

GAHC010234612015



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/8/2015

THE UNION OF INDIA
THROUGH THE GENERAL MANAGER, N.F. RAILWAY,
MANAGEMENT OF N.F. RAILWAY,

VERSUS

THE GENERAL SECRETARY, RAIL MAZDOOR UNION

Advocate for the Petitioner : MR.D K DEY, MS.M PURAKAYASTHA

Advocate for the Respondent : MS.M BORAH, MR.C S HAZARIKA,MS.M SHARMA,MD.M U AHMED

Linked Case : WP(C)/9/2015

THE UNION OF INDIA
THROUGH THE GENERAL MANAGER
N.F. RAILWAY

VERSUS

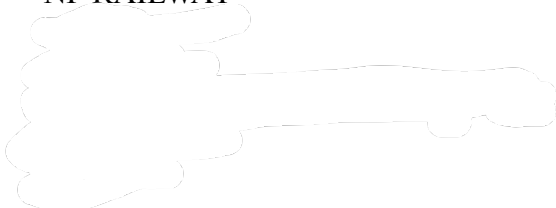
THE GENERAL SECRETARY
RAIL MAZDOOR UNION



Advocate for : MS.M PURAKAYASTHA
Advocate for : MR.C S HAZARIKA appearing for THE GENERAL SECRETARY
RAIL MAZDOOR UNION

Linked Case : WP(C)/6905/2014

THE UNION OF INDIA
THROUGH THE GENERAL MANAGER
NF RAILWAY



VERSUS

THE GENERAL SECRETARY
RAIL MAZDOOR UNION



Advocate for : MR.D K DEY
Advocate for : MS.M BORAH appearing for THE GENERAL SECRETARY
RAIL MAZDOOR UNION

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI
JUDGMENT & ORDER

Advocate for the petitioner : Shri D.K. Dey, Advocate

Advocate for the respondents : Shri M.U. Ahmed, Advocate.

Date of hearing : 05.09.2024

Date of judgment : 11.09.2024

All these three writ petitions are preferred by the Union of India through the General Manager, NF Railways against three numbers of Awards passed by the Central Government Industrial Tribunal, Guwahati. By the said Awards, the fixation of seniority of the incumbent workmen involved have been directed to be done from the date when they were screened for permanent service in the NF Railways.

2. As per the facts projected, the workmen involved were initially engaged in the NF Railways in casual capacity. Since three writ petitions are involved, the relevant dates of engagement and further development are given in a chart below.

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WP(C)	Initial date of appointment	Date of temporary status	Date of screening for permanent absorption
6905/14	16.03.1984	01.04.1984	01.04.1984
	Khalasi Helper	Casual Worker	Casual Labour
8/15	15.03.1985	01.04.1988	01.04.1988
9/15	14.12.1984	01.04.1988	01.04.1988

3. It is the common case of the workmen that though initially their services were in the Construction Department, the same were subsequently transferred to the Open Line and they were also given promotion thereafter.

4. The Union, representing the workmen had raised a dispute seeking fixation of their seniority from the date of their screening and the same dispute was accordingly referred by the Central Government to the learned CGIT in the form of three numbers of References being Reference Nos. 4 / 2010, 5 /2010 and 6 / 2010. The References were however answered by the learned Tribunal vide Awards dated 12.02.2014, 16.06.2014 and 29.05.2014 respectively whereby the seniority was directed to be fixed from the date of the screening for granting permanent absorption. It is in respect of these Awards that the present writ petitions have been filed.

5. I have heard Shri D.K. Dey, learned Standing Counsel, Railways for the petitioners in these cases. I have also heard Shri M.U. Ahmed, learned Counsel for the sole respondent in each of the cases.

6. The learned Standing Counsel, Railways has, at the outset raised the question of maintainability of the References before the learned Tribunal. It is submitted that the Union in question was not a recognized Union and the dispute could not have been raised by the said Union. As regards the Awards, it is submitted that the seniority can be reckoned only from the date of grant of permanent absorption. Elaborating his first submission regarding the maintainability of the References before the Tribunal, it is submitted that Section 2 (K) of the Industrial Disputes Act, 1947 defines "Industrial Dispute". Though such disputes are permissible to be espoused in a representative capacity by a Union, such Union has to be a recognized Union. By drawing the attention to the relevant pleadings, it is submitted that a specific pleading was made before the Tribunal that the Railway Mazdoor Union through whom the dispute was raised was not a recognized Union. It is submitted that in spite of raising the issue, no findings were given by the learned Tribunal.

7. As regards the merits of the dispute, the learned Standing Counsel has submitted that the workmen were transferred to the Open Line from the Construction Department on their own request and irrespective of the same, they were all permanently absorbed on 15.05.1996. By placing before this Court the Indian Railway Establishment Manual Volume –II, it is submitted that seniority for the period prior to regular appointment is not to be counted. It is submitted that the same material was also placed before the Tribunal which was ignored.

8. In support of his submission regarding the manner of reckoning seniority, the learned Standing Counsel has relied upon a judgment of the Hon'ble

Supreme Court reported in **(2007) 14 SCC 405 [M. Ramakotaiah and Ors. vs. Union of India and Ors]**.

9. The learned Standing Counsel accordingly submits that the impugned Awards are liable to be interfered with as the date of undergoing screening for permanent service cannot be reckoned to be the date when such permanency was conferred.

