

(3)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI

O.A. NO. 2375/92

DECIDED ON : S. 3/93

Phool Singh

... Applicant

vs.

Union of India & Others

... Respondents

CORAM :

THE HON'BLE MR. J. P. SHARMA, MEMBER (J)

THE HON'BLE MR. S. R. ADIGE, MEMBER (A)

Shri B. K. Batra, counsel for Applicant

Shri K. K. Patel, Counsel for Respondents

JUDGMENT

Hon'ble Shri J. P. Sharma, Member (J) :-

The case of the applicant is that he has worked for about 422 days from 7.4.1978 to 13.7.1979 as casual labour with respondent No.3, Divisional Railway Manager, Northern Railway, Moradabad. He was ceased from service as casual labour w.e.f. 13.4.1979 and has not been engaged thereafter. The present application has been filed on 14.9.1992 under section 19 of the Administrative Tribunals Act, 1985 praying for a direction to the respondents to reinstate the applicant as casual labour khalasi with consequential benefits, alternatively wages for a period of one year from the date of filing of this application and further to regularise the service of the applicant as person junior to the applicant has been regularised, after incorporating the name of the applicant in the live casual labour register.

2. The respondents have contested the application and took the preliminary objections that the application is hopelessly barred by limitation. The respondents have also contested

(6)

the application on merit that the applicant voluntarily abandoned the service in the year 1979 and at no point of time approached the respondents for his re-engagement as a casual labour. It is, therefore, stated that the application be dismissed.

3. The applicant has also filed an M.P. for condonation of delay in which it is stated that as per Railway Board's instructions dated 4.9.1980 preference should always be given to those who have worked for more days as casual labour. It is also stated that the Railway Board instructions dated 22.10.1980 also provide that if for want of work the casual labour has been discharged in the past and continues to be out of employment due to break in service and he approaches the Railway authorities, then his record should be checked and on the opportunity of the next recruitment he should be preferred for engagement over the juniors. Another circular dated 30.3.1987 has also been referred to which also provides for maintaining the record of all casual labourers who had worked earlier and their names should be placed on the live casual labour register.

4. The respondents have also filed reply to the M.P. for condonation of delay and stated that the applicant himself abandoned the service in 1979 and no case is made out for condonation of delay.

5. We have heard the learned counsel for the parties at length and have gone through the record of the case. The learned counsel for the applicant has been asked to explain the period after 1979 when the applicant, according to him, was discharged from service as casual labour. The controversy is that the applicant himself abandoned the service. Considering these rival contentions, we find that there is nothing on record

(G)

to show that the applicant any time after his discharge made a representation to the respondents for re-engagement. The representation dated 13.4.1981 filed as Annexure A-2 to the O.A. is denied to have been received by the respondents. There is no endorsement on this representation that the applicant has furnished the same to particular authority nor any postal receipt is attached to show that it was sent by post. Similar is the position of the other representation dated May, 1984 filed as Annexure A-3. The same is the position of another representation filed in March, 1987 (Annexure A-4). The learned counsel for the respondents has disputed the genuineness of these representations having been made by the applicant.

These according to the respondents' counsel, have been manufactured for the purpose of the case. Thus, it is not substantiated from the record that the applicant has at any time approached the respondents for his engagement as casual labour. The contention of the learned counsel for the applicant that the applicant has attained a temporary status under Rule 2515 of the Indian Railway Establishment Manual does not in any way give any help to the applicant unless he himself had approached the respondents for his re-engagement as a casual labour. The learned counsel for the applicant has referred to the circular dated 4.3.1987 but in that circular also it has been laid down that such person should apply by 31.3.1987.

6. Learned counsel for the respondents placed reliance on the decision in O.A. No. 1985/92 decided on 3.8.1992 by the Principal Bench of the Tribunal. The applicant of that case had also prayed for the same relief as in the present application alleging that he was appointed as casual labour khalasi under IOW Hapur from 7.2.1978 to 31.7.1979 and again under IOW, Gajraula from 15.1.1979 to 14.11.1979. The cause of action

1c

(8)

accrued to the applicant therein on 14.11.1979 or immediately thereafter so far as the prayer for reinstatement was concerned. As regards the prayer for regularisation, no particulars of the juniors and the dates on which they were regularised had been given and as such the date on which the cause of action in this regard accrued to the applicant had not been indicated. That O.A. was dismissed on the ground that the Tribunal has no jurisdiction in matters where the cause of action accrued prior to three years of coming into force of the Administrative Tribunals Act, 1985, which date is 1.11.1985. Similar is the case here. The learned counsel has also relied on another decision in O.A.1906/92 decided by the Principal Bench on 7.1.1993 in which one of us (Hon'ble Shri J. P. Sharma) was a Member and in that case also the applicant prayed for the grant of relief for reinstatement as a casual labour khalasi with consequential benefits. In that case also the applicant therein alleged that he has worked as casual labour khalasi from one month in 1978 and again from 1.7.1979 to 30.11.1983 under IOW Garhmukteshwar. That O.A. was also dismissed as barred by limitation. In the present case the applicant was discharged from service w.e.f. 13.7.1979 and the cause of action arose to him at that time. He could not file any proceedings before any competent court for the relief now he has prayed for after a lapse of 13 years.

7. The learned counsel for the applicant, however, has filed a judgment of the Principal Bench in O.A.278-91 decided on 1.10.1992 - Narendra Kumar vs. Union of India, but in that case the applicant was registered in live casual labour register and it was ordered that he shall be given offer of appointment in preference to those with lesser length of service and outsiders. Another case relied upon by the learned counsel for the applicant

le

(3)

is O.A.1346/92 between Amir Hussain vs. Union of India decided on 6.11.1992. In that case the applicant therein had alleged to have worked from 1969 to 1981. The representations for re-engagement were made by the applicant of that case in 1983. So this case too does not help the applicant, as in the present case there is a clear denial by the respondents of having received any representation from the applicant for his re-engagement. The applicant could not substantiate having made any representation after 1979. The representations annexed with the O.A. have been denied by the respondents and it can very well be said that these are manufactured for the purpose of the case as an after-thought.

8. Learned counsel for the applicant has placed reliance on the judgment of the Hon'ble Supreme Court in the case of Inder Pal Yadav & Ors. vs. Union of India. The Hon'ble Supreme Court in the concluding para observed as follows :-

"To avoid violation of Art. 14, the Scientific and equitable way of implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In other words, the principle of last come first go or to reverse it first come last go enunciated in Sec. 25G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly."

9. Having given a careful consideration to the rival contentions raised before us, we are of the considered opinion that the present application is hopelessly barred by time and is, therefore, dismissed as not maintainable and also as beyond the jurisdiction of the Tribunal. No costs.

Arif Ali
(S. R. ADAGE)
MEMBER (A)

Domestic
5.3.93
(J. P. SHARMA)
MEMBER (A)