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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH:
J A I P U R.

O.A. No. 216/1994

Date of Order: 31-7-1997

1. Sudhir Kumar aged about 34 years, S/o Shri Laxman Prasad, T.S.- Khallasi, D.S.K. (R.E.), Kota, House No. 209 Kailashpuri, Kota Jn., Kota (Raj.).
2. Rajendra Kumar aged about 37 years, S/o Shri Ramesh Chand, T.S. Khallasi, D.S.K. (R.E.) House No. 344, Kailashpuri, Kota Jn. Kota (Raj.).
3. Kunj Behari, aged about 31 years, S/o Shri Ram Nath, T.S. Driver, D.S.K. (R.E.) Old Colony, Segaria Village, Tehsil Ladpura, District Kota (Rajasthan).

: Applicants

Versus

1. The Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western Railway, Kota.
3. Chief Project Manager (Railway Electrification) Ambala, Haryana.

: Respondents

Mr. P.V. Calla, counsel for the applicants
None present for the respondents

CORAM:

HON'BLE SHRI O.P.SHARMA, MEMBER (ADMINISTRATIVE)
HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

ORDER

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

Three applicants S/o Shri Sudhir Kumar, Rajendra Kumar and Kunj Behari have approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to quash the impugned order dated 7.4.1994 (Annex.A-1) so far as it relates to the applicants transfer from Kota to Kurushetra Division as illegal and to quash the same with a further prayer to allow them to work in Kota Division with all consequential benefits. The

applicants have further sought a direction against the respondents to declare the result of screening held in view of order dated 27.11.1991 (Annex.A-3) and to regularise them on the post of Khallasi w.e.f. the date their juniors have been regularised on the post of Khallasi and fixed their seniority accordingly with an additional prayer to restrain the respondents not to transfer them on any ground to Kota till they are regularised and their seniority is fixed and determined.

2. Facts leading to this application in brief are that these applicants were appointed by the Respondents Railways as Khallasi w.e.f. 18.2.1985, 3.5.83 and 11.11.1982 respectively and were granted temporary status w.e.f. 16.10.1986, 1.1.1984 and 1.1.1984 respectively. It is the grievance of the applicants that the respondents are transferring them from Kota to Kurushetra on the ground that there is no work in the Railway Electrification Wing at Kota vide order dated 7.4.1994 (Annex.A-1) which is wrong and illegal. It has also been averred by the applicants that though steps for regularising Temporary Status Khallasis were undertaken vide order dated 7.7.1988 (Annex.A-2) and also in the year 1990 on 14.4.1990 and 15.4.1990 and Khallasis were screened but they have not been regularised though Khallasis junior to them have been regularised by the respondents and they are working in Kota Division in different Wings. It has, therefore, been urged that non-regularising the applicants is discriminatory, illegal and malefide and the order as at Annexure A-1

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be quashed. It has also been averred by the applicants that by order dated 27.11.1991, 229 persons were called and screened by the respondents alongwith the applicants and the names of the applicants appeared at Sl. No. 181, 126 & 81 respectively, yet for reasons best known to the respondents its result has not been declared and instead the applicants are being transferred from Kota to Kurushetra. Further grievance of the applicants is that vide Annexure A-4 dated 4.3.1994 one Shri Mahendra Pratap Singh, vide order dated 31.3.1994 (Annex. A-5) Mohd. Ali and vide order dated 7.4.1994 (Annex. A-6) one Shri Sanjay Mishra have been newly appointed by the respondents Nos. 1 & 2 in Kota Division. Thus, the order as at Annexure A-1 issued by the respondents is illegal and liable to be set-aside.

3. The respondents although did not file the reply in time but they have contested the application by filing a written reply to which the applicants have also filed a rejoinder. The stand of the respondents has been that the applicants have failed to submit clear position about their appointments and that it is incorrect to say that any person junior to the applicants has been regularised. It has also been averred that seniority list of the Casual Labours is prepared on the basis of different departments and not division-wise and that the applicants belong to a separate wing i.e. of Engineering Department. It is denied that the employees mentioned at Item No. 129 to 172 in the O.A. belong to the Engineering Department to which the applicants belong, but these employees belong to Electrical Department and their screening and absorption has been made on the basis of availability of vacancies departmentwise. The plea

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of limitation in filing this OA and of non-joinder of necessary parties ^{has} also been raised on behalf of the respondents. Regarding the screening done in the year 1990 it has been averred by the respondents that screening has been made in regard to the Engineering Department and accordingly regularisation was made as per the availability of vacancies and seniority position of such employees.

It is denied that any employee junior to the applicants has been screened and regularised in the year 1990. The respondents, however, admit that orders as at Annexure A-3 were issued for screening of the Casual Labours of the Engineering Department, but the regularisation was done only to the extent of availability of vacancies. It has been stated that the applicants would be regularised as and when vacancies would be caused and that would be done in accordance with the seniority position of the applicants in their departments. It has further been urged that even though the screening was conducted in the year 1991 but the applicants have failed to approach the Tribunal in time and hence this OA is barred by limitation also. It has also been urged that the services of the applicants have been transferred for the aforesaid reasons and it is incorrect to say that the applicants have been declared surplus. Accordingly, it has been urged that the application deserves rejection.

