

CENTRAL ADMINISTRATIVE TRIBUNAL  
PRINCIPAL BENCH, NEW DELHI

O.A. No. 1132/98

(37)

HON'BLE SMT. SHANTA SHAstry, MEMBER(A)

New Delhi, this the 4<sup>th</sup> day of ~~December~~<sup>January, 2000</sup> 1999

Sunder Singh  
S/o Shri Medi Singh  
R/o Vill. Bhoyra, Post-Jhajan  
Distt: Bulandshahr (U.P.)

....Applicant

(By Advocate: Shri U. Srivastava)

Versus

1. Union of India  
through the General Manager  
Northern Railway  
Baroda House, New Delhi
2. The Divisional Railway Manager  
Northern Railway, Delhi Circle  
New Delhi Railway Station  
New Delhi

... Respondents

(By Advocate: Shri Madhav Panikar)

O R D E R

Hon'ble Smt. Shanta Shastry, Member (A)

The applicant was engaged as Waterman at Deoband Station of Delhi Division in the year 1990 on 28.5.1990 and he worked upto 13.7.1990. After disengaging him the applicant was told that he would again be engaged during the next hot weather time in 1991, but he was not reengaged.

2. The applicant filed an O.A. No.1377/91 for his reengagement. The Tribunal decided the matter alongwith another O.A. on 26.9.1994 with a direction to the respondents to "include the name of the applicants in the Live Casual Labour Register, if they are eligible for such inclusion in terms of the circular No.220E/190-XIX-A/RIV dated 28.8.87 of the Genl. Manager, Northern Railway (referred to in Net Ram's judgment) and give engagement to the applicants as casual labours if and

when the need arises, in accordance with their seniority in that register. It is made clear that in order to enable the respondents to take such action, the applicants should submit representations to the competent authority within one month from the date of receipt of this order alongwith proof relating to the claim that they are entitled to be included in the Live Casual Labour Register and in case such representations are received, the respondents are directed to dispose them of in accordance with law within a further period of four months thereafter under intimation to the applicants."

3. In compliance with the judgment, the applicant made representation to the respondents. The respondents passed the impugned order dated 16.1.1996 stating that the applicant had managed to get appointment by submitting a forged appointment letter of his earlier working. Also the applicant had not completed 120 days continuously as Casual Labour. He was not found eligible for inclusion of his name in the Live Casual Labour Register as well as for reengagement as Casual Labour as per rules.

4. The applicant is aggrieved by the impugned order and wants the impugned order to be quashed and to direct the respondents to include his name in the Live Casual Labour Register and to consider him for reengagement.

5. The learned counsel for the respondents has raised \* preliminary objections on limitation, jurisdiction and res-judicata. The impugned order was passed on 16.1.1996 and the applicant has filed the O.A.

on 14th May, 1998, much after the period of one year, as ~~again~~ <sup>sign</sup> provided under Section 21 of the Administrative Tribunals Act, 1985. It is further contended that the Principal Bench of the Tribunal has no territorial jurisdiction as Deoband, the working place of the applicant in 1990, was within the jurisdiction of Hon'ble Allahabad Bench. The respondents also state that the applicant had earlier filed the O.A. claiming identical relief and, therefore, this amounts to *res-judicata*.

6. Also the Ministry of Railways had issued instructions on 3.1.1981 that the powers of engagement of fresh casual labourers with the personal orders of Divisional Superintendent, now Divisional Railway Managers, stood withdrawn and it was desired to ensure that no fresh casual labourers were recruited without the prior approval of the General Manager. Thus the engagement of casual labour after 3.1.1981 by any unauthorised person was *ab-initio* void and has no *locus-standi*. The applicant's appointment also therefore is *ab initio* void.

7. The respondents <sup>on their part</sup> have complied with the directions of the Tribunal by giving the applicant liberty to make a representation and the same after being considered has been rejected by a reasoned speaking order. Therefore the applicant has no case.

8. The learned counsel for the applicant, however, asserts that the respondents should have conducted a proper enquiry and should have given an opportunity of being heard to the applicant before coming to the conclusion that the letter of appointment is a forged

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one. The learned counsel for the applicant also takes objection to the additional reply filed by the respondents without the permission of the Tribunal.

9. The learned counsel pleads that the O.A is not barred by limitation. He is relying upon the judgment of the High Court in civil writ petition No.5071/99 whereby the objection of limitation was overruled on the ground that the cause of action is a continuous one. In the O.A. No.1797/94 decided on 23.9.1996 by this Tribunal similar objection of limitation was rejected.

