

8

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. NO. 1119/2002

New Delhi, this the 11th day of February, 2003

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Hari Narain,
S/o Shri Jhingai Ram,
Ex-Casual Labour,
Under Signal Inspector (ACSR)
N. Rly., Moradabad.

Residential Address:-

Hari Narain,
House No. 2840,
Gali Rajputan,
Subzi Mandi,
Delhi

Applicant

(By Advocate : Shri G.D. Bhandari)

Versus

Union of India, through

1. The General Manager,
Northern Railway,,
Baroda House, New Delhi
2. The Divisional Railway Manager,
Northern Railway,
Moradabad

Respondents

(By Advocate : Shri Rajinder Khattar)

O R D E R

Through this OA applicant impugns respondents' action of placing his name at serial No. 192 of the Live Casual Labour Register, hereinafter referred to LCLR, and has sought consideration for engagement and absorption on a Group 'D' post in view of the decision of the apex Court in Dhirender Singh and Ors vs. Union of India & Ors as well as appointment from the date his juniors have been appointed with all consequential benefits.

2. Applicant on casual basis was appointed on 29.04.1973 and had worked upto 25.10.1973 His services

9

have been dispensed with for want of work in the Signal Inspector (ASCR), Northern Railways, Moradabad. Along with 41 persons, who have not been regularised, a Writ Petition No. 262 of 1994 in the name of Dhirender Singh had been filed before the apex Court seeking extension of the benefit of the judgement dated 19.04.1985 in the case of Inderpal Singh and Others vs. Union of India and Others.

3. By an order dated 15.12.1994, directions have been issued to the respondents to appoint a high ranking officer to scrutinise the claim of the petitioners including the applicant. In the scrutiny it was left open to the petitioners to produce whatever evidence they have in their possession. On completion of the scrutiny the decision is to be communicated to the respondents and if the claim is well founded benefit of the scheme be accorded to the petitioners. In accordance with the directions, the applicant produced LCLR Card showing 91 days working on casual basis. Respondents by a communication dated 11.8.1995 examined the claim of the applicant. On verification and in absence of any claim produced by the applicant or any document shown to justify his claim on the basis of what has been claimed in the petition, i.e., working of 91 days in open line, the benefit of temporary status was not accorded, but he was made entitled to be put in the LCLR in the concerned Unit.

4. In pursuance of the above, applicant's name has been placed at serial No.192 of LCLR of JE

(Sig)1/Const/MB on construction side. The priority list issued by the respondents pertaining to S&T Department where the name of the applicant was missing. He preferred a representation for his engagement and regularisation, giving rise to the present OA.

5. Learned counsel of the applicant Shri G.D. Bhandari contended, at the outset, that no contempt has been filed before the apex court by the applicant and in absence of any document to that effect annexed though only communicated in the reply by the respondents, the same is false.

6. It is stated that the verification of the applicant's working period is not based on factual computation, whereas his Casual Labour Card shows 91 days which has been duly verified by the Signal Inspector under whom the applicant had worked. Moreover, it is stated that assuming that the applicant had worked for 51 days as per Circular issued by GM (P), Northern Railways, seniority list for Casual Labours on open line for the purposes of engagement and retrenchment is Inspector-wise, but for screening it is Division-wise. Further relying on Railway Board's letters dated 3.5.1972 and 17.2.1989, it is contended that the Project Casual Labours are eligible for appointment on any Section of the open line and a Division should be treated as a Unit. Accordingly, it is contended that by not maintaining the priority list on Division basis, persons having lesser working period have been engaged and regularised which makes

discrimination and is violative of the Constitution of India. Referring to the reply of the respondents, it is stated that whatever has been contended has not been placed on record. Verification conducted has not been annexed as the applicant still figures in the list for so many years and has not been considered for engagement and regularisation.

7. On the other hand, respondents' counsel Shri Rajinder Khattar strongly rebutted the contention of the applicant and stated that as the applicant in pursuance of the directions in Dhirender Singh's case (supra) by the apex Court has not produced any document or material in support of his claim. The same was examined on the basis of what has been claimed on the petition before the apex Court. 51 days could be verified. Applicant was conveyed the same on 11.8.1985 and submission of a representation to the DRM, he was informed that his name has been brought in LCLR at serial No. 192 and the priority list annexed at A-7 is of inter Unit, whereas the applicant's Unit is JE (Construction) and as per seniority he would be considered for reengagement and regularisation.

8. It is also stated that having failed to raise the issue before the apex Court, the present OA is barred by the doctrine of constructive res judicata. Moreover, it is stated that the case of the applicant is to be considered in his own unit and if the applicant has any grievance he could have approached the apex Court in Contempt Petition which has been

dismissed by the apex Court as such it is not open for the applicant to re-open the matter at this stage. In this back-drop, it is stated that he is of Construction Organisation, which has been stated as a separate Unit and the same would not figure in the list of another Department.

9. In the rejoinder, applicant has reiterated the contentions and has vehemently denied that no Contempt Petition has been filed by the applicant before the apex Court and in absence of any record to indicate how the working period has been treated as 51 days, whereas it is certified as 91 days, the claim of the applicant has been arbitrarily rejected. It is stated that for screening and regularisation, the names are to be arranged on Division-wise seniority.

10. I have carefully considered the rival contentions of the parties and perused the material placed on record.

11. Directions of the apex Court in the instant case made it incumbent on the petitioners to produce whatever evidence in their possession and custody before the High Ranking Officer verifying the claim. Applicant has not responded to the same and as such the respondents have verified 51 days of working and accordingly as he was working in the Construction his name has been placed in the LCLR at serial No.192 and this decision has been communicated to the applicant by letter dated 12.12.1996. The contention of the

applicant that for the purposes of screening the present seniority list for casual labours on open line is Division basis as decided by the GM (P) through Railway Board's letter dated 28.8.1987 though cannot be disputed but Railway Board's subsequent letter dated 17.2.1989 treated a Division as Unit but it has been made open to the Railways with regard to the situation and varied practices in regard to absorption of casual labour to evolve suitable guide-lines in consultation with the recognised labour in regular employment against normal vacancies as well as in posts sanctioned for decasulisation in an equitable manner. Accordingly, the respondents have decided to maintain the seniority of casual labours Unit-wise and not on Division basis. Accordingly, the applicant who belongs to construction has been placed in LCLR of JE (Signal) at serial No.192. I do not find any infirmity in placing the name of the applicant at serial No.192 which is as per the guide-lines.

12. Moreover, the priority list annexed by the applicant is a list of casual labours of S&T Department which is different from the Construction Unit where the applicant had worked and the aforesaid priority list cannot be the basis of engagement of the applicant and his name cannot be included therein. As and when vacancies are available and as per the seniority of the applicant he would be considered for engagement and regularisation as per the decision of the apex Court. Moreover, I find that if applicant has any grievance as to the wrong verification of his working period,

14
(7)

nothing prevented him from approaching appropriate Court in an appropriate proceeding. Having failed to do so, it is not open for him to raise the same issue again as the matter is certainly barred by doctrine of res judicata. However, on merit as well as seniority assigned to the applicant as per his Unit in accordance with the guide-lines framed by the respondents, the same cannot be found fault with.

13. For the foregoing reasons, I do not find any merit in the present OA which is accordingly dismissed. No costs.

S. Raju
(SHANKER RAJU)
MEMBER (J)

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