

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH

GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

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O.A/T.A No. 209/2007

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SECTION OFFICER (Judl.)

Halil
06.10.17

CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH:

ORDERS SHEET1. Original Application No. 209/072. Mise Petition No. 3. Contempt Petition No. 4. Review Application No. Applicant(s) Dinamohit Xadav & Ors vs. Union of India & OrsAdvocate for the Applicants: - , B. Devi, H.K.D.A.

Advocate for the Respondents: - Railway advocate

| Notes of the Registry | Date | Order of the Tribunal |
|--|--------|---|
| 1. Application is in form is I.A.C.F. for Rs. 50/- deposited vide IPO/BD No. 346 6547 93 Dated 28.7.07 | 2.8.07 | Judgment delivered in open Court. Kept in separate sheets. Application is disposed of. No costs. Vice-Chairman |

Registar

Petitioners L.P.N's for issue
notices are not received
with envelops.

Received copy for
applicants

13.8.07
Copy of the judgment
handed over to the
L.P.N. for the Registrars
R. B. Debi
for R.W.S.C.

3

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

O.A. No.209 of 2007

DATE OF DECISION: 02.08.2007

Sri Dinanath Yadav & 32 Others

.....Applicant/s
Ms.B.Devi

..... Advocate for the
Applicant/s.

- Versus -

U.O.I. & Ors

.....Respondent/s

Dr.J.L.Sarkar, Railway Standing Counsel.

.....Advocate for the
Respondents

CORAM

THE HON'BLE MR. K.V. SACHIDANANDAN, VICE CHAIRMAN

1. Whether reporters of local newspapers may be allowed to see the Judgment?

Yes/No

2. Whether to be referred to the Reporter or not?

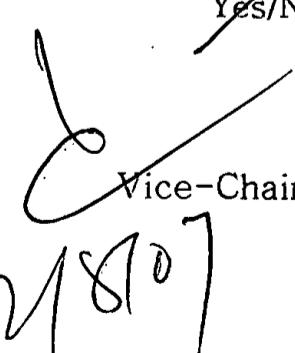
Yes/No

3. Whether to be forwarded for including in the Digest Being compiled at Jodhpur Bench & other Benches ?

Yes/No

4. Whether their Lordships wish to see the fair copy of the Judgment?

Yes/No


Vice-Chairman

218(07)

✓

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Original Application No. 209 of 2007

Date of Order: This, the 2nd day of August, 2007.

THE HON'BLE MR. K.V.SACHIDANANDAN, VICE CHAIRMAN.

1. Sri Dinanath Yadav, S/o Badari Yadav
2. Sri Madhu Ram Kalita, S/o Rupeswar Kalita
3. Sri Bishny Yadav, d/o Baiju Yadav
4. Sri Ganesh Rai, s/o Yogendra Rai
5. Sri Rukma Rabha, s/o Haridhan Rabha
6. Sri Dwipen Rabha, s/o Praneswar Rabha
7. Sri Bikash Das, S/o Lakhi Ram Das
8. Sri Jayanta Kalita, S/o Jogesh Ch. Kalita
9. Sri Bolo Ram ^{Das} ~~Kakiba~~, S/o Bali Ram Das
10. Sri Paban Das, S/o Hiren Das
11. Sri Chandan Nath, S/o Sova Ram Nath
12. Sri Dipak Ch. Das, S/o Kali Ram Das
13. Sri Bhabananda Das, S/o Gobinda Das
14. Sri Durga Rajbhar, S/o Mahesh Rajbhar
15. Sri Amarjit Paul, S/o S.R.Paul
16. Sri Anjali Das, S/o Bali Ram Das
17. Sri Megha Sarkar, S/o Anukul Sarka
18. Sri Paban Das, S/o Swijen Das
19. Sri Rajib Das, S/o Sridhar Das
20. Sri Samsul Ali, S/o Siddik Ali
21. Sri Lalan Choudhury, S/o Niranjan Choudhury
22. Sri Brojen Kr.Das, S/o Ananda Ram Das
23. Sri Jitumoni Saikia, S/o Purnananda Saikia
24. Sri Jeherul Islam, S/o Md. Abdul Kuddus
25. Sri Deba Kanta Das, S/o Dandi Ram Das

✓

26. Sri Dhiraj Das, S/o Uddhab Das
27. Sri Anjan Kalita, S/o Ghanashyam Kalita
28. Sri Dilip Kalita, S/o Guda Kalita
29. Sri Gautam Kalita, S/o Prafulla Kalita
30. Sri Prafulla Rajbongshi, S/o Durga Rajbonshi
31. Sri Umesh Ch. Das, S/o M.R.Das
32. Sri Anil Das, S/o K.M.Das
33. Sri Dhiren Das, S/o P.K.Das

All of them are Ex-Casual Labourers in the Bongaigaon Division, (BB/CON), N.F.Railway.

..... Applicants

By Advocates Ms. B.Devi & Mr.H.K.Das.

- Versus -

1. Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-781 011.
2. The General Manager (Construction)
N.F.Railway, Maligaon
Guwahati-781 011.
3. The Divisional Railway Manager (P)
Bongaigaon Division, N.F.Railways
Bongaigaon.

...Respondents.

By Dr.J.L.Sarkar, Railway Standing Counsel.

O R D E R (ORAL)

SACHIDANANDAN, K.V. (V.C.) :

The Applicants, 33 in number, are ex-casual workers under N.F.Railway. Their claim is that they



were engaged by the Respondents way back on or before 1984. According to them, they worked in various places under Bongaigaon Division as Khalasi. While working as such, the Applicants made request before the concerned authority for their regularisation and accordingly the said authority took up their cases for conversion to regular employee by granting temporary status to them as per law. But all of a sudden the Respondents instructed the Applicants not to attend the office any more. The Applicants claimed that as per rule the Respondents are bound to maintain a live register of the casual and ex-casual workers to provide work as per their seniority. But it appears that the Respondents are not strictly following the same. As a result of non-maintenance of such register the Applicants are deprived of any regular work and their due claims of regularisation. Being aggrieved by the such inaction on the part of the Respondents, the Applicants have filed this O.A. under Rule 4(5)(a) of the CAT (Procedure) Rules, 1987 seeking the following main relief:-

“8.1 To direct the Respondents to appoint the applicants against Group-D posts as has been done in



case of similarly situated employees."

2. Heard Ms.B.Devi, learned counsel for the Applicants and Dr.J.L.Sarkar, learned Standing counsel for the Railways.

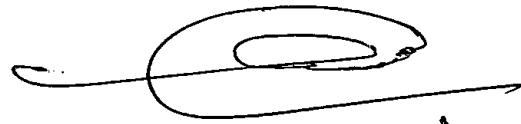
3. When the matter came up for consideration, Ms.B.Devi, learned counsel for the Applicants submitted that she will be satisfied if the Applicants are directed to submit comprehensive representations individually before the Respondent No.3 and upon receipt of the same the said Respondent may be directed to consider and dispose of the same in the light of the order dated 14.06.2007 passed in identical O.A. No.281/2005 and other O.A.s by passing appropriate orders within a time frame. Dr.J.L.Sarkar submitted that Respondents would have no objection in adopting such course of action since certain directions have already been issued in identical O.A. No.281-2005 & other O.A.s to the Respondents to consider the cases of the Applicants therein by constituting a responsible Committee.

4. Accordingly, in the interest of justice, the Applicants are directed to file comprehensive

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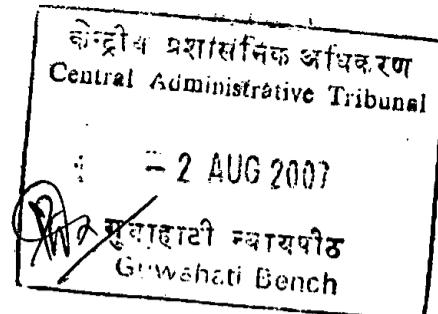
representation individually along with the copies of this order and the O.A. with all Annexures before the Respondent No.3 within a period of one month from the date of receipt of this order. If such representations are filed, the Respondent No.3, or any other competent authority, shall consider and dispose of the same in the light of the directions issued in Annexure-5 order of the O.A. passed in identical O.A. No.281/2005 and other O.A.s and pass appropriate orders communicating the same to the Applicants within a period of four months from the receipt of the individual representation.

