

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL**  
**ALLAHABAD BENCH**  
**ALLAHABAD**

Dated: This the **09<sup>th</sup>** day of **August** 2019

**Original Application No. 330/00072 of 2011**

**Hon'ble Ms. Ajanta Dayalan, Member – A**  
**Hon'ble Mr. Rakesh Sagar Jain, Member – J**

Ram Briksh Yadav, S/o Late Tilakdhari Yadav, R/o Village – Bhamsan Post – Shamsan P.S. Shahyanwa, District Gorakhpur. Presently working under Deputy G.S.T.E. Construction West N.E.R. Gorakhpur as a store Issuer.

. . . Applicant

By Adv: Shri A.K. Singh and Shri A.D. Singh

V E R S U S

1. The Union of India through the General Manager, North East Railway, Gorakhpur.
2. The General Manager (P), Chief Personnel Officer, North Eastern Railway, Gorakhpur.
3. The Chief Administrative Officer (Cons.), North Eastern Railway, Gorakhpur.

. . . Respondents

By Adv: Shri Ajay Kumar Rai

**O R D E R**

**By Hon'ble Ms. Ajanta Dayalan, Member – A**

The present OA has been filed by the applicant – Ram Briksha Yadav seeking quashing of order dated 18.01.2010 rejecting his request for regularization in Group 'C' cadre. The applicant has also sought direction for his regularization in Group 'C' post against which he is getting salary since 1988.

2. In the OA, the applicant has stated that he was engaged as casual labour Khalasi in the project and was appointed as casual labour Class III staff in different categories in the exigencies of service. He has put in more than 10 years of service in Group 'D'. The Railway Board has been regularizing casual labour working in projects against Class III posts from

time to time on the specific recommendation of General Manager, North Eastern Railway. 150 such employees, including the applicant, were recommended by the General Manager for regularization vide letter dated 07.02.1994 (Annexure A-1). The Railway Board regularized four Assistant Draftsman in the Grade of Rs. 1200 – 2040 vide order dated 27.07.1994 (Annexure A-2). These four employees were included in the list sent by the General Manager, but were junior to him. Vide letter dated 12.06.1996 (Annexure A-3), certain issues raised by the Railway Board were clarified. The Board, however, vide letter dated 30/31.01.1997 (Annexure A-4) decided that services of persons be regularized in Group 'D' category. According to the applicant, this was against their policy and also against the Hon'ble Supreme Court direction to regularize casual labours having five years of service in Class III as Class III staff. The Railway Board issued fresh order for regularization of casual labours in Group 'C' only vide their letter dated 09.04.1997 (Annexure A-5). In pursuance of this letter, a Committee of three officers was nominated which conducted the test in December 1997 in which the applicant was declared successful (Annexure A-6). Thereafter, the applicant made several representations to the authorities concerned for his regularization in Group 'C'. But as there was no fruitful result, he approached this Tribunal in OA No. 448 of 1998 alongwith some other similarly placed employees. This OA was disposed of vide order dated 21.05.2009, directing the applicants to file a comprehensive representation and the respondents were directed to decide the same by passing reasoned and speaking order within 3 months of receipt of representation as above. The detailed representation was filed on 25.08.2009 (Annexure A-8) and the respondents decided the representation on 18.01.2010 (Annexure A-9) vide the impugned order.

3. In the OA, the applicant has further stated that he was promoted vide Annexure A-10 (not available in the O.A.) on 05.09.1988 on the post

of 'Material Chaser'. Further, some other persons including Mr. Saiyad Azahar have been regularized in Group 'C' category from the date of his promotion i.e. 03.09.1985 (Annexure A-11). The applicant has further stated that he was working in Group 'C' post namely Store Issuer and getting regular salary for this post. The salary bill is enclosed as Annexure A-12.

