

Date of Decision: 01.2.1995.

OAs nos. 309, 310, 311, 312, 313, 314, 315,
316, 317, 318, 319, 362, 363, 364,
365, 366, 367, 368, 369, 370, 371,
372, 373, 374, 375 and 376/94.

Phool Singh, Mangtoo, Rameshwar, Balbir, Palwa, Amar Singh,
Arjun, Ram Vishan, Samey Singh, Pammatt Pal, Baney Singh, Kirori,
Ramjo, Ishwar, Radhey, Mohru, Fali, Mohan, Murari, Jagani, Ram
Khilari, Sardar, Pooran, Jagan, Bidha and Kalashi.

... APPLICANTS.

V/s.

UNION OF INDIA & ORS.

... RESPONDENTS.

CORAM:

HON'BLE MR. GOPAL KRISHNA, MEMBER (J).
HON'BLE MR. O.P. SHARMA, MEMBER (A).

For the Applicants ... NONE.

For the Respondents ... SHFI M. RAFIQ.

PER HON'BLE MR. O.P. SHARMA, MEMBER (A).

Since these 26 applications involve common points of fact and law, these are disposed of by a common order.

2. The applicants have prayed that the order dated 29.6.94 (Annexure A-1), passed by the Senior Divisional Engineer (Establishment), Western Railway, Kota, who is respondent No.2, may be quashed. They have further prayed that the respondents may be directed to fill up the 33 posts for Bayana Unit in the ratio of 80% from Non-Project Employees and 20% from Project Employees instead of filling up the entire 80% posts from amongst Project Employees. Yet another prayer is that the respondents nos.1, i.e. the General Manager, Western Railway, and respondent No.2 i.e. Senior Divisional Engineer (Establishment), Western Railway, Kota, may be directed to treat the applicants as decasualised employees and the order of the FWI Bayana, respondent No.3, may be quashed and the respondents may be directed to allow the regular pay of a regular employee (Gangman) to the applicants from the date they joined as daily wage employees with all consequential benefits.

2. The case of the applicants is that they joined service under respondent No.3 as casual labourers (Gangmen) during various years from 1978 to 1983 on daily wage basis. After completing 120 days' service they were granted temporary status and they were decasualised on 3.1.94 with regular pay of a regularly employee/Gangman. The applicants were discharging the same duties as regularly employed Gangmen, but were granted on daily wages. Suddenly, under the instructions of respondent No.2, the applicants were practically reverted as ELA vide order dated 5.7.94. Respondent No.2 screened the casual labourers (Non-Project/Open Line Reservation) working under FWI Bayana and they were kept in a panel in Categories A and B. From a perusal of Annexure A-2, by which employees were kept in two categories A and B, it is clear that 80% of the posts were to go to the decasualised employees and the applicant is one of them. Annexure A-3 is the list of employees of Category-B of Unit of FWI Bayana. Therefore, the applicants are entitled to 80% of the decasualised posts allocated to Bayana Unit.

3. Respondent No.2 made 33 posts available to FWI Bayana by Annexure A-1 but out of these 33 posts, 15 posts were re-allocated to FWI Hindon City and thus only 18 posts of Gangmen remained under FWI Bayana. The applicants' case is that out of these 18 posts, 14 posts should go to the employees mentioned in Category-B i.e. for Non-Project labour and 4 posts should go to the Project labour mentioned in Category-A Unit of FWI Bayana. Respondents nos.2 and 3 have, in violation of the circular referred to above, filled up the 14 posts under FWI Bayana, which were meant for Non-Project staff, by appointing persons from amongst the Project staff. The applicants are entitled to be appointed against those 14 posts under FWI Bayana, as they are in Category-B of the list for Bayana Unit. Further, according to them, the Non-Project staff were screened in 1990, whose names are included in Category-B and the Project Employees were screened in 1994 and, therefore, the applicants rank senior to the Project Employees. Thus, the rights of the

Non-Project Employees have been adversely affected by order dated 5.7.1994, passed by the respondent No.3 i.e. PWI Bayana. The allocation of 15 posts to FWI Hindon City by respondent No.2 is without any reasonable basis and has been made to accommodate employees of the choice of respondents Nos. 2 and 3.

