

CENTRAL ADMINISTRATIVE TRIBUNAL

CHENNAI BENCH

OA/310/00511/2018

Dated the 21 day of July Two Thousand Twenty

CORAM: HON'BLE MR. T. JACOB, Member (A)

C.Venugopal, S/o. Late K. Chinnappan,
Kaianoor Kandigai Village,
Kaianoor Post, Arakkonam Taluk,
Vellore District.

....Applicant

By Advocate M/s. Ratio Legis

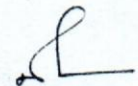
Vs

1.Union of India, Rep by,
The General Manager,
Southern Railway,
Park Town, Chennai 3.

2.The Senior Divisional Personnel Officer,
Chennai Division, Southern Railway,
NGO Annexe, Park Town, Chennai 3.

....Respondents

By Advocate Ms. R. Sathyabama



ORDER
(Pronounced by Hon'ble Mr. T. Jacob, Member(A))

The applicant has filed this OA seeking the following reliefs :

"To call for the applicant's Casual Labours and other service records in favour of the applicant and the impugned order dated 07.11.2017 and to quash the same and further to direct the respondents to regularise the applicant in the qualified regular cadre with all the attendant service benefits and to pass such other/orders as this Hon'ble Tribunal may deem fit and proper and thus to render justice."

2. The facts of the case as stated by the applicant are as follows:

The applicant was engaged as a Casual Labourer during the period from 1985-1987 in the Engineering Department. He was registered as Sl. No. 194 in the Live Register and with reference to the said engagement requested for consequential appointment in the Group 'D' service. After waiting for reasonable time, since there was no response from the respondents, the applicant has sought for judicial intervention in OAs 213 of 2006, 78 of 2008 and 1532 of 2017 wherein this Hon'ble Tribunal directed the respondents to pass speaking order against the pending representation as per rules and in response the impugned order dated 07.11.2017 was made rejecting the claim of the applicant. Aggrieved by the above, the applicant has filed this OA seeking the above relief,

inter alia, on the following grounds :

- i. Denial of consideration for screening and absorption in the Group D post is contrary to the statutory provisions and an act coupled with colourable exercise of authority which is non est in law.



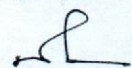
ii. In so far as the applicant was engaged from 1985 till 1987 at different spells as and when work was there, non consideration of the applicant for screening is in gross violation of Chapter 20 of the Establishment Manual and, hence, liable to be set aside.

iii. With respect to Para (v) of the letter no. E (NG) II-80/CL/25 dated 21.10.1980, applicant's record should have been checked and at the opportunity of next recruitment i.e. in the screening vide no U/P564/I/WP/MDU/2003 dated 21.01.2004, the applicant who had put in longer spells of casual labour service should be preferred over his juniors. Therefore denial of such an opportunity of employment is in gross violation of the said mandatory provision made by the Railway Board and, hence, non est in law.

iv. Any contention by the respondents that the applicant who had put in longer spells of casual labour service could not be borne in the live register is in total violation of the mandatory instruction in the letter No E (NG) II/78/CL/2 dated 25.04.1986 issued by the Railway Board and hence non consideration of the applicant for screening on that pretext is untenable in law.

v. In the light of the fact that the applicant was current in the casual labour live register, non consideration of the applicant for screening for appointment to the appropriate Group 'D' post was in gross violation of the letter No E (NG) II/78/CL/2 dated 21.02.1984 made by the Railway Board and, hence, the act of the respondents is unsustainable in law.

vi. In the wake of the fact that Railway Board has ensured strict compliance of the law settled in of WP No. 15863 to 15906 of 1984 between Ram Kumar and others by directing the Administrations to take appropriate steps to remove the difficulties faced by the casual labour, non consideration of the



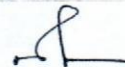
applicant who had put in long spells of casual labour service for screening for appointment to the group D post was in total violation of the letter No. E (NG) II/84/CL/41, dated 26.02.1988 and hence impermissible in law.

