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**CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH**

**OA 2338/2003
With
OA 1737/2004 —**

New Delhi, this the 14th day of September, 2005

HON'BLE MR. MUKESH KUMAR GUPTA, MEMBER (J)

OA No.2338/2003

Karnail Singh S/o Sh. Banta Singh
Permanent Address : Basti Chain Pura, Lehar Gaga,
Distt. Sangrur, Punjab.
At present : A 135, C/o Sono Pandit,
Sector-1, Pappan Kalan, Palam, New Delhi.
(Present Working as Rikshaw Puller)

.....Applicant.

(By Advocate Shri U. Srivastava)

VERSUS

Union of India, through

1. The General Manager
Northern Railway, Baroda House,
New Delhi.
2. The Asstt. Secretary,
R.R.B. Chandigarh, SCO, 78-79 (II Floor)
Sector 8 – C, Chandigarh – 160018.
3. The Divisional Railway Manager
Northern Railway, Ambala Cantt.
4. The Section Engineer (Permanent Way)
Northern Railway Dhuri.
5. The Divisional Engineer-II,
Northern Railway, Ambala.

...Respondents.

(By Advocate Shri V.S.R. Krishna)

OA No.1737/2004

Suresh Giri S/o Sh. Budha Giri,
Presently Residing at C/o Sh. Hair Singh
H. No. RZH-311, Raj Nagar-II, Palam Colony,
New Delhi – 110 045.
Permanent Address : Vill. Vahipur,
Tehsil Gunnaur, Distt. Badaiyon,
U.P.

.....Applicant.

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Sector 8 - C, Chandigarh - 160018.
3. The Divisional Railway Manager
Northern Railway New Delhi,
Estate Entry Road, New Delhi.

.....Respondents.

(By Advocate Shri Rajender Khatter)

O R D E R (ORAL)

Since the question of law and facts involved in both these O.A.s i.e. 2338/2003 and 1737/2004 is common, the present common order will dispose of both the OAs

2. The facts as stated in OA No. 2338/2003 would be treated as leading case and the facts mentioned therein would be noticed herein for the sake of brevity.

3. Applicant seeks a declaration that respondent no.3's action for filling up Group-D posts placing requisition upon the Railway Recruitment Board, Chandigarh in terms of advertisement appearing in the Employment News dated 28 June - 4 July 2003, is illegal, arbitrary and unsustainable in law for the reasons that the applicant's name exist in Live Casual Labourer Register (hereinafter referred as LCLR), which fact is evident from the communication of Northern Railway dated 15.1.1990 (Annexure A-4). It is contended that his name was placed at serial no. 124 on the said LCLR and the respondents vide communication dated 28.2.2001, issued in terms of Board letter dated 9.10.1998, required that the casual labourers whose names were registered on LCLR will "first be considered for absorption" on the Railways strictly as per turn according

to the seniority based on the total number of days put in service by them as casual labourer. 23

4. Shri U. Srivastava, learned counsel appearing on behalf of applicant contended that since it is an admitted fact that he had worked as casual labourer for the period from 01.11.1983 to 14.09.1985 in different spells for the total 433 days in the office of Sectional Engineer, Northern Railway, Dhuri (Pb), under the aforesaid OM and communication, he was entitled for absorption. The respondents' action of placing a requisition upon the Railway Recruitment Board to fill up Group-D posts, in such circumstances without absorbing the applicant, was illegal and arbitrary.

5. Shri V.S.R. Krishna, learned counsel appearing on behalf of respondents, on the other hand, contended that the applicant's name did not exist either at serial no.124 or on LCLR or any anywhere else. The process of recruitment of Group-D posts undertaken through Railway Recruitment Board had the approval of the competent authority and the panel had already been issued, and the officials appointed to the post in question. As on date there exists no Live Casual Labourer Register in the said division. All the casual labourers whose names were existed in LCLR, were given an opportunity through a public notice appearing in the daily newspaper dated 11.2.1998 advising them to submit their application for re-engagement latest by 10.3.1998. Since the applicant failed to submit his application by the date as prescribed under the aforesaid public notice, he lost his right as well as remedy. It cannot, therefore, be contended that he was entitled to regularization. Over and above the recruitment process undertaken through Railway Recruitment Board had been finalized and the persons appointed have not been impleaded in the present proceedings. It is further contended that the application is barred by limitation and not maintainable under Section 20 and 21 of A.T. Act, 1985.

