

Central Administrative Tribunal
Principal Bench: New Delhi

OA 1756/96

New Delhi this the ^{7th}4th day of ^{June}May 1997.

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

Shri Chander Pal
S/o Shri Parem Pal
R/o Chand Bagh Gali No.1
Opp. Bhajanpura, Delhi. ...Applicant.

(By advocate: Mr S.K.Sawhney)

Versus

Union of India through

1. General Manager
Northern Railway
Baroda House
New Delhi.
2. Divisional Railway Manager
Northern Railway
Muradabad ...Respondents.

(By advocate: Mr Rajeev Sharma)

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

In this application, the applicant seeks a direction to the respondents to publish seniority list of persons whose names have been entered in the live casual labour register in their unit and to direct the respondents to re-engage him if persons junior to him have been appointed. He further requires the respondents not to resort to contractual agencies for doing additional work which was of a permanent nature.

2. The brief facts are that the applicant had worked as casual labour under Permanent Way Inspector, Hapur/Bulandshahr during the period from 13.2.81 to 14.2.84 rendering 719 days as per casual labour service card No. 1754 (Annexure A-3). His services were terminated on 14.2.84. The applicant has placed on

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record Annexure A-2 dated 14.8.87 which is a comprehensive instruction issued by the Railway Board on the subject of live casual labour register. Para 9 of the same is important and is extracted as under:

" From the above discussion, it is to summarise that while maintaining live casual labour registers, those casual labourers discharged prior to 1.1.81 and had not worked for two years, their names should be deleted except such casual labourers who had made special representation in terms of P.S.No.9191 and 9195 (to be executed upto 31.3.87) and considered eligible. Further, all casual labourers discharged after 1.1.81, their names are to be continued on the live casual labour register indefinitely."

3. Para 8 has also made it clear that the casual labourers both on projects and open line who have been discharged before 1.1.81 may also be given opportunity to be considered and placed on the live casual labour register provided they represent to the Administration on or before 31.3.87. With regard to those casual labourers discharged after 1.1.81 their names as mentioned in para 9 should continue to be operated on the live register. It is also stated that if for some reasons, their names have been deleted, such names should be restored in the register. The applicant learnt that the respondents had re-engaged Antram, son of Chhidda (372 days of service), Hukum Singh, son of Man Singh (255 days of service) and Chhidda Singh, son of Gopal (182 days of service). His grievance is that he has rendered more service than the three persons mentioned above. As labour needs in a particular unit have to be met from the live casual labour

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register in order of seniority on the principle of 'last come first go' he says that he does not know his place in the seniority list in the live register and that such a register has not been published.

4. Respondents in their counter-submitted that Antram, Hukum Singh and Chhidda Singh were engaged as a result of the orders of the Tribunal and in obedience of the directions of the Tribunal.

5. The next point made by the respondents is that the applicant is not a resident of Delhi. He had no ration card or identity card in support of the same. Respondents claim to have published a live casual labour register on the notice board. It is also claimed that the petition is barred by limitation under Section 20 of the A.T. Act 1985. As the applicant did not come back for job after 14.2.84 and he had left his job without intimation to the Railway Administration, he could not be considered for re-engagement. As the applicant did not approach the respondents to know about his seniority and as he did not approach the respondents on or before 31.3.87, he cannot get any relief after 11 years, through this Tribunal.

6. Learned counsel for the applicant cited the decision of Central Administrative Tribunal in the case of Kaluwa & ors vs. UOI & Anr. decided on 27.9.95 in which the applicants had sought for a direction to publish the seniority list of persons and similar other reliefs as in this petition. In that case as in this, the applicants were disengaged without notice to them as required under 1408 of the Railway Establishment Code. The Hon'ble Supreme Court in Rustam Chandra Samanta V. UOI JT. 1993

Respondent

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(3) SC 480 had observed that the right of the casual labour employed in a project to be re-employed in Railways has been recognised both by the Railways and by the Court. Because of their inaction, this right had extinguished with the flux of time. Para 10 of the order of the Tribunal is extracted below:

