

Central Administrative Tribunal
Principal Bench



O.A.No.2327/2001

Hon'ble Shri Shanker Raju, Member(J)

New Delhi, this the 30th day of December, 2002

1. Attar Singh s/o Sh. Phool Chand

2. Jog Ram s/o Sh. Phool Chand

r/o H.No.615, e Block, Gali No.19
East Gokalpuri, Delhi - 94.

3. Prem Chand s/o Sh. Itwari Lal

4. Telu Ram s/o Sh. Simru Singh

R/o H.No.758, D Block
East Gokalpuri, Delhi - 94... Applicants

(By Advocate: Sh. Yogesh Sharma)

Vs.

1. Union of India through
The General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway, Delhi Division
Near New Delhi Railway Station
New Delhi. Respondents

(By Advocate: Sh. R.P. Aggarwal)

O R D E R

By Shri Shanker Raju, M(J):

In this OA applicants seek quashment of the respondents' order dated 23.12.1998 with further directions to the respondents to include the names of the applicants in Live Casual Labour Register (hereinafter called as "LCLR") and to re-engage them as per their seniority in preference to juniors and freshers.

2. Being aggrieved with non-inclusion of their names in LCLR, applicants preferred OA 1398/98 which stood disposed of on 30.7.1998 with direction to

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the respondents to dispose of the representation in the light of the decision of the Tribunal in OA 867/95 dated 3.1.1997.

3. Respondents, in compliance of the directions, rejected the claim of the applicant for inclusion in LCLR against which a CP No.344/99 has been filed, which was disposed of, giving liberty to the applicants, by an order dated 2.8.2000.

4. Sh. Yogesh Sharma, learned counsel appeared for the applicants, has also filed MA for condonation of delay as well as an application for joining together. MA for joining together is allowed.

5. Applicants, who were engaged with the respondents in the year 1981-82 stated to have completed 120 days continuous service with temporary status. Before disengaging their services they have not been issued any show cause notice. As during 1981-82, no casual labour cards were issued the same have not been in possession of the applicants.

6. Learned counsel for applicants contended that similarly situated persons who were engaged in 1981-82 filed OA 867/95 which was decided on 3.1.1997 and in compliance, all, except two, were engaged.

7. Another OA 532/98 Kunwar Pal and Others v. Union of India was also disposed on 20.7.1999 and Writ Petition has been dismissed by the High Court of Delhi and the directions have already been implemented.



8. It is, in this backdrop, stated that in another OA 914/98, Shish Pal Singh's case dismissed by the Tribunal vide Judgement dated 15.6.1999 against which Writ Petition was filed where the Hon'ble High Court of Delhi was set aside the Tribunal's order and remanded the case to the Tribunal and the Tribunal was allowed the OA 914/98.

9. Further, Railway Board's instructions dated 11.9.1986 pertaining to the engagement and regularisation of casual labour as directed by the Apex Court in Inder Pal Yadav's case supra, it is submitted that these instructions apply to project casual labourers in whose cases zone wise list is to be prepared and those with longer service would have to be given priority. Sh. Sharma further stated that the General Manager issued a Circular on 28.8.1997 regarding maintenance of LCLR for casual labour discharged prior to 1.1.1981 and only those names should be deleted except those who had not worked for two years and it was decided that while maintaining LCLR, those casual labourers who have been discharged prior to 1.1.1981 and had not worked for two years, their names should be deleted except those who made representations and considered eligible further, and further those names are to be continued on the LCLR indefinitely.

10. The grievance of the learned counsel for applicants that although the respondents have engaged the number of persons, i.e., freshers and juniors, they have not adhered to LCLR and without considering the case of casual labour, as per instructions, names



have not been brought in LCLR. This according to him is ~~in~~ violative of Articles 14 and 16 of the Constitution of India.

11. Learned counsel for applicants further stated that rejection of the claim on the ground that General Manager approval was not taken, is not sustainable as applicant was issued paper certificates which ~~have~~ ^l held to be valid in Full Bench decision of Mahabir ~~Shiv~~ v. Union of India, 2000(3) ATJ Page 1.