10. *Per contra*, Shri Ahmed, the learned counsel for the workmen has submitted that no differentiation can be made between the Open Line and the Construction Department of the NF Railway. It is submitted that both the Departments are under the same umbrella and therefore the seniority will not be adversely affected by any transfer. He has also submitted that there is not even an iota of evidence before the Tribunal that such transfer to the Open Line was done on the request of the workmen. By referring to the affidavit-in-opposition filed in these cases, the learned Counsel for the workmen has submitted that at no point of time any option was given by the workmen for transferring them to the Open Line. It is also submitted that before the Tribunal, officers from the Personnel Department of the Railways were examined and after such examination, the Awards have been passed in accordance with law which do not call for any interference.

11. The learned counsel has also submitted that so far as reliance upon the case of **M. Ramakotaiah** (supra) is concerned, in paragraph 26, there is an expression "or otherwise" which would mean that seniority can be granted to the workmen.

12. The rival contentions have been duly considered and the materials placed before this Court including the original records of the Tribunal has been carefully examined.

13. The issue which was referred in the reference cases is analogous and for the sake of convenience, one is extracted herein below:

“Whether the demand of Rail Mazdoor Union for fixation of seniority of Shri Thaneswar Kalita in the cadre of Open Line Organisation, from the date of his screening in construction organization is legal and justified? If yes, what relief the workman is entitled?”

14. As recorded above, the initial appointment of the workmen in these cases were on casual basis. Though admittedly the workmen were subsequently granted temporary status and on 01.04.1984 had undergone a screening test for grant of permanent status, such permanent status was ultimately granted only on 15.05.1996 which is not in dispute. The aspect of transfer of the workmen from Construction Department to Open Line, though has been a contentious issue will not have any relevancy in as much as the issue involved in these cases are with the date from which the seniority is to be reckoned. Therefore, irrespective of whether such transfer was of the own request of the workmen or not, it is the Rules holding the field regarding reckoning of seniority which would have to be taken recourse to. The Indian Railway Establishment Manual Volume- II which has been placed before this Court lays down as follows.

“Casual labour treated as temporary are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of this Manual. The rights and privileges admissible to such labour also include the benefit of D&A Rule. However, their service prior to

absorption in temporary / permanent /regular cadre after the required selection / screening will not count for the purpose of seniority and the date of their regular appointment after screening / selection shall determine their seniority vis-à-vis other regular /temporary employees. This is however, subject to the provision that if the seniority of certain individual employees has already been determined in any other manner, either in pursuance of judicial decisions or otherwise, the seniority so determined shall not be altered."

15. It is also submitted that the same was also placed before the learned Tribunal which was not considered. The aforesaid provision makes it amply clear that seniority for the period prior to regular appointment cannot be counted. It is not in dispute that the permanent status or permanent absorption of the workmen was done only on 15.05.1996. Therefore, it cannot be countenanced that prior to such date, the seniority of the workmen can be reckoned. When the aforesaid provision of the Manual is not the subject matter of challenge, the finding of the learned Tribunal to grant seniority from the date of which the workmen had undergone a screening test in the year 1984 cannot be held to be reasonable or with any basis. So far as the issue whether the dispute has been raised by a recognized Union or not, the same is not required to even gone into as, otherwise also on merits it does not appear that the same decided in a correct manner. The use of the expression "or otherwise" in the case of **M. Ramakotaiah** (supra) cannot be accepted as the date of screening cannot be held to be the date of permanent absorption. To examine the said aspect, the relevant observations are extracted herein below:

"26. We have herein earlier quoted the amended para 2511 (a) of the Manual. From a bare perusal of this para, it would be evident that under this amended para, the seniority of the casual labourers treated as temporary, who were subsequently absorbed in temporary / permanent cadre is to be reckoned on the basis of the date of their regular appointment after screening / selection and their service prior to the

absorption in temporary / permanent cadre after the required selection would not be counted for the purposes of seniority. In the amended para 25 11 (a) only exception is in respect of the employees where the seniority has already been determined, either by way of judicial pronouncement or otherwise and that the seniority so determined shall not be altered.

27. *In view of the discussions made hereinabove, we find that amended Para 2511(a) lays down the privileges of the temporary employees, the crux of which can be enumerated as follows:*

- 1. Casual labour treated as temporary are eligible to rights and benefits admissible to temporary railway servants as laid down in Chapter XXIII of the Manual including the benefit of the Disciplinary and Appeal Rules.*
- 2. The employees shall not be eligible to count their service prior to the date of their being appointed as a temporary/regular employee for the purposes of determination of his seniority. Seniority would be calculated only from the date of the regular appointment.*
- 3. The above provision shall not be applicable in cases where the seniority is determined in any other manner such as a judicial decision. In such situations, the seniority so determined would be applicable and beyond the scope of alteration.*
- 4. For the purposes of pension, the employees shall be eligible to calculate only half their term of service after attaining temporary status on completion of prescribed days of continuous employment and before regular absorption as qualifying service.*
- 5. The above pensionary benefit would be only to employees after their absorption in regular employment.*
- 6. Casual labour who have attained temporary employment would be eligible to carry forward the leave available to them when they are absorbed in regular service.*
- 7. These benefits, however, are not available to daily-rated casual labour.*

29. *Considering this, it is safe to conclude that the Court was of the opinion that when a casual labour treated as temporary is absorbed as temporary/permanent cadre, his seniority would be calculated from date of regular appointment i.e. the services rendered before the date of regular appointment would not be applicable for determination of seniority."*

16. In view of the aforesaid facts and circumstances and the law laid down by the Hon'ble Supreme Court in the case of ***M. Ramakotiah*** (supra), this Court is of the considered opinion that the impugned Awards passed by the learned CGIT cannot be held to be sustainable in law and accordingly the same are set aside.

17. The writ petitions accordingly stand allowed.

18. Let the records be send back.

JUDGE

Comparing Assistant