

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

OA NO.2966/2003

With

OA NO. 1806/2004

New Delhi, this the 6th day of October, 2005

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

OA No.2966/2003 :

Shri Saran Singh,
S/o Shri Chattar Pal,
Ex-Casual Labour,
Under Inspector of Works,
Northern Railway
Naziabad
Presently Residence C/o Ajay Pal,
G-6256, Rohini,
Sector 16, New Delhi

... Applicant

(By Advocate Shri B.S.Maine)

VERSUS

Union of India : through

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi
2. The Inspector of Works,
Northern Railway,
Naziabad

... Respondents

(By Advocate Shri Rajender Khattar)

OA NO.1806/2004 :

Sri Ram,
S/o Shri Bahori Lal,
V & P.O. Mau Kathair,
Distt. Moradabad (UP)
(Ex-Casual Labour)

... Applicant

(By Advocate : Shri G.D. Bhandari)

VERSUS

Union of India : through

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

2. The Divisional Railway Manager,
Northern Railway,
Moradabad

(By Advocate : Shri Rajender Khattar)

... Respondents

ORDER

Since the issue raised in these OAs are common in nature, the present common order will dispose of these two OAs.

Facts of OA 2966/2003

2. The applicant was engaged as Casual Labour under IOW Northern Railway, Nazibabad from 12.10.1980 to 08.02.1981 for 103 days. He requested the said authority to issue a working certificate for the aforesaid period, which indeed, was issued on 21.03.1988. It is stated that the applicant's services have not been utilized thereafter and his name was on the Live Casual Labour Register in terms of Railway Board Circular dated 25.04.1986. In terms of the aforesaid Circular, those Casual Labours, who had been discharged after 01.01.1981 need not make any representation for placement of their names on the Live Casual Labour Register, contended Shri B.S. Mainee, learned counsel. The relief sought for is that the respondents be directed to re-engage him on the basis of "his working in the year 1980/1981 and his name on the Live Casual Labour Register".

3. MA No.2572/2003 has also been filed seeking condonation of delay in approaching this Tribunal. It is contended that the applicant had not been assigned any job after 08.02.1981 despite several oral as well as written requests/representations.

Facts of OA No.1806/04 :

4. In this OA the applicant seeks direction to respondents "to deem the applicant's name placed in the Live Casual Labour Register at the appropriate priority number" based on his casual labour service from 15.10.1977 to

14.07.1986. It is stated that the applicant had, in total, rendered 396 days of service. Initially he was engaged as Casual Labour Gangman on 15.10.1977 and worked upto 14.02.1978 for a total period of 123 days under Permanent Way Inspector (SPL)/Northern Railway, Bareilly. He was again employed in the said capacity on 15.03.1983 and worked under PWI, Rajghat, Narora and then discharged for want of work. He was further engaged as Hot Weather Waterman under Station Master, Jargaon from 07.05.1985 to 14.07.1985. He was further employed as Casual Labour Waterman under Station Superintendent, Chandausi, for a period from 06.05.1986 to 14.07.1986. A Casual Labour Certificate was issued on 24.04.1985 indicating the services rendered in the year 1977-78 and 1983. His performance during the aforesaid period was of desired level and to the complete satisfaction of his superiors. He had been representing both verbally as also in writing that his name should be entered in the Live Casual Labour Register and be screened for permanent absorption on the basis of priority/casual labour working days, but no action had been taken by the respondents, which is violative of the Railway Board's policy/Circular dated 28.08.1987, which was basically issued by the Northern Railway Headquarters reiterating Railway Board's earlier instructions dated 25.4.1986. In terms of Para 179 of the IREM Vol. I, substitutes/casual labours will have prior claim over others to permanent recruitment. It is stated that in the Moradabad Division, the respondents had held a Screening Test in the year 1987 for filling up some posts of Substitute Cleaners ignoring the applicant's claim though many of his juniors were considered for appointment. Despite repeated representations made to all concerned, including higher authorities, no positive result yielded. The Respondents' action thus tantamount to hostile discrimination, violative of Articles 14, 16, 21 and 311 of the Constitution of India besides being violative of the principles of natural justice, fair play etc.