15. Learned counsel for applicants further stated that as per paras 179 (xiii) IREM, the same was added in the Manual on the basis of Board's Circular dated 31.1.1961 and after decision in Inderpal Yadav's case *supra* these instructions have been revised the requirement of six months continuous service has been done away and it is made 120 days. As the applicants have fulfilled all the conditions, their non-inclusion in LCLR and re-engagement of juniors and freshers is not sustainable.

16. On the other hand, respondents' counsel, Shri R.P. Aggarwal vehemently opposed the contentions and stated that applicants' representations have been disposed of with speaking orders with reasons on 23.12.1998 and was communicated to the applicants as per their own version on 25.1.2000, and the OA filed on 3.9.2001 is beyond the limitation period as envisaged under Section 21 of the Administrative Tribunals' Act, 1985. It is contended that certificates issued by Inspector of Works on plain papers cannot be relied on as applicants had worked



during 1981-82 but the certificates have been issued by Inspector of Works only in 1988 and the genuinity of these certificates are doubtful as no details/names of Inspector and Unit has been given in the certificates.

17. According to the learned counsel for respondents casual cards were issued which requires attested photograph of the casual labour and his marks of identification. It is further stated that after a gap of 19 years chance of impersonification cannot be ruled out and authenticity of these cards and casual labour service cannot be ascertained as the same could be done from paid vouchers which have been destroyed as their life span is only five years.

18. In so far as the show cause is concerned, it is stated that applicants could not be ascertained whether the applicants have been disengaged or left at their own risk, as such the law laid down in Full Bench in Mahavir Singh's case regarding show cause notice is to be applied prospectively.

11. In so far as limitation is concerned, it is contended that Full Bench case in Mahavir Singh's case has been upheld by the High Court of Delhi as such the ratio laid down also applies to the applicants and cause of action had arisen only at the time when they were disengaged, OA is hopelessly barred by delay and latches.

12. In so far as the Railway Board's letter is concerned, it is contended that policy has been reviewed in 1978 and vide PS 7716 (A) the powers of

engagement of fresh casual labourers with the personal orders of Divisional Superintendent now DRSSs stood withdrawn and so that no fresh casual labour was recruited without prior approval of General Manager. As per these instructions, the engagement of the applicants as well as without prior approval of the General Manager was bad in law and ab initio. According to him various PSs have been issued, from time to time, in pursuance of the decision in Inder Pal Yadav's case where the cut off date for project casual labour was taken from 1.1.1981. As per the Apex Court decision in WP 332/86, dated 23.2.1987, those persons who had worked as a project casual labour after 1.1.1981 and have discharged for want of work were to submit written representation before 31.3.1987 and were to be kept in LCLR. Board's letter dated 6.5.1998 clarified that the instructions in Para 9 of the PS 9349, was not to regularise or recognise the service of ex-casual labourers who were engaged after 3.1.1981 by the unauthorised persons and those residuary powers lies with General Manager.

13. Learned counsel for respondents further contended that no freshers have been engaged from open market. As the applicants have no claim for placing their names in LCLR, the OA is liable to be rejected.

14. It is lastly stated in Shish Pal Singh's case supra as the casual labourers service particulars could not be authenticated his claim for placing name in the LCLR is rejected.

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

16. The claim of the applicants has been rejected in pursuance of the directions of this Court contained in OA 1398/98. Basically claim was rejected on the ground that as per the directions of the Board, in Inderpal Yadav's case applicants were neither in service on 1.1.1981 nor engaged as project casual labour these instructions would not apply and as they have been recruited without obtaining the prior approval of the General Manager, engaging of any casual labour after 3.1.1981 by unauthorised person would not constitute a right to include their names in the LCLR and also on the ground that they have not worked for six months as per the Paras 179(xiii) of IREM, Vol.I. Lastly, it is contended that the paper certificates issued by Inspector of Works is dubious and cannot be authenticated after 16 years, and that too in absence of paid vouchers have been destroyed as per the rules.

17. In so far as the claim of the applicants regarding disengagement without show cause notice is concerned, although Full Bench Mahabir's case decided this issue by holding that it is obligatory upon the employers to issue a show cause notice at the address given in the card or LCLR but these directions have been observed to be applied prospectively and would not affect the decisions which had already been taken as per the para 24 of the decision. As the applicants have already been disengaged as alleged by them, prior

to the decision of Mahabir's case, i.e., 10.5.2000. The law which has now been upheld by the High Court of Delhi would not apply to their case. Hence, this ground fails.

