

THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1076/92
T.A. No.

199

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DATE OF DECISION

20-11-1992

Sh. Suraj Mal & Ors.

Petitioner

Sh. B. S. Mehta

Advocate for the Petitioner(s)

Versus

Respondent

U.O.I. & Ors.

Advocate for the Respondent(s)

Sh. R. L. Dhawan

CORAM

✓ The Hon'ble Mr. S. P. Biswas, Member (A)

The Hon'ble Mr.

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ? Yes,
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

S. P. Biswas
(S. P. Biswas)
Member (A)

Cases referred:

1. Mithai Lal Vs. U.O.I. (O.A. 1220/91 decided on 16.3.91)
2. Ghulam Ahmed Vs. U.O.I (O.A. 2306/92 decided on 12.5.92) :
Net Ram Vs. U.O.I (O.A. 2441/91 decided on 6.5.94)
3. Basant Lal & Ors. Vs. U.O.I & Ors. (1990 (1) ATJ No. 8 P. 606)
4. Ratan Chandra Samanta & Ors. Vs. U.O.I & Ors. (J.T. 1993 (3) S.C. 418)
5. Central Bank Vs. S. Satyam & Ors. (1995 (3) S.L.J. 91)

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

OA NO. 1076/92



New Delhi this the 20th day of November, 1997.

HON'BLE SH. S P BISWAS, MEMBER (A)

1. Sh. Suraj Mal, S/O Sh. Bhale Ram
Sh. Ram Kumar, S/O Sh. Bhagunda
Under Asstt. Commercial Officer
(Reservation), IRCA Building
Northern Railway, New Delhi.
2. Sh. Ram Kumar,
S/o Sh. Bhagunda,
under Asstt. Commercial Officer
(Reservation) IRCA Building,
Northern Railway, New Delhi. Applicants

(By Sh. B S Mainee, Advocate)

Versus

Union of India through

1. General Manager
Northern Railway
Baroda House, New Delhi.
2. Divisional Railway Manager
Northern Railway
State Entry Road, New Delhi.
3. Asstt. Commercial Officer (Res)
Northern Railway, ICRA Building
New Delhi.

.... Respondents.

(By Sh. R L Dhawan, Advocate)

ORDER

The only short question that falls for determination in this original application is: How does one legally get into Live Casual Labour Register (LCLR for short) maintained by the Railways?

2. Both the applicants are aggrieved by A-3 order dated 13.12.89 by which their services have been discharged with immediate effect while working as

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safaiwalas on casual basis during the summer rush of 1989. Consequently, they have sought for quashing the said order and issuance of directions to respondents to enter their names in LCLR alongwith ancillary benefits.

3. Arguing strenuously, Sh. B.S. Jain, learned counsel for the applicants attempted to justify the aforesaid reliefs prayed for, on the basis of several letters/ instructions/circulars issued by the respondents Railways. He drew our attention to the Railway Board's Circular No. E(NG)II-80-CL/25 dated 22.10.1980, (NRSN 7677) wherein it has been laid down that if any person has worked as a casual worker in the past and is presently out of the employment due to break-in-service because of non-availability of work, his record should be checked and at the opportunity of the next recruitment of casual workers, he should be given preference over juniors.

4. The Railway Board's circular dated 24.4.84 (PS 8634) and letter No. E(NG)/II/78/CL.2, dated 25.4.86 stipulate that the name of each casual labour who was discharged at any time after 1.1.81 should be restored back on LCLR. Again, the Railway Board's order dated 11.9.86, (issued pursuant to Inder Pal Yadav's case (Inder Pal Yadav Vs. U.O.I.) 1985(2) SCC 648,) provides the need for preparing a list of casual labourers on the basis of seniority for giving them temporary status as directed in para 3 of that circular. The applicants would contend that they are entitled to be placed in the appropriate

