

UNION OF INDIA AND ORS.

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v.
BASANT LAL AND ORS.

FEBRUARY 18, 1992

[N. M. KASLIWAL AND K. RAMASWAMY, JJ.]

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Civil Services:

Indian Railways Establishment Manual : Chapter XXIII and Rule 2304—Casual labour—Temporary Railway servants status—When to be accorded—Regularisation and payment of back wages—Directions issued.

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The respondents were employed as Casual Labour in the Construction Division of the Northern Railways and their services were terminated by oral order. The respondents made a representation that they had been working continuously for more than 120 days and as such were entitled to the status of temporary Railway servants. Since there was no response to their representation, the respondents approached the Central Administrative Tribunal. They relied on a letter dated 29.12.78 issued by the General Manager, Northern Railway. As per the letter and the earlier instructions, casual labourers whether employed on project or otherwise who had completed four months' continuous service were required to be considered by the Employment Screening Committee for absorption against Class IV posts.

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The Tribunal gave its finding that since the respondents had worked for more than 120 days, they would be deemed to have acquired temporary status, and that the termination of their services without notice was violative of Rule 2304 of the Indian Railways Establishment Manual. Thus, the Tribunal quashed the termination Orders and directed that the respondents should be reinstated and posted either in the same zone or anywhere else depending on the availability of work, and absorbed against regular class IV posts as per rules.

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The Union of India has preferred the present appeal by special leave, challenging the Tribunal's order.

On behalf of the appellants it was contended that in case the respon-

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A dents were employed in the construction work on the open line then they would acquire a temporary status after continuous employment of 120 days, and since they were employed on a project work they could acquire temporary status only after completing 360 days of service.

B Disposing of the appeal, this court,

C HELD: 1. Chapter XXIII of the Indian Railways Manual lays down that casual labourers who have worked for more than 120 days in open line and those who have worked for more than 360 days on projects acquire temporary status and would be entitled to the rights and privileges admissible to temporary Railway servants. Before the Tribunal, the respondent-workers took a clear stand that they were Class IV employees in the Northern Railways and were employed in the Construction Division. This was supported by the appointment letters issued to them. They had been working for over 120 days and as such were entitled to all rights and privileges admissible to temporary Railway servants. [825C-D; 826E]

D 2. It is directed that all the 105 workers should be accorded the status of temporary employees. They would be entitled to the salary equal to temporary status employees of the Railway at the initial stage of the pay from 12.5.91. The respondents have been uprooted from their original place and even now they are being given daily wages at the rate of Rs. 19.10
E paise and not being given the wages equal to a temporary status employee of the Railway at the initial stage of pay. The Railway Authorities shall pay the back wages to all the employees from 12.5.1991 equal to a temporary status employee allowed at the initial stage of pay within two months, after
F adjusting any amount already paid to them. [828 G-H; 829A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 847 of 1992.

G From the Judgment and Order dated 16.3.1990 of the Central Administrative Tribunal, New Delhi in O.A. No. 2467 of 1988.

Dr. Anand Prakash Sharma, S.N. Sikka and B.K. Prasad for the Appellants.

H D.N. Goburdhan, Ms. Pinki Anand and G.K. Luthra for the Respondents.

The Judgment of the Court was delivered by

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KASLIWAL, J. Special leave granted.

The Union of India has filed this appeal by grant of Special Leave challenging the order of the Central Administrative Tribunal, Principal Bench, New Delhi dated 16.3.1990. Shri Basant Lal and 104 others were employed on the post of casual labour in July, 1988. Their services were terminated by oral order dated 19.12.1988. The workers submitted a representation against their illegal termination. Their contention was that they had been working continuously for more than 120 days and as such were entitled to the status of temporary Railway servants. Having received no response to their representation, they approached the Central Administrative Tribunal. It was an admitted case of the Railway that the casual labourers who have worked continuously for more than 120 days in open line and those who have worked for more than 360 days on projects acquire temporary status and they will be entitled to the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. Thus, the contention of the Railway was that the workers in the present case were employed in project work and having completed nearly 143 days of work with effect from 26.7.1988 to 19.12.1988 and having not completed 360 days of continuous work, they were not entitled to acquire temporary status. The case of the workers was that they had worked for over 120 days continuously in the Construction Division of the Northern Railway other than projects and as such they had acquired temporary status. The Tribunal held that admittedly all the applicants before them had completed more than 120 days of continuous service as such they had acquired temporary status. The workers had been given casual labour cards. The Tribunal also referred to a letter of General Manager, Northern Railway dated 29.12.1978 which contained reference of earlier instructions vide letters dated 21/22.3.1972, 23.5.72 and 27.11.1975 in accordance with which casual labourers whether employed on project or otherwise who had completed four months continuous service were required to be considered for employment Screening Committee for absorption against regular class IV posts and casual labour on project who as a Rule be appointed against Class IV posts that may be required for operation and maintenance of new assets created and they were eligible for appointment on new section of the open line of the Railway concerned irrespective of the limitation of the immediate area of

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A construction. The workers had alleged in para 37 of their application that the aforesaid instructions which had statutory force were not being implemented by the Railways. In reply to the said allegation the Railways admitted the same as a "matter of record". The Tribunal in the above circumstances held that the applicants before them had worked for more than 120 days as such they will be deemed to have acquired temporary status and this conclusion was further supported by the letter of the General Manager, Northern Railway, dated 29.12.1978 extracted above. The termination of their services without giving them a notice was in violation of the provisions of Rule 2304 of the Indian Railways Establishment Manual and was not sustainable in law. The Tribunal thus set aside and quashed the termination orders and gave a direction to reinstate them and to consider for engaging them in the zone of the Railways where they had been engaged, failing which anywhere else in India depending on the availability of work. In the circumstances of the case the Tribunal did not allow the payment of back wages. It was also directed that the Railway shall consider the absorption of the applicants in the regular posts in Group IV category in accordance with their length of service and the relevant Rules. The Railway was directed to comply with the above directions within a period of three months from the date of communication of the order.