5. The Original Application is disposed of as above at the admission stage itself. In the circumstances, there shall be no order as to costs.



(K.V. SACHIDANANDAN)
VICE CHAIRMAN

/LM/



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH.

197/07
209
O.A. No. of 2007

BETWEEN

Sri Dinanath Yadav & Ors. Applicants.

AND

Union of India & ors. Respondents.

SYNOPSIS

The applicants are ex-casual worker under Railway. All of them were engaged on or before 1984. They worked in various places under Bongaigaon Division as Khalasi. The applicants during their service tenure made request to the concerned authority for their conversion to regular employee and accordingly and the concerned authority took up their cases for conversion to regular employee by conferring temporary Status as per law. Suddenly the respondents instructed the applicants verbally not to attend office any more. Even after such discharge the applicants continued to perform their duties with some artificial breaks.

As per rule the respondents are duty bound to maintain a live register of the casual and ex-casual workers to provide work as per their seniority.

In the instant case the applicants have not been provided with regular work as per their seniority. Non-maintenance of such register deprived the applicants their due claims of regularisation. Hence this application.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Title of the case : D.A. No 209 of 2007

BETWEEN

Shri Dinanath Yadav & Ors. Applicants.

AND

Union of India & ors. Respondents.

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Filed by : SS Regn. No. :

File : WS7/dinanath

Date : 2.8.07

Filed by
The applicants
through
Hm'lip. Dr. Bas. to
Adv. Sadi
2.8.07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL

GUWAHATI BENCH : GUWAHATI

(An application under section 19 of the Central Administrative
Tribunal Act, 1985)

O.A. No. 209 of 2007

Between

1. Sri Dinanath Yadav, s/o Badari Yadav,
2. Sri Madhu Ram Kalita, s/o Rupeswar Kalita.
3. Sri Bishny Yadav, d/o Baiju Yadav.
4. Sri Ganesh Rai, s/o Yogendra Rai.
5. Sri Rukma Rabha, s/o Haridhan Rabha.
6. Sri Dwipen Rabha, s/o Praneswar Rabha
7. Sri Bikash Das, s/o Lakshi Ram Das
8. Sri Jayanta Kalita, s/o Jogesh ch. Kalita.
9. Sri Bolo Ram Das, s/o Bali Ram Das.
10. Shri Paban Das, s/o Hiren Das.
11. Sri Chandan Nath, s/o Sova Ram Nath.
12. Sri Dipak Ch. Das, s/o Kali Ram das.
13. Sri Bhabananda Das, s/o Gobinda Das.
14. Sri Durga Rajbhar, s/o Mahesh Rajbhar.
15. Sri Amarjit Paul, s/o S. R. Paul.
16. Sri Anjali Das, s/o Bali Ram Das.
17. Sri Megha Sarkar s/o Anukul Sarkar.
18. Sri Paban Das. s/o Swijen Das.
19. Sri Rajib Das. s/o Sridhar Das.

20. Sri Samsul Ali, s/o Siddik Ali.
21. Sri Lalan Choudhury, s/o Niranjan Choudhury.
22. Sri Brojen Kr. Das, s/o Ananda Ram Das.
23. Sri Jitumoni Saikia, s/o Purnananda Saikia.
24. Sri Jeherul Islam, s/o Md. Abdul Kuddus.
25. Sri Deba Kanta Das, s/o Dandi Ram Das.
26. Sri Dhiraj Das, s/o Uddhab Das.
27. Sri Anjan Kalita, s/o Ghanashyam Kalita.
28. Sri Dilip Kalita, s/o Guda Kalita.
29. Sri Gautam Kalita, s/o Prafulla Kalita.
30. Sri Prafulla Rajbongshi, s/o Durga Rajbonshi.
31. Sri Umesh Ch. Das, S/o M.R. Das.
32. Sri Anil Das, s/o K.M. Das.
33. Sri Dhiren Das, s/o P.K. Das.

~~2~~ All Ex-Casual Labourers in the Bongaigaon
Division, (BB/CON), N.F.Railway

... Applicants.

- AND -

1. Union of India,
represented by the General Manager,
N.F.Railway, Maligaon, Guwahati-11.
2. The General Manager (Construction)
N.F.Railway, Maligaon, Guwahati-11.

3. The Divisional Railway Manager (P)

Bongaigaon Division, N.F.Railways,
Bongaigaon.

..... Respondents

DETAILS OF APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THE APPLICATION IS MADE:

This application is not directed against any specific order but directed against the inaction on the part of the respondents in ignoring the cases of the applicants towards granting the benefit of regularisation in terms of the policy decision adopted by them, whereas under the same fact situation persons similarly situated have been granted the said benefit.

2. JURISDICTION

The applicants declare that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The applicants further declare that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE

4.1. That the applicants are citizens of India and permanent residents in the State of Assam and as such they are entitled to all the rights, protections and privileges guaranteed under the Constitution of India. The applicants mostly belong to the Scheduled Caste and Scheduled Tribe Community and as such they are entitled to the Special privileges guaranteed under the Constitution of India & the laws framed thereunder.

The applicants are all Ex-casual Labourers and their grievances, subject matter and the relief sought for in this application are similar in nature. Therefore, the applicants crave leave of the Hon'ble Tribunal to allow them to join together in a single petition, invoking its power under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.2. That the applicants on being selected were engaged by the Respondents as Casual Mazdoors. The applicants joined their duties on various dates and discharged the responsibilities entrusted to them to the best of their ability and without blemish from any quarter. During their services under the Respondents, the applicants acquired the eligibility for conferment of the benefits of Temporary status as well as other benefits admissible under the law.

4.3. That the applicants who belong to the most economically backward sections of the society, discharged their duties under the Respondents without any blemish from any quarter and from the earning so derived by them they somehow managed to maintain their families. Poised thus, the applicants were discharged from their respective services on different dates by the Respondents.

The applicants who did not know about their rights and the protections available to them against the arbitrary action on the part of the Respondents, could not protest against the same. The modus operandi adopted by the Respondents was that the applicants were verbally asked not to come to work and no written orders were issued in this connection. Even after discharge from their services, the applicants continued to serve under the Respondents in various projects launched by the authorities. This was done only to frustrate their future claim of regularisation.

A chart showing the service particulars of the applicants is annexed herewith and marked as ANNEXURE-1.

4.4. That your applicants state that a procedure is in practice in the Railways wherein a live Register is maintained incorporating therein the names of all casual Mazdoor in order of seniority. Names of discharged employees also find place in the said register and future vacancies in Grade-D posts are filled up from this live Register and the persons whose names figured in the said Register is to be given preference. By virtue of their services under the Respondents the names of the applicants also figure in the Live/Supplementary Register.

4.5. That your applicants state that upon pressure being mounted upon the Respondents by various organizations engaged in fighting for the rights of the applicants and the repeated pleas made by similarly situated persons, the respondents in order to clear the back log of SC/ST in Group 'D' vacancies initiated a special recruitment drive. As directed, the applicants preferred individual applications expressing their willingness for being

considered and for being appointed against any Group-D post. Basing upon the applications so received a list of such persons was prepared. In the said list the service particulars of the persons concerned were also furnished. Further a supplementary list was prepared wherein the names of the applicants and their service particulars were mentioned. Mere perusal of the statement showing the service particulars of the applicants would go to show that the applicants had the requisite number of working days entitling them to the benefits of Temporary status and regularisation.

