

2

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA Nos. 1349/94, 1350/94, 1353/94, 1361/94 & 1366/94
NEW DELHI THE 15th DAY OF JULY, 1994.

MR. JUSTICE S.K. DHAON, ACTING CHAIRMAN
MR. B.K. SINGH, MEMBER (A)

(1)

OA No. 1349/94

Shri Irfan
S/o Shri Mistaque
R/o 2241/27, Jawahar Singh Market, Chellan,
Kucha, Daryaganj
New Delhi. ... APPLICANT
Vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Assistant Engineer
Northern Railway
Hapur
3. Permanent Way Inspector
Northern Railway
Hapur.

... RESPONDENTS

(2)

OA No. 1350/94

Shri Yameen
S/o Shri Maksood
R/o H.No. 1710/6
Seelampur
Delhi-51. ... APPLICANT
vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
2. Assistant Engineer
Northern Railway
Hapur
3. Permanent Way Inspector
Northern Railway
Hapur, U.P.

.. RESPONDENTS

(3)

OA No. 1353/94

Shri Sharif
S/o Shri Sabeer
R/o Block 6, H.No. 724 A,
Bhogal, New Delhi. ... APPLICANT
vs.

1. Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.
 2. Assistant Engineer
Northern Railway
Hapur, U.P.
- Sd/-

3.

**Inspector of Works
Northern Railway
Gajroula, U.P.**

RESPONDENTS

(4)

OA No.1361/94

**Shri Qayamuddin
S/o Shri Niharuddin
R/o Quarter No.3
Peon's Quarters
Jamia Nagar
New Delhi-110025 ...**

APPLICANT

vs.

1.

**Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.**

2.

**Assistant Engineer
Northern Railway
Hapur, U.P.**

3.

**Inspector of Works
Northern Railway
Gajroula, U.P.**

RESPONDENTS

(5)

OA 1366/94

**Shri Saukat
S/o Shri Syeed
R/o F-74, Bazar Lane
Bhagal, New Delhi.**

APPLICANT

vs.

1.

**Union of India through
General Manager
Northern Railway
Baroda House
New Delhi.**

2.

**Assistant Engineer
Northern Railway
Hapur**

3.

**Inspector of Works
Northern Railway
Gajroula, U.P.**

4.

**Permanent Way Inspector
Northern Railway
Hapur.**

RESPONDENTS

**APPLICANTS IN ALL THE CASES THROUGH SHRI S.K.SAWHNEY,
COUNSEL.**

ORDER

JUSTICE S.K.DHAR

The material facts in these 5 original applications are substantially the same. Common to question to be determined in these cases is whether the original applications are barred by limitation.

2. The material averments in OA No.1349/94 (Shri Irfan) are these. The applicant was working as a casual labour from 7-12.1977 to 14.3.1979, the total number of days being 414 and his name was entered in the live casual labour register. He had been making enquiries from time to time to know if his turn had come and he was told that he will be informed as and when his turn comes for appointment. Having come to know that S/shri Ram Singh, Mahavir Singh, Muna Khan, Majid Khan, Majid Singh and Desh Raj who were junior to him in service/date of engagement had been given appointments in January, 1993, he (the applicant) submitted his representation dated 23.1.1993. He was entitled to be considered for appointment as per casual labour service of 414 days rendered by him during the period from 7.12.1977 to 14.3.1979 in terms of Railway Board letters Annexures A2, A3 and A4 to this OA.

3. The reliefs sought by Shri Irfan are:

- (1) Direct the respondents to consider the applicant for appointment as persons junior to him have already been appointed.
- (2) Direct the respondents to grant the applicant the benefit of service from the date persons junior to him were granted appointments in preference to the applicant.

4. Annexure 'A5' is a true copy of the representation dated 23.1.1993 of the applicant addressed to the Assistant Engineer, Northern Railway, Hapur. In this representation, he has highlighted that the aforementioned 6 persons, who were junior to him had been granted regular appointment ignoring his claim. It is noteworthy that in this representation neither the date nor the year in which either of the aforesaid 6 persons were given appointment is

5 mentioned. We are, therefore, not inclined to put any reliance upon the averments made in para 4.5 of this original application that the aforesaid 6 persons were given appointments in January, 1993.

It is to be remembered that according to applicant's own case, he last worked with the respondents till 14.3.1979. It is unbelievable that between 14.3.1979 and January, 1993, the respondents did not recruit either any fresh casual labour or appointed anyone on permanent basis. It is evident that the applicant has been sleeping over his rights since March 1979.

5. Annexure 'A2' to the original application is a copy of the letter dated 11.9.1986 allegedly of the Railway Board. In substance, it is emphasised in this letter that it has been decided in principle that the casual labours employed on projects (also known as "Project casual labour") may be treated as temporary (temporary status) on completion of 360 days of continuous employment. This letter does not apply to the applicant for two reasons. Firstly, it is not his case that he was employed as a casual labour on projects. Secondly, it applies to persons who were in employment as casual labours on projects on 11.9.1986. However, it is clarified later on that the said orders will cover all project casual labour who were in employment at any time from 1.1.1981 and casual labour on projects, who though not in service on 1.1.1981, had been in service on Railways earlier and had already completed the prescribed period of 360 days' continuous employment or will complete the said period of continuous employment on re-engagement after 1.1.1981. We need not go into the details of the letter further as evidently it is not the case of the applicant that he was employed as a casual labour on projects.

6. Annexure 'A3' is a copy of the Railway Board's letter dated 2.3.1987. It also deals with the project casual labour.

7. Annexure 'A4' is a copy of the letter of the Railway Board dated 4.3.1987. The subject is "Casual Labour-Maintenance of Live Casual Labour Register". In para 3 of this letter, it is emphasised that the Ministry of Railways desire that an opportunity may be given to open line casual labour also who were discharged before 1.1.1981 for want of work or completion of work for considering inclusion of their names in the Live Casual Labour Register.

