

Central Administrative Tribunal
Principal Bench: New Delhi

OA NO:859/95

New Delhi this the 16th day of October 1995.

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Hon'ble Mr A.V.Haridasan, Vice Chairman (J)
Hon'ble Mr R.K.Ahooja, Member (A)

Vishal Mani
R/o E-51, J.J.Colony
Inder Puri
New Delhi-110 012.

...Applicant.

(By Advocate: Shri K.N.Vijayan)

Versus

1. General Manager
Northern Railway
H.Q. Baroda House
New Delhi

2. Northern Railway
D.R.M.Office
I.R.C. Building, Chelmsford Road
New Delhi-110 065

Respondents.

(By Advocate:Shri R.L.Dhawan)

O R D E R (Oral)

Hon'ble Mr A.V.Haridasan, Vice Chairman (J)

A casual labour who was engaged for the first time in 1984 and dis-engaged w.e.f.14.8.91 has filed this application under Section 19 of the AT Act praying that the respondents may be directed to absorb him in suitable Group -D post in the Railways w.e.f. 1.9.92 and to pay him compensation for dis-engagement and back wages.

2. The brief facts of the case can be stated as follows:

The applicant was initially engaged by Manager, System Design, Computer Centre, Northern Railway, New Delhi as Bangalow Peon from 1.5.1987 till 12.9.87. Thereafter he was engaged by Northern Railway as Hot Weather Waterman from 17.5.88 to 13.7.88 for 76 days. He was again engaged during the hot season from 26.4.89 to 31.7.89, from 23.5.90 to 31.7.90 and from 1.5.91 to 14.8.91. After 14.8.91, he was not engaged.

Some hot weather watermen similarly situated like the applicant when they were disengaged approached the Tribunal by filing various applications praying for re-engagement and regularisation. A batch of these applications was disposed of by order dated 12.2.92 directing the

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Railway Administration to evolve a rational scheme for absorption/regularisation of these persons alongwith other casual labourers/hot weather watermen who have been working for years depending on the availability of vacancies. In July 1992, the respondents called the hot weather watermen as also the applicant who have rendered long service in the past to appear for screening to bring them on the list for the purpose of re-engagement/regularisation. The name of the applicant who was also called was shown at Sl.No.74 in the list prepared pursuant to that. A copy of the list is at enclosure 7 of the application. According to the applicant when he found that several others who were similarly called have been re-engaged in the year 1994 leaving him out, he requested for re-engagement without success. He, therefore, caused a lawyer notice to be issued on 1.3.94 to which there was no response. He caused another lawyer notice to be issued on 3.4.95. It is finding no response to that also that the applicant has filed this application.

3. Since the last engagement of the applicant was in August 1991, the applicant has filed MA No. 1046/95 seeking condonation of delay. It has been alleged in the MA that when the applicant was not engaged, he approached the officers who told him that he would be considered for engagement as and when vacancy would arise and therefore he did not approach the Tribunal. Finding that several others were engaged in December 1993, the applicant caused two lawyer notices to be issued and it was saying that there was no response that he filed this application.

4. The respondents have replied to the OA as also to the MA. In reply to the MA, the respondents have contended that the delay being inordinate cannot be condoned and stated that the lawyer notices said to have been issued by the applicant had not been received. In response to the OA, the respondents contend that the initial engagement of the applicant itself being against a circular issued by the General Manager

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on 3.1.81, the applicant did not have a right for re-engagement or regularisation. It has been contended that as the decision taken was to consider re-engagement and absorption of the casual labourers who were engaged prior to 31.12.1986, the applicant could not be considered for re-engagement.

5. In the rejoinder the applicant has put forth a case that even casual labourers who were engaged without the approval of the General Manager after 3.1.81 have been re-engaged and regularised and therefore the plea taken by the respondents that the applicant having been engaged without approval of the General Manager after 3.1.81 is not entitled to claim the relief of re-engagement and absorption amounts to discrimination. We had directed the respondents to have an additional affidavit filed by a competent authority as to whether there has been any such regularisation and whether action has been taken against those who are responsible for it. An additional affidavit has been filed in which it is stated that action is being taken.

6. We have gone through the pleadings in the case and have perused with care various annexures appended thereto. We have also heard Shri Vijayan, learned counsel of the applicant and Shri R.L.Dhawan, learned counsel of the respondents.