4.6. That the respondents on receipt of the representations from the applicants as well as from the organisations/Union espousing their cause decided to regularise the services of casual workers including the present applicants. The railway administration to that effect issued instructions to all its wings for furnishing necessary information regarding absorption of the applicants and other similarly situated persons against the available Group-D vacancies. In this connection it will not be out of place to mention here that in response to such a move/decision the Divisional authorities of various wings of the Railways started collecting data and furnished the same to the concerned authority. After verification and cross verification of the records pertaining to the service rendered by the said persons, the office of the Respondent No.2 vide letter under Memo No.E/57/CON/(SC/ST) dated 24.4.95 confirmed the service particulars of all the persons referred to it, which includes the applicants.

The applicants crave leave of this Hon'ble Tribunal to place the said communications at the time of hearing of the case.

4.7. That after the aforesaid development, the office of the Respondent No.2 furnished the full service particulars of the ex-casual labourers (ST/SC) as indicated in the enclosed proforma. As regards the General Manager's approval, it was stated that the case was under scrutiny. The applicants further submitted that their names figured amongst the 120 Nos of persons in the said list and the services of the applicants who worked in the Construction organization having also been approved they were under the legitimate expectation that necessary approval of the General Manager, N.F.Railways would be obtained as regards their initial appointments.

4.8. That after confirmation of their service particulars, the only hindrance in regularisation of their services was the approval (Ex-post facto) of the G.M., N.F.Railways. At the relevant point of time Ex-post facto approval was accorded to persons similarly situated like the applicants. The services of persons similarly situated like the applicants having been granted Ex-post facto approval, there existed any earthly reason for not accordinng the same to the applicants and for absorbing them against the vacancies available in Grade 'D' posts. Be it stated here that sufficient number of vacancies exist under the respondents against which the applicants can be easily accommodated.

4.9. That after verification and cross verification the office of the Respondent No.2, confirmed the service particulars of the persons referred to them. As the names of the applicants were not forwarded to the said wing they were denied of opportunity of having their service particulars confirmed and



thereby have lost the opportunity of being considered for appointment on regular basis, whereas similarly situated persons got their appointments.

4.10. That your applicants state that the service particulars of similarly situated persons were confirmed by the Respondent No.2 and their cases were processed for grant of Ex-post facto approval by the General Manager. The applicants were assured that the same process would be initiated in their cases shortly. Basing on the assurances given to them from time to time the applicants were under the legitimate expectation that their cases for appointment on regular basis would be processed shortly by the respondents.

4.11. That your applicants state that the Respondents having utilised their services, now can not deny to them their due service benefits. It is not understood as to why a differential treatment is being meted out to the applicants as regards grant of approval to their initial appointment. The list wherein the names of the applicants figured having been verified and the service particulars of the candidates having been stated to be confirmed, there exists no reason for not granting the due benefits to the applicants.

4.12. That on the back drop of the said facts, number of the Ex-casual labourers who were similarly situated like the applicants approached this Hon'ble Tribunal by way of an O.A. being O.A. No.79/96 interalia praying for a direction for their absorption against the back log vacancies available for SC/ST candidates. This Hon'ble Tribunal upon hearing the parties was pleased to dispose of the said Original Application with a

direction to the Respondents to consider the cases of the applicants, thereto and to take a decision as regards their appointment within the time limit specified therein.

4.13. That your applicants state that the applicants in O.A. 79/96 preferred representations as directed but the same were not attended to. But ultimately the Respondents in the month of December, 1999 issued call letters to persons similarly situated like the applicants on pick and choose basis, for attending a Screening for absorption against Group 'D' posts. But the applicants whose names were also figured in the said list were not issued with any call letters and were kept in dark about the said process. The whole exercise was carried out behind the back of the applicants.

4.14. That your applicants state that although they are similarly situated with the applicants in the O.A. 79/96 their cases were not considered in the Screening held and as such they were deprived of an opportunity for consideration of their cases for appointment on regular basis under the respondents. The persons who were called for screening, were selected for appointment against Grade 'D' posts vide memorandum dated 21.4.2000. Be it stated here that amongst the persons so selected include persons who had joined their services under the respondents along with the applicants and/or were junior to the applicants and as such the applicants were discriminated in the matter of public employment.

4.15. That your applicants state that the persons screened and selected vide memorandum dated 21.4.2000 were appointed against vacancies available in Group 'D' posts and for

this necessary post facto approval was also granted by the G.M., N.F.Railways. But the applicants who were similarly situated were deprived of this benefit.

4.16. That the applicants on coming to learn about the deprivation being meted out to them as regards their appointment, took up the matter with the All India Scheduled Caste and Schedule Tribes Railway Employees Association, who in turn brought the deprivation being meted out to the applicants before the National Commission for SC and ST. The organizations thought for the rights of the applicants in the National Commission for SC and ST. The organizations fighting for the rights of the applicants, have all along been requesting the respondents to take steps for appointing all the Ex-casual labourers on regular basis. Be stated here that the names of the applicants were also recommended and submitted by the organizations fighting for the rights of the applicants.

4.17. That your applicants state that in spite of repeated requests from the organizations involved for getting justice to the applicants, the Respondents have failed to take any action for considering the cases of the applicants in tune with the consideration done in case of 49 similarly situated persons. Due to discriminatory attitude adopted by the Respondents the applicants continued to suffer.

4.18. That your applicants state that there is no dispute as regards the fact that they were engaged as casual labourers, at different points of time, by the respondents and they having expressed their willingness for being appointed against any Group-D vacant posts, it was the duty of the

respondents to take necessary steps for considering the cases of the applicants for such appointment. The pick and choose method adopted by the respondents in this connection has resulted in the discrimination in the matter of public employment.

4.19. That pending consideration of the case of the applicants, the Respondents have issued an advertisement inviting application from fresh candidates for filling up vacant post of Track man, under a special recruitment drive for SC & ST. A total of 595 vacancies have been advertised. The applicants who are ex-casual labourers are entitled to preference in matters of appointment. The Respondents ought to have first cleared the list of Ex-casual labourers and thereafter are required to consider the case of fresh candidates.

4.20. That your applicants state that some similarly situated persons approached this Hon'ble Tribunal for non-consideration of their cases by way of OA No.261/06, 262/06 263/06 praying for a direction towards the Respondents to consider their cases for any Group-D post and to appoint them against vacant group-D posts available for filling up SC/ST backlog vacancies. The applicants also made prayer for a direction to the General Manager N.F.Railway, Maligaon to issue necessary approval towards the appointment of the applicants.

That the applicants state that the Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said OAs vide common judgment and order dated 14.6.07 directing the respondents to constitute a responsible committee to verify the records of the applicants thereto and thereafter to pass appropriate order as per the judgment and order dated

19.7.85 (Annexure-3).

A copy of the said judgment and order dated 14.6.87 is annexed herewith and marked as ANNEXURE-2.

4.21. That the applicants beg to state that after passing of the aforesaid judgment and order dated 14.6.87 passed in OA No.261/86 and Ors., they preferred representations to the respondents praying for consideration of their cases also for absorption as Group-D employee along with the applicants in OA No.261/86 and Ors as they are similarly situated with those persons. But the respondents have not yet replied to the said representations filed by the applicants.

A copy of one of such representation filed by the applicants is annexed herewith and marked as ANNEXURE-3.

The applicants crave leave of the Hon'ble Court to produce the other representations at the time of hearing of the case.

4.22. That the applicants beg to state that their cases are squarely covered by the above noted judgment and order dated 14.6.87 as they are similarly situated like that of applicants in OA No.261/86 and ors. Therefore the applicants in the instant application also pray for a similar direction as has been passed in OA No.261/86 and ors. In the event of passing the similar order as has been prayed for, it will be just, proper and adequate, otherwise the applicants will suffer irreparable loss and injury.

4.23. That this application has been filed bonafide for securing the ends of justice.

5. GROUNDS FOR RELIEF WITH LEGAL PROVISIONS

5.1. For that the impugned action/inaction on the part of the respondent authorities in denying to the applicants their due appointments is arbitrary, illegal and discriminatory.