4. According to the applicant, even in the year 1985, the issue of regularization of casual employees working against Class III posts other than skilled artisan was taken up by the Railway Board and services of persons mentioned in the letter dated 14/17.06.1983 were decided to be regularized subject to conditions mentioned in letter dated 19.01.1995 (Annexure A-13). A Committee of four persons was constituted (Annexure A-14). Immediately thereafter, the services of 16 employees working as Traces, 50 employees working as Clerk and 26 employees working as Typist, one employee working as Work Mistry were regularized vide notification dated 04.09.1985 (Annexure A-15). All these were Class III posts. Again vide letter dated 31.12.1991 (Annexure A-18), information regarding casual labours working against Class III posts on regular basis was called for. That proposal for regularization of applicant who were working in BD construction was pending before Railway Board is evident by letter dated 15.05.1995. Vide letter dated 30/31.01.1997 stated to be annexed as Annexure A-19, but not annexed, services of some other casual labours were regularized against Group 'D' posts except those working against Group III post who were diploma holders. Vide letter dated 28.07.1997 stated to be annexed as Annexure A-20, but not annexed, 61 persons were regularized against Group 'D' posts. However, earlier on 04.09.1997 stated to be annexed as Annexure A-21, but annexed at Annexure A-19 the Railway Board had already directed regularization of services of casual labours working in Group 'C' against

Group 'C' itself against vacancies and as per conditions earlier laid down. As there was some confusion whether casual labour working as work mistry, chaser, tracer etc. were to be regularized against Group 'D' or Group 'C' posts, the matter was clarified vide circular dated 04.09.1997 stating that their services were to be regularized in Group 'C' posts. Thereafter, the Chief Administrative Officer issued letter dated 27.11.1997 clearly stating that all those casual labours working against the Group 'C' post shall be regularized against Group 'C' post (stated to be annexed as Annexure A-23 but annexed as Annexure A-20). The Railway Board itself, vide its letter dated 14.07.1997 (stated to be annexed as Annexure A-24 but annexed as Annexure A-21) has reaffirmed the instructions contained in its circular dated 09.04.1997.

5. The case of the applicant is that in view of the instructions of the Railway Board, the applicant, who was working by way of promotion order dated 05.09.1988 against Group 'C' post, is entitled for regularization against Group 'C' post after screening for the purpose is completed as per direction issued by the Railway Board vide its notification dated 09.04.1997.

6. The respondents have contested the claim of the applicant. They have stated that casual workers working in projects in the Railways are governed by the statutory instructions contained in Chapter XX of Indian Railway Establishment Manual (IREM) Vol. II 1989 edition. Para 2005 (b) and para 2511 (b) old specifically provide that such casual labours who acquire temporary status will not, however be brought into the permanent or regular establishment or treated as in regular employment in Railway until and unless they are selected through regular Selection Board for Group 'D' post in the manner laid down. The date of regular appointment after screening/selection shall determine their seniority vis-

à-vis other regular / temporary employees. Such absorption / appointment on Group 'D' post is, however, not automatic but it is subject to inter-alia the availability of vacancies and suitability and eligibility of candidates.

7. The respondents have further stated that casual labour employed in project, should as a rule, be engaged against Group 'D' post. They are required for operation and maintenance of new assets created – new lines, conversion, doubling, re-modeling etc. The post should be filled exclusively from the casual labour who had worked at project stage. After working out vacancies for requirement of these units, all casual labour who have put in minimum 120 / 360 days continuous service - whether on the open line, in the division or on adjacent construction project – should be listed for screening, the seniority being fixed by racking their previous spells of employment on the basis of such cumulative aggregate service. Project casual workers of various branches will be considered for regularization and absorption on the basis of combined seniority depending upon the total number of days of service put in by the candidates and their lien is fixed in open line organization as all the posts in project are work charged post.

8. The respondents have further averred that casual labour is not holder of any civil post until and unless he is appointed to a Group 'D' post after screening / selection according to seniority. Casual labour are granted temporary status after completion of 360 days of continuous service and on grant of such status, some benefits like passes, PTOs etc. become admissible under the rules; but they do not become Temporary Railway Servant as they are not holder of civil post. The term Temporary Railway Servant (TRS) is defined in Clause (I) of para 1501 of Chapter XV of IREM Vol I, which is as under:-

*“Temporary Railway Servant means a Railway Servant without a lien on permanent post in Railway or any other administration or office under the Railway Board. The term does not include:-*

*“Casual labours” including casual labours with temporary status.”*

Thus, casual labours who acquire temporary status will not be brought to permanent or regular establishment or treated as in regular employment in Railway until or unless they are selected through regular Selection Board for Group ‘D’ in the manner laid down in the Rules.

