IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH,NEW DELHI

O.A.2351/92

New Delhi, this the 16th day of December, 1993.

Shri Bhanwar Singh,
S/o Shri Babulal
Ex.Casual Gangman
Under P.W.I Vapi, Western Railway,

C/o Shri Rajvir
7/89-90, Dakshinpuri Extn.
New Delhi. ... ... Applicant

(By Advocate Shri B.S. Mainee)

Versus

Union of India : Through

1. The General Manager,
Western Railway,
Churchgate,
Bombay.

2. The Divisional Railway Manager,
Western Railway,
Bombay Central.

3. The Permanent Way Inspector,
Western Railway,
Vapi, Maharashtra. ... .. Respondents

(By Advocate Shri Inderjit Sharma)

ORDER

(By Hon'ble Mr J.P. Sharma, Member (J))

1. In this application the applicant is aggrieved by the action of the respondents in not assigning any work to him although he had worked as a casual gangman from 21.07.84 to 2`.05.1985 under P.W.I. Vapi and has prayed for directing the respondents to engage the services of the applicant as a Casual Labour because his juniors are

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still working and to register his name in the live register and granting any other relief deemed fit and proper under the circumstances by this Tribunal.

2. The case of the applicant is that he was engaged as a casual labour gangman under PWI Vapi, Western Railway, where he worked from 21.7.1984 to 21.5.1985. A copy of the working certificate is at Annexure AI. He was given temporary status with effect from 25.11.1984 and he was also issued a privilege pass in accordance with the rules. The service of the applicant was terminated on 21.5.1985 without any notice and without any retrenchment compensation. When the applicant approached the authorities concerned, the applicant was assured that he will be assigned further work in the near future. Even though PWI Vapi had promised to give the work on 4.5.1986, he finally refused to give work to him and demanded a heavy amount to re-engage him. Thereafter, the applicant submitted a representation to the PWI Vapi in March, 1987 as per Annexure-A3. In spite of the said representation and personal meetings, the respondents have failed to give duty to the applicant and have not placed his name in the live casual register. In terms of Railway Board Circular No. E(NG)II80/CL5 dated 4.9.1980, it has been laid down that while engaging casual labour preference should always be given to those, who have already worked for more number of days as casual labour on open line as well as on projects. In Terms of another letter No.E(NG)/II/80/CL/25 dated 22.10.1980 the Railway Board had issued instructions that if any person

having worked as a casual labour in the past and is presently out of employment due to break in his service because of non-availability of work, approaches an appropriate railway authority, his records should be checked and at the opportunity of next recruitment for casual labour work, he should naturally be given preference over his juniors. It is also the case of the applicant that in terms of Railway Board Circular No.220-E/190-XII-A(EIV) dated 14.8.1987 it has been decided that the name of each casual labour who was 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 register and if the name of certain such labours have been deleted due to earlier instructions these should be restored on the live casual labour register. Further, in terms of Railway Board's Circular No.E(NG)II/78/CL/2 dated 20.3.1987, it has been decided by the Railway Board that a register should be maintained in which every written representations received from the casual labour should be duly registered and serial number given to each representation to facilitate easy reference. The applicant had also submitted a representation in1987, a copy of which is enclosed as Annexure-A3. Thus, in view of the failure on the part of the respondents to re-engage the applicant, he has filed this application.

3. The respondents have filed their reply contesting the application. They have admitted that the applicant worked as a Casual Labour Gangman from 21.7.1984 to 21.5.1985 under PWI Vapi. However, they have denied as being incorrect that the applicant made any representation for engagement, thereafter. It is their case that the applicant absented himself from duty after 21.5.1985 without any permission or the knowledge of the officers concerned and never came back thereafter. They have taken a preliminary objection that application is barred by limitation and repeated representations do not extent the period of limitation. They have stressed the fact that the applicant was not discharged on 21.5.1985, but he absented himself from duty. The respondents have submitted that the various circulars of the Railway Board referred to by the applicant are not applicable to the facts of the case of the applicant, since he absented himself from duty from 21.5.1985 onwards. They have specifically averred that no representation allegedly made in 1987 is on their record.