5.2. For that the applicants being ex-casual labourers of the Respondents and their names being available in the live/supplementary Register they are entitled to the benefits under the Rules and the Respondents can not discriminate between similarly situated persons.

5.3. For that the Respondents can not take advantage of the fact that the applicants belong to the lower stratum of the society and they are not aware of their rights. All of them being members of ST community are entitled to special privileges.

5.4. For that similarly situated persons having already been considered for appointment and the applicants also being similarly placed cannot be deprived of an opportunity of consideration of their services.

5.5. For that in any view of the matter the impugned action on the part of the respondents is not maintainable and the applicants are entitled to the reliefs prayed for.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicants declare that they have no other alternative and efficacious remedy except by way of filing this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicants further declare that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

8.1. To direct the Respondents to appoint the applicants against Group-D posts as has been done in case of similarly situated employees.

8.2. Cost of the application.

8.3. Any other relief/reliefs that the applicant may be entitled to.



9. INTERIM ORDER PRAYED FOR:

The applicants pray for an interim direction to the respondents not to fill up the any Group-D vacancy without first considering the cases of the applicants till finalization of this OA.

10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O.

- (i) I.P.O. No.: 34G 654793
- (ii) Date: 28.7.07
- (iii) Payable at: Guwahati

12. LIST OF ENCLOSURES:

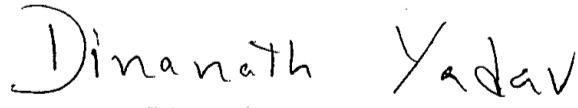
As stated in the Index.

VERIFICATION

I, Shri Dinanath Yadav, aged about 34 years, son of Badari Yadav, presently residing at Village Auguri (2 No Udmori P.O. Amlighat, Dist-Morigaon Assam, do hereby solemnly affirm and state that the statement made in this petition from paragraph 4.1, 4.2 are true to my knowledge and those made in paragraphs 4.3 - 4.20 are matters records which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

I am the applicant No 1 in the present application and I am well acquainted with the facts of the case and I have been authorised by the other applicants to swear this verification.

And I sign this verification on 2th day of August 2007.


Signature

Name and address with Bio-Data of Ex/CL Worked under XEN/BG/CON/BNGN of 6 (Six) Line Project, N.F. Railway.

| Sl. No. | Name | Father's Name | D.O.B. | D.O.A. | Date of Discharged | Under whom worked | Home Address |
|---------|------------------|--------------------|----------|----------|--------------------|-------------------|--|
| 1. | Dinanath Yadav | Badari Yadav | 05-09-67 | 16-03-87 | 31-12-87 | PWI/BG/CON/BNGN | Vill: Auguri (2 No. Udmori) P.O. Amlighat, Dist. Morigaon (Assam), PIN-782410 |
| 2. | Madhu Ram Kalita | Rupeswar Kalita | 06-02-69 | 15-03-87 | 31-12-87 | -DO- | C/O. Monoj Kumar, Vill: Sundarbari, P.O. Ghy-14, Dist. Kamrup (Assam) |
| 3. | Bishny Yadav | Baiju Yadav | 02-09-67 | 16-03-87 | 31-12-87 | -DO- | C/O. Ramdhari Yadav, Vill: Auguri, P.O. Amlighat, Via. Jagiroad, Dist. Morigaon. |
| 4. | Ganesh Rai | Yogendra Rai | 18-07-65 | 16-03-87 | 31-12-87 | -DO- | C/O. Krishna Kanta Das, P.O. & Vill: Sadilapur, Ghy-12 Dist. Kamrup (Assam) |
| 5. | Rukma Rabha | Haridhan Rabha | 05-10-69 | 15-03-87 | 31-12-87 | PWI/BG/CON/BNGN | Vill: Mouman, P.O. Boko, Dist. Kamrup (Assam) |
| 6. | Dwipen Rabha | Praneswar Rabha | 15-10-69 | 16-05-87 | 31-12-87 | -DO- | Vill: Mauman, P.O. Boko, Dist. Kamrup, (Assam) |
| 7. | Bikash Das | Lakshi Ram Das | 01-03-66 | 01-09-84 | 31-03-86 | -DO- | Vill: Pandu Nath Basti, P.O. Pandu, Guwahati-12, Dist. Kamrup (Assam) |
| 8. | Jayanta Kalia | Jogensh Ch. Kalita | 09-04-69 | 15-01-86 | 31-12-88 | -DO- | Vill: Kayapatti, P.O. Jogighopa, Dist. Bongaigaon (Assam) |
| 9. | Balo Ram Das | Bali Ram Das | 01-09-66 | 01-09-84 | 31-03-86 | -DO- | Vill: Pandu Nath Basti, P.O. Pandu, Guwahati-12, Dist. Kamrup (Assam) |
| 10. | Paban Das | Hiren Das | 14-07-87 | 17-02-87 | 31-12-87 | PWI/BG/CON/BNGN | Vill: Pandu Sadilapur, P.O. Sadilapur, Guwahati-12, Dist. Kamrup (Assam) |

Contd.....2

Attester
SD

| Sl. No. | Name | Father's Name | D.O.B. | D.O.A. | Date of Discharged | Under whom worked | Home Address |
|---------|----------------|----------------|----------|----------|--------------------|-------------------|---|
| 11. | Chandan Nath | Sôva Ram Nath | 03-03-69 | 03-05-86 | 31-12-87 | -DO- | Vill: Pasduar, P.O. Abhayapuri, Dist. Bongaigaon (Assam) |
| 12. | Dipak Ch. Das | Kali Ram Das | 21-01-69 | 15-01-87 | 31-12-87 | -DO- | Vill: Ambari, P.O. Bhattapara, P.S. Palashbari, Dist. Kamrup (Assam) |
| 13. | Bhabananda Das | Gobinda Das | 01-09-69 | 12-11-86 | 31-03-87 | -DO- | Vill: Pandu Sadilapur, P.O. Sadilapur, Guwahati-12, Dist. Kamrup (Assam) |
| 14. | Durga Rajbhar | Mahesh Rajbhar | 21-01-69 | 15-07-87 | 31-12-87 | PWI/BG/CON/BNGN | Vill: Ghunusha (New Market) P.O. Jagiroad, Dist. Morigaon, (Assam) PIN-782460 |
| 15. | Amarjit Paul | S.R. Paul | 11-03-68 | 13-11-87 | 15-07-88 | -DO- | C/O. Ranjit Dey, Lumding Loco Colony, Dist. Nagaon (Assam) |
| 16. | Anjali Das | Bali Ram Das | 19-03-68 | 16-02-87 | 31-12-87 | -DO- | Vill: Pandu Nath Basti, P.O. Pandu, Guwahati-12, Dist. Kamrup (Assam) |
| 17. | Megha Sarkar | Anukul Sarkar | 06-05-69 | 16-02-87 | 31-12-87 | -DO- | C/O. Krishna Kumar Das, P.O. Maligaon, Guwahati-11, Dist. Kamrup (Assam) |

