

CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH
NEW DELHI

✓ O.A. No.888 of 1998 decided on 7.7.1999

Name of Applicant : Vineet Kumar & ors.

By Advocate : Shri K.K.Patel

(20)

Versus

Name of respondent/s Union of India through the
G.M., Baroda House, New Delhi & anr.

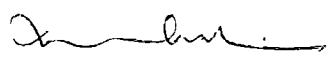
By Advocate : Shri R.L.Dhawan

Corum:

Hon'ble Mr. N. Sahu, Member (Admnv)

1. To be referred to the reporter - Yes/No

2. Whether to be circulated to the other Benches of the Tribunal. - Yes/No


(N. Sahu)
Member (Admnv)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

Original Application No.888 of 1998
M.A.No.882/98

New Delhi, this the 7th day of July, 1999

HON'BLE SHRI N.SAHU, MEMBER(A)

1. Vineet Kumar
S/o Shri ~~Ram Chander~~ ^(S) Ramesh Chander
Mohalla Bangla Gown
at Post Dist. Moradabad
2. Ram Chander (SC)
S/o Shri Morarilal,
Village Didora, P.O. Pakbada
Dist. Moradabad
3. Shri Jagdish Prasad Verma
S/o Shri Chotta
Village Pendapur,
Post Office Pach Kohra,
Dist. Hardoi (U.P.)
4. Shri Shakil Ahmad
S/o Shri Nizam Ahmad
Mohalla Sarai Gal Sahid,
Moradabad.

(21)
-APPLICANTS

(By Advocate: Shri K.K.Patel)

Versus

1. Union of India
through the General Manager,
Baroda House,
New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Moradabad Division,
Moradabad.

-RESPONDENTS

(By Advocate: Shri R.L.Dhawan)

O R D E R

By Hon'ble Shri N.Sahu, Member(A)

This O.A. is filed seeking a direction to the respondents to engage the applicants in preference to freshers and junior casual labourers and also to re-engage them in accordance with their seniority as well as to consider them for regularization and for grant of temporary status.

✓ Corrected vide order
dated 3-8-99 in part i file

3/11/99

2. Applicant no.1 had worked for 214 days as casual labour during the period 15.6.77 to 14.2.78. Applicant no.2 claims to have worked for 31 days from 31.1.80 to 2.2.80. Applicant no.3 claims to have worked for 348 days. It is necessary to mention here that in compliance of the orders of the Supreme Court in Writ Petition No.262/92, the services of applicant no.3 could not be verified due to non-availability of records and his name could not be included in the Live Casual Labour Register. He was informed that any additional and verifiable material be produced before the respondents within 15 days. Applicant no.4 had also been informed on 24.12.97 (Annexure 8) in implementation of orders passed by this Tribunal in O.A.1203/92 that his name is available in the Live Casual Labour Register (in short "LCLR") of Loco Department at sr.no.150 although he worked only for 55 days.

3. After notice, the respondents submitted the counter and the applicant submitted rejoinder. The arguments of the learned counsel for respondents Shri R.L.Dhawan are as under.

4. Shri Dhawan states that this O.A. is barred by limitation and for this purpose, he cited the decision in O.A.774/98 dated 25.5.99 in the case of Matoo and anr. vs. Union of India and ors. That was a case where the applicants worked for short spells during 1983-84 and woke up 1996-97 to find that some juniors were engaged. I disposed of that O.A. by stating that there is a perennial right to be considered for engagement only when the applicants' names are found in LCLR. In that case,