4. We have heard Shri B.S. Mainee for the applicant and Shri Inderjeet Sharma for the respondents. Since the pleadings are complete, the application is being disposed of at the admission stage itself with the consent of both the parties. We have also carefully perused the various rules, Railway Board's letters and case laws cited by both the parties.

5. In view of the conclusions arrived at by a larger Bench of this Tribunal in the case of A. Padmavalley and Ors. Vs. CPWD and Telecom, it is by now well settled that any applicant seeking relief under the provisions of the Industrial Disputes Act must ordinarily exhaust the remedies available under that Act. In para 4.4 of the application, the applicant has averred that his services were terminated on 21.5.1985 without any notice and without any retrenchment compensation. Again in para 5.4 the applicant has averred that casual labour junior to him are still working, while his services have been discharged in an arbitrary manner. This would amount to failure to follow the provisions of the Industrial Disputes Act in the case of discharge by way of payment of compensation and following the principle of "last come first go". Even though the applicant has not asked for any backwages in his relief, his main case is based on the alleged violation of the provisions of the I.D. Act by the respondents. In such a case, the applicant has to ordinarily exhaust the remedies available under that Act, which has not been done and he has also not mentioned any valid reasons for not doing so. In para 6 of the application, the applicant has only noted that he has exhausted departmental remedy. Since this application has not been admitted so far, taking this aspect into consideration, this application is liable to be rejected for not having exhausted alternative remedies. However, since this application was filed as early as on 1.9.1992 and the respondents have filed their reply by 15.3.1993, we do not consider

it proper to reject the applicant at the admission stage on grounds of failure to exhaust alternative remedies and proceed to examine the case on merits.

6. The respondents have taken a preliminary objection that this application is barred by limitation. Shri Mainee argued that as far as Casual Labours engaged on the India Railways are concerned, their names have to be borne on a live register and work assigned to them, whenever available, according to their seniority. In view of this the cause of action, being denial of re-engagement, is a continuing one and the period of limitation would not apply.

In this connection, he referred to the following case laws :-

(1) Mithilal Vs UOI & Ors - O.A.1220/88(T) decided on 14.3.1989 - Allahabad Bench.

(2) Beer Singh & Ors Vs. UOI - II(1990) ATLT (CAT)13-Principal Bench, New Delhi.

(3) Raj Singh Vs UOI -ATR 1987 (2) CAT 168 -Principal Bench, New Delhi.

(4) Gulam Mohammed Vs. UOI & Ors - O.A.2306/92 decided on 12.5.1993 -Principal Bench,New Delhi.

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(5) Matroomal & Ors. Vs UOI - O.A.2692/91 decided on 3.8.1993 -Principal Bench, New Delhi.

Shri Mainee pointed out that in Mithai Lal's case, it has been held by the Allahabad Bench that as per the Railway Board's Circular dt 28.8.1987, in the case of those who were discharged after 28.8.1985 the requirement of making an application for inclusion of their names in the live register does not apply and the duty of mainting the live casual labour register is put on the Railway respondents. In para 8 of their judgement the Allahabad Bench has also held that the case of the applicant there in for being placed on t he live casual labour register and to be remployed is a recurring cause from day to day under the decision of the Railway Board itself and there is no question of the claim being barred by limitation under section 21 of the Act. The learned counsel for the applicant also pointed out that in the Raj Singh's Case the Principal Bench of this Tribunal has held that the termination of service due to the alleged absence of the petitioner from duty without issuing show casue notice or obtaining his written statement that he was leaving his job is not sustainable. Similarly, in Beer Singh's case, t he Principal Bench held that the question whether the casaul labour has abondoned service or not would depend on the facts and circumstances of each case the employer is bound to give notice to the employee in such cases calling upon him to resume his duty. In case the employer intends to terminate his service on ground of