| Sl. No. | Name | Father's Name | D.O.B. | D.O.A. | Date of Discharged | Under whom worked | Home Address |
|---------|-----------------|--------------------|----------|----------|--------------------|-------------------|--|
| 18. | Paban Das | Swijen Das | 09-08-69 | 03-07-86 | 31-10-87 | PWI/BG/CON/BNGN | Vill: Pandu Sadilapur, P.O. Sadilapur, Guwahati-12, Dist. Kamrup (Assam) |
| 19. | Rajib Das | Shridhar Das | 11-02-67 | 15-02-87 | 31-12-87 | -DO- | Vill: Pandu Sadilapur, P.O. Sadilapur, Guwahati-12, Dist. Kamrup (Assam) |
| 20. | Samsul Ali | Siddik Ali | 21-11-67 | 15-02-87 | 31-03-87 | -DO- | Vill: Agathuri, P.O. Dadara, Dist. Kamrup (Assam) |
| 21. | Lalan Choudhury | Niranjan Choudhury | 06-02-67 | 15-02-87 | 31-12-87 | PWI/BG/CON/BNGN | Vill: Mathgharia, P.O. Narengi, Dist. Kamrup (Assam) |
| 22. | Brojen Kr. Das | Ananda Ram Das | 04-04-68 | 03-02-87 | 20-07-88 | -DO- | Vill: Pandu Sadilapur, P.O. Sadilapur, Guwahati-12, Dist. Kamrup (Assam) |
| 23. | Jitumoni Saikia | Purnananda Saikia | 19-03-68 | 06-02-87 | 31-12-87 | -DO- | Vill: Dhing Chariali, P.O. Dhing, Dist. Nowgaon (Assam) |
| 24. | Jeherul Ismal | Md. Abdul Kuddis | 09-02-63 | 03-07-86 | 31-10-87 | -DO- | Vill: Garigaon, P.O. Garigaon Guwahati-14, Dist. Kamrup (Assam) |
| 25. | Deba Kanta Das | Dandi Ram Das | 05-01-69 | 03-05-87 | 31-12-87 | -DO- | Vill: Rangia (Jarowakuchi) P.O. Rangia, Dist. Kamrup (Assam) |

Contd.....4

| Sl. No. | Name | Father's Name | D.O.B. | D.O.A. | Date of Discharged | Under whom worked | Home Address |
|---------|---------------------|------------------|----------|----------|--------------------|-------------------|---|
| 26. | Dhiraj Das | Uddhab Das | 05-03-69 | 15-03-86 | 13-12-87 | -DO- | Vill: Rangia (Jayantipur) P.O. Rangia, Dist. Kamrup (Assam) |
| 27. | Anjan Kalita | Ghanshyam Kalita | 15-02-67 | 16-02-87 | 31-12-87 | -DO- | Vill: Hahdia, P.O. Uzankuri, Dist. Kamrup (Assam) |
| 28. | Dilip Kalita | Guda Kalita | 07-02-66 | 01-02-84 | 02-12-87 | -DO- | Vill: Hahdia, P.O. Uzankuri, Dist. Kamrup (Assam) |
| 29. | Gautam Kalita | Prafulla Kalita | 18-10-69 | 01-10-87 | 31-12-87 | -DO- | Vill: Hadala, P.O. Geruah, Dist. Kamrup (Assam) |
| 30. | Prafulla Rajbongshi | Durga Rajbongshi | 03-11-68 | 15-02-87 | 31-12-87 | -DO- | Vill: Khudra Hazara, P.O. Bezara, Dist. Kamrup, (Assam) |
| 31. | Umesh Ch. Das | M.R. Das | 01-04-68 | 15-03-86 | 31-12-86 | -DO- | Vill: Bonglagarh, P.O. Changsari, Dist. Kamrup, (Assam) |
| 32. | Anil Das | K. M. Das | 09-04-67 | 03-01-86 | 31-12-87 | -DO- | Vill: Niz Hajo, P.O. Hajo, Dist. Kamrup (Assam) |
| 33. | Dhiren das | P. K. Das | 17-02-67 | 03-01-86 | 31-10-87 | -DO- | Vill: Padunbari, P.O. Gotanagar, Dist. Kamrup (Assam) |

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

30

[1] O.A. No. 281 of 2005

[2] O.A. No. 261 of 2006

[3] O.A. No. 262 of 2006

[4] O.A. No. 263 of 2006

Date of decision, this day the 14 of June, 2007

CORAM: The Hon'ble Shri K.V.Sachidanandan, Vice-Chairman

[1] O.A. No. 281 of 2005

1. Sri Ajant Boro, s/o sri Moniram Boro.
2. Sri Bires Ch.Boro, s/o sri Jogen Boro.
3. Sri Dilip Choudhury, s/o sri Rameshwar Choudhary.
4. Sri Rabindra Boro, s/o sri Chandra Kt.Boro.
5. Sri Lachit Kr.Basumotory, s/o sri Pura ram Basumotary.
6. Sri Pabitra Wary, s/o sri Mahim Wary.
7. Sri Ram Nath Thakuria, s/o Sri Dayal Thakuria.
8. Sri Moni Rani Boro, s/o Umesi Boro.
9. Sri Jiten Boro, s/o Bipin Boro.
10. Sri Upen Boro, s/o Bhanda Boro.
11. Sri Rajen Swargiary, s/o Haloi Ram Swaragiary.
12. Sri Makthang Daimary, s/o Langa Daimary.
13. Sri Ratan Ch. Boro, s/o Late Jamuna Boro.
14. Sri Kartik Narzary, s/o Baya Ram Narzary.
15. Sri Warga Ram Daimary, s/o Maya Ram Daimary.
16. Sri Bipul Ramchiary, s/o Sri Agin Ramchiary.
17. Sri Monoa Kr. Basumatary, s/o Sri Jageswar Basumatary.
18. Sri Lalit Ch. Boro, s/o Sri Durga Boro.
19. Sri Girish Ch. Basumatary, s/o Sri Sambar Basumatary.
20. Sri Maheswar Boro, s/o Late Benga Boro.
21. Sri Budhan Ramchiary, s/o Sri Madhab Ranchiary.
22. Sri Ananta Shargiary, s/o of Late Bimal Shargiary.
23. Sri Bipin Daimary, s/o Sri Nabin Daimary.
24. Sri Kanistha Basumatary, s/o Sri Jogendra Basumatary.
25. Sri Samala Boro, s/o Hasa Ram Boro.
26. Sri Bapa Ram Boro, s/o Sri Mohan Boro.
27. Sri Lakhi Boro, s/o Nawa Boro.
28. Sri Achut Ramchiary, s/o Rajen Ramchiary.
29. Sri Nanci Daimary, s/o Japra Daimary.
30. Sri Dinesh Ch.Boro, s/o Ana Boro.

Applicants

By Advocate: Mr. B. Sarma



Attested

Advocate

Versus

1. The Union of India, represented by the General Manager, N.F.Railway, Maligaon, Guwahati-11
2. The General Manager [Construction], N.F.Railway, Maligaon Guwahati-11.
3. The Divisional Railway Manager (P) Alipurduar Division, N.F.Railway, Alipurduar.

Respondents

By Advocate: Mr. K.K. Biswas

[2] O.A. No. 261 of 2006

1. Sri Habul Ghosh.
2. Sri Haren Das.
3. Sri Kishor Kumar Mandal.
4. Sri Biren Boro.
5. Sri Maina Boro.
6. Sri Kripa Tewary.
7. Sri Praip Sarma.
8. Sri Paneswur Boro.
9. Sri Nagendra Boro.
10. Sri Anil Kalita.
11. Sri Bhogi Ram Basumatary.

All are ex-casual labourers working under the respondents.

By Advocate: Mr. H.K. Sarma

Applicants

Versus

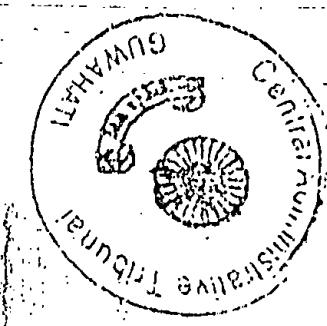
1. The Union of India, represented by the General Manager, N.F.Railway, Maligaon-Guwahati-11.
2. The General Manager [Construction], N.F.Railway, Maligaon, Guwahati-11.
3. The Divisional Railway Manager (P) Alipurduar Division, N.F.Railway, Alipurduar.

Respondents

By Advocate: Mr. K.K. Biswas.

[3] O.A. No. 262 of 2006

1. Sri Suren Ramcharay
2. Sri Ratan Boro



3
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3. Sri Mizing Brahma.
4. Sri Rajit Brahma
5. Sri Jaidev Swargiary.
6. Sri Naren Ch.Basumatary.
7. Sri Raj Kumar Mandal.
8. Sri Biren Baishya.
9. Sri Angat Das.
10. Sri Radhe Shyam Mandal.
11. Sri Monilal Nurzary.
12. Sri Swargo Boro.
13. Sri Ramesh Ch.Boro.
14. Sri Biren Baishya.
15. Sri Jogendra Pasi.
16. Sri Ramjit Das.
17. Shri Naren Ch.Boro.