vii. Any contention by the respondents that the applicant who had put in long spells of casual labour service was over aged is in gross violation of para 2006 of the Indian Railways Establishment Manual that prescribes for relaxation in upper age limit at the time of actual absorption provided a casual labour has been enrolled within the prescribed age limit and thus untenable in law.

viii. In as much as the respondents have considered many casual labourers similarly placed to the applicant; pursuant to similar direction by this Hon'ble Tribunal, non consideration of the applicant tantamount to denial of equal opportunity and therefore impermissible in law.

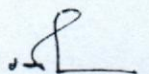
ix. Non consideration of the applicant who had put in long spells of casual labour service for screening for appointment to the Group D post further attracts violation of Articles 14 & 16 of the Constitution of India and, hence, the act of the respondents is not maintainable in law.

x. In the light of the fact that the Hon'ble Madras High Court in WP No. 8972 of 2006 was pleased to hold that artificial breaks were given only to deprive the casual labourers the regular service and further held considering this fact and the previous judgment dated 11.10.2007 in WP Nos 2554 of 2002 and 1351 of 2004 following the judgment of the Hon'ble Supreme Court in Inder Pal Yadav and others vs Union of India and others (1985 (2) SCC 648) and also Robert D'Souza Vs Executive Engineer, Southern Railway and another (1982 SCC (L&S) 12) the



petitioner was entitled for the grant of temporary status on completion of 120 days of engagement with consequential benefits and the same was implemented denial of such benefits to the applicant who has put in long spells of casual labourer is contrary to the spirit of ART 142 of the Constitution of India and hence non est in law.

3. The applicant has also relied on the decision of the Hon'ble Madras High Court dt. 16.02.2008 in WP No. 39878 of 2005 & batch in the case of Union of India & anr Vs. C. Mariappan & ors which was upheld by the Hon'ble Supreme Court in support of his submissions.
4. The respondents have filed detailed reply. It is submitted that the applicant, Shri Venugopal filed the OA 203/2006 before this Tribunal praying for appointment as Khalasi on the basis of his Casual Labour Card issued during 1985 and this Tribunal directed the 2nd respondent to dispose the representation dt. 27.07.2005 submitted by the applicant. In order to dispose the representation dt. 27.07.2005, the applicant was advised to produce the original documents regarding Casual Labour Service, Community Certificate, Age Proof, Educational Qualification and Residential Address. The same were made available by the applicant. The respondents submit that on receipt of the documents, a thorough investigation was done. On verification, it was seen that in the Casual Labour Card submitted by the applicant, the period of engagement from 12.04.1985 to 07.05.1985 should be followed by 25.11.1985 to 16.12.1985 whereas it was immediately followed by 19.12.1985 to 06.01.1986 of the Integral Coach Factory, Perambur. Normally, in the Casual Labour Service



Card, the period of employment/engagement is entered in the chronological order with the signature of the respective supervisory official who engaged such Casual Labour. This was not followed in the Casual Labour card produced by the applicant. The Committee scrutinized all these applications and found that only 30 applications fulfilled the conditions as per the notification and even out of these 30 applications, only three have been found to be genuine by the Committee. The applicant's name was not one among the three candidates found to be genuine by the committee. The Committee's recommendation was approved by the Divisional Railway Manager. Subsequently, one more name was included with the approval of Divisional Railway Manager. As on date, only these four names were available in the Supplementary Live Register. The applicant's name was not included in the Supplementary Live Register and, hence, even in the year 1988 there was no possibility of engaging the applicant. The applicant's request dt. 27.07.2005 to give a chance to work in Railways was rejected in pursuance of the direction of the Tribunal vide letter dt. 03.07.2006. The applicant did not agitate the issue in the year 1988 and also 2006. Further the OA 73/2008 filed by the applicant to direct the Railway Administration to appoint him in any Group D recruitment service in any suitable post was also dismissed by the Tribunal by order dt. 31.01.2008 which the applicant has not challenged by filing any Writ Petition. The applicant filed another OA 1352/2017 praying this Hon'ble Tribunal to consider his representation dt. 12.02.2017 for appointment in any vacancies eligible for him. This Tribunal disposed the OA at the admission stage with a direction to consider the