18. In so far as the ground that their engagement without prior approval of the General Manager, does not vest them any right to be included in the LCLR, is concerned, the same is no more res integra having been adjudicated by the Full Bench in Mahabir's case supra which is observed as follows:

"31. As far casual labourers are concerned, they are generally issued casual labour cards. However, some of them have not so been issued the said cards but have been issued paper certificates indicating the period of their employment. If several casual labourers have not been issued the casual labour cards but have been issued paper certificates, they can hardly be blamed. In the circumstances, in either case whether they have been issued casual labour cards or paper certificates as long as the same are sufficient to establish their employment as casual labour on or after 1.1.1981, the same should be a good evidence for their being extended the benefit of the said circular. Whether the evidence produced by the casual labour is good evidence or otherwise would be a question of fact to be decided in each individual case. Whether such paper certificates are genuine or otherwise, would, therefore, also be an issue to be decided in each individual case. However, particulars to be found in the casual labour card or the paper certificates become relevant for the purpose of computing the number of days of work put in for the purpose of determining the seniority of the casual labour in the seniority list, for the purpose of offering them employment on the basis of last-go first-in."

19. If one has regard to the aforesaid ratio, the grounds taken by the respondents that the casual labour certificates produced on an plain papers cannot be relied upon cannot be countenanced.

20. However, the later part of the directions it has been left open to be examined whether such paper certificates are genuine or otherwise and this is to be dealt with in each individuals case. In the light of what has held above, applicants in support of their engagement have produced paper certificates issued in 1988, purportedly issued by Inspector of Works. It is very strange that although the applicants had worked in 1981 the certificates have been issued only in the year 1988. Moreover, neither the signatures nor the stamp of Inspector of Works is legible. The details of name of Inspector and his Unit is also missing. The authenticity and verification of this casual labour certificates on plain paper, their service particulars cannot be undergone into as the record is destroyed more particularly paid vouchers where the casual labour has put in number of days, have been destroyed as per the instructions of the Railways after five years. As such they are not in a position to verify the authenticity of the casual labour certificates particulars as well as identity of the applicants. Paid vouchers is the only record to clarify the working days of the applicants which is not available for the relevant period with the Railway Administration. As identity of casual employee or his signatures are available on the paid vouchers at the time of making payment of their salary and as these paid vouchers pertaining to period 1981-82 are not available with the Railway Administration and destroyed on expiry of codal life as per the extant rules, the applicants claim cannot be accepted. As

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each case is to be considered in its circumstances, the claim of the applicants for bringing their names in the LCLR as well as re-engagement, cannot be accorded to them.

21. Moreover, although the directions have been issued, in pursuance of Court's order to dispose of the representation of the applicants, which was disposed of on 23.12.1998, and the applicants admittedly received the same on 25.7.2000 they have failed to approach this Court within the period of one year as stipulated under Section 21 of the Administrative Tribunals Act, 1985. The explanation tendered and reasons assigned in the application for condonation of delay are not sufficient to condone the delay, the MA filed by the applicants for condonation of delay is liable to be rejected and as such the OA is also liable to be dismissed on the ground of limitation.

22. Moreover, having regard to the Full Bench of this Court in Mahabir's case supra which is upheld by the High Court of Delhi, the law of limitation is made applicable to the casual labourers. According to the ratio laid down, circular of Railway Board issued in 1987 dealt with placing of names of casual labourers in LCLR does not give rise to continuing cause of action and the cause of action had arisen to a casual labour at the appropriate time when he discharged. Admittedly, as the applicants have been discharged in 1981-82. Merely because the respondents are under obligation to maintain the LCLR continuously

does not mean that the same confers continuing right to the Casual Labour to be placed in the register in the first instance.

23. If the name was removed in 1981-82 nothing precluded the applicants to approach the appropriate forum, for redressal of their grievance, they cannot be allowed to approach the Tribunal by leisure at their whims and fancies after about 20 years to ascertain their right of being placed on the register.

24. In this view of the matter and for the foregoing discussion, 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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