

Central Administrative Tribunal
Principal Bench

O.A. 706/96
and
O.A. 1704/98

New Delhi this the 31 st day of January, 2000

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 706/96

Shri Mahabir,
S/o Shri Mauz Ram,
Ex. Casual Khalasi,
under IOW,
Northern Railway,
Rohtak.
R/o Vill & PO-Karor,
Distt. Rohtak.

... 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 Inspector of Works,
Northern Railway,
Rohtak.

... Respondents

By Advocate Shri R.L. Dhawan.

O.A. 1704/98

Karam Singh,
S/o Shri Lakshman Singh,
R/o B-13, Gopal Vihar,
Vijay Vihar,
Delhi-110081.

... Applicant.

By Advocate Ms Meenu Mainee proxy for Shri B.S. Mainee

Versus

Union of India through

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

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

3. The Station Superintendent,
Northern Railway,
Delhi Jnc.

... Respondents

By Advocate Shri B.S. Jain.

O R D E R

Hon'ble Smt. Lakshmi Swaminathan, Member(J).

O.A. 706/96

In this application, the applicant is aggrieved that he has not been given an appointment further to the letter dated 29.12.1989 which, according to him, has been issued on the basis of his working as casual labourer for various periods from 20.7.1979 to 31.7.1988. One of the main reliefs prayed for in this application is that the respondents may be directed to keep the name of the applicant on the Live Casual Labour Register (hereinafter referred to as 'LCL Register') if it is not already there.

2. Shri B.S. Mainee, learned counsel has relied on the Railway Board's circular dated 20.8.1987. His contention is that a casual labourer who has been discharged at any time after 1.1.1981 has to be registered in the LCL Register automatically and maintained there indefinitely. His other main contention is that there is no question of any bar of limitation in these cases under Section 21 of the Administrative Tribunals Act, 1985, and the casual labourers who have worked with the Railway Administration at any time after 1.1.1981 can approach this Tribunal at any time for a direction to the respondents to place them in the LCL Register

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as it is their bounden duty to do so. However, one plea that the respondents have taken is that the casual labourers in such cases very often abandon their work and leave the job on their own accord several years back. According to Shri B S. Mainee, learned counsel, this again is an unacceptable plea taken by the respondents, which he states is only to defeat the legitimate and rightful claim of the applicants to place their names in the LCL Register. He claims that placing the names of the casual labourers in the LCL register is a perennial right which gives a continuous cause of action to the applicant and hence the respondents are unnecessarily taking the plea of limitation in this case. He has placed on record a number of judgements of the Single Bench and Division Bench of the Tribunal supporting his arguments. As the judgements are numerous and their copies have been placed on record, they are not being referred to separately except giving the principles which are in controversy in this O.A.

3. The respondents have controverted the averments of the applicant. Shri R.L. Dhawan, learned counsel, has also placed on record a number of judgements of the Tribunal where it has been held that even if the applicants did work with the respondents as casual labourers on or after 1981, as they have taken action after inordinate delay of several years to approach the Tribunal for relief, the applications were dismissed. They have also stated that as the applicants have not explained the inordinate delay, in some cases as much as 7-15 years, where they had not even submitted any representation earlier or in some cases perhaps a representation was made soon after the admitted days of work sometime in the 1980s, there was no question of even condonation of delay. He has relied on the judgement of the

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Tribunal in Nand Kishore Vs. Union of India & Ors. (OA 943/98), where it has been observed that "This court is not an eternal gate way for age old disputes to be revived, on the mere ground that some decision is given in another case. That would destroy the very foundation of limitation which is based as a matter of public policy, public convenience and public interest". Shri R.L. Dhawan, learned counsel, relying on a number of judgements of the Tribunal, copies placed on record, has very vehemently submitted that the applicant's claims are barred by limitation.

4. The claim of the applicant that he was engaged as casual labourer from 31.3.1974 has also been disputed stating that the applicant has also not placed sufficient proof of his working from 1.4.1982 to 31.7.1988. They have also submitted that the applicant was called for ad hoc appointment vide letter dated 29.12.1989, but he did not turn up and never reported for duty in the Divisional Office and he is, therefore, not entitled to any relief.

O.A. 1704/98

5. In this application which has also been filed ^{by} a casual labourer, similar issues as mentioned above in O.A. 706/96 have been raised. The applicant has claimed that he has worked as casual labourer from 1983-1989 and is aggrieved that he has not been considered for re-engagement. One of the main reliefs sought in this O.A. is also that a direction may be given to the respondents to re-engage the applicant after placing his name in the LCL Register.

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6. The respondents have submitted that the applicant had left the job on his own and he had been paid arrears of pay in the year 1992 but in spite of that, the O.A. has been filed in 1999, that is after seven years. Shri B.S. Jain, learned counsel has raised the preliminary objection of limitation stating that there is no question of condonation of this long delay which has been stoutly controverted by Ms Meenu Mainee, learned proxy counsel stating that this is a continuous cause of action relying on the judgements of the Tribunal in O.A. 2441/91 which has been followed later in O.A. 2358/98 decided on 23.12.1999. Ms. Mainee, learned proxy counsel has submitted that in all these cases of poor casual labourers, the respondents are unnecessarily raising the plea of limitation without adhering to the instructions issued by the Railway Board in their circular dated 28.8.1980 and has adopted similar arguments of Shri B.S. Mainee learned counsel in OA 706/96.

7. Shri B.S. Jain, learned counsel has relied certain other judgements of the Tribunal, copies placed on record, holding the contrary that limitation would apply where there has been inordinate delay and that too, without sufficient or proper explanation as provided in Section 31 of the Administrative Tribunals Act, 1985. He also relied on the provisions of paragraph 179 of the IREM (Vol I) Another submission made by the learned counsel for the respondents that in accordance with the Railway Board's Rules and Instructions which have been issued right from 3.1981, the concerned officials could not take any fresh casual labourer without the prior approval of the General Manager. He very vehemently submitted that as no such prior approval of the General Manager has been taken for continuing

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applicant in this case as casual labourer which is contrary to the Railway Board's instructions dated 3.1.1981, the appointment of the applicant is void ab-initio. He has therefore, submitted that the claim of the applicant for a direction to place his name in the LCL Register in an O.A. which has been filed as late as on 1.9.1998, on the basis that he had worked as casual labourer upto 1989, is highly belated and should be dismissed.

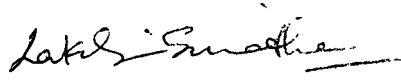
8. It is seen from a perusal of the relevant judgements relied upon by both the parties that there are conflicting views expressed on the same or similar set of facts. In other words, there is need for a Larger Bench to be constituted to reconcile these views in order to have an authoritative decision on the issues raised in these cases. These are regarding, for example, termination of services of casual labourers, their re-engagement, their right of placement in the LCL Register and whether this is a continuous cause of action or the plea of limitation applies, the question of show cause notice in cases where it is alleged that the casual labourer has abandoned his work and whether a seniority list is to be maintained by the respondents of all casual labourers at all times where it is alleged that juniors have been re-engaged while ignoring the claims of seniors.

9. In view of what has been stated above, Registry to place O.A. 706/96 and O.A. 1704/98 before the Hon'ble Chairman for appropriate orders for placing before a larger Bench the following issues for its consideration:-

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- (a) Whether the claim of a casual labourer who has worked prior to 1.1.1981 or thereafter with the respondents i.e. ^{the} Railway Administration has a continuous cause of action to approach the Tribunal at any time, well after the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985, to get a direction to have his name placed on the Live Casual Labour Register; In other words, whether the provisions of the relevant Railway Board circulars for placing his name in the LCL Register ^{gives} a continuous cause of action;
- (b) In case the plea is taken that the casual labourer has abandoned his work, whether it is the duty of the respondents to issue a show cause notice and keep his name in the Live Casual Labour Register for all time.
- (c) Whether the respondents can take the plea that the casual labourers who have been engaged without obtaining the prior approval of the General Manager as laid down in the relevant Railway Board circulars, disentitles them from claiming (a) above;
- (d) Maintenance of a seniority list of casual labourers;
- (e) Generally;

10. Let a copy of this order be placed in O.A. 706/96 and O.A 1704/98.


(Smt. Lakshmi Swamianthan)
Member(J)

'SRD'

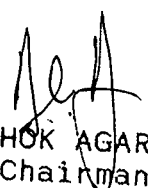
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O.A. No. 706/96
with

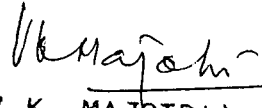
O.A. No. 1704/96
O.A. No. 32/95
O.A. No. 1033/98
O.A. No. 2137/98
O.A. No. 208/99

Present: Shri M.K. Gupta proxy counsel for applicant
in all the O.As
Shri S.M. Arif proxy counsel for respondents

Adjourned to 23.3.2000.