All Ex-Casual Labourers in the Alipurduwar Division,
N.F.Railway.

Applicants

By Advocate: Mr. H.K. Sarma

Versus

- 1 Union of India, represented by the General Manager,
N.F.Railway, Maligaon, Guwahati-11.
2. The General Manager [Construction], N.F.Railway, Maligaon
Guwahati-11.
3. The Divisional Railway Manager[P] Alipurduwar
Division, N.F.Railway, Alipurduwar.

Respondents

By Advocate: Mr. K.K. Biswas.

[4] O.A.No. 263 of 2006

1. Sri Dhaneswar Rahang
2. Sri Lohit Ch.Boro.
3. Sri Rati Kanta Boro.
4. Sri Monorangen Dwaimary.
5. Sri Manteswar Boro.
6. Sri Joy Ram Boro.
7. Sri Haricharan Basumatary
8. Sri Durga Ram Daimary
9. Sri Sabjib Boro
10. Shri Khargeswar Swargiary
11. Sri Pradip Kr. Boro

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12. Sri Ugen Narzary.
13. Sri Tarun Ch. Boro
14. Sri Ramesh Ch. Ramchiary
15. Sri Monoranjan Deori.
16. Sri Ram Nath Pathak.
17. Sri Gopal Basumatary.
18. Sri Malin Kr. Das.
19. Sri Ranhit Swargiary.
20. Sri Ratna Kanta Boro
21. Sri Nirmal Kr. Brahma
22. Sri Monoj Das.
23. Sri Mrinal Das
24. Sri Sanjay Kr. Narzary
25. Sri Pankaj Baruah
26. Sri Ajit Kr. Sarania.
27. Sri Sunil Ch. Boro.
28. Sri Bipin Ch. Boro.
29. Sri Nepolin Lahary
30. Sri Rajen Daimary
- ✓ 31. Sri Asnuma Swargiary.
32. Sri Suren Daimary
33. Sri Raju Borah
34. Sri Pradip Das
35. Sri Robin Dwaimary
36. Sri Pradib Boro
37. Sri Chandan Dev Nath
38. Sri Kamaleswar Boro
39. Shri Phukan Boro
40. Sri Krishna Ram Boro
41. Sri Ratneswar Boro

All Ex-Casual Labourers in the Alipurduwar Division
[BB/Con], N.F.Railway.



By Advocate: Mr. H.K. Sarma

Applicants

Versus

1. 1. The Union of India, represented by the General Manager, N.F.Railway, Maligaon, Guwahati-11.
2. The General Manager (Construction), N.F.Railway, Maligaon, Guwahati-11.
3. The Divisional Railway Manager (P), Alipurduar Division, N.F.Railway, Alipurduar.

Respondents

By Advocate: Mr. K.K. Biswas

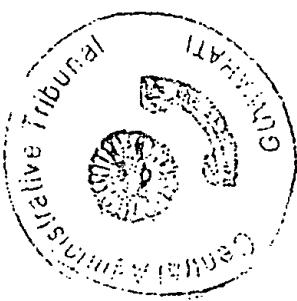
ORDER

K.V.Sachidanandan-Vice-Chairman:

There are 30 applicants in O.A. 281/05, 11 applicants in OA 261/06, 17 applicants in OA 262/06 and 41 applicants in OA 263 of 2006. Most of the applicants had earlier approached this Tribunal in OA No.255 of 2003, O.A.No. 336/04, OA. No.337/04 and O.A.No.338/04. All the applicants are ex-casual labourers under the respondents-Railways in various Divisions and their grievances are identical/similar to appoint them against Group 'D' posts on regularization of their services. They have sought the following identical reliefs:

1. To set aside and quash the impugned orders dated 18.1.04 and 16.3.05 as the same are in violation of the principles of natural justice and not sustainable in the eye of law.
2. To direct the respondents to consider the cases of the applicants and appoint them against vacant Group 'D' posts available for filling up SC/ST backlog vacancies.
3. To direct the respondents to keep the posts vacant for the applicants till consideration for appointment of the applicants.
4. To direct the General Manager, N.F.Railway, Maligaon to issue necessary approval towards the appointment of the applicants.
5. To Direct the respondents to issue necessary order of absorption to each applicant after observing the formalities as prescribed, with retrospective effect that is from the date on which junior to the applicants were absorbed with all consequential service benefits.

2. Since the issue involved in all the four applications are identical and the applicants are identically/similarly placed employees, having a common grievance, these matters are



disposed of by way of one common order with the consent of the parties.

3. The facts of the case are that the applicants were engaged as Casual Labourers in various stations of the N.F.Railway and performed their duties to the satisfaction of all concerned. According to them, the applicants, acquired eligibility for conferment of the benefits of Temporary Status as well as other benefits admissible, under the law. They were entrusted the duties of Khalasi similar to regular Group 'D' employees. The applicants represented to regularize their services as per law but ultimately did not yield in a fruitful result. Thereafter, they were verbally terminated and instructed not to attend office any more.

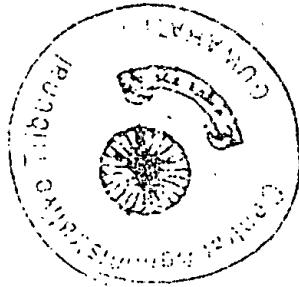
Even after such discharge, the applicants continued to perform their duties with some artificial breaks. During their disengagement and break period, the respondents engaged outsiders as Khalasi with intention to frustrate the claim of regularization of the applicants. The respondents duly maintain a Live Register incorporating therein the names of all Casual Mazdoors in order of seniority. The claim of the applicants is to regularize their services under the provisions of law. Some of the similarly situated Ex-Casual Labourers approached this Tribunal by way of filing O.A. No. 79 of 1996. The Court directed the Railway to consider their cases within a stipulated time. The applicants of the said O.A. have been granted benefit of Temporary Status. The case of the applicants is that though they



are similarly situated to the applicants in O.A.79/96, but their cases were not considered in the screening held by the respondents and as such they were deprived of an opportunity for consideration of their cases for appointment on regular basis under the respondents. The respondents ought to have extended similar benefits to the present applicants and the present applicants were discriminated in the matter of appointment. Several representations made to the authorities did not accede and the N.F. Railway Union also took up their cases through representations and correspondences but till date nothing came in affirmative, and then the present OAs have been filed.

4. The applicants earlier preferred O.A. 255/03, O.A.336/04, O.A.337/04, and O.A.338/04 in which this Court directed the applicants to submit their representations giving the details of their services as far as possible and the respondents were directed to dispose of the same. Copies of the judgments are produced along with the OAs. Some of the applicants were directed to produce documentary evidence relating to Identity Cards and their cases have been rejected on the ground that genuineness of the Identity Cards could not be established, and finally the claims of the applicants were rejected by impugned orders of the respective OAs. These impugned orders are challenged on the ground of being illegal, arbitrary and violative of natural justice.

5. The respondents have filed a detailed reply statement contending that the records produced by the applicants were



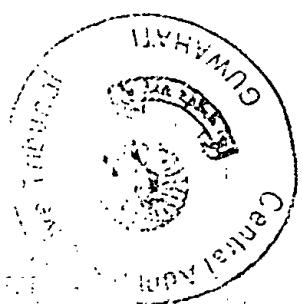
proved to be false, fabricated, frivolous and take. The records produced by the applicants were initially examined by the respondents with the records kept in the office so as to examine the veracity and their genuineness to entertain the claim. The respondents also took the opinion of the Forensic Department. Opinion of the Expert on this aspect are submitted as Annexures 1 and 2 which shows that that the Casual Labour Cards produced by the applicants did not corroborate with the signatures of the applicants in the official records. Therefore, the respondents have stated that the documents produced by the applicants appear to be fake, fabricated and false. This is the second round of litigation on the same subject. The Court in the earlier OAs directed the respondents to dispose of the representations of the applicants. The respondents disposed of their representations after examining their cases on merits, and being aggrieved the applicants filed contempt petitions which were disposed of by the court. The Railway Board directed all the Zonal Railways for an action plan for absorption of all casual labours on roll and whose names were in the live casual labour register/supplementary casual labour register. A drive was launched by the Railway Administration to absorb all the discharged casual labours after verification of representations/applications with the original casual labour certificates of engagement. There was no application for absorption/regularization from the applicants.

