

(50)

**Central Administrative Tribunal
Principal Bench**

OA No. 2981/2003

New Delhi, this the 31st day of May, 2007

**Hon'ble Mr. Justice M. Ramachandran, Vice Chairman (J)
Hon'ble Mr. V.K. Agnihotri, Member (A)**

1. Shri Bala Dutt
s/o Shri Pan Dev
Chowkidar, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
2. Shri Ganga Dhar,
S/o Shri Nagina Thakur,
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
3. Shri Dudh Nath,
S/o Shri Dina Nath,
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
4. Shri Sawalia Pershad
S/o Shri Shiv Nath Pershad
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
5. Shri Hoti Lal
S/o Shri Mohan Lal
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.



(S)

6. Shri Nageshwar
S/o Shri Hirdey Narain,
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
7. Shri Bainoo
S/o Shri Karuna
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
8. Shri Kartar Singh
S/o Shri Girwar Singh,
Khallasi, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
9. Shri Govind Raju
S/o Shri Begaan,
Khallasi, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
10. Shri Shyam Sunder
S/o Shri Gwadin,
Khallasi, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
11. Shri Munshi Lal
S/o Shri Avtari Lal
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
12. Shri Lal Jeet,
S/o Shri Leekha Ram,
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.
13. Shri Veda Nand
S/o Shri Maha Kant,
Gangman, Office of A.E.N.,
Northern Railway,
GHAZIABAD.



14. Shri Hori Lal
 S/o Shri Pooran
 Gangman, Office of A.E.N.,
 Northern Railway,
 GHAZIABAD. ...Applicants

(By Advocate: Shri P.S. Mahendru)

Versus

Union of India through:

1. The General Manager,
 Northern Railway,
 Baroda House,
 New Delhi.
2. The Divisional Railway Manager,
 Northern Railway,
 State Entry Road,
 New Delhi. ...Respondents

(By Advocate: Shri R.L. Dhawan)

O R D E R

By Mr. V.K. Agnihotri, Member (A):

In this OA the applicants have sought grant of temporary status on completion of 120 days of service in terms of Railway Board Circular dated 12.07.1973, and grant of regular scale of pay, HRA, CCA, DA, etc. on par with regular employees upon attaining temporary status, with consequential benefits.

2. The bare minimum facts of the case are that the applicants were engaged as Casual Labour by the respondents on different dates between the years 1972 to 1981. They were granted



(3)

- 10 -

temporary status on different dates between the years 1980 to 1985, and regularized on different dates thereafter.

3. The applicants have contended that as per para 2001 of the Indian Railway Establishment Manual (IREM, for short) (Volume-II) the Casual Labour engaged on open line, who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break, are to be treated as temporary (i.e. given temporary status) on completion of 120 days of continuous employment. Further, as per para 2005 of IREM (Volume-II), casual labour, upon being treated as temporary, are entitled to all the rights, privileges and benefits admissible to temporary railway servants. In the circumstances, the applicants became entitled to regular scales of pay, increment, D.A., H.R.A., C.C.A., etc. w.e.f. the date of their acquiring temporary status, in consonance with the decision of Railway Board as circulated vide its letter No. PC-72/RLT/69/3 (i) dated 12.07.1973.

4. The applicants have further contended that the respondents failed to grant regular scales of pay to the applicants after their attaining respective temporary status but granted the same only on their absorption and regularization in the Railway service. This has resulted in wrong fixation of their pay on their regularization, thereby also resulting in their getting lesser salary every month.



The above inaction on the part of the respondents has also resulted in wrong fixation of their pay consequent to the recommendation of the 5th Central Pay Commission. Moreover, the said act on the part of the respondents will ultimately result in granting lower pensionary benefits to the applicants on their retirement, than admissible.

5. The applicants have argued that the respondents have already granted benefits to similarly placed employees who were applicants in OA No. 2559/2000 titled **Ishwar Chand & Ors. v. Union of India** and have also decided to granted the benefits to applicants in OA No. 1966/2002 titled **Shri Swayamber & Ors. v. Union of India**. The respondents have further decided to grant similar benefits to the applicants in OA No. 1905/2003 in **Ram Dayal etc. v. Union of India**. Thus the impugned action of the respondents is contrary to the law laid down by the Supreme Court to the effect that relief granted to one set of employees should be given to similarly placed employees *suo motu* and they should not be compelled to rush to the Court for it.

6. The respondents, in their preliminary objections, have contended that the OA filed by the applicants is not maintainable. It is a deliberate and *mala fide* attempt to mislead this Tribunal. They have concealed the fact that there are two types of Casual Labour recognized in Railways. One is known as Casual Labour



(Open Line) while the other is known as Casual Labour (Project).

Both have different criteria for attaining temporary status. In order to acquire temporary status, a Casual Labour (Project) has to put in a minimum continuous service of 360 days as opposed to the 120 days of service required to be put in by Casual Labour (Open Line).