7. We shall first deal with the issue of limitation. Shri Dhawan argued that the applicant having been dis-engaged on 14.8.91 should have approached the Tribunal within a year thereafter if he was aggrieved by such dis-engagement and therefore this application filed several years thereafter has to be turned down at the threshold. Noting the contention raised in the reply, the applicant has filed MA for condonation of delay. The starting point of limitation in this case would have been 14.8.91 if there has been no subsequent events between the applicant and the respondents. The respondents themselves had in July 1992 called the applicant also to be present for the purpose of

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preparing a list for re-engagement of persons similar to the applicant.

It is seen that a list has been prepared in which the applicant with 211 days of casual service has been shown as Sl.No.74. It is the case of the applicant that when he found that in December 1993 some persons who were called alongwith him had been re-engaged and absorbed in service, he made enquiries and was told that he was also to be considered in his turn. It is his further case that noting that there was no further move on the part of the respondents in his case, he caused lawyer notice to be issued on 1.3.94. The applicant in his MA has prayed that in case there is delay, the same not being intentional should be condoned.

8. The action on the part of the respondents in calling casual labourers similarly placed like the applicant including the applicant for the purpose of preparation of a list in 1992 and preparing a list thereafter making appointments shows that the respondents themselves have recognised the right of the applicant to claim re-engagement in his turn. Therefore his grievance arises only when others are re-engaged and he is left out. Though the respondents in the reply to the MA contend that lawyer notice issued on 1.3.94 has not been received in the office, they have stated in the reply that it was only in the month of March 1994 that the applicant approached the respondents with a legal notice. Another legal notice was issued by the applicant on 1.3.95 in which there was a mention of earlier legal notice issued on 1.3.94. Photocopy of the postal receipt showing that such legal notice was issued has also been produced by the applicant. It is seen therefore that ever since the respondents started the process of calling casual labourers who have rendered service in the past, the applicant has been continuously making efforts to get his case also processed and that his averment in the application therefore that he was made to believe that his case would be considered and that was why he did not approach the Tribunal has to be accepted. We are,

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therefore, of the considered view that there is practically no delay in the case and if at all there is any delay the same has to be condoned in the facts and circumstances of the case. *order is already* ✓

9. Now we shall deal with the contention of the respondents that the initial engagement of the applicant itself being unlawful, he is not entitled for any relief. Learned counsel of the respondents invited our attention to the circular no.220-E/190-II dated 3.1.81 which states that future engagement of casual labourers should be made only after prior approval of the General Manager. It is a contention of the respondents *in the case* of the case of the applicant that no such prior approval of the GM having been taken, the appointment itself was null and void. We are not in a position to agree with this argument. The applicant was first engaged in 1988 and he was continued to be engaged till 14.8.91 with intermittent breaks. Even if the engagement was without prior approval, it was within the competence of GM either to ratify such engagement or to stop the engagement forthwith. After engaging the applicant *continuing* for a long time it is unjust to contend that his engagement was void. The engagement could be said to be voidable at the option of the General Manager but not void. Since the General Manager did not direct to stop the engagement of the applicant and as the applicant was continued in engagement from 1988 to 1991, it has to be deemed that there is *implied* ~~unified~~ ratification by the GM of the applicant's engagement.

10. There is ^a dispute regarding the number of days of service of the applicant. According to the applicant, he has rendered 340 days, but according to the list produced by the applicant itself, the respondents have taken his engagement only as for 211 days. If the applicant had a case that the number of days of service rendered by him as shown in the notice was correct, he should have challenged that at the appropriate time. Therefore, we are of the view that the number of days of the engagement has to be accepted as 211 as claimed by the respondents.

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11. Having found that the application cannot be rejected on the ground of limitation and that the applicant has approached the Tribunal in right time, we have to consider what relief he is entitled to. It has not been made out by the applicant that the respondents have either engaged or regularised any person who has rendered lesser service than the applicant. Therefore, the applicant will be entitled to be considered for re-engagement in his turn as and when work is available.

12. In the result, the application is disposed of with directions to the respondents to place the applicant's name at an appropriate place in the list of casual labourers to be re-engaged and regularised on the basis of the number of days of casual service to his credit and to re-engage him in his turn. The question of regularisation shall also be taken up in accordance with rules and in his turn.

No order as to costs.


(R.K. Ahooja)

Member (A)


(A.V. Haridasan)

Vice Chairman (J)

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