6. Casual Labour Card in terms of the instructions of the Ministry of Personnel, Public Grievances and Pensions, it is only kept for three years. In this case, the claim pertains to the year 1984, that is, more than 20 years. Annexure-2 is copy of such circular. After disposal of earlier OAs 255/03, 336/04, 337/04 and 338/04, the applicants are agitating the same matter in these OAs but the matters have been finally disposed of and contempt petitions also closed by this Tribunal. The applications are barred by limitation. The applicants have not approached the respondents to settle their grievances but they have directly approached the Tribunal violating the A.T. Act. On verification of records, the claims of the applicants are not tenable in the eye of law. There is no merit in the OAs and hence the OAs are liable to be dismissed.

7. The applicants, on the other hand, have filed additional affidavit by way of rejoinder, reiterating their contentions producing certain documents in order to establish that they were casual labourers. Photo copies of certain documents establish that they were casual labourers.

8. The respondents have also filed reply to the rejoinder again reiterating that the documents produced by the applicants are fake, fraudulent and their claims are not genuine.

9. The learned counsel appearing for the applicants and the respondents have taken me to various pleadings, evidence and materials placed on record. The learned counsel for the applicants



would argue that the original Casual Labour Cards have already been submitted to the respondents. Therefore, they do not possess the originals of the Casual Labour Cards and only photo copies are available which were produced. The other documents produced by the applicants would prove that the applicants were casual labourers. The photo copies produced by the applicants cannot be questioned since the finding of the Tribunal in the earlier OAs to dispose of the representations of the applicants on the basis of documents produced by the applicants. The respondents, in total violation of the directions of the Tribunal, called for opinion of the Forensic Expert. Moreover, the report of the Forensic Expert had only opined that signatures cannot be compared with the Xerox copies of the documents and, therefore, deliberately and willfully the respondents are denying the right accrued to the applicants.

10. The counsel appearing for the respondents persuasively argued that the documents produced by the applicants are fabricated and not genuine and on the basis of such a situation, the benefit cannot be extended to the applicants.

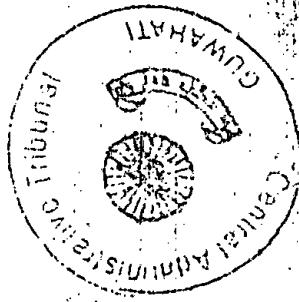
11. I have given due consideration and attention to the materials, evidence and arguments advanced by the learned counsel appearing for the parties. This is not the first round of litigation. Earlier also these applicants had approached this

Tribunal in OA 255/03, OA 336/04, OA 337/04 and OA 338/04. In OA 336/04, a common order has been passed, along with OA

337/04 and 338/04, by a Division Bench of this Court dated 19th

July, 2005. The relevant portion of the said judgment is quoted below:

“5. As already noted, the applicants had earlier approached this Tribunal by filing OA No.259, 44 and 43 of 2002 and this Tribunal had disposed of the said applications by directing the applicants to make representations before the Railways. We find that the Tribunal had specifically considered the contention of the respondents that the claim of the applicants is highly belated. The Tribunal observed that when similarly situated persons have earlier approached the Tribunal and obtained reliefs and were absorbed the applicants cannot be denied the benefits, if they are really entitled to on the ground of delay. It was further observed that when similar nature of orders were passed it was equally incumbent on the part of the respondents to issue notices to all the like persons so that they could also approach the authority for appropriate reliefs. The Tribunal, however, observed that ends of justice will be met if a direction is issued on the applicants also to submit their representations giving details of their services and narrating all the facts within a specified time and if such representations are filed within the time, the respondents shall examine the same as expeditiously as possible and take appropriate decisions thereon within a specified time. One such representation is Annexure-6 in the OA No.336/2004. We are sorry to note that respondents had dealt with the matter in a very casual manner by passing the impugned orders all dated 18.3.2004. The orders only say that the genuineness of the casual labour cards is not established. It is not clear as to whether the applicants were afforded an opportunity by the Railways for establishing the genuineness of the casual labour cards. There is no averment in the written statement in this respect. Further, there is no case for the Railways that they have ascertained the genuineness of the labour cards from the officers who are stated to have issued the cards. From the written statement and from the submission of Dr. Sharma it is clear that the names of the persons who have issued the casual labour cards were very much known to the Railways. Why in such a situation, no such step was taken to verify the genuineness of the casual labour cards with those officers in anybody's guess. We do not want to further comment on the conduct of the Railways. Dr. Sharma has placed before us the identity cards; the records of the officers who had issued the identity cards and also



the records containing the Xerox copies of the casual labour live register. We have perused the said records. We do not want to say anything with regard to the identity cards i.e. as to whether they are genuine and were issued during the relevant period and why the Railways did not make any effort to ascertain its genuineness through the officers who are stated to have issued those cards. For our purpose, the extract of the Xerox copies of Casual Labour Live Register is sufficient.

6. Now, on the question whether the Xerox copies of the Casual Labour live register can be relied, respondents have taken a stand in the written statements that unless the details contained in the Xerox copies are verified with the original it cannot be relied. The respondents at the same time do not have the original of the Casual Labour live register. How it is missing is neither clear nor stated. Now, coming to the Xerox copies of the Casual Labour live register, on perusal of the records, we find the reason for taking such photocopies in a communication dated 5.1.1989 issued by the Executive Engineer BG/CON, N.E. Railways, Bongaigaon to the Deputy Chief Engineer/CON, N.E. Railway, Jogighopa. It is stated therein that 483 surplus ex-casual labours had to be re-engaged and therefore after holding discussions with the relevant organization the letter is sent along with Xerox copies of the "Casual Labour Live Register" for suitable and necessary action by the Deputy Chief Engineer. Xerox copies of the said document are available in the records maintained by the Railways. From the above it can be assumed safely that the Xerox copies represent the original and it is maintained in the regular course of business of the Railways. It is surprising when the Xerox copies of the casual labour live register along with the letter dated 5.1.1989 is in the records maintained by the Railways, how they could say in the written statement "For obvious reasons, these records could not be relied upon as authentic due to the fact that such materials are capable of being manipulated due to the high stakes involved." On this aspect, we do not want to make further observation which may eventually damage the reputation of the persons who made such bald statements.

7. Now, coming to the matter on merits the respondents are in possession of records [Xerox copies of the live register] containing the details of the applicants. Of course some of the applicants do not find a place in the said records also. In respect of applicant no. 1 in OA

336/2004, the earlier written statements filed by the Railways in OA 259/2002 and referred to in Annexure-5 judgment in OA 336/2004 the following observations occurs:-

"In the written statement the respondents however admitted that one ex casual labour namely, Sri Habul son of Ruplal was screened, thereby indicating that the applicant was screened but he could not be absorbed for want of vacancy within the panel period."

8. As already noted, the only reason for rejecting the claim of the applicants is that the casual labour identity cards produced by the applicants the genuineness of which is doubtful. In the circumstances, as already discussed, the respondents are directed to consider the case of the applicants ignoring the identity cards and based on their own records namely, the Xerox copies of the casual labour live register, the documents with reference to which the earlier written statements were filed and extracted hereinabove and to take a decision in the case of the applicants in all the three cases afresh within a period of four months from the date of receipt of this order. For the said purpose, the impugned orders all dated 18.3.2004 [Annexure-7 in OA Nos.336/2004 and 338/2004 and annexure-11 in OA 337/2004] are quashed. The concerned respondent will pass reasoned orders on merits as directed hereinabove.