7. The respondents, at the outset, have, therefore, stated that the applicants were employed as Casual Labour (Project) in Construction Organization under usual norms and conditions as applicable. It has been denied that any of the applicants at any point of time were engaged as Casual Labour (Open Line). As such, they are not similarly placed or situated as the regular employees posted on identical posts. The action of the respondents in treating the applicants differently is not arbitrary, discriminatory and not, in any way, violative of either Articles 14 & 16 of the Constitution of India or any of the relevant rules and instructions on the subject.

8. The applicants, in their rejoinder, in addition to reiterate and elaborate on various averments made in the main application, have argued that irrespective of the fact that whether one is Casual Labour (Project) or Casual Labour (Open Line), he is entitled to the regular pay scale on acquiring temporary status as admissible to regular employees posted on identical posts.



~~SECRET~~

9. During the oral arguments, Shri P.S. Mahendru, learned counsel for the applicants, stated that in view of the ruling of the Hon'ble Supreme Court in the case of **Ram Kumar & Ors. v. Union of India & Ors.**, AIR 1988 SC 390 there is no difference between Casual Labour (Project) and Casual Labour (Open Line) and they are entitled to same pay and allowances and other benefits of service once they have acquired temporary status. He further contended that the respondents were in possession of all the requisite information in order to grant necessary relief to the applicants. He cited the order of the Hon'ble High Court of Delhi in the case of **Smt. Niranjan Kaur v. M/s. New Delhi Hotels Ltd. & Ors.**, AIR 1998 (Delhi) 332 to argue that when a party, in possession of best evidence which would throw light on the issue in controversy, withholds it, Court ought to draw an adverse inference against him notwithstanding that onus of proof does not lie on him. He further cited the judgment of the Hon'ble Supreme Court in the case of **Union of India & Anr. v. Raja Mohammed Amir Mohammad Khan**, 2005 (8) SCC 696 wherein it was held that it is not only for the courts to deliver justice. Every and any authority working under the statute has to discharge its duties in a just manner.

10. Learned counsel for the applicants further contended that the respondents have not denied the averments made in para nos.



(5A)

4.5 to 4.9 of the OA except stating that the applicants were appointed as Casual Labour (Project) and not Casual Labour (Open Line). In this context, he cited the judgment of the Hon'ble Supreme Court in the case of **Union of India & Ors. v. Basant Lal & Ors.**, 1992 (1) AISLJ 190 wherein it was held that since the contention of the applicants that they had worked for over 120 days in the Construction Wing had not been specifically denied by the respondents in their counter, the applicants were eligible for grant of temporary status with back wages.

11. Learned counsel for the applicants cited the judgment of the Hon'ble Supreme Court in the case of **M.R. Gupta v. Union of India & Ors.**, 1995 (5) SCC 628 to argue that fixation of pay provides a recurring cause of action and hence the doctrine of limitation is not applicable in such cases.

12. Learned counsel for the applicants cited a catena of cases to argue that similarly situated persons should be provided the desired relief by the authorities *suo motu*. A public authority should not resort to technical pleas to deny legitimate claims of citizens [**G.C. Ghosh & Ors. v. Union of India & Ors.**, 1992 (19) ATC 94; **Madras Port Trust v. Hymanshu International by its Proprietor V. Venkatadri (Dead) by L.R.s**, 1979 (4) SCC 176; **Man Singh v. Union of India & Ors.**, 2004 (3) ATJ (CAT-PB) 255;



58

and **Arunesh Awasthi & 4 Ors. etc. v. The Director of Education, Delhi & Ors. etc.**, 2004 (3) ATJ 249].

13. Shri R.L. Dhawan, learned counsel for the respondents relied heavily on the order of this Tribunal in the case of **Raghbir Singh & Ors. v. Union of India & Ors.** (OA No. 1449/2002, decided on 12.03.2007). He said that the present case was fully covered by the order of this Tribunal in the case **Raghbir Singh** (supra). In particular, he invited attention to the finding of this Tribunal in the said case to the effect that the applicants, having been the beneficiaries of the judgment of the Hon'ble Supreme Court in the case of **Inder Pal Yadav v. Union of India & Ors.**, 1985 (2) AISLJ (SC) 58, which related to Casual Labour (Project), cannot now seek the benefit of the Railway Board's letter dated 12.07.1973 (supra), which pertains to Casual Labour (Open Line).

14. Learned counsel for the respondents further argued that disputed questions of facts cannot be gone into by this Tribunal and they should be agitated before the Labour Court (**Bharat Ram Meena v. Rajasthan High Court at Jodhpur & Ors.**, 1997 SCC (L&S) 797.

15. We have heard the learned counsel for the parties and perused the material on record.



16. From a conjoint reading of the pleadings of the applicants and the respondents, in our opinion, two things are obvious: (1) the applicants were beneficiaries of the dispensation provided by the respondents in compliance of the order of the Hon'ble Supreme Court in the case of **Inder Pal Yadav** (supra); and (2) the applicants are seeking relief in terms of the Circular of the respondents dated 12.07.1973 (supra).

