

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

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O.A. NO.341 OF 2002
M.A. No.1661 OF 2002
M.A. No.1018 OF 2003

New Delhi, this the 8th day of March, 2004

HON'BLE SHRI R.K. UPADHYAYA, ADMINISTRATIVE MEMBER

Shri Surendra Kumar Sharma
S/o Shri Bal Kishan Sharma,
R/o Mohalla - Katra Bansidhai,
Diwan Ka Bazar,
Moradabad.

At present residing at
4/2 A, East Azad Nagar,
Shahdara, Delhi.

.....Applicant

(By Advocate : Shri K.K. Patel)

Versus

Union of India through:

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

.....Respondents

(By Advocates : Shri R.L. Dhawan with Shri Rajinder
Khatter)

O R D E R

OA was filed by Shri S.K. Sharma claiming the
following reliefs:-

- "(a) Call for the records of the case;
- (b) Direct the respondents to engage the
applicant forthwith in preference to
all other freshers and junior casual
labours;
- (c) Direct the respondents to re-engage
the applicant in accordance with the
seniority fixed on the basis of total
number of working days he has rendered
as casual labour as prescribed by
Railway Board's instructions issued
from time to time along with all
consequential benefits;

Concurrence

- (d) Award the costs of the proceedings;
and
- (e) Pass such further order or orders as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case.

2. It is stated by the applicant that he was employed with the respondents between March 1978 to November 1984. It is also stated that his name was kept in the priority list of casual labourers of Loco Department of MB Division as per list of 8.11.1997. However, during the pendency of this OA, the applicant died on 13.2.2002. MA 1661/2002 has been filed by Shri Pawan Vashisht son of the applicant on 29.7.2002 for "taking his name as applicant in place of his deceased father - Shri S.K. Sharma". Another misc. application (not numbered) has been filed seeking condonation of delay in filing the misc. application for bringing the legal heirs on record. However, in the misc. application seeking condonation of delay, it has been stated by the applicant of the misc. application Shri Pawan Vashisht S/o late Shri S.K. Sharma that the legal heirs of the deceased included his wife Smt. Asha Sharma, two major daughters and the applicant. The reason for delay in filing this misc. application for bringing the legal heirs on record is stated to be on account of the death certificate having been received late.

3. MA 1018/2003 has been filed by Shri Pawan Vashisht S/o late Shri S.K. Sharma seeking amendment in the OA. The applicant Shri Pawan Vashisht has now

Amendment

sought a direction to the respondents to appoint him on compassionate grounds.

4. The respondents have filed the reply to the Original Application as well as misc. applications filed by Shri Pawan Vashisht. In the reply to the OA, the respondents have stated that no junior to the applicant (late Shri S.K. Sharma) had been engaged. Therefore, there was no cause of action in favour of the deceased applicant. The respondents have also stated that the OA was not maintainable as Principal Bench of this Tribunal has no jurisdiction in respect of the matter where the cause of action arose at Moradabad.

5. Learned counsel of the deceased applicant and Shri Pawan Vashistha stated that the right to sue the respondents devolves on the heir(s) of the deceased. In this connection reliance was placed on the Full Bench decision of this Tribunal in the case of Mrs. Chandra Kala Pradhan Vs. Union of India and Ors., (ATFBJ (1997-2001) 410. He also stated that neither the Original Application nor the misc. applications are beyond the period of limitation. He also referred to the Full Bench decision of this Tribunal in the case of Virender Kumar Vs. Commissioner of Police, ATFBJ (1997-2001) 1, wherein this Tribunal has held that legal representatives can continue the proceedings initiated by the deceased employee.

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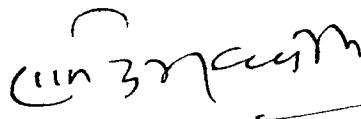
6. After hearing the learned counsel of the parties and after perusal of the material available on record, it is held that the proceedings initiated by Late Shri S.K. Sharma cannot be continued after his death. He has sought re-engagement as casual labourer on the basis of his earlier employment with the respondents as per the priority list of casual labours of Loco Department of MB Division as on 8.11.1997. The total working days of the applicant as per this list was 96 days only. Therefore, he was not a casual labourer with temporary status nor such temporary status could have been allowed on the basis of which the claim is made. As a matter of fact, no such claim for grant of temporary status has been made in the OA. What the learned counsel now wants to argue is altogether a new case. The applicant had worked upto the year 1984. No person junior to him was granted re-engagement during his life time. Therefore, even on merits the applicant had no case.

7. The question of legal heirs being brought on record does not arise in view of the fact that the OA abated after the death of the applicant - S.K. Sharma. The Hon'ble Supreme Court in the case of Syedna Taher Saifuddin Saheb v. State of Bombay, AIR 1958 SC 253, have held that when the plaintiff filed a suit that he had been wrongly excommunicated and died pending suit, the suit would abate, since the action was personal to the plaintiff and on his death it would die with him. On that analogy, the present OA having already abated cannot be revived. There is

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another reason for not allowing the MA NO.1661/2002 for bringing the legal heir on record. Admittedly there were four legal heirs to the deceased applicant and only one of them has chosen to place his name as legal heir. As a matter of fact all the legal heirs should have joined together or in any case, they could have authorised the applicant in the misc. application Shri Pawan Vashisht to do so. There is nothing on record to suggest anything in this connection. Even the reason for filing the misc. application for condonation of delay in filing the misc. application to bring on record the legal heir is not convincing. The only reason given is that the applicant received copy of death certificate late. This can hardly be a ground for condonation of delay. The applicant could have filed the misc. application and subsequently evidence in the form of certificate could have been filed in due course.

8. In view of what is stated above, OA 341/2002, which is held to have abated, is dismissed and sent to records. ~~MA 341/2002~~. MAs are also disposed of as rejected in view of the reasons stated hereinbefore.



(R.K. UPADHYAYA)
ADMINISTRATIVE MEMBER

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