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abondon of service he should hold an eniquiry before doing so. Shri Mainee pointed out that in Gulam Mohammed's Case the Tribunal considered the objection raised by the respondents regarding the question of limitation, since in that case the petitioner was disengaged on31.08.1985 and the application was filed only in 1992. It was held by the Tribunal that if the petitioner is eligible otherwise, he is entitled to be considered on every occasion when a vacancy occurs and therefore, this is a case of recurring cause of action and question of belated application does not arise. Shri Mainee also submitted in Matroomal's case considering the facts and circumstances of that case, that the names of the applicant therein have already been borne on the live casual labour register and the fact that the applicant had worked upto 21.5.1985 has not been disputed by the respondents, the name of the applicant cannot be struck off from the live casual labour register and he has to be given employment as and when there was necessity for engaging additional casual labour. Shri Mainee strongly argued that in the present case since the juniors to the applicant have been engaged and are still working and the applicant's name has to be borne on the live casual labour register, the question of limitation would not also arise.

7. On the other hand, Shri Inderjit Sharma, Counsel for the respondents submitted that there was no question of the applicant being denied work after 21.5.1985, since the applicant absented himself from duty after that date

without any permission or knowledge of the competent authority. He, therefore, submitted that there was no question of termination of service of the applicant. He also referred to the judgement of the Principal Bench dated 20.4.1993 in O.A. 1848/92 in the case of Ramesh Chand Vs. UOI. He pointed out that in that case the applicant had worked as casual labour upto 14.11.1984 and he filed the application in 1992 praying for directing the respondents to reinstate the applicant therein as Casual Labour Gangman with all consequential benefits. In that case the M.P. filed for condonation of delay was rejected by the Principal Bench as the applicant therein had not averred to any pertinent facts which prevented him to come to the Tribunal immediately after the grievance had arisen or within a reasonable time thereafter.

8. As far as the question of limitation is concerned, we find that the applicant, even though he has alleged that his services were terminated on 21.5.1985 without any notice and without any retrenchment compensation, has not prayed for the relief of reinstating his from that date with consequential benefits of back-wages. Such reliefs would be clearly barred by limitation. In the case of A. Mohanan and Others Vs. UOI and Othewrs reported in 1993 (2) ATJ 1, it has been held by the Ernakulam Bench of this Tribunal that the period of limitation will apply in cases of discontinuance of casual labour without following the provisions of the I.D. Act. Apart from this, we also

observe that in the case of Ratan Chanda Samanta and Others Vs. UOI reported in JT 1993 (3) SC 418, the Supreme Court has held that delay deprrives the person of the remedy available in law and a person who has lost his remedy by lapse of time looses his right as well. It has also been observed by the Supreme Court that a writ is issued in favour of person, who has some right and not for the sake of a roving enquiry leaving scope for manuering. In view of this and the fact that the applicant has not produced any proof whatsoever before us to substantiate his claim that his services have been terminated with effect from 21.5.1985 without any notice and without any retrenchment compensation, while continuing to employ other junior casual labourers and this application having been filed only in 1992, the applicant's submission cannot be accepted.

9. On the other hand we find that the applicant has cleverly limited his relief to directing the respondents to include his name in the live register and to engage his services as casual labour in view of his juniors still working. As far as the question of keeping his name on the live casual labour register is concerned, the respondents have stated that since the applicant himself absented from duty from 21.5.1985 onwards there was no question of keeping his name on the live casual labour register. We pointed out to the counsel for the applicant that if on 21.5.1985 itself the services of the applicant were terminated, but the services of his junior casual labourers were continued, then he would have made

a representation in 1985 itself instead of making a representation only in 1987 which the respondents state, have not received. In case the applicant aalong with his juniors were disengaged from service for want of work, we asked t he counsel for the applicant as to what is the procedure to be adopted by the respondents for taking them back to work, whenever work becomes available. Shri Mainee, in all fairness, admitted that in such a case no individual intimation is sent to the applicants to their address and a list is only exhibited in the notice board of the concerned office stating that work is available and the eligible casual labour may rejoin duty. If this is the position, the applicant has not made any averment that the respondents have not displayed his name in the notice board as and when work became available. The relevant instructions lay down that if the casual labourer's name as per his seniority is exhibited in the notice board on 2 occasions and he does not come forward to take up the job, his name can be struct off from the live casual labour register. The applicant has not produced any material whatsoever that the above instructions have been superceded. The only instruction referred to by him was regarding reintroduction in the live register of the names of those casual labourers, whose name had been struck off by another set of instructions by which the names of those who had not been engaged continuously for 2 years for want of work were struck off. In view of this we find no merit in the submission of the applicant that the respondents should be directed to include his name in the live register. We