17. We have arrived at this conclusion in view of the following facts:-

- (i) From a conjoint reading of Annexure A-1 and Annexure R-2, it is obvious that the dates provided by the applicants under the column 'Date of Acquiring Temporary Status' (Annexure A-1) are the dates from which they are seeking grant of temporary status, ostensibly by virtue of having completed 120 days from the date of appointment, in terms of Railway Board Circular dated 12.07.1973.
- (ii) The dates mentioned under the column 'Date of Regularization' (Annexure A-1) more or less match with the data given in Annexure R-2 under the column 'Date of Granting Temporary Status'. The dates in respect of most of the applicants in these columns are



01.01.1983 and 01.01.1984, which are in consonance with the dates for grant of temporary status prescribed in the Scheme formulated by the respondents in compliance of the judgment of the Hon'ble Supreme Court in the case of **Inder Pal Yadav** (supra), vide para 2 of the counter.

18. Even though the applicants have also sought relief in terms of the judgment of the Hon'ble Supreme Court in the case of **Ram Kumar & Ors.** (supra), it is interesting to note that in Annexure A-1 the data under the column 'Date of Regularization' is the same as the date provided by the respondents under the column 'Date of Granting Temporary Status' (Annexure R-2). Thus, it would appear that the respondents have already provided the benefit of the judgment of the Hon'ble Supreme Court in the case of **Ram Kumar & Ors.** (supra) to which the applicants are entitled, on par with regular employees, from the date of the grant of temporary status to them. The respondents have also not denied the factum of the judgment of the Hon'ble Supreme Court in the case of **Ram Kumar & Ors.** (supra) and its implementation in respect of the applicants, insofar as in their counter they have stated as follows:-

"4.5...It is wrong to suggest that the Applicants become entitled to the status of temporary employees after completion of 120 days of un-interrupted service. It is reiterated that they will become entitled to the status of temporary employee only after



—
—

completion of 360 days of un-interrupted service. They become entitled to scales of pay, increment, D.A., HRA, CCA etc., only w.e.f. the date of acquiring the temporary status after completing of 360 days of service and the Railway Boards decision dated 12.7.1973 would become applicable to them only after their acquiring temporary status.

x x x

4.9...It is submitted that the pay fixation and all the consequential benefits have been provided keeping in mind the relevant rules and provisions and the judgment of the Hon'ble Supreme Court."

19. The only relief that remains to be adjudicated, therefore, is the entitlement of the applicants, who are Casual Labour (Project), to the benefits of the Railway Board's Circular dated 12.07.1973, to the extent it is applicable to Casual Labour (Open Line). As pointed out by the learned counsel for the respondents, this matter has already been decided in the order of this Tribunal in the case of **Raghbir Singh** (supra) wherein it was held as follows:-

"25. Taking the totality of facts and circumstances of the case into consideration, we come to the conclusion that the applicants have failed to establish their rightful claim for grant of benefit of the Railway Board's Circular dated 12.07.1973 (supra) to them. We further find that the applicants, having got the benefit of the judgment of the Hon'ble Supreme Court in the case of **Inder Pal Yadav v. Union of India & Ors.** (supra), which relates to Project Casual Labour, are now changing track to obtain the benefit of the Railway Board's



letter dated 12.07.1973, which pertains to Open Line Casual labour. This conduct of the applicants reminds us of the adage: running with the hare as well as hunting with the hound. The case of the applicants is also hit by delay and laches.

26. In the result, the OA is devoid of merit and is, therefore, dismissed. There will be no order as to costs."

20. We do not agree with the contention of the learned counsel for the applicants that the matter being agitated by the applicants is not subject to the doctrine of limitation since their request for re-fixation of pay provides a recurring cause of action in terms of the order of the Hon'ble Supreme Court in the case of **M.R. Gupta** (supra). We would like to make a distinction between disputes relating to the nature of appointment and those relating to the terms and conditions of a particular appointment. It is not the case of the applicants that they have not been given the pay scale to which they are rightfully entitled as Casual Labour (Project). If that was so, it would have provided a recurring cause of action. What the applicants are seeking instead is parity with some other category of employees, viz. Casual Labour (Open Line), which, in our opinion, falls under the category of nature of appointment and is, therefore, not a recurring cause of action.



21. In the totality of facts and circumstances of the case, it is obvious that the applicants are not entitled to get the benefit of the Circular dated 12.07.1973. There case is also hit by delay and laches. On the whole, the present case is fully covered by the order of this Tribunal in the case of **Raghbir Singh** (supra).

22. In the result, the OA is devoid of merit and is, therefore, dismissed. There will be no order as to costs.



(V.K. Agnihotri)
Member (A)



(M. Ramachandran)
Vice Chairman (J)

/na/