9. The respondents have further averred that Hon’ble Supreme Court in Writ Petition No. 548 of 2000 (Inder Pal Yadav and others vs. Union of India and others) (Annexure CA-1) has observed as follows:

*“It is not in dispute that subsequent to the orders of this Court, the petitioners were regularised as khalasis in Group D in the open line. However, they have been permitted to continue to serve in various projects of the Railway administration. While they were serving in such projects, they have been granted provisional promotion in a particular corresponding scale of pay on the basis of supplementary trade test held in the project itself. However, the order by which such petitioners were granted local provisional or ad hoc promotion made it clear that they would not claim over their seniors in other units. The reason for the filing of these petitions before us by the petitioners is the preparation of lists of surplus staff in the projects. It is the petitioners' case that these surplus lists have been prepared with a view to bring the petitioners back to the open line cadre at the scale of pay applicable to Group D employees overlooking that the petitioners had in the meanwhile been promoted to Group C and were enjoying much higher scale of pay.*

*From the documents on record, it is clear that the petitioners have been regularised and continue to hold the substantive posts of khalasi in Group D category in the open line division of the respondents. Their provisional local promotion in the projects cannot be taken as having vested in them a right either to continue in the project or to resist reversion back to the cadre, or to enjoy a higher promotion merely on the basis of locally provisional promotion granted to them in the project in which they had been employed at a particular point of time. No rules have been pointed out to us to justify this claim on the part of the petitioners. Besides, if this stand of the petitioners was to be accepted it would operate inequitably as far as the regular employees in the open line department are concerned. Furthermore, the order of provisional promotion expressly made it clear that the petitioners were in fact provisionally appointed. Therefore, the writ petitioners cannot seek to make such provisional appointment permanent by filing a writ petition to restrain the respondents from reverting them back to their appointed cadre.*

*However, while the petitioners cannot be granted the reliefs as prayed for in the writ petition, namely, that they should not be reverted to a lower post or that they should be treated as having been promoted by reason of their promotion in the projects, nevertheless, we wish to protect the petitioners against some of the anomalies which may arise, if the petitioners are directed to join their parent cadre or other projects, in future. It cannot be lost sight of that the petitioners have passed trade tests to achieve the promotional level in a particular project. Therefore, if the petitioners are posted back to the same project they shall be entitled to the same pay as their contemporaries unless the posts held by such contemporary employees at the time of such reposting of the petitioners is based on selection.”*

10. In view of the ratio laid down in this Writ Petition by the Hon'ble Supreme Court, this Tribunal has decided OA No. 731 of 2004 (Vijay Narain and others vs. Union of India and others) and OA No. 786 of 2004 (Ram Preet vs. Union of India and others) vide common judgment dated 31.03.2008 (Annexure CA-2).

11. The respondents have further relied upon the Judgment of Hon'ble Supreme Court in Civil Appeal No. 6413 of 2002 (General Manager Northern Railway and others vs. Jageshwar and others) vide judgment and order dated 01.04.2009 (Annexure CA-3). Para 4 of this judgment is quoted below:-

*"This Court in Motilal Case (Supra) did not lay down any preposition that when employee is absorbed in different organization, his previous pay should be protected – Absorption in Railway was not in pursuance of any legal right. To avoid hardship to the employees of the Construction Organization on humanitarian ground, the Railway chooses to consider the surplus labour of that organization for absorption after screening them. When being so screened and absorbed, an employee cannot contend that he should be absorbed in post equivalent to post he was holding in previous organization nor could the Tribunal or High Court direct that his pay should be protected."*

12. Regarding specific case of the applicant, the respondents have averred that the applicant was initially engaged as casual labour on daily wage basis and after getting temporary status, was allowed to work in Group 'C' purely on ad-hoc basis. Therefore, his services have been regularized in feeder cadre in Group 'D' post, which is justified in view of law laid down by the Full Bench of this Tribunal in the case of Ram Lobhaya and others vs. Union of India and others reported in 2001 ATJ Page 40, Aslam Khan and others vs. Union of India and others reported in 2001 ATJ (2) Jaipur page 4 as well as judgment of Hon'ble Supreme Court in Civil Appeal No. 6413 of 2002 (supra). The applicant was first appointed on 28.12.1983 as casual labour. He was given temporary

status on 28.12.1984 in terms of Railway Board letters of 1996 and 1997. After completion of working days as per directive contained in Railway Board's circulars as well as availability of funds, casual labours were given ad-hoc promotion on the basis of their skill and suitability on Group 'C'. The applicant was given ad-hoc promotion on the post of Chaser w.e.f. 16.08.1988. The applicant was regularized in Group 'D' post in the pay scale of Rs. 2550 – 3200 according to rule. Further, in the light of Railway Board letter dated 10.06.2009, three promotional scales after completion of 10, 20 and 30 years of service were to be granted to him. The applicant's eligibility for these financial benefits are being enquired. Particulars showing his service record are filed at Annexures CA 4 to 9.

