scheme. As the applicants in these OAs do not fulfill the conditions under that scheme they cannot claim for temporary status etc. in view of the observations of the apex court in the above mentioned Civil Appeals. No direction in contravention of the notified scheme of the Railway Board can be given in these OAs.

18. The applicants in these OAs submit that they have <sup>put</sup> in long years of service as hamals and as they are overaged now they have no other alternative except to seek employment in the Railways at the present juncture. But their cases as it stands cannot be disposed off with the direction for consideration of their cases as prayed for in view of the reasons stated above.

19. It was informed to us that a casual labour can be engaged even if he is a fresher with the approval of the General Manager as per letter No.E/NG/II 88/CL 39 dt. 22.4.1988 of the Railway Board. This would mean that the General Manager has the discretionary powers to engage






casual labour even if the applicant is a new face if the circumstances so warrant. Whether the circumstances, under which the applicants in these OAs are placed, warrant the use of the discretionary powers of the General Manager has to be decided by him only. In all the OAs except in OA 62/95 the representation of the applicants addressed to the FA & CAO were not replied to. As the FA & CAO has no ~~power~~ powers to consider the case of the applicants issue of no reply to their representation is of no consequence. However, as General Manager has got discretionary powers in regard to casual labour appointment as contained in applicants herein may apply to him if so advised and General Manager may take a suitable decision on the basis of the facts and circumstances mentioned in each case.

20. In the result, all the OAs are disposed of with the following observations:-

The applicants in all these OAs may represent to the General Manager, South Central Railway, if they are so advised, explaining their cases in detail which warrant ~~their cases for~~ consideration for engagement as casual labour. If such representations are received, the General Manager, South Central Railway may consider the case of each applicant on merits on the basis of the discretionary powers vested ~~in~~ him in terms of Railway Board's letter dated 22.4.1983 and take

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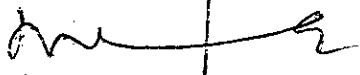



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a decision for engaging them as casual labour  
in accordance with

21. Parties will bear their own costs.

  
(R. Rangarajan)  
Member (Admn.)

  
(M.G. Chaudhari)  
Vice Chairman

Dated 11<sup>th</sup> April, 1996.

Grh.



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To

1. The Financial Advisor and Chief Accounts Officer,  
S.C.Rly, Secunderabad.
2. The Senior Divisional Officer,  
Hyderabad MG Division, SC Rly, Secunderabad.
3. The Divisional Cashier (Pay)  
Hyd.(MG) Division, SC Rly,  
Station Annexure, Secunderabad.
4. The Divisional Cashier(Pay)  
Secunderabad BG Division, SC Rly,  
Secunderabad Railway Station,  
Annexure, Secunderabad.
5. One copy to Mr. J.Lalitha Prasad, Advocate, CAT Hyd.
6. One copy to Mr. N. B. ...  
copy to Mr. V. Bhimanna, SC for Rlys, CAT.Hyd.
8. One copy to Mr. D. Francis Paul, SC for Rlys, CAT.Hyd.
9. One copy to Library, CAT.Hyd.
10. One spare copy.

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APPROVED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
HYDERABAD BENCH AT HYDERABAD

THE HON'BLE MR. JUSTICE M.G. CHAUDHARI  
VICE-CHAIRMAN

AND

THE HON'BLE MR. H. RAJENDRA PRASAD :M(A)

Dated: 11-4-1996

~~ORDER~~ JUDGMENT

M.A/R.A./C.A.No.

in

O.A.No. 60/95, 61/95, 62/95, 187/95, 1493/95

T.A.No. (w.p. and 1494/95)

Admitted and Interim Directions  
issued.

Allowed.

Disposed of with directions

Dismissed.

Dismissed as withdrawn.

Dismissed for Default

Ordered/Rejected.

No order as to costs.

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