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it was found that the General Manager's authorization disabled the applicants from making any further claim. That was a case where a temporary engagement was allowed with a specific condition that they would not claim reengagement. I have held that to claim their names to be placed in the LCLR is a different grievance and this grievance should have been raised within the period of limitation. I have also held that enrolment in the LCLR is predicated upon General Manager's permission for those who have worked after 1.1.81. The second ground raised by Shri Dhawan is that the relief claimed in the present O.A. had already been adjudicated upon in Writ Petition No. 262/92 and O.A.1203/92, in the case of applicant no.2 and in O.A.1203/92 in the case of applicants no.3 and 4. Shri Dhawan states that this O.A. is barred by resjudicata. He further submitted that there is no common cause of action and this O.A. is not maintainable under Rule.4(5) of CAT (Procedure) Rules,1987. It is further submitted that casual labours disengaged prior to 1.1.81 were required to submit their representation alongwith documentary proof of their previous service under the respondents upto 31.3.87 for the purpose of inclusion of their names in the LCLR. No such representation was received alongwith documentary proof. It is thus argued by Shri Dhawan that applicants no.1,2 and 3 are not eligible for inclusion in the LCLR whereas name of respondent no.4 has already been included.

5. Shri K.K.Patel, learned counsel for the applicants submitted that under the Railway Board's instructions, all casual labours who worked before 1.1.81 have a right of their names included in the LCLR,

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automatically. The respondents have violated the statutory instructions of the Railway Board in not including their names as well as engaging fresh casual labours which was banned by the Railway Board's instructions dated 7.6.84.

6. Shri Dhawan's next argument is that in terms of Para 179 (XIII)C of IREM, a casual labour should have worked for 180 days for consideration of regular appointment. The applicants' counsel states that in the same paragraph of the rule, casual labours who have worked for 120 days, acquire temporary status and they should be considered for regular appointment. It is further stated that in the present case, two of the applicants have worked for more than 120 days and yet they were not given temporary status. Shri Patel urged that those who are discharged after 1.1.81 and worked prior to 1.1.81, should be included and continued on the LCLR indefinitely in view of the Supreme Court's decision in Inderpal Yadav's case reported in 1985(2) SCC 648. He cited the Railway Board circular dated 24.4.84 (PS 8634) for this purpose. Shri Patel has drawn my attention to the substance of his claim by referring page 5 of his rejoinder as under:-

"The casual labourers claim are covered as per provisions under para 7 to 14 of General Manager/Northern Railways letter no. 220E/190/XIX-A/R IV dated 20.8.1987. This Hon'ble Tribunal in their judgement in the cases of Mithailal Vs UOI (O.A.No.1220/91) delivered on 6.3.81, Gulam Ahmed Vs. UOI (O.A.No.2306/92) decided on 12.5.1992 and Net Ram Vs UOI (OA No.2441/91) decided on 6.5.1994 have settled the issue. It is, further, submitted that in the case of Shri Basant Lal & Ors. vs. UOI & ors. reported in 1990 (1) ATJ Vol.8 Page 606, the casual labourers are entitled to temporary status for having continuously worked for more than

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120 days. I further states that as per provisions contained in paras 2501 and 2511 of IREM, a casual labour who acquires temporary status is entitled to all the rights and privileges as admissible to a temporary Railway servant including one month's notice before discharged.

6. It is further submitted that the Railway Board vide circular no.E(NG)/II/78/CL.2 dated 25.4.1986 has laid down which is as follows:

"The name of each casual labourer who was 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 labour register and if the names of certain such labours have been deleted due to earlier instructions, this should be restored on the live casual labour register."

7. Shri Patel also cited the decision of the Principal Bench of this Tribunal in O.A.2441/91 dated 26.5.94. He has cited another order of mine in the case of Shri Ram Chander Lal vs. Union of India and anr. in O.A.704/98 in which the applicant has worked for different periods. This court directed his re-engagement and his placement in the LCLR. I have held that the right to be enlisted in the LCLR is a right conferred under the Rules, if the stipulated conditions are satisfied and the right to seek reengagement is also under the rules. Shri Patel, disputes the claim of respondents' counsel that minimum of 180 days' working should be there for casual labour for consideration of reengagement or regularisation. It is submitted that in that event how could respondent no.4 find a place in the LCLR when he worked only for 55 days?

