CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

O.A. No.520 of 1998

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New Delhi, this 14th day of January,2000

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

Rama Shanker
S/o Shri Shri Ram
R/o H.O.309/51 Railway Basti
Shakurbasti, Rani Bagh
New Delhi. ...Applicant

(By Advocate: Shri B.S. Mainee)

Versus

Union of India, through

1. The General Manager
Northern Railway
Baroda House
New Delhi.

2. The Divisional Railway Manager
Northern Railway
State Entry Road
New Delhi.

3. The Permanent Way Inspector
Northern Railway
Shakurbasti
New Delhi. ....Respondents

(By Advocate: Shri R.P. Aggarwal)

O R D E R

Hon'ble Smt. Shanta Shastry Member(A)

The applicant worked as a casual labourer for different periods from November 1984 to February 1995 under the Permanent Way Inspector, Northern Railway, Shakur Basti, Delhi for a total number of 90 days. Thereafter the applicant has not been engaged again and his name has not been entered in the Live Casual Labour Register (LCLR). The applicant's prayer is to direct the respondents to register his name on the LCLR and

to re-engage him in accordance with his seniority with all consequential benefits.

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2. The applicant in support of his claim of having worked as casual labourer has produced a certificate dated 18.5.1985 (Annexure A-1). It is the case of the applicant that in terms of the Railway Board's instructions contained in letter dated 4.9.1980 while engaging casual labour preference should be given to those who have worked for more days as casual labour on open line as well as on projects. According to another letter dated 22.10.1980 the Railway Board has laid down that if any person having worked as a casual labour in the past is presently out of employment due to break in service because of non availability of work, and approaches the appropriate Railway authority, his records should be checked at the opportunity of next recruitment for a casual labour work and he should naturally be given preference over his juniors. Again in terms of circular letter dated 12.6.1986 of the Railway Board, the name of each casual labourer who was discharged at any time after 1.1.1981 should be continued to be borne on the LCLR and in case any name has been deleted, the same should be restored. It is the grievance of the applicant that in spite of these various instructions, the respondents have failed to re-engage him or to enter his name in the LCLR.

The learned counsel for the applicant has also cited certain relevant judgments as follows:

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2.1. i) OA.No.1076/92 decided on 20.11.1997 in the matter of Suraj Mal & Shri Ram Kr Vs UOI & Ors; ii) OA.No.2208/93 decided on 5.8.1997 in the case of Ramesh Chand & Ors Vs. UOI & Ors. and iii) OA.No.1689/95 decided on 16.11.1995 in the matter of Vishal Mani Vs. Gen. Manager, Northern Railway. All these judgments have ruled in favour of the applicants who were all casual labour.

2.2. In OA.No.1076/92 the applicants had worked continuously for more than 120 days and the prayer for grant of temporary status was considered.

2.3. In OA.No.2208/93 the prayer was to re-engage the applicants and place their names on the LCLR. In short, it was identical to the prayer in the OA. One of the applicants had secured employment in 1986 and had worked for a period of 93 days by producing four fabricated certificates of his employment in 1976-77. When this came to light the applicant left the service on his own accord for fear of disciplinary action against him. The Tribunal directed the applicant to address a fresh representation to the concerned authority giving full details of the employment and the respondents to examine the genuineness of the claim and if satisfied the

names of the applicants should be placed in LCLR.

24. In OA.No.1859/95 a casual labour was engaged for the first time in 1987 and was disengaged on 14.8.1991. His prayer was to absorb him in suitable group'D' post in the Railways with effect from 1.9.1992. In this case, the Tribunal accepted the claim of the respondents that the applicant had worked only for 211 days and therefore the respondents were directed to place the applicant's name at an appropriate place in the list of casual labour to be re-engaged and regularised on the basis of the number of days.

3. The learned counsel for the respondents however has argued that the Railway Board has issued instructions under P.S.No.7716-A. Under these instructions the powers of engagement of fresh casual labourers with the personal orders of Divisional Superintendents, now DRMs, stood withdrawn and it was desired to ensure that no fresh casual labours were recruited without obtaining prior approval of the General Manager. Thus engagement of casual labourers after 3.1.1981 by any unauthorised person is bad in law ab initio and has no locus standi. The applicant was engaged in 1984 after 3.1.1981 and therefore his engagement is void ab initio having been engaged by unauthorised person. Therefore, the claim of the applicant is not maintainable.

Secondly the learned counsel for the respondents contends that casual labours engaged in the Railway service are always given a casual labour work card for maintaining record of the casual labour service. In this case the applicant has not produced his casual labour card. The applicant has only produced a certificate on a plain paper which also does not stand scrutiny. The casual labour card always bears photograph of the casual labourer and his marks of identification. He further states that it is also not possible to establish the authenticity of this certificate as the paid vouchers from which it should have been possible to verify the casual labour service of the applicant had been destroyed as their life span is only of five years and therefore the casual labour certificate produced on a plain paper cannot be relied upon. He further argues that the instructions regarding maintenance of LCLR and inclusion of names therein vide P.S. No.9048 stipulated the cut off date for granting temporary status and continuance of project casual labour as 1.1.1981. This means only for those who had worked as project casual labour before 1.1.1981 and who were discharged after 1.1.1981 for want of further work or due to completion of work and who had to submit written representations with adequate documentary proof before 21.3.1987 were to be kept on LCLR. This facility was also extended to open line casual labour vide

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P.S.No.9185. Therefore the question is not of those who were employed after 1.1.1981 but of those who were employed prior to 1.1.1981 and were discharged after 1.1.1981. Therefore, the stand taken by the applicant that because he was discharged after 1.1.1981 he should be given re-engagement on the basis of these instructions does not hold water. The General Manager, Northern Railway has again clarified vide letter dated 6.5.1998 issued under P.S.No.11572 of 1998 that it has never been the intention of the administration to regularise or recognise the service of those ex-casual labourers who were engaged after 3.1.1981 by unauthorised person.