4. The respondents in their reply have denied that the applicants were decasualised in January, 1994 and were appointed regularly on the posts of Gangmen. They were, however, granted temporary status on various dates in 1984. The applicants are not working as regularly employed Gangmen but are working as temporary status holder Gangmen. A panel was prepared vide order dated 15.6.90 for the purpose of appointments against Group-D posts of Non-Project Open Line casual labour and this panel consisted of two parts, A and B. Part-A ^{be} employees were to ~~regularised~~ ^{be} regularised against newly sanctioned posts of decasualised ^{labour,} whereas Part-B employees were to be regularised against the posts which remained vacant excluding the posts decasualised and, therefore, 80% of such posts were to be filled up on regular basis from amongst the employees whose names appear in Part-B of the said panel.

5. The respondents have added that a total of 223 posts were created under decasualisation scheme in the entire Kota Division and such posts were allocated to various Units as per Annexure E-1 dated 30.3.94. The order Annexure A-1 dated 29.6.94 merely seeks to make a revised allocation of these ^{and} decasualised posts, ^{only} those Open Line Project casual labour who are working in CTR (Casual Labour Track Renewal Work), and who were screened, have been regularised against such posts. The allegation that Non-Project casual labour forming part of ^{against these posts} Category-B are being regularised ^{has} been denied. Only casual labours working in Track Renewal Work have been decasualised and the seniority of such officials is maintained separately.

Appointments have been given against these decasualised posts on a regular basis. The applicants have been screened in the unit of Permanent Way Inspector, Bayana, for the posts that may fall vacant otherwise than under the decasualisation scheme and which would be available to Non-Project labour. This is evident from Annexure A-2 dated 15.6.90. Further, according to the respondents, screening of the applicants in the year 1990 cannot be treated as their regularisation. The applicants have not objected to their placement in Part-B of the panel. The impugned order dated 29.6.94 (Annexure A-1) does not alter the status of the applicants as temporary status holder Gangmen. Since the seniority of Project labour and Non-Project labour is separately maintained, there can be no question of comparison between these two sets of employees.

6. Finally, the respondents have stated that the Senior Divisional Engineer (Establishment), vide his order dated 28.7.92, had invited options from all Non-Project screened casual labour of Kota Division for regularisation against the regular posts lying vacant in different units. The units mentioned were Lakheri, Ramganjmandi (North and South), and Kota. It was stated that in these units there was no Non-Project screened casual labour. If the applicants were interested in regularisation of their services, they ought to have submitted their options in response to the aforesaid offer. However, since they did not submit any options now they shall be regularised in the units where they were screened against the posts falling vacant, ^{otherwise than those} which have been decasualised. All the 33 posts originally allocated to PWI Bayana, 15 of which were transferred to PWI Hindon City, have all since been filled up from amongst the Project labour, as seen from Annexure R/3.

7. We have heard the learned counsel for the respondents and have gone through the records. The learned counsel for the respondents was advised yesterday, after the case had been

partly heard, to get in touch with the learned counsel for the applicants so that we could hear him or the applicants before finally disposing of the applications. According to the learned counsel for the respondents, he left a message in the office of the learned counsel for the applicants in this regard but still nobody has appeared on behalf of the applicants. Accordingly, the applications are disposed of after considering the issue on merits.

8. It appears from Annexure R-1 dated 30.3.94 that the allocation of 223 posts, which have been decasualised, are meant for being filled up from amongst Project Line Employees engaged in Track Renewal Work. The seniority of Project Line Employees is maintained separately from that of Non-Project Line Employees. It is not the applicants' case that they were Project Line Employees at any stage. Therefore, the applicants cannot claim any right to be posted against decasualised posts which were meant exclusively for Project Line Employees engaged on Track Renewal work. In the circumstances, the applicants' claim to the posts allocated to PWI Bayana or those transferred to PWI Hindon City out of the once originally allocated to PWI Bayana cannot be sustained.

9. As stated by the respondents in their reply, they had offered to Non-Project screened labour that they may submit their options for regularisation against the posts lying vacant in other units but they did not submit their options. However, we deem it necessary to direct the respondents that they may grant another opportunity to the applicants for regularisation against the posts in other nearby units, at Lakheri, Ramganjmandi (North and South) and Kota. If the applicants submit their options within a period of two months from the date of receipt of a copy of this order, their options may be considered on merits and steps may be taken to regularise them against the posts which may be vacant in these units at present. Also if

such posts are lying vacant in other FWI Units in the same division, where there are no screened casual labour available to fill up those posts, the applicants may be given option to seek regularisation in those other units also. For this purpose also the applicants shall approach the respondents within a period of two months from the date of receipt of a copy of this order.

10. Subject to the above direction, these applications are disposed of accordingly with no order as to costs.

(O.P. SHARMA)
MEMBER (A)

(Gopal Prishna)
MEMBER (J)