(ASHOK AGARWAL)
Chairman


(S.R. ADIGE)
Vice Chairman (A)


(V.K. MAJOTRA)
Member (A)

gk

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23.3.2000

OA- 706/1996

with

OA- 1704/98

OA- 32/95

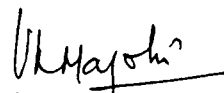
OA- 1033/98


OA- 2137/98

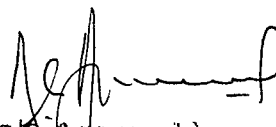
OA- 208/99

Present: Shri S.K. Gupta, proxy counsel for applicant

Advocates appearing for the parties are absent. On request made by proxy advocate, present OA is adjourned to 27.4.2000.


(V.K. Majotra)
Member (A)


(S.R. Adige)
Vice-Chairman (J)


(Ashok Agarwal)
Chairman

cc.

OA 706/96

with

OA 1704/98

OA 32/1995

OA 1033/98

OA 2137/98

OA 208/99

28.04.00

Present: Sh. B. S. Mainee, Counsel
for the applicants.

S/Sh. R. L. Dhawan, B. S. Jain
+ Sh. N. K. Agarwal Counsel
for the respondents.

List on 9-5-2000.

Sh. K. K. Patel, Counsel states that
OA No. 939/99 also raises a similar
controversy which is raised in the
aforesaid OAs. List OA 939/99 also
on 9-5-2000 along with aforesaid
OAs.

V. K. Majotra
(V. K. Majotra)
M(A)

S. R. Adige
(S. R. Adige)
VCC(A)

Asish Agarwal
(Asish Agarwal)
Chairman

27/11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 706/1996, OA 1704/96, OA 32/1995
OA 1033/1998, OA 2137/1998, OA 208/1998
OA 939/1998

DATE OF DECISION : 10.5.2000

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S.R. ADIGE, VICE CHAIRMAN (A)
MEMBER ()

HON'BLE SHRI V.K. MAJOTRA, MEMBER (A)

Sh Mahabir & ors.

... Applicant(s)

-Versus-

Union of India & ors.

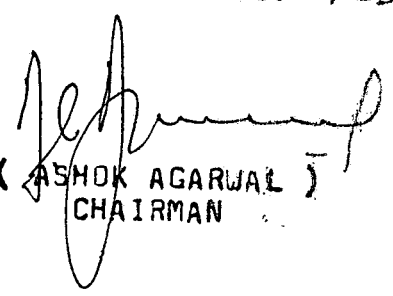
... Respondent(s)

Advocates :

Mr./Sh. B. S. Mainee, & Sh. K. K. Patel, for Applicant(s)

Mr./Mr. R. K. Dhawan, Mr. B. S. Jain for Respondent(s)
& Mr. N. K. Agarwal,

1. Whether to be referred to Reporter? Yes
2. Whether to be circulated to other Benches? Yes.


(ASHOK AGARWAL)
CHAIRMAN

(72)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

- 1) O.A. NO. 706/1996
- 2) O.A. NO. 1704/1998
- 3) O.A. NO. 32/1995
- 4) O.A. NO. 1033/1998
- 5) O.A. NO. 2137/1998
- 6) O.A. NO. 208/1998
- 7) O.A. NO. 939/1999

New Delhi this the 10th day of May, 2000.

HON'BLE SHRI JUSTICE ASHOK AGARWAL, CHAIRMAN

HON'BLE SHRI S. R. ADIGE, VICE CHAIRMAN (A)

HON'BLE SHRI V. K. MAJOTRA, MEMBER (A)

1) O.A. NO. 706/1996

Mahabir S/O Mauz Ram,
ex. Casual Khallasi under I.O.W.,
Northern Railway, Rohtak.

... Applicant

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. Inspector of Works,
Northern Railway,
Rohtak.

... Respondents

2) O.A. NO. 1704/1998

Karam Singh S/O Lakshman Singh,
Ex. Hot Weather Waterman
undr Inspector of Works,
Northern Railway, Subzi Mandi,
Delhi, R/O B-13 Gopal Vihar,
Vijay Vihar, Delhi-110081.

... Applicant

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
 2. Divisional Railway Manager,
Northern Railway,
State Entry Road, New Delhi.
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3. Station Superintendent,
Northern Railway,
Delhi Jn.

... Respondents

3) O.A. NO. 32/1995

Jyoti Parsad S/O Jai Narain,
Ex. Casual Labour under PWI,
Northern Railway,
Khurza Junction.

... Applicant

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
Allahabad.
3. Permanent Way Inspector,
Northern Railway,
Khurza Jn.

... Respondents

4) O.A. NO. 1033/1998

1. Ramesh Chander S/O Mirachi Lal,
Ex. Casual Gangman,
under Chief Permanent Way Inspector,
Northern Railway,
Bareilly Jn.
2. Bhajan Lal S/O Babu Ram,
Ex. Casual Gangman
under Chief P.Way Inspector,
Northern Railway,
Bareilly Jn.
3. Ram Nath S/O Ram Bharose Lal,
Ex. Hot Weather Waterman
under Station Master,
Northern Railway,
Bhatinda.

... Applicants

versus

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

... Respondents

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5) O.A. NO. 2137/1998

Devari Lal S/O Shri Ram,
Ex. Casual Labour
under Station Master,
Northern Railway, Allahabad Dn.,
Kaurara, presently
C/O Harharan Gupta,
H.No.860-A, Gali No.2,
Durga Mandir, Jwala Nagar,
Delhi Shahdara-110032.

... Applicant

versus

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

... Respondents

6) O.A. NO. 208/1999

Ram Sewak S/O Sri Chand,
Ex. Casual Labour
under Station Superintendent,
Sarai Bhupath, Barthana
C/O Ranvir Singh Yadav,
396/11 Palam Colony, Raj Nagar,
New Delhi.

... Applicant

versus

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

... Respondents

7) O.A. NO. 939/1999

Hari Gam S/O Ghasi Ram,

R/O House No.4/20, Gali No.8,
Harijan Basti, New Rohtak road,
Daya Basti, New Delhi.

... Applicant

versus

1. Union of India through
General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.

... Respondents

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Advocates : Shri B. S. Mainee and Shri K. K. Patel,
for applicants.

Shri R. L. Dhawan, Shri B. S. Jain and
Shri N. K. Aggarwal, for respondents.

