

Central Administratice Tribunal
Principal Bench, New Delhi

95

OA No. 367/2004

New Delhi, this the 1st day of July, 2005

HON'BLE MR. SHANKER RAJU, MEMBER (J)

Mahabir & Ors.

...Applicants

(By Advocate: Shri Yogesh Sharma)

-versus-

Union of India & Ors.

...Respondents

(By Advocate: Shri R.L. Dhawan)

1. To be referred to the Reporter or not? Yes
2. To be circulated to other Benches of the Tribunal or not? Yes

S. Raju
(Shanker Raju)
Member (J)

Central Administrative Tribunal
Principal Bench, New Delhi.

26

OA-367/2004

New Delhi this the 1st day of July, 2005.

Hon'ble Shri Shanker Raju, Member(J)

1. Mahabir S/o Sh. Bhanwar Lal
2. Raj Kumar S/o Sh. Gugan
3. Parbhati Lal S/o Sh. Gopi Ram
4. Mange Ram S/o Sh. Anwar
5. Rajinder Singh S/o Sh. Mai Lal
6. Dalsher Singh S/o Sh. Nand
7. Asgar S/o Sh. Gateh Mohammed
8. Sant Lal S/o Sh. Sarjeet

..... Applicants

All are casual labour who had worked in Railway Department and are presently Residing in Delhi C/o Gaur Bahwan, Gali No. 40, Sadh Nagar-II, New Delhi-45.

(through Sh. Yogesh Sharma, Advocate)

Versus

1. Union of India through
the General Manager,
North Western Railway,
Jaipur.
2. The Divl. Railway Manager,
North Western Railway,
Bikaner.

.... Respondents

(through Sh. R.L. Dhawan, Advocate)

Order (Oral

Through this OA applicants seek absorption and regularization and a direction to re-engage them in Group-D against the posts of Gangmen with consequential benefits.

2. Brief factual matrix of the case suggests that the applicants were initially engaged as casual labours in the year 1984 in Bikaner Division but disengaged on 19.1.1985. In OA Nos. 1606/1997, 1878/1996 and 1816/1998, by orders passed on 29.5.1998, 5.9.1997 and 7.5.1999 directions have been issued to place the applicants' names in Live Casual Labour Register (hereinafter referred as LCLR). Writ Petition Nos. 683/1999 and 7179/1999 respectively filed by the respondents against the orders passed by the Tribunal

27

have been dismissed. In pursuance thereof, names of the applicants had been entered in LCLR. On a Contempt Petition Tribunal directed consideration for re-engagement and to this effect representation preferred was not responded to.

3. Learned counsel of the applicant Shri Yogesh Sharma while referring to Railway Board's letter No. 42/2001 dated 28.2.2001 stated that against 60% quota posts of Gangamen are to be filled from open market and the applicants are to be considered against Group-D vacancies by way of absorption.

4. By referring to Railway Recruitment Board Notification issued on 28.7.2003, it is stated that certain posts have been advertised for Gangmen/Trackmen by Ajmer Recruitment Board, yet persons who are to be covered under 60% quota whose names have been entered in LCLR have not been considered for absorption.

5. Referring to letter dated 21.3.2005 passed by General Manager (Works), North Western Railway addressed to the Railway Board for approval to fill up 938 posts of Bikaner Mandal it is stated that Railway Recruitment Board Ajmer is the proper authority. As such, the contention that for Bikaner Division, there is no notification for filling up the vacancies, cannot be countenanced. If Ajmer Recruitment Board conducts recruitment/posts under Bikaner Division are also covered by it.

6. On the other hand, Sh. R.L. Dhawan, learned counsel vehemently opposed the contentions and stated that in a decision by Jaipur Bench in **OA-109/2003** (Sohan Lal Vs. U.O.I. & Ors.) decided on 29.3.2004, the same contention relying upon the circular dated 28.2.2001 has been repelled. As such, in case of divergent views, the matter is to be referred to a Larger Bench. Moreover, while referring to the contention of the applicant, it is stated that the Notification issued pertained to 40% quota and that too of Ajmer Division which does not include Bikaner Division.

7. In the above conspectus, it is stated that as per Railway Board Letter dated 27.11.2001 recruitment to Group-D posts shall be undertaken by Railway Recruitment Board only.

8. Shri Dhawan, learned counsel states that the applicants have to await their turn for re-engagement as per their priority in LCLR subject to availability of vacancies.

9. On careful consideration of the rival contentions of the parties, the decision in **Sohan Lal's** case by Jaipur Bench of the Tribunal has not taken note of the provisions of Railway Board's Circular dated 28.2.2001 and as the decision is in ignorance of the intent of the letter, the same is per incuriam and has to be ignored. There ~~is~~ ^{is} ~~an~~ ^{an} ~~infraction to~~ ⁱⁿ ~~the~~ ^{the} doctrine of precedent if such a decision is not disagreed. A per incuriam decision which is based on ignorance of the settled principle of law and statutory rules which in the present case includes the instructions of the Railway Board which are yet to be superseded and envisage absorption of casual labours borne in LCLR to the extent of 60% quota. The above view is fortified on the issue of per incuriam by the decision of the Apex court in **State of Bihar Vs. Kalika Kuer** (2003(5)SCC 448) where the following observations have been made:-

“5. At this juncture we may examine as to in what circumstances a decision can be considered to have been rendered *per incuriam*. In **Halsbury’s Laws of England** (4th Edn.) Vol. 26. Judgment and Orders: Judicial Decisions as Authorities (PP 297-98, para 578) we find it observed about *per incuriam* as follows:-