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list on the basis of said circular. Again, the Railway Board's letter No. E(NG)II/87/CL/38 dated 12.6.87 emphasised that LCLR should be maintained strictly and a responsible officer must check the Register to ensure that unauthorised enteries are not made therein. To buttress his arguments further, Sh. Mainee drew strength from the General Manager/Norther Railway's letter No. 220E/190/XIX-A/R IV dated 20.8.87 to say that the claim of the applicants are covered as per provisions under paras 7 to 14 of the said letter. The counsel further contended that the case of the applicants is covered by decisions of this Tribunal in cases of Mithai Lal Vs. U.O.I. (OA No.1220/91) delivered on 16.3.81, Ghulam Ahmed Vs. UOI (OA No.2306/92) decided on 12.5.92 and Net Ram Vs. U.O.I. (OA-2441/91) decided on 6.5.94. The counsel would also submit that as per decisions of this Tribunal in the case of Sri Basant Lal & Ors. Vs. U.O.I. & Ors. (1990(1)ATJ Vol.8 P.606, the applicants are entitled to temporary status for having continuously worked for more than 120 days. And as per provisions contained in paras 2501 and 2511 of the Indian Railway Establishment Manual (IREM for short), a casual labour who acquires temporary status is entitled to all the rights and privileges as admissible to a temporary Railway servant including one month's notice before discharge. In the present case no such notice was given.

5. The respondents have taken 3 main objections. Shri R.L. Dhawan, learned counsel for the respondents argued vehemently to say that the case is barred by

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limitation. The learned counsel relied on the Supreme Court's judgement in Ratam Chandra Samanta & Ors. Vs. U.O.I. & Ors. (JT 1993(3) SC 418) wherein it was held that delay deprives the person of the remedy available in law and a person who has lost his remedy by lapse of time also loses his right. As per counsel, the applicants having worked only in 1989 do not have a legal basis for approaching this Court after three years in 1992. He also cited the case of Central Bank Vs. S. Satyam & Others (1996(3) SLJ SC1) wherein it was held that latches are a material flaw as the claim of 1982 was filed in 1992. That apart, the respondents would also argue that the applicants were engaged as casual labour for a very short period and on the expiry of the said period of engagement, their services automatically stood terminated. It has also been specifically denied that the applicants were required to be given one month's notice before termination. Thirdly, the applicants had failed to provide necessary response in reply to Northern Railway's Circular dated 9.4.90 by which an open call was given to all casual labourers who had worked under the respondents previously to fill in the necessary details. The applicants did neither respond to the said notice nor submit any application/representation for inclusion of their names in LCLR for the purpose of re-engagement.

6. I have carefully considered the matter. I do not agree with the learned counsel for respondents that the present case is covered by the ratio in the cases of Ratam Chandra Samanta and Central Bank (supra). The

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claim of the applicants in Samanta's case was that they had been engaged upto 1979. The Apex Court observed in that case that the representation of the applicants gave no details and was lacking in material particulars. It was also observed that the Court would have been persuaded to take a sympathetic view but in absence of any supporting details to establish that those petitioners were in fact appointed and working as alleged by them, it would not be proper to exercise discretion any of jurisdiction and direct the opposite parties to verify the correctness of the petitioners' statement. In the present case, however, A-2 is a positive certificate issued by Assistant Commercial Officer/IRCA Building, New Delhi. The respondents have not denied applicants' claim of having worked in the summer season from 19.7.89 to 12.12.89.

7. That apart, the respondents have themselves come out in their Circular No. E(NG)II/78/CL.2, dated 25.4.86 stating that:-

"The name of each casual labourer who was discharged at any time after 1.1.81 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 names of certain such labours have been deleted due to earlier instructions these should be restored on the Live Casual Labour Register."

The executive authority must rigorously hold to the standards by which it professes its action to be judged and it must scrupulously observe those standards

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on points of invalidation of an act in violation of them (See Ramana D. Shett Vs. International Airport Authority (1979) 3 SCC 489 and B.S. Minhas Vs. Indian Statistical Institute (1983) 4 SCC 582).