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24 6. Applicant by filing rejoinder contested the averments made by the respondents, while reiterating the contentions so raised in the OA.

7. I have heard the learned counsel for both the parties and perused the pleadings. Shri U. Srivastava, learned counsel for the applicant contended that he had issued a legal notice on 15.5.2000 (Annexure A-9), requiring the respondents to appoint the applicant in Group-D post based on his name appearing in LCLR, which had not been attended to. The moot question in these proceedings is whether the applicant at this late stage be allowed to raise the plea that he was entitled to preference for grant of regularization in terms of communication dated 28.2.2001. It is not in dispute that the respondents vide employment notice appearing in an English Newspaper, The Tribune, Chandigarh edition dated 11.2.1998 notified that "casual labourers whose names were in existence on the said register to apply for re-engagement in Group-D post in Ambala Division, latest by 10.3.1998 but the applicant had not responded to. It is contended by Shri U. Srivastava, learned counsel that applicant being illiterate had no knowledge of the said public notice appearing in the English newspaper dated 11.2.1998. It is further contended that the said newspaper had not been in wide circulation in the State of Punjab.

8. I have given my careful thought and consideration to all these aspects and find that since the applicant had not been vigilant, as he was dis-engaged in the year 1985, after a passage of almost two decades, applicant at this stage has lost his right as well as remedy [see 1993 (3) SCC 418 – Ramesh Chandra Samanta vs. U.O.I.]. It is also not disputed that apart from communication dated 15.1.1990 no other proof had been presented either before respondents or before this Tribunal to establish that the applicant's name was in existence in the LCLR and there exists such register in Ambala division as on date. I may also note that the respondents specific contention on the said aspect, as noticed

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hereinabove, has not been contraverted by producing cogent material except for suggesting that his name appeared in the said register and the respondents cannot take advantage of the public notice dated 11.2.1998. The applicant had placed reliance on respondents communication dated 28.2.2001 which was subsequent in time.

9. It is further contended by Shri U. Srivastava, learned counsel for applicant that he has filed an MA No.1010/2004 seeking impleadment of Divisional Engineer, Ambala as respondent in OA, which request had been acceded to vide order dated 14.1.2005, and no reply has been filed by the said newly impleaded respondent no.5 in the OA and therefore in the absence of any specific rebuttal by the said official, the respondents cannot be allowed to take a stand that his name did not appear in the LCLR of the Ambala Division. Be that as it is, it remains admitted fact that the applicant had been provided an opportunity to respond to the public notice dated 11.2.1998, to submit his name for re-engagement as casual labourer, which opportunity he failed to avail. Merely because the applicant come to the Tribunal after an almost two decades could not be a ground to entertain the present OA particularly when the applicant stated his age as thirty years in the verification portion of the OA, though he alleged that he worked since in the year 1983-85 for a period of 433 days. It is beyond my comprehension as to how a person who had worked in 1983-85 could be of thirty years on the date of filing present OA i.e. 17.9.2003. It is impossible to believe that the Indian Railway employs a person of age who is of such a tender age.

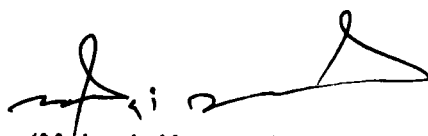
10. In view of the findings recorded hereinabove I find no justification and reason to interfere in the present OA and Accordingly, the same is dismissed.

9. As far as OA No.1737/2004 is concerned, I may note that the applicant had filed series of litigation on the said subject and vide order dated 01.02.2000

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in OA No. 2193/1998 wherein the present applicant was applicant no.3, his request to include his name in the LCLR was rejected. However, observation was made that in case fresh intake was to be resorted to, preference should be given to those who had earlier worked in the Railways but their name could not be registered in LCLR. I may note that the said observation was made in the context of engagement based on "casual basis" and not on regular basis, as prayed in the present OA.

Accordingly, OAs No. 2338/2003 and 1737/2004 fail and dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)

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