O R D E R (ORAL)

Shri Justice Ashok Agarwal :

Present batch of applications has been referred to the Full Bench. The same pertains to casual labourers engaged by the Railways. Railways, it appears, are required to undertake in addition to regular works, works on emergent basis or of temporary nature. For executing such works, casual labourers are employed. Their services are dispensed with the moment the work at hand is completed. Casual labourers are available aplenty whereas employment for them is comparatively scanty. In the circumstances, there is a scramble of labourers seeking employment. Righteous officials occupying high positions in the railways who have had a desire to accommodate and offer employment to such casual labourers have devised modalities in order to provide relief by giving employment to such casual labourers. We are in the instant applications concerned with one such policy decision which is reflected in a circular issued by the General Manager, Northern Railway on 28.8.1987 which has been the subject matter of a rather long debate on the part of the learned counsel appearing for the contending parties. It may, in the circumstances, be useful to have a look at the said circular. The same is based on a decision of the Railway Board dated 25.4.1986. Based on the decision

of the Railway Board, aforesaid circular inter alia provides that names of casual labourers who were discharged at any time after 1.1.1981 on completion of work or for want of further productive work, should be continued to be borne on the live casual labour registers and if the names of certain such casual labourers have been deleted due to earlier instructions, those should be restored on the live casual labour registers. The circular reiterates that those casual labourers discharged prior to 1.1.1981 and who have not worked for two years, their names should be deleted except such casual labourers who have made special representations in terms of PS Nos.9191 and 9195 (to be executed up to 31.3.1981) and considered eligible; further, all casual labourers discharged after 1.1.1981, their names are to be continued on the live casual labour register indefinitely. The circular further provides that if any requirement of casual labourers in the seniority unit arises, the same is to be met with by re-engaging casual labourers from the register of that seniority unit in order of seniority on the principle of 'last-go-first-in.' The same clarifies that if a casual labourer retrenched on completion of work, does not accept the offer made to him or does not turn up to work when ordered on availability of fresh work, he loses the benefit of previous spell of his employment as casual labour. The circular goes on to mandate that the controlling officers/senior gazetted officers of each seniority unit are required to ensure that such live casual labour registers are maintained by

the concerned staff and surprise checks should be organised and action should be taken against the defaulting staff. These registers must be reviewed once a quarter. The circular concludes by directing the instructions to be brought to the notice of all concerned dealing with casual labour, particularly senior subordinates and Assistant Officers and ensure that suitable checks and monitoring is made to ensure that these live casual labour registers are carefully maintained, updated and utilized for purposes of re-engagement of casual labour. The circular prescribes a format of particulars of casual labourers to be entered in the live casual labour register which is as follows :

- i) Name of employee
- ii) Father's name
- iii) Date of birth
- iv) Educational qualification
- v) Personal mark of identification
- vi) Date of engagement
- vii) Age at the time of initial casual labour employment.
- viii) Nature of job in each occasion
- ix) Date of retrenchment
- x) Reason for retrenchment
- xi) Signature of casual labour
- xii) Signature of the Supervisor (under whose supervision live casual labour register is maintained)"

2. Aforesaid circular, it is apparent, makes an effort to offer employment to casual labourers on

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certain rational basis. The same seeks to do justice to casual labourers by offering them employment. Whereas casual labourers are available aplenty, jobs for them are scarce. Casual labourers who have been placed on the casual labour registers have outnumbered the normal requirement for such works which are ordinarily or normally undertaken by the railways. Aforesaid circular, therefore, seeks to curtail the number of casual labourers from the registers who are less deserving on account of their having been employed prior to the aforesaid cut-off date, namely, 1.1.1981 and who have not been employed thereafter for a considerable time. At the same time, it seeks to offer employment to as many casual labourers and absorb them against regular vacancies, as far as the same is possible, on their fulfilling the prescribed criteria/norms.

3. Certain questions have arisen for consideration as regards the interpretation to be given to the aforesaid circular. One such question which has been referred to the present Full Bench is in respect of limitation. The question referred is in the following terms :

(a) Whether the claim of a casual labourer who has worked prior to 1.1.1981 or thereafter with the respondents i.e. Railway Administration has a continuous cause of action to approach the Tribunal at any time, well after the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985, to get a direction to have his name placed on the Live Casual Labour Register; in other words, whether the provisions of the relevant Railway Board circulars for

placing his name in the LCL Register gives him a continuous cause of action."

4. Shri B.S.Maine and Shri K.K.Patel, learned advocates appearing on behalf of the applicants have strenuously urged that the aforesaid circular prescribes for maintenance of live casual labour register on continuous basis. The same mandates placing of casual labourers on the said register the moment they satisfy the conditions prescribed. Therefore, a duty is cast on the railway administration to maintain such registers and to enroll the names of casual labourers on such registers. A further duty is cast upon them to offer the casual labourers employment as and when work for them becomes available. As far as casual labourers are concerned, they have thus a continuous right of not only being placed on the live casual labour register but also of being continued to be on the registers. They have a further right of being offered employment as and when the same becomes available. They, in the circumstances, have a continuous right both of being on the register and being offered employment. Hence, there can be no question of limitation coming in their way while asserting their aforesaid right of being on the registers and of being offered employment.

5. As against this, Shri R.L.Dhawan, Shri B.S. Jain and Shri N.K.Aggarwal, learned counsel appearing on behalf of the respondents, have strenuously countered by submitting that the right of being placed

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on the registers is not and cannot be a continuous right. The same arises the moment a casual labourer qualifies himself to be so placed on the register. If a casual labourer who has had the right of being placed on the register, say, in or around 1982, takes no steps whatsoever till say 1995 and thereafter comes up with a claim that he be placed on the register and he be offered employment, such a claim will definitely be barred by the law of limitation. The Administrative Tribunals Act, 1985 by enacting Section 21 has prescribed a period of limitation. The same has to be strictly followed and adhered to. The Tribunal has no authority, right or jurisdiction on grounds of equity or sympathy to relax the provisions contained in the aforesaid Section. It is bound by the aforesaid provision of limitation.

6. Learned counsel appearing for either side are supported by various decisions rendered by this Tribunal and they have naturally relied upon the same. In one batch of decisions it has been held that the aforesaid circular gives in favour of casual labourers a continuous cause of action. Hence no period of limitation can be made applicable in their cases. Their applications though filed after a lapse of considerable time, cannot be thrown out on grounds of limitation.

7. In order to illustrate the aforesaid view taken by several Benches, a reference to the following passages contained in O.A. No.1220/88 : Mithai Lal

A v. Union of India, decided by the Allahabad Bench of the Tribunal will be useful :

A "5. The main point urged on behalf of opposite party is that it was the duty of the applicant to apply to the concerned authorities for placing his name on the live casual labour register, but since he failed to do so, it was not possible to include his name, connected with this is the plan that since the applicant was out of employment since 28.8.85 this application is barred by the the rule of limitation contained in Section 21 of the Act. It is also urged that the nature of relief sought by the applicant is not capable of being given by this Tribunal.

6. A close examination of the circular dated 20.8.1987 makes two things clear, firstly the responsibility of making a representation to include the name in the live casual labour register is confined to those who had been discharged before 1.1.1981 (vide para 8). Since the applicant was discharged after 20.8.85 the requirement of making an application by the applicant himself does not apply.

7. Secondly, the duty of maintaining the live casual labour register is upon the opposite party suomoto. It was not the duty of any of the casual labour to require the opposite party to maintain the register and keep entries therein. Para 7 of the circular clearly says that the Railway Board had decided that the names of each casual labour discharged at any time after should continue to be borne out on live casual labour register and if such has been deleted it ought to be restored on their register. Again in para 9 it is specifically stated that of all these casual labourers discharged after 1.1.1981 their names are to be continued on the live casual labour register indefinitely. These contents of the circular leave no manner of doubt that in respect of the applicant who has been discharged after 28.8.85, it was the clear duty of the opposite parties to retain his name on the live casual labour register, so much so, that if it happened to be deleted, it had to be restored by them on their own motion and retained indefinitely.

8. This being the situation, the applicant's cause for being placed on the live casual labour register and to be reemployed is a recurring cause from day to

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day under the decision of the Railway Board itself, and there is no question of the claim being barred by limitation under section 21 of the Act."

8. It is not necessary to make a reference to various other decisions which have taken the aforesaid view and burden the present order and make it unwieldy. It is enough to observe that the aforesaid decision as also the catena of decisions taking the aforesaid view proceeds on the basis that it is the duty of the administration to maintain the casual labour registers on continuous basis. The circular gives a continuous right to the casual labourers to be placed on the register and to claim employment. Such claim does not attract the provisions of limitation. Applications filed though after a considerable lapse of time cannot, therefore, be thrown out on the ground of limitation.

9. As far as the other view is concerned, a reference can be made to the case of **Rambir Singh & Ors. v. Union of India & Anr.**, O.A. No.1421/98 decided by the Principal Bench on 17.12.1999. The aforesaid decision has inter alia observed, thus -

"5. Respondents have taken three main objections. Shri R.L.Dhawan, learned counsel for the respondents argued vehemently to say that the case is barred by limitation. He relies upon the judgment of the Hon'ble Supreme Court in the case of R.C.Samanta & Ors. vs. U.O.I. 1993 (3) SC 418. It was held therein that delay deprives a person of the remedies available in law and the person who has lost his remedy by lapse of time also loses his right. As per the counsel, applicants had worked in 1982 and did not have legal basis for approaching this Tribunal after a

passage of more than 16 years. He also cited the case of Central Bank v. S. Stayam & Ors. 1996(3) SLJ SC 1 wherein it was held that laches are a material flaw as the claim of 1982 was filed in 1992."