8. We have already accepted the case of the applicant that his name was in the live casual labour register.

9. In OA No.1350/94(Sh.Yameen) substantially the relevant facts are the same as in OA No.1349/94 (Sh.Irfan). The applicant alleges that he was in casual employment for a period of 1365 days from 1.7.1973 to 14.7.1985. In this case too, it is averred in paragraph 4.5 that 6 persons junior to him had been given appointment in January, 1993 and he made a representation on 23.1.1993. The representation dated 23.1.93 is a verbatim copy of the representation in the case of Irfan. In this OA too, reliance has been placed upon letters dated 11.9.1986, 2.3.1987 and 4.3.1987 of the Railway Board as in the case of Irfan.

10. In OA No.1353/94(Sharif) it is averred that the applicant worked as a casual labour for 344 days from 15.11.1977 to 14.11.1983. In para 4.5 of the original application, it is also averred that the aforesaid 6 persons who were junior to the applicant had been given employment in January,

7 1993. In this case too, a copy of the representation dated 23.1.1993 has been filed. The contents of the said representation are verbatim the same as the representations dated 23.1.1993 in the abovementioned two cases. In this original application too, reliance has been placed upon the three aforementioned documents apart from the representation dated 23.1.1993.

11. In OA No.1361/94(Sh.Qayamuddin), it is averred that the applicant worked as a casual labour for 635 days from 14.5.1980 to 14.9.1983. In this case too in para 4.5 it is averred that the aforementioned 6 persons who were junior to him were given employment in January, 1993. In this case too, a copy of the representation dated 23.1.1993 has been filed. The contents of the representation dated 23.1.1993 are verbatim the representations as in the aforementioned three cases. In this original application too, reliance has been placed upon the aforementioned three letters of the Railway Board.

12. In OA No.1366/94(Shri Soukat), the material allegations are these. The applicant was initially appointed as a casual labour for 60 days from 5.2.78 to 5.4.78 and thereafter he worked from 1978 to 1980 in broken periods and his name has been entered in the live casual labour register. He has also made similar allegation against the aforesaid 6 persons that they were junior to him and were given employment in January, 1993. He has also filed a copy of the representation dated 16.2.1993 addressed to the Assistant Engineer, Northern Railway, Hapur. It is stated therein that the aforesaid 6 persons who were junior to him had been given regular appointment ignoring his claim. It is significant to note that even in this representation neither a particular date on which either of the 6 persons were appointed

9

nor the year in which they were appointed is mentioned.
also
He has/placed reliance on the aforementioned three
letters of the Railway Board.

13. Assuming that the names of each of the applicants are included in the live casual labour register, we are of the opinion that these applications have got to be rejected as barred by limitation. in so far as the reliefs claimed therein are concerned. We have a feeling that the representations made in 1993 by each of the applicants, though lacking in particulars, were made merely for the purpose of getting over the question of limitation. We are satisfied that, the allegation made by each of the applicants that aforementioned 6 persons junior to them had been given employment on permanent basis in January, 1993, have also been made with a view to get over the question of limitation. It is contended by the learned counsel for the applicants that the names of the applicants having been included in the live casual labour register, the question of limitation does not arise as according to him, the theory of recurring cause of action is applicable in these cases.

UNION OF INDIA & ORS.

14. In **RATAM CHANDRA SAMMANTA & ORS./ (JT 1993(3) S.C.418)**, their Lordships were dealing with a petition under Article 32 of the Constitution. Their Lordships observed:

"... A writ is issued by this Court in favour of a person who has some right, and not for the 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...."

9

15. Under the Administrative Tribunals Act, 1985 (the Act) a period of limitation is prescribed. In these cases, we may note that the services of the applicants were terminated long before the coming into force of the Act. This Tribunal has no jurisdiction to entertain a belated application under Section 19 of the Act. We have already stated that it is unbelievable that no appointment of casual labours was made during the years when the applicants remained out of service and such an appointment had been made for the first time in January, 1993. Therefore, injury to each of the applicants must have occurred long before 1993 when the respondents made appointment of casual labours. At that stage, a cause of action accrued to each of the applicants. They having not made a grievance within the time prescribed, their rights, if any, extinguished by lapse of time. We may note that the Legislature does not encourage the theory of recurring cause of action. It is to be remembered that under Article 120 of the Limitation Act, 1908, no limitation was prescribed and the law, therefore, was that whenever a cloud was cast on the plaintiff's title, a fresh cause of action accrued. However, by the Limitation Act, 1963, Article 120 was replaced by Article 137 where a period of three years was prescribed from the date of the accrual of the cause of action. That law operates even now.

16. If the applicants acquired any right on account of their names being put in the live casual labour register or they acquired a temporary status, their rights so acquired, could not be destroyed merely because the respondents failed to give them the benefit permissible to them under the law. They are, therefore, under an obligation to consider the cases of the applicants for being

recruited as casual labours on merits and in accordance with law if and when they(the respondents) feel the necessity of recruiting fresh persons. . However, it will be open to the authority concerned to investigate into the question as to whether anyone or all the applicants acquired either a temporary status or their respective names found a place in the live casual labour register. Even otherwise, they (the applicants), like any other citizen of this country, are entitled to be considered for being recruited as casual workers if and when the respondents make recruitment of such workers and if the applicants are otherwise eligible.

17. With these observations, these applications are dismissed summarily.

(B. K. SINGH)
MEMBER (A)

(S. K. DHAON)
ACTING CHAIRMAN

SNS

44/10/10
44/10/10
15-07-94
(S. K. DHAON)