Applicant's contention :

5. Shri B.S. Mainee, learned counsel appearing for applicant in OA No.2966/2003 strenuously urged that in view of the law laid down by the Hon'ble Supreme Court in ***State of Bihar & Ors v/s Kameshwar Prasad Singh & Anr.***, 2001 (1) AISLJ 76 (SC), the Courts/Tribunal should follow liberal approach in condoning the delay. Power to condone the delay in approaching the Court has been conferred upon the Courts to enable them to do substantial justice to parties by disposing of matters on merits, contended Shri Mainee. With reference to Paras 11, 12 and 13 of the aforesaid judgment, it was pointed out that a delay of about 31 years had been condoned by the Hon'ble Supreme Court in the reported judgment. The purpose of Limitation Act was not to destroy the rights. The object of providing legal remedy is to repair the damage caused by reason of legal injury. Ordinarily a litigant does not stand to benefit by lodging of an appeal late. When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay.

6. Shri Rajinder Khatter, learned counsel for the respondents, on the other hand, vociferously countered the said plea and stated that there is no sufficient cause or explanation made for approaching this Tribunal belatedly. Though he had worked in the year 1980-81 but the OA was preferred only on 05.12.2003. The applicant who remained quite for more than two decades is not entitled to any relief.

7. On merits, Shri B.S. Mainee contended that the Northern Railway HQrs at New Delhi, vide aforesaid Circular dated 28.08.1987 reiterated the mandate of Railway Board's Circulars dated 25.04.1986, PS 8989 wherein it was provided that names of each Casual Labour who were discharged at any time after 1.1.1981 on completion of work or for want of further productive work, should continue to be borne on the Live Casual Labour Registers and if the names of

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certain such Labour have been deleted due to earlier instructions, these should be restored on the Live Casual Labour Register. It was also stated therein that Casual Labours engaged for short duration like a week or days for emergencies or for restoration of breaches etc. will however, continue to be governed by the Board's letter dated 10.12.1984. As per para-9 of the said Circular dated 28.08.1987, it was summarized that while maintaining Live Casual Labour Register those Casual Labour discharged prior to 01.01.1981 and had worked for two years, their names should be deleted except such Casual Labours who had made special representation in terms of PS No.9191 and 9195 (to be executed upto 31.03.1987) and considered eligible. Further, all casual labours discharged after 01.01.1981, their names are to be continued on the live casual labour register indefinitely.

8. Both Shri B.S. Mainee as well as Shri G.D. Bhandari, learned counsel, heavily relied upon the said paragraphs of the aforesaid Circular. Shri Mainee further contended that it was a mandate of the said Circular that those who were discharged after 01.01.1981, their name should continue to be on the live casual labour register, and it nowhere required the concerned Casual Labours to make any representation to bring his name on the said record. In terms of para-13 of the said Circular, it was emphasized that the Controlling Officers/senior Gazetted Officers of each seniority units, are required to ensure that such live casual labour registers are maintained by the concerned staff and action should be taken against defaulting staff. Shri Mainee, further contended that the applicant had submitted representations on 23.07.1990, 18.11.1992, 01.11.2001 and lastly on 02.12.2002. Since no positive result yielded from the respondents, he approached this Tribunal by instituting the aforesaid OA.