"12. It is not in doubt that the applicants claim to have worked as casual labourers in 1981-1982. It is also not disputed that the applicants made representation only in 1997. As such, application filed after more than 16 years is squarely hit by limitation. The Hon ble Supreme Court has laid down the law in the case of Gurdev Singh vs. State of Punjab, JT 1991 (3) SC 465 that statute of limitation was intended to provide a time limit for all suits conceivable"

10. Here also it is not necessary to make a reference to other decisions taking a similar view and burden the present order. Suffice to state that aforesaid decision proceeds on the hypothesis that delay in approaching the Tribunal beyond the period prescribed makes an application time barred. Therefore, it proceeds on to hold that the aforesaid circular does not give a continuous cause of action in favour of casual labour to be placed on the live casual labour register and of being offered employment as and when the same becomes available. As far as the present controversy is concerned, once again it will be useful to make a reference to the aforesaid circular dated 28.8.1987. The crucial phrase provides as under :

"....all casual labour discharged after 1.1.81 their names are to be continued on the live casual labour register indefinitely."

11. Aforesaid circular, in our judgment, confers a right on casual labour to be placed on the

live casual labour register. The said right arises the moment the casual labour is discharged. The said right is conferred on such casual labour who have been discharged after 1.1.1981. Hence, the moment a casual labour is discharged, a right to be placed on the register arises. To give an example, in respect of casual labour who have been discharged say, on 1.1.1982, the right to be placed on the register arises as on that date. The casual labour, no doubt has a right to be continued on the live casual labour register indefinitely. However, before that right of being continued on the register indefinitely can arise, the right to be placed on the register in the first instance has to be asserted. The cause of action for asserting the said right arises on 1.1.1982 when the casual labour is discharged. This is amply clear from the aforesaid recital to be found in the circular. Circular no doubt casts an obligation on the part of the administration to maintain the registers continuously. That, however, does not mean that the same confers a continuing right on the part of the casual labour to be placed on the register in the first instance. If the right which has accrued in his favour on 1.1.1982 is denied to him, he has to take recourse to approach this Tribunal within the time prescribed by Section 21 of the Administrative Tribunals Act, 1985. He cannot wait for time immemorial and approach the Tribunal at leisure and, at his whims and fancies, may be years later, and assert his right of being placed on the register.

12. Casual labourers who are parties in the present applications fall in two categories - one whose services have been discharged, and secondly those who have either abandoned their employment or have not accepted the offer of employment when made. The latter, therefore, would also fall under the category of those who have abandoned their services. As far as the former category of casual labourers are concerned, aforesaid circular provides them protection by conferring upon them the right of being offered employment by being placed on the live casual labour register. As far as the latter category of casual labourers are concerned, aforesaid right has not been bestowed upon them. On the contrary, they have been deprived of the aforesaid benefit under the terms of the circular itself. As far as first category of labourers is concerned, namely, whose services have been discharged, a right accrues in their favour, a right of being placed on the register. This right accrues in their favour the moment their services are discharged. In the circumstances, we are of the considered view that provisions contained in Section 21 of the Administrative Tribunals Act, 1985 prescribing the period of limitation will be applicable to the applications filed seeking benefit of the aforesaid circular.

13. In the case of **Ratam Chandra Sammanta & ors. vs. The Union of India & Ors.**, JT 1993 (3) S.C.418, the Apex Court has observed as under :

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"6. Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railways and this Court. But unfortunately the petitioners did not take any steps to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned Counsel for the petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed...." (Emphasis provided).

14. In the case of **State of Punjab & Ors.** v **Gurdev Singh**, (1991) 4 SCC 1, the Apex Court on the question of limitation has observed thus :

"7. In the instant cases, the respondents were dismissed from service. May be illegally. The order of dismissal has clearly infringed their right to continue in the service and indeed they were precluded from attending the office from the date of their dismissal. They have not been paid their salary from that date. They came forward to the court with a grievance that their dismissal from service was no dismissal in law. According to them the order of dismissal was illegal, inoperative and not binding on them. They

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wanted the court to declare that their dismissal was void and inoperative and not binding on them and they continue to be in service. For the purpose of these cases, we may assume that the order of dismissal was void, inoperative and ultra vires, and not voidable. If an Act is void or ultra vires it is enough for the court to declare it so and it collapses automatically. It need not be satisfied. The aggrieved party can simply seek a declaration that it is void and not binding upon him. A declaration merely declares the existing state of affairs and does not quash so as to produce a new state of affairs.

8. But nonetheless the impugned dismissal order has at least a de facto operation unless and until it is declared to be void or nullity by a competent body or court. In *Smith v. East Elloe Rural District Council*, 1956 AC 736, 769, Lord Radcliffe observed: (All ER p.871)

"An order, even if not made in good faith, is still an act capable of legal consequences. It bears no brand of invalidity on its forehead. Unless the necessary proceedings are taken at law to establish the cause of invalidity and to get it quashed or otherwise upset, it will remain as effective for its ostensible purpose as the most impeccable of orders."

9. Appropos to this principle, Prof. Wade states (See Wade: Administrative Law, 6th edn., p.352) "the principle must be equally true even where the brand of invalidity" is plainly visible; for there also the order can effectively be resisted in law only by obtaining the decision of the court. Prof. Wade sums up these principles :

"The truth of the matter is that the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be hypothetically a nullity, but the court may refuse to quash it because of the plaintiff's lack of standing, because he does not deserve a discretionary remedy, because he has waived his rights, or for some other legal reason. In any such case the 'void' order remains effective and is, in reality, valid. It follows that an order may be void for one purpose and valid for another; and that it may be void against one person but valid against another."

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Contention in respect of limitation raised before the Apex Court was answered by observing thus :

"10. It will be clear from these principles, the party aggrieved by the invalidity of the order has to approach the court for relief of declaration that the order against him is inoperative and not binding upon him. He must approach the court within the prescribed period of limitation. If the statutory time limit expires the court cannot give the declaration sought for."

15. If one has regard to the aforesaid decision rendered by the Apex Court, we have no hesitation in holding that the provisions of limitation will undoubtedly apply to the claims raised in the present applications.

16. It is, however, contended by Shri Mainee that various applicants, who were similarly placed as applicants in the present applications, have been granted the reliefs claimed in the present batch of applications by the various Benches of the Tribunal taking a view contrary to the one we are now taking. Based on the decisions of this Tribunal respondents have complied with the directions and applicants in those cases have received the benefit of those decisions. Applicants in the instant cases, therefore, should be given a similar relief on the basis of a right to equality and non-discrimination, a principle enshrined in Article 14 of the Constitution. In this behalf it will be useful to make a reference to the case of Bhoop Singh v. Union of India & Ors..

1992 (2) SLJ 103. Termination of his service was challenged by a police constable 22 years after his termination. In the said case this is what the Supreme Court has observed :

"7. There is another aspect of the matter. Inordinate and unexplained delay or laches is by itself a ground to refuse relief to the petitioner, irrespective of the merit of his claim. If a person entitled to a relief chooses to remain silent for long, he thereby gives rise to a reasonable belief in the mind of others that he is not interested in claiming that relief. Others are then justified in acting on that belief. This is more so in service matters where vacancies are required to be filled promptly. A person cannot be permitted to challenge the termination of his service after a period of twenty two years, without any cogent explanation for the inordinate delay, merely because others similarly dismissed had been reinstated as a result of their earlier petitions being allowed. Accepting the petitioner's contention would upset the entire service jurisprudence and we are unable to construe **Dharampal** in the manner suggested by the petitioner. Article 14 or the principle of non-discrimination is an equitable principle and, therefore, any relief claimed on that basis must itself be founded on equity and not be alien to that concept. In our opinion, grant of the relief to the petitioner, in the present case, would be inequitable instead of its refusal being discriminatory as asserted by learned counsel for the petitioner..."