E We have heard Dr. Anand Prakash, Senior Advocate on behalf of the Union of India and Shri Goburdhan Advocate on behalf of the workers. It was not disputed before us by learned counsel for the Union of India that in case the workers were employed in the construction work on the open line then they would acquire a temporary status after continuous employment of 120 days, but if the workers were employed on a project work then they can acquire temporary status only after completing 360 days of service. Learned counsel thus strenuously urged that in the present case the stand taken by the Railways was that the workers were employed in the Construction Division and being project workers, the rule of 360 days of service ought to have been applied in their case. It was also contended that the Tribunal did not record a finding that the workers in the present case were engaged on open line and not on project works and in the absence of such finding the Tribunal was wrong in applying the Rule of 120 days of continuous service in the present case.

H We have considered the arguments advanced on behalf of both the

parties and have thoroughly perused the record. The workers had clearly come forward with a case that they were employed as casual labour in the Construction Division and in this regard they placed on record the letter of appointment Annexure IV which reads as under:-

"INFORMATION -

You are being informed by Asstt. Engineer Construction/Northern Railway, Kurukshetra by information No. E-II/AEN/C/KKDEA/ dated 19.7.1988 that you are being appointed in the post of as Casual Labour. This appointment shall only be for the monsoon period. In this duration, your services can be terminated at any moment. You shall not be entitled for any claim in respect of this service.

N.E.IT/R.P.G./N Ambala

Chawni, dated 7/88

Permanent way Inspector/
Construction N. Railway".

In the application filed before the Tribunal the workers took a clear stand that they were Class IV Employees in the Northern Railways and were employed in the Construction Division and employed as Gangmen and mates. They had been working for over 120 days and as such were entitled to all the rights and privileges admissible to temporary Railway servants. The workers in para 4.37 of their application stated as under:-

"That in fact, the Railway Board, and high officials have always considered the Class IV employees in high esteem. It has even ordered by a Railway Circular dated 29.12.1978, which has a statutory force that all workers in the Division be made permanent and regular after completing the mandatory days in casual work. It has also noticed, that, Delhi Division and other Divisions are not following the orders, and they should implement the orders. A true copy of the Annexures is marked as Annexure V".

The Railway filed a written statement before the Tribunal and gave the following reply to para 4.37.

"Para 4.37 is admitted only in so far as it is a matter of record.

A But the same is again ill-motivated and highly misconceived".

B The Railways as such did not deny the allegations made in Para 4.37
in the application filed by the workers, and on the other hand admitted by
saying that it was a "matter of record". The contents of Annexure IV
extracted above clearly goes to show that the information given by Assistant
C Engineer, Construction/Northern Railway, Kurukshetra dated 19.7.1988
workers were appointed in the post of casual labour and it nowhere
mentioned that they were employed as casual labour on a project work.
Apart from this letter, it is nowhere the case of the Railways that there was
any other order of appointment, nor they have placed any documentary
D evidence on record before the Tribunal or even before this Court to show
that the workers were employed as casual labour on a project work. A
request was made on behalf of the Union of India that the case may be
remanded to the Tribunal for allowing the Railways to produce relevant
record to show that the workers were employed as casual labour in a
project work. We do not consider it proper in the interest of justice to
allow this opportunity to the Union of India at this belated stage and to
further drag on the poor workers in this litigation.

E Thus, in the circumstances mentioned above, we do not find any
error in the order of the Tribunal so as to call for any interference. The
Railways were directed by the Tribunal to comply with the directions within
a period of three months from the date of communication of the order of
the Tribunal dated 16.3.1990. Thereafter the workers had moved a Con-
tempt application before this Court and on 12.3.1991, this Court had
directed the Union of India to give employment to all the respondents
F (workers) within two months and to pay them the salary equal to temporary
status employee of the Railways at the initial stage of the pay. During the
proceedings for Contempt of Court it was brought to our notice that the
Railways had given employment to 35 workers initially and for the remain-
ing 70 workers it was stated on 6.1.1992 that they have also been employed.
G In view of such statement made on behalf of the Union of India we did not
consider it necessary to pursue the Contempt Petition any longer and the
same was accordingly dismissed. In the circumstances mentioned above,
we direct that all the 105 workers would be entitled to the salary equal to
a temporary status employee of the Railway at the initial stage of the pay
from 12.5.1991 when two months expired in accordance with our order
H dated 12.3.1991. It has been brought to our notice on behalf of the workers

that they have been uprooted from their original place and even now they are being given daily wages at the rate of Rs. 19.10 paise and not being given the wages equal to a temporary status employee of the Railway at the initial stage of pay. We, therefore, direct the Railway Authorities to pay the back wages to all the employees from 12.5.1991 equal to a temporary status employee allowed at the initial stage of pay within two months from today after adjusting any amount already received by them. The Railway Authorities shall accord the status of temporary employee to all the 105 workers. The workers shall also be entitled to one set of costs from the petitioner, Union of India. We dispose of the appeal in the manner indicated above.

G.N.

Appeal disposed of.