Respondents' stand:

9. Shri Rajinder Khattar, learned counsel for respondents countered the said contentions. It is stated that the applicant has not furnished any documentary

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proof of having previously worked as Casual Labour. No representation was received from the applicant. His claim that he had worked as Casual Labour cannot be verified at this belated stage after a lapse of 23 years. The pay sheets from which verification could be done had since already been destroyed being time barred in terms of item No.120 of Appendix-IX of Railway Accounts Code Vol.1, according to which pay sheets are required to be preserved only for a period of 5 years. As already noticed, the respondents have also opposed the applicants' request for condonation of delay as the present OAs are hopelessly barred by limitation. Reliance was placed on *R.C. Samanta & Others v/s Union of India*, 1993 Suppl. 4 SCC 67 and *Central Bank of India v/s S. Satyam & Others*, 1996 (3) SCJ SC-1. Reliance was also placed on *Mahavir v/s Union of India & Ors and connected matters*, ATJ 2000 (3) page-1, wherein a Full Bench of this Tribunal had ruled that the provisions of Section 21 of Administrative Tribunals Act, 1985 would be applicable to applications filed seeking benefits of the Railway Board's Circulars dated 25.04.1986 and 28.08.1987. Reliance was also placed on the following judgements too –

1. (1995) 30 ATC 707 Ram Prasad Srivastava & Anr versus Union of India, holding that Section 21 of Administrative Tribunals Act, 1985 is a complete code.
2. (1995) 29 ATC 1 – Shri Om Prakash Satija v/s Union of India and Others decided on 25.10.1994, Holding that a judgment in a case does not give a cause of action to another employees.
3. 98 (2002) DLT 837 (FB) of Delhi High Court Jagdish Prasad v/s Union of India & Ors
4. OA No.1186/2004 Shri Shyam Sunder Kohli v/s Northern Railways decided on 15.07.2005

10. On merits, it was further contended that the genuineness of the service certificate produced by the applicants cannot be verified at this distant point of time. The said Certificates did not contain the File No. and based on what document. No details and particulars of the juniors and outsiders who seem to have been engaged and regularized by the respondents are given by the

applicants. Applicants' name did not appear in the live casual labour registers of the concerned Units. The instructions relied upon by the applicants are not applicable in the facts and circumstances of the present cases.

11. I have heard the learned counsel for the parties at length and perused the pleadings carefully.

12. Before proceeding further, it would be expedient to notice the relevant portion of the Northern Railway Circular dated 28.08.1987 on the subject of Live Casual Labour Register. Para-9 on which emphasis has been made reads as under:

"9. From the above discussions, it is to summarize that while maintaining live casual labour register, those casual labour discharged prior to 01.01.1981 and had not worked for two years, their names should be deleted except such casual labour who had made special representation in terms of PS No.9191 and 9195 (to be executed upto 31.3.1987) and considered eligible further, all casual labour discharged after 01.01.81, their names are to be continued on the live casual labour register indefinitely."

13. Shri B.S. Mainee, learned counsel contended that the applicant's name is deemed to have been placed on the said live casual labour register as per the mandate of the aforesaid Circular as well as the Railway Board's Circular dated 25.04.1986. Shri G.D. Bhandari, learned counsel appearing for applicant in OA No.1860/2004 also contended on the same line that the applicant is deemed to have been placed in the live casual labour register at appropriate serial number based on the number of days he worked with the Railways. Both the learned counsel contended that since the concerned authorities were obligated under the aforesaid Circular, to maintain live casual labour register particularly in respect of those who were discharged after 01.01.1981 indefinitely, till they are absorbed and the respondents' action in not including them in the said Register would not be of any material consequence, and, therefore, they cannot be made to suffer. Shri Rajinder Khatter, learned counsel appearing for respondents, on the other hand, disputed such contention.

14. I may note, at this stage, that a Full Bench of this Tribunal in *Mahabir and Ors. v/s Union of India and Ors*, 2000 (3) A.T.J. page 1 considered the following question:-

"(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." (emphasis supplied)

15. After noticing the aforesaid Circulars dated 25.04.1986 as well as 28.08.1987, the Full Bench in the aforesaid Judgment observed as follows:-

"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 labours 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 whim 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." (emphasis supplied)

Vide para 34 of the said judgment, the Full Bench observed that the Circular dated 28.08.1987 undisputedly provide for maintenance of seniority lists and the respondents were 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.

