

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A. No. 810/98

New Delhi this the (4) Day of February 1999

Hon'ble Shri R.K. Ahooja, Member (A)

Shri Joginder Prasad,
S/o Shri Raghu Nath Prasad,
Ex. Casual Gangman,
under Permanent Way Inspector,
Northern Railway,
Hapur.

R/o 4/29, NCERT
Sri Arvindo Marg,
Mehrauli,
New Delhi-110 016.

Applicant

(By Advocate: Shri B.S. Mainee)

-Versus-

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Moradabad.
3. The Assistant Engineer,
Northern Railway,
Hapur.

Respondents

(By Advocate: Shri B.S. Jain)

O R D E R

Hon'ble Shri R.K. Ahooja, Member (A)

It is an admitted position that the applicant was engaged as Casual Labour Gangman under Permanent Way Inspector (Special), Northern Railway, Hapur from 15.12.1983 (X) and worked upto 14.2.1984 for 53 days and again from 15.2.1984 to 14.8.1984 for 182 days. The applicant claims on that basis a right to re-engagement and regularisation in preference to those who were engaged as casual labour afterwards. The respondents, on the other hand, take the plea of limitation and also that the applicant had been engaged without the authority of the competent officer;

as per his Casual Labour Card, though the same has not been admitted by the respondents.

(X) ✓ Corrected vide Court's order dated 16.12.99
passed in R.A. 149199. *Shri*

the appointment of the applicant as a casual gangman ¹² was thus unlawful ab initio and no benefit could be given to him on that basis.

2. I have heard the counsel on both sides. It was argued on behalf of the respondents that the Circular issued by the Railways No. 220E/190-XII-A/EIV dated 28.8.1997 has been misread in regard to the inclusion of the names of casual labours who were discharged for want of work after 1.1.1981. The learned counsel for the respondents Shri B.S. Jain submitted that these provisions apply only to those who were initially engaged prior to 1.1.1981 but were retrenched after 1.1.1981 and not to those whose initial appointment itself was after 1.1.1981. I have gone through the said Circular, copy of which has been annexed to the O.A. itself as A-2. In para 7, it is stated that the Railway Board have "decided that the name of each casual labour who were discharged at any time after 1.1.1981 on completion of work or for want of further productive work, should continue to be borne on the live casual registers". There is no mention therein that this direction only applies in respect of those who were initially engaged prior to 1.1.1981. In fact, the case of the latter category as mentioned in para 9 of the above Circular, has been distinguished by directing that the names of casual labour discharged prior to 1.1.1981 who had not worked for two years should be deleted unless they make a special representation. The contention therefore of Shri B.S. Jain on this point cannot be accepted.

Dr

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3. In regard to limitation, the applicant having acquired a right to have his name on the casual labour register has a recurring cause of action every time a junior is given re-engagement. However, he cannot make the grievance at this stage of such re-engagement of his juniors, if he did not agitate the matter at the appropriate time. In other words, even though his claim does not suffer from limitation, it is so only in respect to any future re-engagement of his juniors. The relief to be given is thus to be modulated in terms of the time frame in which he has approached the Tribunal.

4. As regards the contention of the respondents that the engagement of the applicant was abinitio invalid as he had not been engaged with the approval of the competent authority, the same is liable to be rejected out of hand. A poor casual labourer cannot be expected to investigate before taking up the work whether his appointment has been made by the competent authority in accordance with the various Circulars of the Railway Board. The applicant was duly paid his wages and that was sufficient for him. If someone in the Railway hierarchy has violated the instructions issued by the Railway Board then it was for the Railway Authorities to take action against that person. If they did not do so, then they condoned the action of the person who appointed the applicant. In this light of the matter, the appointment of the applicant cannot be declared to be invalid on the ground that the appointing authority have violated the instructions of the Railway Board.

Dr

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5. In the light of the above discussion, I allow the O.A. with a direction that the respondents will place the name of the applicant in the relevant live casual labour register and consider him for re-engagement against any future vacancies in preference ~~to~~ of his juniors. The applicant will, however, have no claim for preference over those who have already been reengaged or regularised in the past.

R.K. Ahooja
(R.K. Ahooja)
Member(A)

Mittal