representation and dispose the same. The same was considered and the applicant was advised vide this office impugned letter dt. 07.11.2017 rejecting the request on various grounds and challenging which the present OA has been filed to direct the respondents to regularize him in the qualified cadre with all the attendant service benefits. It is submitted that the claim of the applicant is hit by not only delay and laches but also by the principle of res judicata. The respondents pray for dismissal of OA.

5. The respondents have relied on the following decisions in support of their submissions :

- i. Judgment of the Hon'ble Supreme Court in Ratan Chandra Sammanta Vs. Union of India (1994 SCC L&S 182)
- ii. Judgment of Hon'ble Supreme Court in State of Karnataka Vs. Umadevi [(2006) 4 SCC 1].

6. Heard the learned counsel for the respective parties and perused the pleadings and documents on record.

7. The issue to be decided in this OA is whether the applicant is entitled to regularisation in the qualified regular cadre.

8. Admittedly, this is the fourth round of litigation before this Tribunal. The applicant had earlier filed OA 213/2006 alleging that he was not given appointment in a regular post even after submission of his original documents pursuant to the communication dt. 09.05.2006. This Tribunal passed an order on 22.03.2006 directing the respondents to pass orders on his representation within a period of six weeks. By a communication dt. 03.07.2006, the applicant was informed that the committee did not consider his case since it had already



approved 30 applications. The OA 73/2008 filed by the applicant to direct the Railway administration to appoint him in any Group D recruitment service in any suitable post was also dismissed by the Tribunal by order dt. 31.01.2008. Thereafter, the applicant made several representations, none of which, was considered. The applicant filed another OA 1352/2017 praying this Hon'ble Tribunal to consider his representation dt. 12.02.2017 for appointment in any vacancies eligible for him. This Tribunal disposed the OA at the admission stage with a direction to consider the representation and dispose the same. The respondents rejected the claim of the applicant by the impugned order dt. 07.11.2017 and challenging which the present OA has been filed.

9. The applicant worked as a casual labour in the engineering department during 1985 to 1987 and submitted original documents for consideration in pursuance of the order in OA No. 213/2006 filed by the applicant. The same was considered vide letter no. M/P.353/CC/OA 213/2006 dated 03.07.2006. It was intimated to the applicant that in terms of the Board's letter No. E[NG]/II/78/CI./2 dated 21.10.1987, a Committee of four Officers was constituted in the year 1988 to verify the genuineness of the applications including the applicant's case. Out of these applications, only 3 were found to be genuine by the Committee and the applicant was not among the three candidates found to be genuine by the Committee and only four names were included in the Supplementary Live Register to engage retrenched casual labourers. In view of not being genuine case, the same was rejected even in the year 1988 and the same was intimated to the applicant also vide letter No. M/P.353/CC/OA

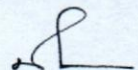


213/2006 dated 03.07.2006 which has not been challenged so far.

10. The applicant's request to offer an appointment in Group D category is neither backed by any rule position nor his case was found to be genuine during the relevant period ie in the year 1988 and also in the year 2006 and his case was rejected in pursuance of the direction of this Honourable Central Administrative Tribunal. Further, the OA No. 73/2008 filed by the applicant to direct the Railway Administration to appoint him in any Group D recruitment service in any suitable post was also dismissed by the Tribunal by order dated 31.01.2008 which has not been challenged by filing any Writ Petition. In view of the litigation having become final and his claim not found to be genuine in the year 1988 and further in the year 2006, there is no scope for offering any Group D category to the applicant at present.