17. Aforesaid contention of Shri Mainee in the circumstances is rejected.

18. In the light of the foregoing discussion we answer the aforesaid issue (a) as under :

Provisions of the relevant Railway Board circular dated 25.4.1986 followed by the

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circular dated 28.8.1987 issued by General Manager, Northern Railway for placing the names of casual labour on the live casual labour register do not give rise to a continuous cause of action and hence the provisions of limitation contained in Section 21 of the Administrative Tribunals Act, 1985 would apply.

19. The next question which has been referred to the Full Bench is as follows :

"(b) In case the plea is taken that the casual labourer has abandoned his work, whether it is the duty of the respondents to issue a show cause notice and keep his name in the Live Casual Labour Register for all time."

20. Aforesaid issue arises out of the following provisions contained in the circular of 28.8.1987 :

"12. It is also clarified that as per extant orders, if a casual labour retrenched on completion of work, does not accept the offer made to him or does not turn up to work when offered, on availability of fresh work, he loses the benefit of previous spell of his employment as casual labour."

21. It many a time happens that a casual labourer, while employed, absents himself and abandons employment. There are also cases where casual labourers, retrenched on completion of work, do not report for work after an offer is made for employment. Benefit of the aforesaid circular is not extended to them. Question often arises, when casual labourer

absents himself, whether such absence is to be construed as abandonment of work or whether absence from work is on account of genuine reasons such as illness or for some such similar reasons. Question, therefore, which is posed, is whether in such cases a show cause notice is required to be given before their names can be struck-off from the live casual labour register thus denying them their future entitlement for employment.

22. Shri K.K.Patel, the learned advocate appearing in one of the O.As. being (O.A. No. 939/99) on behalf of the applicant, has contended that once a casual labourer has been placed on the live casual labour register a vested right accrues in his favour of being offered employment when available. If he is to be removed from the said register, a valuable right which is vested in him will be taken away. The same, therefore, results in civil consequences arising against him. A show cause notice is, therefore, mandatory. As against this S/Shri Dhawan, Jain and Aggarwal have countered by submitting that once a casual labourer abandons work, his whereabouts are invariably unknown. If a casual labourer makes himself scarce and is no longer available for being offered employment, there can arise no occasion to issue a show cause notice. His name is liable to be removed without a show cause notice merely on the ground of his abandonment. Moreover, the issue of such a show cause notice is impracticable as in most cases his whereabouts are unknown.

23. The legal position in regard to abandonment of service as enunciated by the Supreme Court and as contained in the case of **Beer Singh v. Union of India & Ors.**, 1990 (1) ATJ 576 (CAT) is as follows :

"In the case of **G.T.Lad v. Chemical and Fibres of India Ltd.**, 1979 SCC (L&S) 76 at 80, the Supreme Court after referring to the meaning given in various dictionaries has observed that it (abandonment) must be voluntary relinquishment and that it must be total and under such circumstances as clearly to indicate an absolute relinquishment. The failure to perform the duties pertaining to the office must be with actual imputed intention, on the part of the officer to abandon and relinquish the office. The intention may be inferred from the acts and conduct of the party, and is a question of fact. Temporary absence is not ordinarily sufficient to constitute an abandonment of office."

"In **Buckingham & Carnatic Company v. Venkatiah**, AIR 1964 SC 1272 at 1275, the Supreme Court observed that abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrine of common law or considerations of equity, would not be relevant. Whether there has been any voluntary abandonment of service or not is to be determined in the light of the surrounding circumstances of each case."

"In **M/s Jeevanlal (1929) Limited v. Its Workmen**, AIR 1961 SC 1567 at 1569, it was observed that if an employee continues to be absent from duty without obtaining leave and in an unauthorised manner for such a long period of time that an inference may reasonably be drawn from such absence that by his absence he has abandoned service, then such long unauthorised absence may legitimately be held to cause a break in the continuity of service. It would also be question of fact to be decided on the circumstances of each case whether or not a particular employee can claim continuity of service for the requisite period."

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"In **G. Krishnamurthy v. Union of India & Ors.**, 1989 (9) ATC 158 the Madras Bench of this Tribunal observed that in the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. The Tribunal followed the decision of the Bombay High Court in **Gauri Shankar Vishvakarma v. Eagle Industries (P) Ltd.**, 1988 (1) LLN 259."

24. Thus the question whether a casual labourer has abandoned service or not would depend on the facts and circumstances of each case. In the circumstances, the employer, railway administration, is bound to give a show cause notice to the casual labour in case of his absence/abandonment from service before his name is struck-off from the live casual labour register. As far as the practicability of service of show cause notice is concerned, we have referred to the details which are required to be maintained in respect of casual labourers in the live casual labour register to be found in the circular dated 28.8.1987. The same has already been reproduced hereinabove. We have been shown a sample of a casual labour card which is being issued to casual labourers. The same substantially contains the aforesaid particulars required to be maintained in the live casual labour register. In addition, the same also contains a column containing the addresses of the casual labourers. Moreover, it is common ground that offers are issued to the casual labours by sending notices. It is, therefore, apparent that the addresses of the casual labourers are available with the administration. In the

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circumstances, it would be futile to submit that it is impracticable to issue a show cause notice. Hence, though there is no column in respect of the address in the format to be maintained in the live casual labour register, in the casual labour card issued to the casual labourer, there is a specific column containing his address. In the circumstances, we hold that it will be necessary and incumbent on respondents to issue a show cause notice at the address to be found in the casual labour card and/or live casual labour register. It follows that once a notice is issued at the aforesaid address, the obligation and duty cast upon the employer would be fulfilled and in case the casual labourer fails to respond in response to the said notice, he shall be deemed to have abandoned employment. Present direction will necessarily operate prospectively and will not affect decisions which have already been taken in this behalf.

25. In the circumstances, we answer the aforesaid issue (b) in the affirmative and hold that in case a plea is taken that the casual labour has abandoned his work, it is the duty of the respondents to issue a show cause notice before his name is removed from the live casual labour register.

26. The next question which is referred to the Full Bench is as follows :

"(c) Whether the respondents can take the plea that the casual labourers who have been engaged without obtaining the prior approval of the General Manager as laid down in the relevant Railway Board

circulars, disentitles them from claiming (a) above."

27. Whereas it has been pointed out on behalf of the applicants that what is made relevant in the circular in question is the work performed by casual labourers during the relevant period. Whether the same has been rendered on engagement of casual labour after obtaining prior approval of the General Manager is not made the basis of the circular. As far as casual labourers are concerned, they may not be aware whether they have been engaged after obtaining the prior approval of the General Manager or otherwise. As far as they are concerned, they have rendered the requisite service entitling them to be placed on the live casual labour register thereby entitling them to claim reemployment when work becomes available. The internal mechanism, whether the same is followed or otherwise, is of no concern to the casual labourers. It would, therefore, be unjust and unequitable to deny them the claim for placement in the live casual labour register merely because they were engaged earlier without obtaining the prior approval of the General Manager.

28. In this context, reliance is placed by Shri Dhawan on a circular dated 6.5.1998 issued by the Northern Railway which seeks to give certain clarifications in respect of para 5 of the circular dated 28.8.1987. The same insofar is relevant provides :

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"Now it is amplified that the casual labourers who were engaged prior to 1.1.81 by authorised person and discharged after 1.1.81, their names only are to be continued in the Live Casual Labourer Register for the simple reason that after 3.1.81 no authority except, the General Manager has been empowered to engage/re-engage a casual labour."

Circular of 3.1.1981 to which reference is made, provides as under :

"In partial modification of Board's instructions contained in the letter No. F(NG)II/77/CL/467 dated 27.2.78 (P.S. No.6963), the railway Board have decided that the number of men on casual basis already being sizeable enough to meet Railways requirement in the fields there should normally be no need for fresh intake of candidates. There could only be special situation in limited areas and in that case too intake of fresh casual labour should be resorted to only after obtaining the prior approval of the General Manager. With the issue of these instructions the power of engagement of fresh casual labours with the personal orders of Divl. Supdts, now Divisional Railway Managers stands withdrawn, and it may please be ensured that no fresh casual labour are recruited without obtaining prior approval of the General Manager."

The instructions contained in C.P.O's D.O. No.R-254/5-Part-2 dated 8.8.1980 to Divisional Railway Managers accordingly stand amended."