9. Before parting with, we would also like to refer to the decision of the Hon'ble Supreme Court in Ratan Chandra Samanta & Ors. Vs. Union of India & Ors., 1994 SCC(I&S) 182 relied on by Dr. M.C.Sharma. The said decision was rendered in Writ Petition [civil] filed under Article 32 of the Constitution of India. In that case the applicants who were ex-casual labours in south Eastern Railways alleged to have been appointed between 1964-69 and retrenched between 1975-78 had approached the Supreme Court for a direction to the opposite parties to include their names in the live casual labourer register after due screening and to give them re-employment according to their seniority. Supreme Court rejected the said Writ Petition stating that no factual basis or any material whatsoever prima facie to establish their claim was made out in the Writ Petition. The contention that the petitioners therein will produce all the documents before the authorities, in the above circumstances, was repelled. The said decision is not applicable in the instant case for the reason that there are necessary averments in the representation filed by the applicants and necessary materials are also available in the records maintained by the Railways.



The OAs are allowed as above. In the circumstances, there will be no order as to costs."

12. The clear finding of this Tribunal to the question as to whether Xerox copies can be relied upon is dealt with in para 6 of the judgment, as above. The Tribunal taking the decision of the Apex Court reported and discussed *Supra* in para 9 of the judgment, have come to the conclusion that the materials available have to be relied upon and these OAs have been allowed.

13. Now, the question is whether the respondents are justified in sending the entire matter to the Forensic Expert. It is true that the respondents have to find out whether the documents submitted by the applicants are genuine or not. But the respondents Railways cannot ignore all the documents submitted by the applicants. Whether it is Xerox copy or not, under the pretext of preservation of the period of three years, the respondents can cross-verify these documents with that available records with the Railways. If the contention of the Railways is that they do not have any records with them, the natural inference will be that the photocopies to be relied on. It is further pertinent to note that the applicants in the rejoinder have produced certain documents [Annexure-A], list of ex-casual labour sent by the Deputy Chief Engineer/Construction, N.F.Railway, Jogighopa, dated 17th July, 1995, which was certified by the P.W.I. on 1.2.1987.

which some of the applicants figure in the list. These are correspondences from one office to another by a responsible Railway Officer in 1995. Merely stating that preservation of documents is for three years do not absolve the responsibility of the respondents in stating that the applicants were not casual labourers in the railways. There are certain procedure to be followed as per the Railways Rules that in case documents are to be destroyed, the entry should be there in the Register maintained for the same. The respondents have not been able to show any such register to prove that these documents have been destroyed by them. Therefore, their averment that the documents have been destroyed cannot be taken as a foolproof. It appears that no genuine efforts have been made out by the respondents to find out the claim of the respondents. On the other hand, they have shifted their responsibility to the Forensic Department in supersession of the direction of the Tribunal where this Tribunal categorically stated in the earlier OAs that the respondents have taken a plea that they are not having the original records then the respondents have to rely on the photocopies and other reliable records from the Railways and consider the case of the applicants individually. No such exercise has been done by the respondents and, therefore, this Court is not happy in the manner the claims of the applicants have been disposed of which has necessitated the applicants to come again by these



OAs. However, when the matter came up for hearing, the counsel for the applicants have taken my attention to the decision of this Tribunal in the case of Swapan Sutradhar and others vs. Union of India & others, O.A. No.203 of 2002, dated the 2nd June, 2004, wherein this Court has directed to re-examine the cases of the applicants therein by constituting a responsible Committee and scrutinize the cases of the applicants therein. For better elucidation, the said judgment is reproduced as below:-

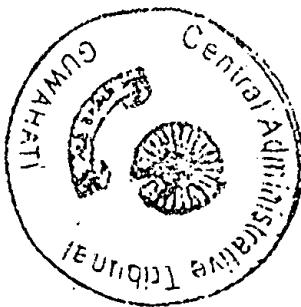
Dated 2.6.2004

"ORDER"

K.V.Prahadan, Member[A]:

The applicants are working as Casual Workers under the General Manager, Telecom, Silchar, Silchar Secondary Switching Area. All of them were employed from 1987-88 onwards. The applicants approached this Tribunal by way of an OA No. 278 of 2000, for grant of Temporary Status. The Tribunal vide order dated 6th September, 2001 directed the applicants to make individual representation and the respondents were directed to consider the case of the applicants after scrutinizing all the available and relevant records. A Committee was constituted as per the direction in O.A. No. 278 of 2000. The Committee found that none of the applicants completed 240 days in any year. Therefore, their claim for grant of Temporary Status was rejected by the respondents. The present Original application is against that order.

2. Mr. S.Sarma, learned counsel for the applicants pointed out that the Committee made numerous discrepancies in verifying the individual particulars of the applicants. In some cases it reveals that some of the applicants have been shown to be paid Rs.200/- per day and in some cases the applicants have been paid Rs.50/- per day. Their entitlements were not uniform. Mr. A.K.Chaudhuri, learned Addl.C.G S.C. for the respondents has agreed to re-examine the entire records of the applicants.



3. In the circumstances, the respondents are directed to thoroughly scrutinize all the records of the applicants for regularization by a responsible Committee. This exercise should be completed within four months from the date of receipt of this order.

The application is accordingly disposed of. No order as to costs.

14. The counsel for the applicants submitted that they are

amenable to such recourse since many of the applicants in the said OA were granted the benefit by such Committee. In the interest of

justice, this Court is of the view that such a responsible Committee

may be constituted by the respondents with senior officials for the

purpose and the said Committee shall scrutinize the available

records of the applicants, as per directions in OA 336/04 and if

requested, by giving a personal hearing to each individual and

consider the case individually and pass appropriate orders and

communicate the same to the applicants within a reasonable period.

in any case within four months from the date of receipt of this order.

15. The OAs are disposed of with the above directions. No

order as to costs.

Sd/ VICE CHAIRMAN

16.6.07
Date of Application : 16.6.07
Date on which copy is ready : 18.6.07
Date on which copy is delivered : 18.6.07
I certify to be true copy

N. N. N.
Section Officer (Jedl)
C. A. T. Guwahati Bench
Guwahati
18/6/07

ANNEXURE-3

To,

Date-20.6.07

The General Manager (Construction)
N.F.Railway, Maligaon
Guwahati.

Sub- Prayer for consideration of my case for engagement as Gr.D employee in the light of the judgment and order dated 14.6.07 passed in OA No.261/06 and Ors.

Sir,

With due deference and profound submission I beg to lay the following few lines for your kind consideration and necessary action thereof.

That Sir, on being selected I was engaged as casual labour and was continuing as such for a long period. I have completed requisite number of days and as such entitled for conferment of temporary status. Instead of regularising my service I was terminated from my service.

That Sir, I belong to very poor family. I have been continuously pursuing the matter regarding regularisation of my service but as yet nothing has been done in this regard.

That Sir, some similarly situated persons approached the Hon'ble Tribunal for non-consideration of their cases by way of OA No.261/06, 262/06 263/06 praying for a direction towards the Respondents to consider their cases for any Group-D post and to appoint them against vacant group-D posts available for filling up SC/ST backlog vacancies.

That the applicants state that the Hon'ble Tribunal

Attested

Advocate

after hearing the parties to the proceeding was pleased to allow the said OAs vide common judgment and order dated 14.6.07 directing the respondents to constitute a responsible committee to verify the records of the applicants thereto and thereafter to pass appropriate order.

That Sir, I being a similarly situated person like the applicants in OA No. 261/06 and Ors. I pray before your honour kindly to consider my case also in the light of the judgment and order dated 14.6.07 for which I shall remain ever grateful to you.

Thanking you,

Sincerely yours

SD/- Dinanath Yadav.