4. We heard the learned counsel for the applicants and have examined the record in great detail.

5. Though it has been argued by the applicants' counsel that for Casual Labours the seniority list is maintained Division-wise and not Department-wise, yet the facts appear to be otherwise. On 23.7.96 the learned counsel

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for the respondents sought time to produce instructions to show whether seniority of Project Labours is counted on the basis of number of days worked or on the basis of the date of first engagement and further to produce the seniority list of Casual Labours separately for each department within the Railway Electrification Department. It appears that the respondents did not adhere to their undertaking as no seniority list of Casual Labours of the Electrification Department has been placed by the respondents. However, the learned counsel for the applicants placed for perusal of the bench a combined seniority list of Project Casual Labours of Engineering Department. From a perusal of this combined seniority list of Project Casual Labours in the Engineering Department as also on perusal of eligibility list for screening of the Project Casual Labours in the Electrical Department (Annex.A-2) and the list of T.S. Khallasis working in R.E. Project, Keta (Annex.A-3), it is made out that separate seniority lists are being maintained by the Respondents Railways. ^{that as it may; the} Argument of the learned counsel for the applicants that employees junior to the applicants have been regularised by the respondents does not appear to be without substance. In their reply, the respondents stand has not been clear. On one hand, it is stated by the respondents that seniority lists are maintained Department-wise, but on the other hand they failed to explain how appointment orders as at Annexure A-4 in respect of one Shri Mahendra Pratap Singh in the Engineering Department has come into existence vide order dated 23.2.1994. Other two orders dated 21.3.94

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and 7.4.1994 (Annx. A-5 & A-6) pertain to the engagement of one Shri Mehi. Ali and Sanjay Mishra in Traffic Department. Though these two orders Annexures A-5 and A-6 do not relate to the Engineering Department, yet it is clear that respondents have given appointment to one Shri Mahendra Pratap Singh as at Annexure A-4 vide order dated 23.2. 1994 which admittedly appears to be a fresh appointment in the Engg. Deptt. The/ in their reply/able to give a satisfactory explanation about the appointment of this person Shri Mahendra Pratap Singh vide Annexure A-4 and have tried to evade the reply by mentioning that this order as at Anxx.A-4 has no effect whatsoever on the applicants' right because they are going to be regularised immediately on the happening of the vacancies on the post. We are of the opinion that this explanation given by the respondents is not satisfactory and when they admit that they have conducted the screening in the year 1991 of 229 employees including the applicants and their result has not been declared so far, their action in giving appointment to only Shri Mahendra Pratap Singh in the Engg. Deptt. vide Annexure A-4/ is in contravention to their own policy of regularisation of the Temporary Status Khallasis. The stand of the respondents in their reply that screening is conducted for judging the fitness of the employees and therefore, result of the same are not required to be declared and that regularisation are made in accordance with the seniority position of the employees in their respective department/ is of no avail. It shows that this is an evasive reply to ward off the implications of having given appointment

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to one Shri Mahendra Pratap Singh vide Annexure A-4 in the Engineering Department to which category the applicants belong. The contention of the learned counsel for the applicants has been that a number of employees junior to the applicants have been given appointment by the respondents and this is supported by the order issued by the respondents in favour of one Shri Mahendra Pratap Singh vide Annexure A-4. It exhibits that the respondents have not adhered to regularise the temporary status holder Khallas viz., the applicants in this OA and instead have appointed a fresh person vide Annexure A-4 which is in contravention to their own policy. The plea of the respondents that there are no vacant posts for regularisation of the applicants in the Engineering Department is also belied by the order as at Annexure A-4 in respect of Shri Mahendra Pratap Singh. The action of the respondents, therefore, in transferring the applicants from Kota to Kurushetra does not appear to be bonafide and is per se illegal and is liable to be set aside. It may further be mentioned that in the impugned order Annexure A-1 dated 7.4.1994 although the respondents have not used the word surplus but they have used the word 'released' which gives an indication that the apprehension of the applicants that they are being transferred after being declared surplus is not without any basis.

6. Regarding the plea of limitation raised on behalf of the respondents, it is suffice to mention that since respondents themselves have not declared the result of the screening done in the year 1991, the OA filed by the applicant in the year 1994 cannot be treated

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as barred by limitation more particularly when this OA has been filed after the issuance of the impugned order dated 7.4.1994 by the respondents. Since no relief has been claimed against the employees who have been appointed vide Annexures A-4, A-5 and A-6 dated 4.3.94, 21.3.1994 and 7.4.94 respectively, they cannot be treated as necessary parties and the objection raised in this behalf by the respondents is of no avail and is rejected.

7. For all the aforesaid reasons, we are of the considered view that action of the respondents in transferring the applicants from Kota to Kurushetra vide Annexure A-1 dated 7.4.1994 cannot stand the test of law and is hereby quashed qua the applicants. In case the applicants have joined their duties at Kurushetra in pursuance of order Annexure A-1 dated 7.4.94, appropriate orders will be issued by the respondents to bring them back to Kota in their own wing/department within a period of fifteen days of the receipt of a copy of this order. The respondents are further directed to declare the result of the Screening done in the year 1991 of the applicants and issue necessary orders about their regularisation if they fulfil all other conditions of being regularised, within a period of three months from the date of receipt of a copy of this order.

8. No order as to costs.

DR. C. V. R. S. A.
(RATAN PEAKASH)
MEMBER (J)

O. P. SHARMA
(O. P. SHARMA)
MEMBER (A)