8. There is a third reason for which the plea of limitation cannot hold good. The respondents have no case that the seniority list of earlier casual labourers whose names were entered in the LCLR was published and despite this the applicants remained quiet. For the reasons aforesaid, the plea of limitation has to be dismissed.

9. We shall now proceed to examine the applicants claim of temporary status and the legality of serving a notice before termination. Chapter-XXV of the IREM deals with provisions applicable to casual labour in general. One the salient features in these provisions indicate that:-

"Seasonal labour, who are sanctioned for specific works of less than six months' duration, may be shifted from one work to another. They should also be treated as temporary after the expiry of 4 months of continuous employment (vide Rules 2501 and 2512)."

(Authority-para 30(iii) in Basant Lal's case)

10. It is not in doubt that the applicants herein were engaged to clear the summer rush for a particular season. I find applicants have staked claim of temporary status as they had worked continuously for more than 120 days. This plea has not been specifically denied by the

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respondents in the counter and the decision of this Tribunal in Basant Lal's case (supra) has been upheld by the Hon'ble Supreme Court in the case of UOI & Ors. Vs. Basant Lal & Ors. (1992(1)SLJ 190). That apart, the applicants claim of having acquired temporary status also finds support through the letter of General Manager/Northern Railway which is extracted below:-

"In this connection, attention is again invited to the instruction contained in this office letters Nos. 220/E/0/4-III (EN) dated 21/22-3-72 and 23.5.72 (Rs. 5600, 5600, 5657) respectively read with this office letter No. 220-E/o/4-III (EN) dated 27.11.1975 (P.S. No.6422) in accordance with casual labourers whether employed on project or otherwise who have completed 4 months continuous service should be considered for employment screening committee for absorption against Regular Class IV post and casual labour on project should as a rule be appointed against Class IV posts that may be required for operation and maintenance of new assets created and that they are eligible for appointment on any section of the open line of the Railway concerned irrespective of the limitation of the immediate area of the construction."

11. It is not in doubt that the applicants were engaged in the open line for seasonal work. Termination of the services of the applicants without giving them notice is violation of the provisions of Rule 2302 of IREM and is not sustainable in law. The respondents' stand that the applicants were engaged only for a specific period after expiry of which their services would be terminated automatically has to be rejected in terms of the rule afore-quoted. The legal provision that would govern claims of temporary status by a casual labourer in Railways have been enumerated in details in

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the orders of this Tribunal in Basant Lal's case (supra) and decisions therein, uncontroverted by Railways, have attained finality through the order of the Apex Court dated 18.2.92 in Civil Appeal No.847/92.

12. The respondents plea that the applicants neither responded to the open notice or submitted their representation for inclusion in their names of LCLR cannot also be accepted. In terms of the Circular dated 28.8.87 issued by the General Manager Northern Railway, there is no requirement for such workers to make any representation and such labourers had a cause of action every time when vacancies arose or those juniors in LCLR were engaged by the respondents.

13. In view of the above, the O.A. deserves to be allowed on merits and I do so accordingly with the following directions:-

(i) The respondents shall consider ~~including~~ the names of the applicants in the LCLR, if eligible, for such inclusion in terms of the circular dated 28.8.87 referred to above and give engagement to the applicants as casual labour as and when need arises in accordance with their seniority in that register.

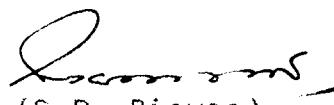
(ii) The applicants shall make a comprehensive representation to the

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respondents alongwith whatever documents they have regarding their engagements. The respondents shall verify the claims within a period of 3 months thereafter, include their names of the applicants in the LCLR and consider them for re-engagement in terms of instructions issued by respondents.

(iii) There shall be no order as to costs.


(S.P. Biswas)
Member (A)

/VV/