"10. Shri K.K. Patel has invited our attention to the Tribunal's order dated 26.5.94 in OA 2441/91 Net Ram & Others Vs. General Manager, Western Railway which has been disposed of with a direction to the respondents to include the names of 8 applicants out of 11 in the Live Casual Labour Register, if eligible for such inclusion, in terms of the Railway Board's circular dated 28.8.87 and to give engagement to the applicants as casual labourers as and when need arises, in accordance with their seniority in that register. Shri Patel states that the respondents would have no objection if the directions contained in Net Ram's case (Supra) were extended to the applicants in these OAs also. In this connection, our attention has also been invited to the order of the Hon'ble Supreme Court dated 15.12.94 in Civil Writ Petition No. 262/94 Dhirender Singh & Others Vs. UOI & Ors wherein 42 petitioners had claimed benefits under the Scheme worked out by the Hon'ble Supreme Court in Writ Petitions No. 147, 320-369, 454 and 4335-4434/83 Inder Pal Yadav Vs. UOI decided on 18.4.85. In that case, the Railway Administration's counsel has stated that if the petitioners were in a position to place evidence for the Railway Administration showing that they were genuine casual labourers on projects and had completed the required period of service to be entitled to the benefits under the Scheme, the Railway Administration would have no objection to giving them that benefit. Accordingly, the Hon'ble Supreme

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Court directed the Railway Administration to appoint a high ranking officer before whom the applicants would produce whatever evidence they had in support of their claims for eligibility for the said benefits and the officer so appointed after scrutinising the claims of those applicants would pass a speaking order whether or not the petitioners are entitled to those benefits within specified time limit.

7. First is the question of jurisdiction. The applicant's address has been given as Bhajanpura, Delhi. It is not necessary under law for the applicant to prove that he is a resident of Delhi. The applicant is a labourer. He moves from place to place in search of work. His address is likely to change. After projects were completed in outlying areas, he had come to Delhi in search of work. Such labourers in search of work do not have any permanent address. Their address is the place of work. The very fact that he came to an advocate residing in Delhi who was satisfied that the applicant was working in Delhi is enough evidence of his bonafides. There is no need to insist on any residence as proof by the respondents. It is the person who has alleged the statement to be untrue to prove that it is untrue. Respondents need to prove that the applicant does not stay or work in Delhi. I, therefore, do not consider this contention to be well founded.

8. In regard to limitation, the applicant's contention is that certain persons junior to him were granted appointment. The applicant represented that he should also be considered. This representation has not been considered at all. As the respondents, according to the applicant, had not published the

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seniority list and his name has not appeared in the said seniority list., I am very clear in my mind that the applicant has a right to be included in the live casual labour register. Applicant's service record (Annexure A-3) clearly shows that he had worked for 719 days from 15.5.82 to 14.2.84. His particulars, identification marks and photo are also recorded in the service record. The record is verified, attested and endorsed by the Electrical Forman, Northern Railway Electrification, Ghaziabad. The genuineness of this evidence has not been contested anywhere in the counter affidavit. It is also a fact that the applicant rendered service after 1.1.81. There was no need for him to make a representation for inclusion of his name in the live casual labour register. After hearing the learned counsel for the respondents, it appears to me that the applicant's name has not been included so far in the live register claimed to have been published by the respondents on the notice board. If the name has not been included, it is the bounden duty on the part of the respondents in terms of their instructions to include the name of the applicant. I will accept the claim that the live casual labour register has been published on the notice board. Since the respondents have not pointed out the serial number of the applicant in the said register, it is presumed that the name of the applicant has not been included. Respondents shall do so now.

9. In this background, the question of limitation has been solved. The right to be included in the casual labour register is manifest from several instructions of the Railway Board. In fact the whole concept of casual labour engagement is based on the premise that no fresh face shall be recruited without exhausting persons from the casual labour register. Thus the

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applicant has a fundamental right, a right to live, to earn and a right to employment depending on the entry of his name in the register. As he was not engaged and has claimed that his juniors have been engaged and the respondents have not shown his name in the serial number in the register, the applicant has a continuing right for redressal. No limitation in such circumstances exists. Learned counsel stated that the applicant had left peremptorily on 4.2.84 without informing anybody. It is alleged that because of unruly and insubordinate behaviour, his name had not been included in the register. There is no such finding to justify such non-inclusion. No such findings had been shown to him. Even now if there is material on record about such a behaviour of the applicant, the competent authority should record the findings that that was the reason for non-inclusion. Learned counsel for the respondents did not place any such material before me. A mere statement that he left without intimation is neither here nor there. I, therefore, direct that the respondents should within 6 weeks from the date of receipt of this order consider the service record of the applicant and if there is no adverse findings on his eligibility, assign him proper seniority in the casual labour register claimed to have been published and inform him of his Sl.No. and seniority in the said register. After doing that, they should consider engaging him wherever work is available within a period 12 weeks from the date of receipt of this order. OA is disposed of without order as to costs.



(N. Sahu)
Member (A)

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