10. Again he is placing reliance on the judgment dated 8.11.1996 in O.A. No.1711/93 of this Principal Bench to emphasise that whether the casual labour card was fabricated or not is not a matter of guess but of determination. It has to be examined on the basis of evidence and not on the basis of inference. For the other points relating to the validity of the appointment order raised by the respondents the applicant has cited the order dated 13.10.1998 <sup>in O.A. No. 2423/97</sup> of single bench of this Tribunal.

11. The learned counsel for the respondents in turn is drawing strength from the judgments passed in O.A. No.444/98 and O.A. No.664/98 as well as the extracts of para 179 (XIII)(c) of Indian Railway Establishment Manual (Vol.I) and extracts of para 2005 of the Indian Railway Establishment Manual (Vol.II). Under Rule 179(XIII) of the IREM (Vol.I), "a casual labour has to put in atleast 180 days of service including in broken periods for inclusion of his name on the Live Casual Labour Register.

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According to para 2005 of the IREM (Vol.II), casual labour who are treated as temporary, i.e. after completion of 120 days are entitled to rights and privileges admissible to such casual labour. However, their service prior to absorption in temporary or regular cadre will not count for the purpose of seniority." This rule has primacy over any executive instructions. Since the applicant has not put in 120 days, he cannot be brought on the Live Casual Labour Register.

12. After hearing the pleadings, I find that the only direction this Tribunal had given<sup>earlier in C.H.W.B77/41</sup> was that the applicant should give a representation to the respondents and the respondents in turn after examining the representation were to include his name in the Live Casual Labour Register. To that extent I am satisfied that the respondents have complied with the directions of this Tribunal.

13. I would like to deal with the preliminary objections first.

- (i) The applicant has not filed the O.A. within a period of one year from the date of the impugned order. In view of the judgment cited by the applicant I reject the plea of limitation as it is a continuous cause of action.
- (ii) The applicant's earlier O.A. was entertained by the Principal Bench. This O.A. has arisen out of the earlier O.A. and as such the point of jurisdiction is not accepted.
- (iii) The respondents do have a point in that the applicant cannot reagitate the same grievance taken up in earlier O.A. However, the applicant's grievance is against the impugned order whereby it has been alleged that the letter of appointment of applicant is a forged letter.
- (iv) Although prior approval of the General Manager was necessary before giving

appointment as casual labourer, there is no mention of any action having been taken against the appointing authority. The applicant cannot be blamed for that.

14. Now coming to the merits of the case, the respondents are claiming that the letter of appointment of the applicant is a forged one. The respondents were asked to produce the original file containing the letter of appointment of seasonal casual labourers as it was necessary to know how the respondents have come to the conclusion about the forgery. The respondents in their additional reply have filed a photo copy of the said letter of appointment and have submitted that no office file is available in the office of the respondents containing the office copy of the said letter of appointment. The respondent has detected discrepancies in the letter of appointment. It is obvious from the perusal of the letter that it is a standard format in which some dates have been filled and some are left blank. Obviously when the letter is dated 19.4.1990 (which is also put in the wrong order) the applicant cannot be shown to have passed the medical test on 22.4.1990, i.e. after the issuance date of the letter of appointment. It is also seen that in para 2 of the letter there is a mention that His/Her pay for July 1989 should not be charged in the regular salary bill. The applicant is said to have worked from 28.5.1990. Where was the question of payment for the month of July, 1989? These discrepancies certainly cast a doubt on the genuineness/authenticity of the letter. According to the respondents, the applicant absconded after the said forged letter came to light. Though the impugned letter is dated 16.1.1996, the applicant has represented only on 1.12.1996. The

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respondents have also stated that the Hon'ble Supreme Court have laid down the law in the case of Bharat Ram Meena Vs. Rajasthan High Court [1997 SCC (L&S) 797] that a disputed question of facts cannot be gone into in judicial review. The applicant however is harping that proper enquiry has not been conducted before coming to the conclusion that it is a forged letter. As already observed the letter of appointment has many flaws which are obvious and go to indicate that it is not a genuine one. I, therefore, accept the respondents' claim.

15. This apart the applicant has worked only for 37 days and not 120 days. The applicant has not produced any proof to show that he has worked for 120 days. Therefore, this ground is enough to reject the O.A.

16. Accordingly the O.A. is dismissed. No costs.

*Shanta Shastray*

(Smt. Shanta Shastray)  
Member (A)

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