29. Placing reliance on the aforesaid circulars, it is contended by Shri Dhawan that any engagement of casual labour made after the aforesaid circular of 3.1.1981 by an authority other than the General Manager would be unauthorised and the benefit conferred by the circular dated 18.8.1987 cannot be extended in favour of such unauthorised casual labour.

30. We have considered the rival contentions and we are inclined to hold that the aforesaid clarification sought to be made by the circular of 6.5.1998 cannot be invoked to deny casual labourers their claim for placement in the live casual labour register merely because they were engaged without the prior approval of the General Manager. Casual labour have no means of knowing whether they were appointed with the prior approval of the General Manager or not and they have not been put to notice in respect of the circular of 3.1.1981. These casual labourers are often uneducated and unemployed youths. They are employed on emergent basis for works undertaken which are not on a regular basis. As far as they are concerned, it hardly matters to them whether their engagement has been with the prior concurrence of the General Manager or some other authority. Aforesaid circular of 3.1.1981 nowhere finds a place in the circular of 28.8.1987. It would, therefore, be unjust and in any event unequitable to foist the said circular and the later explanation contained in the circular of 6.5.1998 upon them so as to deprive them of the benefit of the aforesaid circular of 28.8.1987.

31. As far casual labourers are concerned, they are generally issued casual labour cards. However, some of them have not so been issued the said cards but have been issued paper certificates indicating the period of their employment. If several casual labourers have not been issued the casual labour cards but have been issued paper certificates, they can

hardly be blamed. In the circumstances, in either case whether they have been issued casual labour cards or paper certificates as long as the same are sufficient to establish their employment as casual labour on or after 1.1.1981, the same should be a good evidence for their being extended the benefit of the said circular. Whether the evidence produced by the casual labour is good evidence or otherwise would be a question of fact to be decided in each individual case. Whether such paper certificates are genuine or otherwise, would, therefore, also be an issue to be decided in each individual case. However, particulars to be found in the casual labour card or the paper certificates become relevant for the purpose of computing the number of days of work put in for the purpose of determining the seniority of the casual labour in the seniority list, for the purpose of offering them employment on the basis of last-go-first-in .

32. For the foregoing reasons, we hold that respondents cannot take a plea that casual labour who have been engaged without obtaining the prior approval of the General Manager as laid down in the relevant Railway Board circular disentitles them from claiming (a) above.

33. The next issue referred pertains to maintenance of seniority list of casual labour. The same arises out of the following provisions contained in the circular of 28.8.1987 :

"3. Present seniority unit for the casual labour on open line for the purpose of engagement and retrenchment is inspectorwise and for screening it in the Division. For project casual labour the seniority unit is a Division, as per recent Supreme Court judgment."


"4. Whenever additional requirements of casual labour arise the same has to be met with the re-engaging casual labour who had earlier worked on the seniority unit and have been retrenched due to completion of the work done on the basis of their seniority by following provisions of Industrial Disputes Act, i.e., last go, first in."

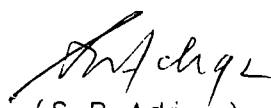
"10. Further, it is obvious that if any requirements of casual labour in the seniority unit arise, the same is to be met with by re-engaging from casual labour register of that seniority unit in order of seniority on the principle of last go first in. If there are no persons on live casual labour register, the casual labour borne on the casual labour registers of the adjacent units must be invoked before resorting to any fresh intake."


34. Aforesaid provisions contained in the circular, undisputedly provide for maintenance of seniority lists. Respondents are accordingly required to maintain the requisite seniority list in accordance with the rules and instructions in that behalf and offer employment whenever available in order of seniority, i.e., last-go-first-in. Aforesaid issue is accordingly answered by holding that the respondents are required to maintain seniority lists of casual labour in their respective seniority units.

35. Having answered the issues raised in the present reference, we now direct that the present O.As. be placed before the concerned Single Bench for

disposal in the light of the aforesaid findings and in accordance with law.


(V.K. Majotra)
Member(A)


(S.R. Adige)
Vice-Chairman(A)


(Ashok Agarwal)
Chairman

/sns/

Item-R-1

17.7.2000

OA-706/96
with
OA-1704/98
OA-32/95
OA-1033/98
OA-2137/98
OA-939/99
OA-208/99
OA-1566/97
OA-1883/98
MA-1997/98

Present: Sh. B.L.Madhok proxy for
Sh. B.S.Maine, \
learned counsel for applicant.

Sh. B.S.Jain,
learned counsel for respondents and
proxy for Sh. R.L.Dhawan, Sh. N.K.Aggarwal
and Sh. V.P.Sharma.

At the request of Sh. Madhok list on 7.8.2000.

18 -
(Smt. Lakshmi Swaminathan)
Member (J)

'sd'

58
Item No. R-1 (Court IV)

OA No. 706/1996 alongwith OA 1704/98, 32/95, 1033/98,
2137/98, 939/99, 208/99, 208/99, 1586/97 and 1883/98

August 8, 2000

Present : Shri B. S. Mainee, counsel for the applicants

None present for the respondents

Shri B. S. Mainee submits that since these cases
were listed for 11.8.2000 and preponed for today, it is
not possible for him to argue the matter in the absence
of the relevant files. He also needs to cite some
judgements of the High Court and this Tribunal.

Let the cases remain on board.

(Smt. Shanta Shastri)
Member (A)

/gtv/

Item-R1

O.A.706/965

with

OA Nos. 1704/98, 32/95, 1033/98, 2137/98, 939/99
208/99, 1566/97 and 1883/98.

16.8.2000

Present: Ms. Meenu Mainee, proxy for Shri B.S.
Mainee, counsel for the applicants.

Sh.R.L. Dhawan, counsel for the respondents.

Shri Mainee is stated to be unwell. List on

18.8.2000.

Shri Dhawan states that OA 1566/97 is not
connected with these cases and it should be listed
separately. Accordingly, OA 1556/97 may be listed
separately on the next date, i.e., 18.8.2000.

(Kuldip Singh)
Member (Judl)

/dm/

(60)

21.8.2000

R-1

O.A. 706/96 with
O.A. 1704/98, 32/95, 1033/98, 2137/98, 939/99,
208/99, 1883/98

Present: Sh. B.S. Mainee, counsel for applicant
Sh. R.L. Dhawan/Sh. B.S. Jain/N.K. Aggarwal,
counsel for respondents.

Sh. B.S. Mainee, learned counsel seeks an
adjournment on the ground that he is not feeling well
further
today to proceed with this case/and connected cases.

List on 22.9.2000.

d
(S.A.T. RIZVI)
M(A)

SKA

22-9-2000

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- ✓ 1. O.A. 706/1996
with connected cases
2. O.A. 237/1997
3. O.A. 915/1997
MA 952/98 989/97

The cases listed at Sl.No.1 to 3 in today's
cause list be listed on 3.11.2000 under regular
matters.

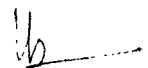


(V.K. MAJOTRA)
MEMBER(A)

62
3.11.2000

- ✓ 1. OA-706/96 with connected cases
2. OA-915/97
MA-952/98
MA-989/97
3. OA-1079/97
MA-1161/97
MA-857/98
4. OA-516/98
MA-342/99

Cases listed at Sr. No. 1 to 3A in today's
cause list stand adjourned to 21.11.2000.


(V.K. Majotra)
Member (A)

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Item No. R-2
OA 706/1996 with
OA 1704/98
OA 32/95
OA 1033/98
OA 2137/98
OA 939/99
OA 208/99
OA 1833/98
OA 237/97


24.11.2000

Present: Shri Madhok, proxy counsel for Shri B.S.
M'ainee, counsel for the applicant

Shri R.C. Malhotra, proxy counsel for
Shri R.L. Dhawan, counsel for the
respondents

At the joint request of both the parties, list on
19.1.2001.