“A decision is given per incuriam when the court has acted in ignorance of a previous decision of its own or of a court of coordinate jurisdiction which covered the case before it, in which case it must decide which case to follow; or when it has acted in ignorance of a House of Lords decision, in which case it must follow that decision; or when the decision is given in ignorance of the terms of a statute or rule having statutory force. A decision should not be treated as given per incuriam, however, simply because of a deficiency of parties, or because the court had not the benefit of the best argument, and, as a general rule, the only cases in which decisions should be held to be given per incuriam are those given in ignorance of some inconsistent statute or binding authority. Even if a decision of the Court of Appeal has misinterpreted a previous decision of the House of Lords, the Court of Appeal must follow its previous decision and leave the House of Lords to rectify the mistake.”

XXXX

8. In **State of U.P. v. Synthetics and Chemicals Ltd.** This Court observed: (SCC pp. 162-63, para 40)

“40. ‘Incuria’ literally means ‘carelessness’. In practice per incuriam appears to mean per ignoratium. English courts have developed this principle in relaxation of the rule of stare decisis. The ‘quotable in law’ is avoided and ignored if it is rendered, ‘in ignoratium of a statute or other binding authority’. (**Young v. Bristol Aeroplane Co. Ltd.**) Same has been accepted, approved and adopted by this Court while interpreting Article 141 of the Constitution which embodies the doctrine of precedents as a matter of law.”

9. In **Fuerst Day Lawson Ltd. v. Jindal Exports Ltd.** this Court observed :
(SCC pp.367 & 368, paras 19 & 23)

A prior decision of the Supreme Court on identical facts and law binds the Court on the same points of law in a later case. In exceptional instances, where by obvious inadvertence or oversight a judgment fails to notice a plain statutory provision or obligatory authority running counter to the reasoning and result reached, the principle of *per incuriam* may apply. Unless it is a glaring case of obtrusive omission, it is not desirable to depend on the principle of judgment '*per incuriam*'. It has to be shown that some part of the decision was based on a reasoning which was demonstrably wrong, for applying the principle of *per incuriam*."

10. If one has regard to the above, whereas in the instructions issued on 28.2.2001 Clauses 4 and 5 provide absorption of casual labour in LCLR and respondents' subsequent letter dated 27.11.2001 does not affect the existing procedure for appointment against special quota which includes casual labour in LCLR and its continuance has not been taken into consideration. Accordingly, the judgment is *per incuriam*.

11. Instructions dated 28.2.2001 of the Railway Board with regard to 60% quota provide as under:-

"4. After considering the views of the both the recognized Federations, the Board have now decided that, for filling up 60% of the open market recruitment vacancies for each recruitment in the category of Gangmen, scale Rs. 2,610-3,500, in the Civil Engineering Department, the minimum educational qualification of class VIII passed need not be insisted upon while considering the ex casual labour borne on live/supplementary live casual labour registeres. The remaining 40% of open market recruitment vacancies in the g\category of gangmen in Civil Engineering Department will be filled in through direct recruitment from open market, in which ex-casual labour, who are lower in the seniority position (based on the total number of days of casual service put in) in the live/supplementary live registers, but possess minimum qualification of class VIII pass, can also apply. For all the other departments, only those ex-casual labour borne on live/supplementary live casual labour registers, who fulfill the minimum educational qualification of class VIII pass would be considered for direct appointment against group 'D' vacancies.

5. Board's approval will, however, be continued to be required for resorting to direct recruitment for filling up all Group 'D' vacancies on Railways, either by absorption of ex-casual labour borne on live/supplementary live casual labour registeres or by doing fresh recruitment from open market. This is in line with the existing practice of taking Board's approval for such open market recruitments for filling up vacancies in Group 'D' in accordance with the instructions contained in Board's letter No. E(NG)/II/91/RR-1/21 dated 16.9.1991, wherein all Group 'D' recruitment on the Railways, from open market, had been stopped."

12. Respondents' letter dated 27.11.2001 which envisages Group-D recruitment through Railway Recuritment Board, Clause 3 provides as under:-

30

"3) The existing procedure for appointments on compassionate ground appointments against special quota (like sports quota, cultural quota, physically handicapped quota etc.) shall continue to be in force."

13. If one has regard to the above instructions dated 28.2.2001 having been superseded by subsequent letter dated 27.11.2001 and in so far as 60% vacancies to be filled up from open market those who are borne on LCLR have to be considered for absorption.

14. So far as the issue whether Bikaner Division is covered in Ajmer Board is concerned, the letter of the General Manager dated 21.3.2005 which shows that posts of Gangmen at Bikaner Mandal have been referred to Railway Recruitment Board Ajmer for approval by the Railway Recruitment Board is clearly indicative of the fact that Bikaner Division is covered under Railway Recruitment Board at Ajmer.

15. However as the vacancies notified through Railway Recruitment Board pertained to 40% quota in the light of the posts now being required, applicants have a right to be considered for absorption against 60% quota even at the Recruitment Board at Ajmer and any process undertaken thereof by the Railway Recruitment Board at Ajmer.

16. In the result, for the foregoing reasons, O.A. is partly allowed to the extent of directing the respondents to consider the cases of the applicants for absorption against Group-D posts in the light of Railway Board circular dated 28.2.2001 including the posts of Gangmen within three months from the date of receipt of a copy of this order. No costs.

S. Raju
(Shanker Raju)

Member(J)

/vv/