13. It is further stated that the list of 150 temporary status casual workers related to those temporary status workers who were directly appointed as casual workers on Group 'C' post. The applicant was initially appointed against Group 'D' post and was later posted on Group 'C' post on ad-hoc basis. It is also stated that the case of the applicant is not similar to 150 persons quoted by him. Further, as far as regularization of Casual Assistant Tracer in the pay scale of Rs. 1200 – 2040 is concerned, they were appointed directly as casual Assistant Tracer and accordingly their regularization was made as per Rules. On the other hand, the case of the applicant is quite different.

14. The respondents have further stated that a list of 63 ad-hoc Group 'C' temporary status employees of Construction Organization was sent by the General Manager on 12.06.1996 for regularization. The Railway Board by order dated 09.04.1997 directed as follows:-

- “3. *The question of regularization of the casual labour working in Group 'C' scales has been under considerations of the Board. After careful consideration of the matter, Board has decided that the regularization of casual labour working in Group 'C' scales may be done on the following lines: -*



*(i) All casual labour / substitutes in Group "C" scale whether they are Diploma holders or have other qualifications may be given a chance to appear in examinations conducted by RRB or the Railways for posts as per their suitability and qualifications without any age bar.*

*(ii) Not with standing (i) above, such of the casual labour in Group "C" scale as are presently entitled for absorption as skilled artisans against 25% of promotion quota may continue to be considered for absorption as such.*

*(iii) Notwithstanding (i) and (ii) above all casual labour may continue to be considered for absorption in Group "D" on the basis of the number of days put in as casual labour in respective units."*

Thereafter, the Railway Board vide letter dated 03.09.1996 (Annexure CA-5) issued detailed instructions for regularization of casual labour working against vacant Group 'D' posts, after due screening. In the light of these instructions, the services of the applicant were regularized in Group 'D' post in the pay scale of Rs. 2550 – 3200 w.e.f. 31.12.1997 by the Construction Organization, which is legal and as per rules.

15. Further, it is stated that the representation of the applicant dated 25.08.2009 (Annexure A-8) has been decided by a reasoned and speaking order dated 18.01.2010, after going through entire facts and circumstances of the case and policy point raised by the applicant.

16. Respondents have finally concluded that the regularization of the applicant is, therefore, keeping in view the facts, grounds and settled legal prepositions mentioned. They have stated that the applicant is not entitled to any relief claimed by him.

17. We have heard learned counsels for both the parties and have also gone through the pleadings of the case as well as written arguments filed by the respondents and supplementary affidavit filed by the applicant.

18. We observe that the applicant was initially appointed only as casual labour on daily wage basis. He was given temporary status after completion of requisite number of days as casual labour on 28.12.1984. The respondents have clearly stated that he was never appointed to Group 'C' post and was only asked to look after the work of Chaser purely on ad-hoc basis. The appointment order the applicant is citing in support of his promotion in Group 'C' post dated 04.04.1995 (Annexure A-10) is in-fact not an appointment or promotion order at all. This office order only states that the applicant "will henceforth be responsible for stock & issue of all liquid items of this stores". The order further goes to say that in absence of the applicant, one Shri K.K. Tripathi, will look after the work. Mere perusal of this order clearly shows that it is not an appointment or promotion order at all. We also note that the pay slip given by the applicant in support of his claim can only be used to prove the amount received by him and cannot be used to substantiate that he was promoted on regular basis to Group 'C' post.

19. We further observe that the provisions of Rules given by the respondents are quite clear. IREM paragraphs 2005 (b) and 2511(b) old of Chapter XX clearly provide that casual labourers acquiring temporary status will not be brought into permanent or regular establishment or treated as in regular employment in Railways until or unless they are selected through regular Selection Board for Group 'D' post in the manner laid down. Such absorption / appointment in Group 'D' is not automatic but is subject to availability of vacancies and suitability and eligibility of candidates.

20. We further note that para 1501 of Chapter XV of IREM provides clearly that Temporary Railway Servants are without lien on permanent post in Railway or in any other administration or office under the Railway

Board. It also categorically states that temporary Government Servant term does not include casual labour including casual labour with temporary status. Hence, even Temporary Railway Servants do not have a lien on any permanent post in Railways. Casual labour are not even Temporary Railway Servant. It is, therefore, obvious that they also do not have any lien in the Railways. They do not hold any civil post.