/pkr/


(S.A.T. Rizvi)
Member(A)

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22.1.2001

R-1

Case No.: OA 706/96, OA 1704/98, OA 324/95, OA 1033/98,
OA 2130/98, OA 939/98, OA 208/98, OA 233/97
OA 1883/98

Present: Shri B.S. Mainee, Counsel for Applicant in
OA 706/96, OA 1704/98, OA 324/95, OA 1033/98
OA 2130/98, OA 208/98, OA 233/97

Shri R.L. Dhowan, Counsel for Respondent in
OA 706/96, OA 1033/98

Shri B.S. Jadhav, Counsel for Respondent in
OA 1704/98, OA 324/95, OA 2130/98, OA 939/98,
OA 208/98, OA 1883/98

Shri N.C. Aggarwal, Counsel for Respondent
in OA 324/95

Heard arguments and concluded.

Orders reserved by the bench comprising of
Hon'ble Shri Kuldeep Singh, Member (J)

B.O.
by
Court Officer
Court No. II

6.2.2001

Judgment pronounced in open Court

Pro.
less
A.O. CIV

(65)

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. Nos. 706/96, 1704/98, 32/95, 1033/98, 2137/98,
939/99, 208/99 and 1863/98

New Delhi, this the 6th February, 2001

HON'BLE MR. KULDIP SINGH, MEMBER (JUDL)

OA 706/96

Shri Mahabir S/o Shri Mauz Ram
ex. Casual Khallasi under IOW
Northern Railway,
Rohtak
R/o Village and P.O. Karori
District Rohtak.

...Applicant

Versus

U.O.I. 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 Inspector of Works,
Northern Railway,
Rohtak.

...Respondents.

OA 1704/98

Shri Karam Singh S/o Sh. Lakshman Singh
Ex. Hot Weather Waterman
Under Inspector of Works
Northern Railway, Sabzi Mandi, Delhi.
R/o BB-Gukula Vihar, Vijay Vihar,
Delhi-110 081.

...Applicant

Versus

U.O.I. 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 Station Superintendent,
Northern Railway,
Delhi Jnc.

...Respondents.

OA 32/95

Shri Jyoti Parsad S/o Sh. Jai Narain
Ex. Casual Labour under PWI
Northern Railway, Khurza Junction.

...Applicant

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Versus

U.O.I. Through

1. The General Manager, Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Allahabad.
3. The Permanent Way Inspector, Northern Railway,
Khurza. Jnc. ...Respondents.

QA 1033/98

1. Shri Ramesh Chander S/o Shri Mirachi Lal
Ex. Casual Gangman
Under Chief Permanent Way Inspector,
Northern Railway, Bareilly Jnc.
2. Shri Bhajan Lal S/o Shri Babu Ram
Ex. Casual Gangman
Under Chief Permanent Way Inspector,
Northern Railway, Bareilly Jnc.
3. Shri Ram Nath S/o Shri Ram Barose Lal
Ex. Hot Weather Waterman Under Station Master,
Northern Railway,
Bhitaura. ...Applicants

Versus

U.O.I. Through

1. The General Manager, Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway
Moradabad. ...Respondents.

QA 2137/98

Shri Devari Lal R/o H.No. 860-A Gali No.2, Durga Mandir,
Jwala Nagar, Delhi Shahdara-32.Applicant.

Versus

U.O.I. Through

1. The General Manager, Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad. ...Respondents.

QA 939/99

Shri Hari Ram S/o Sh. Ghasi Ram
R/o House No.4/20 Gali No.8,
Harijan Basti, New Rohtak Road, Daya Basti,
New Delhi. ...Applicant

Versus

U.O.I. Through

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

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

OA 208/99

Shri Ram Sewak S/o Shri Sri Chand
R/o C-6, Ranvir Singh Yadav,
396/11, Palam Colony,
Raj Nagar-II, New Delhi. ...Applicant

Versus

U.O.I. Through

1. The General Manager, Northern Railway
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
Allahabad. ..Respondents.

OA 1823/98

Shri Satish Kumar S/o Shri Karam Chand
Ex. Casual Safaiwala
under Sr. Health Inspector
Northern Railway,
Shakurbasti, Delhi
R/o D-141/B, Budhvihar,
Delhi-110 041. ...Applicant

Versus

U.O.I. 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 Sr. Health Inspector,
Northern Railway, Shakurbasti,
Delhi. ..Respondents.

Shri B.S. Mainee, Counsel for the applicants in all the
OAs except in OA 939/99.

None for the applicant in OA 939/99.

Shri R.L. Dhawan, Counsel for the respondents in OA
Nos. 706/96 and 1033/98.

Sh.B.S. Jain, Counsel for respondents in OA Nos. 1704/98,
2137/98, 939/99, 208/99 and 1883/98.

Shri N.K. Aggarwal, Counsel for respondents in OA 32/95.

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O R D E R

By Hon'ble Mr. Kuldip Singh, Member (Judl)

By this order I will decide the O.A. Nos. 706/96, 1704/98, 32/95, 1033/98, 2137/98, 939/97, 208/99 and 1838/98, which raise common question of law and facts.

OA No. 706/96

2. Brief facts in this case are that the applicant claims that he had worked as a casual labourer during the period from 30.7.74 to 31.7.88 with certain breaks. Thereafter he has not been re-engaged. As such he has prayed for a direction to the respondents to keep his name in the Live Casual Labour Register and to re-engage him.

OA No. 1704/98

3. In this case the applicant claims that he was engaged as a casual safaiwala under the Northhorn Railway, Shakurbasti where he worked for 72 days from 5.9.83 to 25.8.85 with intermittent breaks and total number of days works out to 72. Thereafter he was re-engaged during the period 25.4.86 to 31.7.88 and worked for about 416 days as per Annexure A-2 and then for 88 days during 4.5.89 to 31.7.89. In his OA he has prayed that the respondents be directed to re-engage the services of the applicant after placing his name on the Live Casual Labour Register.

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OA No.32/95

4. In this case the applicant claims that during the period 23.6.79 to 5.12.1981 he had worked for a total number of 212 days with intermittent breaks and has prayed that the respondents be directed to re-engage his services after placing his name on the Live Casual Labour Register.

OA No.1033/98

5. This is a joint application filed by three applicants. Ramesh Chander, applicant No.1 has claimed that he had worked from 1.1.1982 to 14.7.82 for 167 days with intermittent breaks, Bhajan Lal, applicant No.2 from 12.9.78 to 16.6.84 for 275 days with intermittent breaks and Ram Nath, applicant No.3 from 7.5.79 to 31.8.79 for 116 days and thereafter from 1.1.80 to 25.2.80 for 45 days. They have, therefore,, prayed that the respondents be directed to re-engage their services as casual labourers after registering their names on the Live Casual Labour Register.

OA No.2137/98

6. In this case the applicant claims that he had worked as Hot Weather Waterman from 18.5.84 to 10.8.91 for 648 days with intermittent breaks and has prayed that the respondents be directed to re-engage him in service

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after correctly placing his name on the Live Casual Labour Register in accordance with the actual number of working days.

OA No. 939/99

7. In this case the applicant claims that he made an application in the year 1987 to the respondents for his engagement. In response thereto he was issued an interview letter to appear for interview on 17.6.87 for the post of category 'D' in the pay scale of Rs. 750-940 against shortfall of SC and ST under crash programme. After appearing in the interview, he waited for engagement but the respondents did not communicate any order to the applicant. He again represented on 22.6.89 for engaging him as Safaiwala but to no avail. By this OA, he has prayed that the respondents be directed to re-engage him in accordance with the seniority fixed on the basis of total number of working days he had rendered as casual labourer as prescribed by Railway Board's instructions issued from time to time and also for inclusion of his name in the Live Casual Labour Register and regularise him in accordance with the Railway Board's instructions.

OA No. 208/99

8. In this OA applicant claims that he was engaged as casual labourer on 2.5.77 and worked for 16 days in the year 1977 and for 25 days in the years 1978. He was again engaged as casual labourer waterman on 3.5.86 and worked upto 14.8.86 for 104 days. In the year

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1987 he worked from April to August for 122 days. Thereafter he was again engaged from 1.5.88 and worked upto 14.8.91 for 680 days with intermittent breaks. In this case applicant has prayed that the OA be allowed and respondents be directed to re-engage the services of the applicant and regularise him because he had already been screened and persons junior to him had already been re-engaged and regularised. He has also prayed that respondents be directed to extend the benefit of the judgment in the case of Nehal Singh & Others Vs. U.O.I. & Others (OA 1821/92) because that case was filed by the colleagues of the applicant which was allowed.

