

(10)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA 2103/2002

New Delhi, this the 25th day of February, 2003

Hon'ble Shri Shanker Raju, Member (J)

Sh. Vineet Kumar Bhatnagar
S/o Sh. Parmatama Swaroop

Permanent Address :-

House No.L/A-13, Laxmi Nagar
Behind Mata Mandir, Line Par, Moradabad

At present residing at :-

C/o Sh. Sanjay Sharma
2/4A, East Azad Nagar
Shahdara, Delhi.

...Applicant

(By Advocate Sh. K.K.Patel)

V E R S U S

Union of India : through

1. The General Manager
Northern Railway
Baroda House
New Delhi - 110 001.
2. Division Railway Manager
Northern Railway
Moradabad Division
Moradabad.

...Respondents

(By Advocate Sh. R.L.Dhawan)

O R D E R

By Sh. Shanker Raju,

Applicant impugns respondents' order dated 8.3.2002 where his request for placing his name in the Live Casual Labour Register (LCLR) has been turned down. He has sought quashment of the same with direction to the respondents to re-engage him as per his seniority from the date his juniors have been engaged with all consequential benefits.

2. As per OA, applicant had worked from 17.5.78 to 30.6.79 for 81 days, 20.5.81 to 15.12.83 for 300 days and 3.5.86 to 30.12.86 for 200 days on casual basis.

(11)

-2-

3. Being aggrieved with non-consideration of re-engagement and regularisation applicant filed OA-2940/2001 which was disposed of on 29.10.2001 with direction to the respondents to dispose of the representation.

4. In compliance of the direction of this court respondents by a letter dated 8.3.2002 examined the request of applicant and rejected the same, giving rise to the present OA.

5. Learned counsel for applicant Sh. K.K. Patel contended that statement of workers worked until 1.12.86 and the list which is LCLR of 58 casual labours incorporates name of applicant and this list is issued after proper verification by the Divisional Engineer (Track) Northern Railway, Moradabad and is in supersession of the earlier list dated 1.12.86. As per applicant on the basis of his list several other persons of the lists have been re-engaged and further regularised whereas his claim has not been considered which is violative of Articles 14 and 16 of the Constitution of India.

6. It is further stated that though now a defence has been taken by respondents that Kanoongo clerk who has prepared a forged list where the working of casual labour has not been as per the record available has been proceeded with in a disciplinary proceeding and the same is pending, as such without finalisation of the proceeding it cannot be presumed

h

that the aforesaid list is not LCLR or is forged. As such, in view of Board's letter and policy applicant has a right to be re-engaged and regularised.

7. On the other hand, respondents' counsel Sh. R.L. Dhawan strongly rebutted the contentions and stated that as applicant has last worked as per him in 1986 present application is filed after such an inordinate delay and is hit by limitation and as the cause of action is not continuing the same arises on disengagement of applicant and is barred by the decision of High Court of Delhi in CWP No.450/2001, Jagdish Prasad v. Union of India & Ors. decided on 7.5.2002.

8. Moreover, on merits it is stated that applicant has been directed to attend office of respondents alongwith his casual labour card but he failed to submit his original card for verification. As name of applicant is neither available in the LCLR of Loco Foreman, Moradabad nor IOW (Survey) where he is alleged to have last worked the statement of 58 names filed by applicant is forged for which a disciplinary proceeding is taken against the concerned clerk. Moreover, on the plea that others have been engaged from this list it is contended that on a wrong order passed by respondents applicant has no indefeasible right as held by Apex Court in Chandigarh Administration v. Jagjit Singh, JT 1995 (1) SC 745.

9. I have carefully considered the rival contentions of the parties and perused the material on record. As per respondents the claim of applicant was

not well founded as firstly he had failed to produce his original casual labour card. Moreover, his name was neither available in the LCLR at Loco Foreman, Moradabad nor at IOW (Survey) though his name figured in the photo copy of 58 casual labours at serial No.20 which was furnished by one O.P. Saxena, Kanoongo clerk of DRM office on 25.2.99 but if applicant had worked as per record his name would have been figured in the respective register of concerned PWI or LF. The statement of 58 persons was found forged and moreover after 3.1.81 except General Manager none else was empowered to make appointment of casual labour. As respondents have denied the authenticity of statement of workers figuring 58 casual labours and is not a LCLR claim of applicant that his name was entered in the LCLR, cannot be countenanced. Moreover had he worked, as alleged by him and as reported in the statement of workers it would have been simultaneously existed in the Loco Foreman or IOW. As the name of applicant does not figure in any of the register his contention of having worked is not authentic and as statement submitted by Kanoongo clerk has been found forged and for which a disciplinary proceeding is taken is conclusive to establish that on the strength of this document applicant's claim cannot be allowed. In order to establish his claim for re-engagement it is to be established that his name existed in the LCLR and as the same has not been discharged applicant is not entitled for either re-engagement or regularisation. The contention of Sh. Patel that list cannot be treated as forged unless the disciplinary proceedings are held, cannot be countenanced as the proceedings are for a

h

(14)

-5-

misconduct against the Kanoongo clerk and the factum of forged statement of workers has already been established from the official record.

10. Another plea that few persons have been re-engaged and regularised from this list by the respondents will not confer upon applicant a right to seek the same as a wrong order cannot vest him with a right as per the decision of Apex Court in Jaggiit Singh's case (supra).

11. In the result and for the foregoing reasons I am of the considered view that the decision taken by the respondents on the representation of applicant does not suffer from any legal infirmity and moreover as applicant was disengaged in 1986 as alleged by him cause of action being not continuous, as held by the High Court of Delhi in Jagdish Prasad's case (supra) the OA is liable to be dismissed as time barred. The OA is accordingly found bereft of merit and is dismissed. No costs.

S. Raju

(Shanker Raju)
Member (J)

"San.."