11. The para 2006 of IREM stipulates that absorption of casual labour in regular Group D employment may be considered in accordance with instructions issued by the Railway Board from time to time. Such absorption, is however, not automatic but is subject, inter alia, to availability of vacancies and suitability and eligibility of individual casual labour and rules regarding seniority unit method of absorption etc decided by the Railway Administration. In this case the applicant was a retrenched casual labour and moreover his name was not in the Live Casual Labour Register.

12. The Supreme Court judgment in Ramkumar Vs. UOI in WP 15863 to 15906 of 1984 cited by the applicant relates to grant of temporary status and not to grant of regularisation. The applicant is seeking the relief of regularisation.



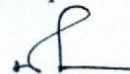
The applicant was retrenched and, therefore, he cannot compare himself with a Casual Labour who was granted temporary status and regularized. The retrenched casual labour can be kept in the Live Casual Register and as per the seniority, they were granted temporary status and subsequent regularization. In this case the applicant's name does not figure in the Live Casual Register and the applicant knew this fact even in the year 1988, however, he has not challenged the same.

13. The judgment in WP No. 8972 & WP No. 2554 of 2002 and 1351 of 2004 are not applicable to the facts of the case and in those cases the regular Railway Servants claimed advancement of Temporary Status on par with Open Line Casual Labour. In this OA, the applicant was not at all granted any Temporary Status and not even absorbed.

14. The applicant cannot be regularised as his case had already been rejected in the year 2006 which has become final. Moreover, the Railways cannot engage the Casual Labour at this juncture. The same would be against the principle of recruitment by open invitation. Therefore, there is no violation of Articles 14 and 16 of the Constitution of India.

15. In a similar issue in Ratan Chandra Sammanta Vs. Union of India (1994 SCC L&S 182) the Hon'ble Supreme Court held that

“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 other who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979. The Writ Petitions accordingly fail and are dismissed."

16. In State of Karnataka Vs. Umadevi [(2006) 4 SCC 1], the Hon'ble Supreme Court has held thus :

"48.....Those who are working on daily wages formed a class by themselves, they cannot claim that they are discriminated as against those who have been regularly recruited on the basis of the relevant rules. No right can be founded on an employment on daily wages to claim that such employee should be treated on a par with a regularly recruited candidate, and made permanent in employment, even assuming that the principle could be invoked for claiming equal wages for equal work. There is no fundamental right in those who have been employed on daily wages or temporarily or on contractual basis, to claim that they have a right to be absorbed in service. As has been held by this Court, they cannot be said to be holders of a post, since a regular appointment could be made only by making appointments consistent with the requirements of Articles 14 and 16 of the Constitution. The right to be treated equally with the other employees employed on daily wages, cannot be extended to a claim for equal treatment with those who were regularly



employed. That would be treating unequal as equals. It cannot also be relied on to claim a right to be absorbed in service even though they have never been selected in terms of the relevant recruitment rules. The arguments based on Articles 14 and 16 of the Constitution are therefore overruled."

17. It is clear from the dictum laid down by the Supreme Court that casual labourers / temporary employee do not have any right to regular or permanent employment. The committee found the applicant as not eligible and it recommended three candidates only. The fundamental issue is regularisation subject to fulfilment of pre-requisites. As selection was by a selection committee no legal flaw can be located. The applicant's case was already rejected in the year 1988 and 2006. Moreover, the OA is hit by delay and laches. Further public employment can be done only through the process of open invitation with the requirement of Articles 14 & 16 through the Railway Recruitment Boards/Railway Recruitment Cells.

18. In the conspectus of the above facts and circumstances of the case and the judgments of the Hon'ble Supreme Court, I find no reason to interfere with the impugned order of the respondents dt. 07.11.2017. OA is liable to be dismissed and is accordingly dismissed. No costs.