OA No. 1883/98

9. In this case applicant claims that he had worked as a casual Safaiwala from 16.11.82 to 9.12.82 and thereafter from 29.12.1983 to 19.2.86 and worked for 468 days. He was disengaged on the ground that there was no work. Applicant had also acquired temporary status after having worked for more than 120 days. It is further stated that respondents have made appointment in 1997 of casual Safaiwalas but applicant has not been considered. Hence it is prayed that the respondents be directed to re-engage the services of the applicant as Safaiwala after placing his name in the Live Casual Labour Register in the order of his seniority particularly in view of the fact that a large number of Safaiwalas have been appointed while applicant has not been considered.

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10. Respondents are contesting the OAs. They pleaded that this matter had been decided by the Full Bench and it has been held therein as to how the bar of limitation is applicable for placing the name of the applicants in the Live Casual Labour Register. Accordingly all these cases are hit by limitation and are not maintainable.

11. I have heard the respective counsel appearing for the parties.

12. At the outset I may mention that out of these OAs except OA 1838/98 all other OAs were the subject matter of the Full Bench reference on which the judgment was delivered on 10.5.2000. As far the relevant facts with regard to the limitation are concerned, a reference was made to the Full Bench which shows that on the point of limitation the following question was referred to the Full Bench:-

" (a) Whether the claim of a casual labourer who has worked prior to 1.1.1981 or thereafter with the respondents i.e. Railway Administration has a continuous cause of action to approach the Tribunal at any time, well after the period of limitation prescribed under Section 21 of the Administrative Tribunals Act, 1985, to get a direction to have his name placed on the Live Casual Labour Register; in other words, whether the provisions of the relevant Railway Board circulars for placing his name in the LCL Register gives him a continuous cause of action".

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13. The Hon'ble Full Bench after considering the rival contentions and going through the various judgments on the issue answered the question in the following manner:-

"18. In the light of the foregoing discussion we answer the aforesaid issue (a) as under:

Provisions of the relevant Railway Board's circular dated 25.4.1986 circular dated 28.8.1987 issued by General Manager, Northern Railway for placing the names of casual labour on the live cause labour register do not give rise to a continuous cause of action and hence the provisions of limitation contained in Section 21 of the Administrative Tribunals Act, 1985 would apply".

14. In this background I have heard the learned counsel for the parties and have gone through the record. The learned counsel appearing for the applicant simply submitted that since a Writ Petition has been filed against the decision of Full Bench preferred before the Hon'ble High Court and notices have been issued so to requested that the cases should be adjourned awaiting final directions given by the Hon'ble High Court. This request was opposed by the respective counsel appearing on behalf of the Railways and stated that since the question of limitation has already been decided by the Full Bench so there is no need to further adjourn the case and the court should pass an order as per the law interpreted by the Full Bench and the same should be applied to the present cases and in case the facts of the cases shows that the cases have been filed beyond the period of limitation so the OAs should be dismissed on the point of limitation alone.

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15. The learned counsel for the applicant after finding the strong opposition submitted the arguments on the point of limitation and stated that in the case of sheesh Pal and Others Vs. U.O.I. & Others the Hon'ble Delhi High Court had held that the case of action is a continuous one and the petition should not have been dismissed on the ground of delay and the case should be remanded back to this court and whereby this court allowed the OA and held that since the plea of limitation had been negatived by the Hon'ble High Court so the OA in the case of Sheesh Pal & Others was allowed. Thus the counsel for the applicants submitted that since junior employee to the applicants have been engaged so the cause of action arises from the day when the juniors were engaged. So on the basis of the facts stated in each of the OA it is to be seen rather than dismissing all the OAs by an omnibus order holding that each case is barred by time.

16. On the contrary the counsel for the respondents submitted that as per the circulars issued by the Railway Department from time to time the applications were invited for enlisting the retrenched casual workers in a Live CASual Labour Register so that they may be provided jobs as per the order of seniority. The enlisting of the name on the LCLR was to be done within a stipulated period and thereafter the job was to be provided on the basis of seniority as maintained as per the LCLR. Since the applicants had not applied in time for enlisting their names within the stipulated period in the Live Casual Labour Register, their names had not been enlisted and had they any grievance, then they could have

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approached the court within the period of limitation as provided under Section 21 of the AT Act but not beyond that period.

17. The counsel for the respondents further submitted that in all these OAs the applicants have prayed for enlisting their names in the LCLR and then providing them job and this enlisting of the name has become time barred.

18. I have given my thoughtful consideration to the question involved as per the contentions raised by rival parties. I find that to appreciate the relevant position as to in what cases the OAs are hit by limitation, we have to go through the relief claimed in the each OA as per the allegations contained in the OAs. In case the applicants are aggrieved of for refusal to be enlisted in the LCLR then it has to be seen whether the applicants had applied in time to the Railway Authorities and if on their refusal the applicants had approached the court within the period of limitation as provided under Section 21 of the AT Act.

19. The second aspect of the case can be if the applicants has been refused to be re-engaged and his juniors or freshers had been engaged in preference to him then what should be the stage to approach the court. In this regard I may mention that as per the question answered by the Full Bench referred to above (Supra) all the controversies had been settled as the Hon'ble Full Bench had observed that as far the placing of the names of the casual labour in the Live Casual Labour Register

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is concerned that does not give rise to a continuing cause of action and the provisions of limitation as contained in Section 21 of the A.T. Act would apply. In view of this observation we will have to examine facts in each of the OAs.

20. As far as OA 706/96 is concerned the applicant has prayed for a direction to the respondents to get his name enlisted in the Live Casual Labour Register and to re-engage him and he has also alleged that he had worked for the period 30.7.74 to 31.8.88 which means that when the Circulars dated 25.4.86 and 28.8.87 were issued the applicant was working with the respondents and he should have insisted at that very time for being enlisted on the Live Casual Labour Register and he had approached this court only in the year 1996 and no detail of any representation made by him to the department has also been given though he has annexed a copy of the representation but that also does not give any date as to when it was made nor there was any evidence to show that it was received by the department at any point of time and at best it can be said that the applicant had approached the department in 1996 when he had filed the OA which goes to show that the case of the applicant is grossly hit by limitation as per the law laid down by the Hon'ble Full Bench.

21. As far as OA 32/95 is concerned it is stated that the applicant had worked for 212 days till 5.12.1981 with intermittent breaks. He has filed the present OA

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only on 2.1.1995 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

22. With regard to OA 939/99 is concerned it is stated that the applicant had worked for 680 days with intermittent breaks. He has filed the present OA only on 19.4.99 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

23. As far as OA 208/99 is concerned it is stated that the applicant had worked for 680 days till 14.8.91 with intermittent breaks. He has filed the present OA only on 27.1.1999 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

24. As regards OA 1704/98 is concerned it is stated that the applicant had worked for 416 days till 31.7.89 with intermittent breaks. He has filed the present OA only on 1.09.1998 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

25. As far as OA 2137/98 is concerned it is stated that the applicant had worked for 648 days till 41.8.91 with intermittent breaks. He has filed the present OA only on 3.11.1998 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

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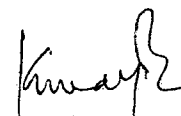
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26. In OA No. 1033/98 all the three applicants had worked for certain periods. Applicant No.1 had worked 167 days till 14.7.82 with intermittent breaks, applicant No.2 for 257 days till 16.6.84 with intermittent breaks and applicant No.3 for 116 days in the first spell and 45 days in the second spell till 25.2.80. He has filed the present OA only on 20.5.98 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

27. OA 1883/98 was filed by the applicant claiming that he had worked for 456 days upto 19.2.86 within intermittent breaks. He has filed the present OA on 23.9.98 for getting his name enlisted on the Live Casual Labour Register which is clearly hit by limitation.

28. In view of the discussion above, all the OAs are dismissed. No costs.

Let a copy of this order be placed in O.A. Nos.706/96, 1704/98, 32/95, 1033/98, 2137/98, 939/99, 208/99 and 1838/98.


(KULDIP SINGH)
MEMBER(JUDL)

/Rakesh