are unable to accept the position that even though the applicant presented himself for work whenever work was available, but the respondents refused to take him back to work from 1985 to 1992 while continuing to engage his juniors and the applicant did not lift his little finger to protest against this injustice. Here the ratio laid down by the Supreme Court in Ratan Chandra Samanta's case (Supra) would squarely apply and this relief will be hit by the bar of limitation, since the cause of action, viz, the removal of his name from the live register, arose many years back. In the case of State of Punjab Vs Gurdev Singh reported in (1991)4 SCC 1, which was concerning the alleged illegal removal from service by a void order, it was held by the Apex Court that if the statutory limit had expired, the Court cannot give the declarration that the order is a void order. Even otherwise the purpose of maintaining the live register is to re-engage the casual labour in the order of their seniority so as to comply with t he provision of the I.D. Act. It has already been held by the Ernakulam Bench in Mohanan's case (Supra) that period of limitation will apply in cases of discontinuance of casual service without following the provisions of I.D. Act. In view of this, we are of the view that we cannot give any declaration that the removal of the applicants' name from the live register is void and consequently, we cannot give any direction to the respondents to include the name of the applicant in the live register. We have gone through the various case laws referred to by Shri Mainee. We are of the view that they do not apply to the present

case since in those cases the names of the applicants therein were continued to be maintained in the live register.

10. Now we come to the question regarding the abandonment of service by the applicant. Even in Beer Singh's case (Supra) it has been held by t he Principal Bench that the question whether a casual labour has abandoned service or not would depend on the facts and circumstances of each case. In the present case the respondents themselves have stated that the applicant absented himself from duty after 21.5.1985 without any permission or knowledge of the competent authority. The counsel for the applicant has referred to the judgement of the Supreme Court in the case of L. Robert D'Souza vs Executive Engineer, Southern Railway, reported in AIR 1982 SC 854. In that case, the applicant, who was last working as Lascar at Ernakulam in October 1974, was intimated by the Executive Engineer that his services were deemed to have been terminated from September 18, 1974 from which date the applicant therein was said to have absented himself from duty. The Su preme Court in that case have held that the termination of service of the applicant was illegal as it would amount to retrenchment without following the procedure laid down in

the I.D. Act. The facts in D'Souza's case and the present case are not on all fours. In that case only after a short absence, when the applicant resumed duty, his services were terminated. On the ot her hand in the present case there is no proof even that the applicant approached the respondents at any time after 1985 to take him back to duty and he has approached this Tribunal only in 1992. Hence the ratio laid down in D'souza's case cannot straightaway be applied to the present case.

11. However, the fact remains that the applicant was granted temporary status. As per the provisions in para-2005 of the Indian Railway Establishment Manual, Vol.II, revised edition-1990, casual labour treated as temporary (that is temporary status) are entitled to the rights and benefits admissible to temporary railway servants as laid down in Chapter XIV of the Manual. In view of this, the applicant has to be treated as a temporary servant and even if he is unauthorisedly absent for a long period, his services cannot be terminated without following the procedure. Hence, as and when he approached the respondents for taking his back to work, the respondents should have followed the procedure for terminating his services on the grounds of unauthorised absence. This the respondents have failed to do.

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12. In the result the application is allowed in part with the following directions :-

(i) The respondents are directed to consider re-engaging the applicant as temporary status casual labour, when there is additional work for which casual labour is required. His case should be considered in accordance with law in preference to other casual labour and fresh faces subject to his seniority based on the number of days of work put in by him in his previous spell of service.

(ii) The disposal of this application will not come in the way of the respondents taking suitable action in accordance with law, if so desired, for initiating necessary action against the applicant for his unauthorised absence.

13. The application is disposed of accordingly with no order as to costs.

(S. Gurusankaran)
Member (A)

(J.P. Sharma)
(Member (J)

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