

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

(36)

O.A. NO. 1759/2002
NEW Delhi 17/2/2004
HON'BLE SHRI SHANKER RAJU, MEMBER (J)
HON'BLE SHRI S.A. SINGH, MEMBER (A)

1. Khacheru Singh
2. Ram Gopal
3. Sh. Madho Ban,
4. Sh. Hukam Singh
5. Sh. Ant Ram
6. Sh. Meena
7. Sh. Hari Singh
8. Sh. Chhidha Singh
9. Sh. Jamael
10. Sh. Udhal
11. Sh. Hukam Singh

(All working under AEN/N. Rly. Hapur as
Gangman Class IV Post)

.....Applicants

(By Shri G D Bhandari, Advocate)

VERSUS

Union of India, through

1. The General Manager,
Northern Railway,
Baroda House, New Delhi
2. The Divisional Railway Manager,
Northern Railway Moradabad.
3. The Divisional Engineer (HQ)
Northern Railway, Moradabad

.....Respondents.

(Sh. V S R Krishna and Sh. Rajinder Khattar, Advocates)

O R D E R (ORAL)

BY HON'BLE SHRI S.A. SINGH, MEMBER (A)

The applicants impugns respondents' orders dated
1.06.2002 (annexure P-I & II) and similar orders issued in

respect of other applicants and pray that the respondents be directed to continue the engagement of the applicants with consequential benefits.

2. Heard learned counsel for the applicants and the respondents .

3. The applicants are amongst those who had earlier filed an OA 378/2001 challenging the termination of the applicants after their re-engagement as per the directions of the Tribunal in OA 1288/1996 . The respondents had terminated the re-engagement on the grounds that they had been erroneously re-engaged w.e.f. 15.5.94 by ignoring the claims of those who were senior to them in live casual register. The Tribunal disposed of the OA with the directions:

"10. There is merit in respondents contention that as long as there are persons in LCL Register senior to applicants who have not been engaged, applicants have to make way for them. If they are called for work and still do not turn up, then only applicants would have a right for re-engagement because in that case their appointment would be in their turn, and not out of turn, by ignoring the claims of persons senior to them in LCL Register.

11. In the result the impugned order warrants no interference and the interim orders are vacated. If respondents find that persons senior to applicants are already engaged or are not interested in getting employment, then it will be open to respondents to re-engage applicants as per their seniority in LCL Register."

4. In the impugned order the respondents has stated as under:

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" The termination orders having been upheld by Hon'ble CAT/NDLS vide order dated 23.02.2001, you are hereby discharged from service with immediate effect. It is stated that your name already existing in Live Casual Labour Register at S No. 11 under SE/W/GJL-HPU, Sub Divisional and further you will be considered for re-engagement as per your turn in the unit of SE/W/GJL as and when vacancy occurs subject to the fulfilment of conditions of employment."

5. It is the contention of the applicants that those senior to applicants, in the Live Casual Register, are either working in the other Units, expired or not interested in the employment. As such, they are senior most in line for re-engagement and they should be re-engaged as vacancies exists. However, respondents have not taken any steps in this direction on the plea of no vacancies.

6. Further, they allege hostile discrimination because the respondents have regularised many juniors in other Units under AENs Gajraula and Bulandshahar. They should have annexed seniority list of these units, in addition, to the seniority list of SE/P.Way, Amroha.

7. The respondents contend that the applicants were erroneously re-engaged because the court's orders were misimplemented. This mistake was detected by the DRM and it was decided to rectify it by issuing Show Cause Notices to the concerned applicants. The applicants approached the Hon'ble Tribunal in OA No. 1288/96, 1310/96 and 1355/96 and the Tribunal disposed of their OAs by a common order. The show Cause Notices were quashed by the Tribunal with liberty to respondents to issue fresh show cause notices along with the details of services of those who are waiting for

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re-engagement to enable the applicants to answer the allegations against them and thereafter to proceeding in accordance with law.

8. In compliance of these orders fresh Show Cause Notices were issued to the applicants intimating them the names of seniors who were waiting for re-engagement. After considering the reply to the Show Cause Notice, termination orders were issued by the respondents on 10.8.2002. The applicants filed OA No. 378/2001 against the said termination orders which was disposed of on 19.4.2002 with the observation that the impugned order warrants no interference and if respondent find that persons seniors to the applicants are already engaged or not interested in getting employment, then it will be open to respondents to re-engage applicants as per their seniority in the live casual labour register.

9. The respondents further urged that the applicants are again and again approaching the Tribunal for same cause of action and thus the applicants are barred by the principle of Res-judicata and reconstructive Res-judicata .

10. The respondents during oral submissions stated that they will be considering their re-engagement in their turn as and when vacancy and work is available.

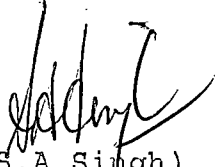
11. We find that the Tribunal's order dated 9.4.2002 in OA 378/2001 required the respondents to provide to the


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applicants details of seniors, who are waiting for engagement along with the fresh show cause notice to enable the applicants to reply and thereafter to proceed in accordance with law. The applicants have not been able to establish that any person junior to them in their seniority unit has been engaged.

12. Applicants have pleaded that in their seniority unit, vacancies exist, and those who are senior to them are not interested in re-engagement. The respondents should therefore, re-engage the applicants against these vacancies. We find that such directions already exist in OA 378/2001 the operative portions of which have been reproduced in para 3 earlier. Respondents have, during the course of submissions, assured that they will re-engage the applicants in their turn when vacancies arise. We, therefore, find no reason to interfere in the matter as it has already been adjudicated upon in the earlier OA.

13. We dispose of the OA with the observation that respondents should review the vacancies position in the seniority unit of the applicants and take steps in accordance with the direction already given in para 11 of judgement dated 9.4.2002 in OA 178/2001. No costs.


(S.A. Singh)
Member(A)


(Shanker Raju)
Member (J)

Patwal/