8. Shri Dhawan has cited the following decisions:

(i) JT 1995 (1) SC 445 - Chandigarh Administration & anr. vs. Jagjit Singh and anr.

(ii) 1998 (8) SCC 477 - State of West Bengal & ors. vs. Sultan Singh

(iii) 1997(2) SLJ SC 155 - Delhi Administration vs. Yogender Singh & others.

9. In the first citation Chandigarh Administration & anr. vs. Jagjit Singh & anr., the Supreme Court held that the mere fact that the respondent authority passed a particular order in the case of another person, similarly situated, it can never be a ground for issuing a writ in favour of the petitioner. There can be no question of discrimination if the order issued in favour of a similarly situated person was not a legal order. I have not found any relevance in respect of other two cases, cited above.

10. Shri Dhawan's argument is that the respondents are not obliged to keep the labour sheets for more than five years. For this purpose, he referred to Indian Railway Accounts Code, volume I, item no.120 wherein the respondents are supposed to maintain labour pay sheet only for five years and they cannot be blamed for not maintaining it beyond this period. In this connection he cited the decision of the Calcutta Bench in the case of Praveer Sarkar and others Vs. Union of India, 1999(1) SLJ (CAT) 445.

11. I am not impressed by the arguments of Shri Dhawan either on limitation or on resjudicata. The inclusion of their names in the LCLR is a benefit conferred by several circulars and instructions. This inclusion is the only gateway to employment. In not



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empanelling their names, their right to livelihood is threatened. Thus not only legal rights but fundamental rights of livelihood and gainful employment are infringed by not including their names in the LCLR. It is another matter if on facts and merit, the respondents throw them out. But on a mere technical ground, their substantive rights of livelihood cannot be jettisoned. There is no resjudicata: there is a right of appeal, even to effectuate the consequential benefits of an earlier order.

12. With regard to applicant no.4, the admitted position is that his name finds place in the LCLR for loco shed. Since loco shed has reached a dead end and no further engagement takes place, it does not mean that the applicant no.4 shall not get any engagement in future. I direct in this connection respondent no.2 to consider engaging applicant no.4 in any other Branch other than the loco shed, keeping in view his seniority in the loco shed LCLR. His name should accordingly be considered while engaging other applicants in the LCLR of Moradabad Division other than the LCLR of loco shed, in preference to juniors and outsiders in any known vacancy that may arise in future. With regard to other three applicants, it would not do if the respondents say that they have destroyed their records. Annexure 1 consisting Vineet Kumar applicant no.1 is a record of service for 214 days. It would be appropriate if a direction is given on the lines on which the Hon'ble Supreme Court has stated in the case referred to above, namely that the genuineness of his services be verified and in accordance with the findings if the services are found to be genuine, it is

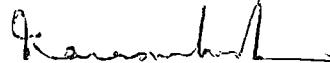


mandatory on the part of the Railway administration to enroll him in the LCLR.

13. With regard to applicant no.3 the respondents are duty bound to examine the deponent of the affidavit who was IOW Balamu for the period from June 1972 to September, 1976. Wages were received by the applicant for a period of 348 days. Some minimum verification of the registers would be undertaken for this period. It would not do to dismiss the applicant's claim because he can not produce any other evidence. The onus is entirely on the respondents to examine the affidavit of their own official who stated that the applicant Shri J.P.Verma worked for 348 days for which payments have also been made. The deponent could be examined by the DRM for this purpose. The matter is no doubt old but on pain of prosecuting the applicant on wrong information, he could be examined. I direct the DRM to do so within a period of three months from the date of receipt of a copy of this order.

14. If on inquiry, the respondents find no material to impeach the evidence produced by the applicants, they shall place them in the LCLR at a point which accords with their seniority and intimate the same to the applicants. Thereafter their engagement shall be considered if and when a vacancy arises, in preference to juniors and outsiders.

15. The OA is disposed of with the above directions.


(N. SAHU)
MEMBER(A)

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