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4. The respondents have also raised the plea of limitation. The cause of action arose in February 1985 when the applicant was discharged whereas the application has been filed on 6.3.1998, i.e. after a period of 13 years of limitation. The respondents are not quite certain whether the applicant had worked under PWI/SSB for 90 days during November 1984 to February 1985. They are unable to state categorically in the absence of the payment vouchers. Further no representations were received by the respondents from the applicant. On these grounds the applicant has no case at all and therefore the application should be dismissed. The learned counsel is also relying on the judgment delivered in December 1998 in OA.

Nos. 444/98 and 1558/97 wherein the claim of the applicants for inclusion of their names in LCLR and for re-engagement were rejected.

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5. The first contention is about the appointment being ab initio void on ground of it being issued by an unauthorised person. The learned counsel for the applicant points out that the respondents have taken post facto approval of the General Manager in many cases where such appointments had been made by officers not competent to do so. He has further given a list of 495 persons who were also engaged similarly and who are continuing without the approval of the General Manager and it is not the fault of the applicant. Action should be taken against unauthorised person issuing such appointment in spite of instructions of the Railway Board.

6. As to the limitation, the applicant's view is it being a recurring cause of action, limitation does not apply. There are a catena of judgments on this issue. He further argues that the Railway Rules provide that once casual labours have worked in the Railways they should be re-engaged. According to the scheme of 28.8.1987, though the applicant had not been discharged prior to 1.1.1981, he still gave a representation to give him work. In regard to the casual labour card, the learned counsel for the applicant states that the Railway

Administration does not have enough casual labour cards. Therefore, the casual labour card is not given. Also, this was introduced only in 1988. He also contends that the records of casual labour are never destroyed as the record is required for verification and for entering the names of the casual labour in the LCLR.

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7. As far as the ground of limitation is concerned, there is no doubt that there is a number of judgments wherein it has been held that where the cause of action is of recurring nature, limitation would not apply. It has been so held in the case of Net Ram Vs UOI (OA.2441/91 decided on 6.5.1994 of this Tribunal). The ground of limitation is therefore not accepted.

8. The applicant states that he had given a representation. A copy of the latest representation is at Annexure A-3. There is nothing to show when the first such representation was made. The respondents however have stated in their counter that no representation seems to have been received in the office of the respondents. They are not sure about the same. Therefore, the benefit of doubt can be given to the applicant. In view of this also, the ground of limitation can be overlooked. All the same, the applicant has also filed an MA for condonation of delay. He has also denied the contention of the respondents that the applicant

had left the job of his own accord. The applicant states that he was duly engaged by the authorised and competent authority. Otherwise salary bills would have been rejected by the accounts department. The instructions under P.S.No.11572 quoted by the respondents have been issued after the OA has ben filed. Therefore, this circular cannot overrule the Railway Board's instructions. In view of the judgments cited by the learned counsel for the applicant, the applicant is entitled to be re-engaged and to be included in LCLR.

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9. After hearing the learned counsel for the applicant and the respondents, I find that the ground of the appointment being made by unauthorised/lower authorities, cannot be accepted because it is the fault of the lower authorities. They should not have engaged the applicant in the face of the circular issued by the Railway Board. I also do not accept the ground of limitation. It is also clear from the averments made in the counter that the scheme circulated for grant of temporary status to casual labour and for enrolling such casual labour on the LCLR is applicable mostly to those who were engaged prior to 1.1.1981 and were discharged after 1.1.1981. Therefore, the appointments made after 1.1.1981 cannot be said to be covered under the scheme of 1987. The applicant has worked only for 90 days. According

to the Railway Manual those who have put in less than 120 days on the open line cannot be considered for grant of temporary status or for entering of their names in the LCLR. In the present case, the applicant has worked for less than 120 days and the proof that he has produced does not stand scrutiny as rightly pointed out by the learned counsel for the respondents. The certificate which is at Annexure A-1 seems to have been written on a plain paper which has no numbering and no name of the office except the words Northern Railway. The signature and the stamp of the PWI, Shakurbasti are smudged in such a way that nothing is legible and nothing can be made out of it. The date is shown as 18.5.1985 on the side. One cannot take this as a reliable document. There is not enough satisfactory material to establish that the applicant had worked for 90 days in the Railways, the prayer of the applicant cannot be granted. In the three judgments cited by the applicant the facts were slightly different than the present case. Therefore, the ratio of those judgments cannot be made applicable to the present case.

10. The OA is accordingly dismissed. No order as to costs.

(Mrs Shanta Shastry)
Member(A)

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