21. We further observe that the applicant was, by his own admission, employed in project. Respondent department has observed that such casual labour, as a rule, are engaged against Group 'D' post. They are for operation and maintenance of new assets namely new lines, conversion, doubling, re-modeling etc. Such casual labours working in projects of various branches can be considered for regularization and absorption only after screening based on their combined seniority depending upon number of days put in by them.

22. We also note that the impugned order dated 18.01.2010 clearly states that the applicant was screened for regularization. However, due to non availability of regular post in Group 'C' category in Construction Division and Railway Board circular dated 03.09.1996 (Annexure CA-5), his services were regularized in Group 'D' cadre. It is further stated therein that in Construction Division, only services of casual labour working against Group 'C' category prior to 1985 have been regularized in Group 'C' category from the year 1985 to 1989. At that time, regularization of the applicant could not be considered as he did not meet the requisite standards for regularization then. It is also stated that the all posts being work charged and no post being available in Group 'C' category, the applicant could not be regularized in Group 'C'. He was regularized in Group 'D' category under alternative (I) and (II) of letter dated 03.09.1996. We observe that order dated 03.09.1996 is quite clear

and gives detailed instructions for regularization of casual labour who are working against Group 'C' or Group 'D' post, in Group 'D' category based on availability of posts and eligibility and suitability of candidates and after proper screening.

23. We also note that there have been number of instructions by the Railway Board regarding regularization of casual labourers. In the OA, the applicant does mention a few of them. But the emphasis and substance of the Board instructions are placed in a manner that may lead to confusion and wrong interpretation by the reader. We have perused these instructions as well as the ones referred by the respondents. We are avoiding detailed references on account of multiplicity of such instructions and to avoid confusion. However, we wish to highlight that after this perusal, we find that the Railway Board has been consistently issuing instructions to eliminate the practice of recruiting casual labour in future. Then, their emphasis was to regularize the ones already working. But here, with the exception of skilled artisans, the regularization was to be done in Group 'D' posts and that too against vacancies and after proper screening. Casual labour with diploma or other qualifications were allowed to appear in examination conducted by RRB or by Railways as per their eligibility and suitability without age bar . Casual labour entitled for absorption as skilled artisan could be considered for absorption against 25% promotion quota. All other casual labour were to be regularized against Group 'C' posts. We also find that all project posts were work-charged and hence, regularization could be on regular posts which were in open line. As the applicant did not qualify for regularization against Group 'C' posts, he was correctly absorbed against Group 'D' post.

24. We observe that it is true that the applicant was first appointed as casual labour on 28.12.1983 and was granted temporary status w.e.f.

28.12.1984 and he was posted as ad-hoc Chaser from 16.08.1988, but he was not meeting requisite standards for regularization against Group 'C' category during the period 1985 – 1989 when Railway Board was considering regularization against Group 'C' post. As such, we do not find any illegality or impropriety in the impugned order. There is no discrimination against the applicant as rules and instructions have been followed and regularization of the employees has been done as per these rules and instructions.

25. As regards the specific case of Sayyaid Azhar Immam, the respondents' department has states that the case is under examination and appropriate action will be taken. In any case, that one case – if done mistakenly- cannot be taken as a basis for the applicant to claim relief which is not as per rules.

26. We also observe that the Hon'ble Apex Court has already laid down guidelines as quoted by the respondents. The applicant would, therefore, be entitled only for regularization against Group 'D' post and not against Group 'C' post.

27. Observation of the Hon'ble Apex Court in the case of Inder Pal Yadav and others vs. Union of India and others (supra), which is quoted above as well as their judgment in General Manager Northern Railway and others vs. Jageshwar and others (supra), quoted in this order are relevant. Besides, we find that the Full Bench of this Tribunal in the case of Ram Lobhaya and other vs. Union of India and others (supra) has also followed the Hon'ble Supreme Court's order in General Manager Northern Railway and others vs. Jageshwar and others and ordered accordingly.

28. In view of all the above facts, we find that the OA, being devoid of merit, deserves to be dismissed. The OA is accordingly dismissed. There is no order as to costs.

**(Rakesh Sagar Jain)**  
Member – J

**(Ajanta Dayalan)**  
Member – A

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