16. Shri B.S. Mainee, learned counsel vehemently contended that the aforesaid judgment is not applicable in the facts and circumstances of the present case. Similarly, Shri G.D. Bhandari, learned counsel contended that the Division Bench of the Delhi High Court in *Shish Pal Singh's case* (W.P. (C) No.5071/1999) decided on 23.08.1999 stated that the cause of action to place the applicant's name therein on the live casual labour register was continuous one and over-ruled the decision of this Tribunal in dismissing the OA on the ground of delay. Shri Rajinder Khatter, learned counsel appearing for respondents, on the other hand, vehemently and forcefully contended that the aforesaid judgment dated 23.08.1999 in the case of *Shish Pal Singh & Ors vs. Union of India* (*supra*) has since been over-ruled by the Full Bench of Delhi High Court in *Jagdish Prasad v/s Union of India & Ors.*, 98 (2002) DLT 837 (FB), wherein it was held that "in a case of this nature, the cause of action would not be a continuous one."

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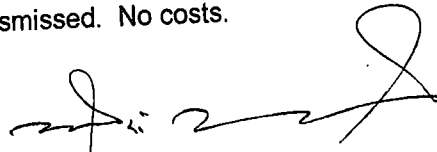
17. I have carefully perused the aforesaid judgments of the Full Bench of this Tribunal as well as Full Bench of Hon'ble Delhi High Court. On bestowing my careful consideration to the entire aspect of the matter, it is observed that the question of engagement of applicants as casual labourers and subsequently their regularization would arise only when their names appear in the live casual labour register, which requirement, in my considered view, is a condition precedent. As per the aforesaid judgment of the Full Bench of this Tribunal, the applicants had a right to be placed their names on the live casual labour register (LCLR) in terms of Circular dated 28.08.1987. The casual labour has a right to continue on the LCLR indefinitely right of being continued on the LCLR indefinitely. However, before that right of being continued on the LCLR indefinitely could be claimed, the right to be placed on the register in the first instance has to be asserted and the said condition needs to be satisfied. Merely because the said Circular casts an obligation on the part of administration to maintain the register continuously did not mean that the said Circular confers a continuing right on the part of the Casual Labour to be placed on the register. In the present cases, it is not the case of the applicants that their names appear on the live casual labour register at a particular serial number. What has been emphasized by them is that their names deemed to have been included in the live casual labour registers, which contention, in my considered view, is unwarranted and untenable. There is a difference between the casual labour card and the card showing their experience. Mere certificate issued by the competent authority to indicate the details of the period when they were employed as casual labours cannot be equated with the requirements of the Circular to place their names on the Register. Since this condition precedent is not satisfied by the applicants in the present cases, the rights which could have accrued to them under the aforesaid Circular would not be available. As held by the Hon'ble Full Bench of Delhi High Court, the cause of action for maintenance of live casual labour register is not a continuous cause of action. The delay itself deprives a person of

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a remedy available in law as held by the Hon'ble Supreme Court in *R.C. Samanta, JT 1993 (3) SC 418*. Moreover, it is well settled that settled service position should not be disturbed after a lapse of reasonable period. In my respectful view, the Full Bench Judgments of this Tribunal as well as Delhi High Court (*supra*) are applicable in the facts and circumstances of the present cases. I, therefore, do not find any sufficient cause or reasons to condone the delay in approaching this Tribunal belatedly. Therefore, I do not find any justification in condoning the delay as prayed for in OA No.2966/2003.

18. In view of the discussions made hereinabove and following the Full Bench Judgments and Orders, the present Original Applications are found to be bereft of any merit and are accordingly dismissed. No costs.


(Mukesh Kumar Gupta)
Member (J)

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