

(Reserved)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

ORIGINAL APPLICATION NO.399 OF 1996

Allahabad, this the 31st day of MAY, 1999.

CORAM : Hon'ble Mr.G.Ramakrishnan, Member(A)

Bal Ram,
S/o. Sri Baij Nath,
R/o. Village - Sarvakazi,
P.O. Mooratganj,
Distt. Allahabad.

..... Applicant

By Shri K.S.Saxena, Advocate.

Versus

1. Union of India Through
General Manager, Northern Rly,
Baroda House,
New Delhi.
2. The Chief Administrative Officer (Construction),
Northern Railway, Kashmeregate,
Delhi.
3. IOW (Construction),
Northern Rly,
Allahabad
C/o. Dy. C.E.(Const.)
Northern Railway,
DRM Office Complex,
Allahabad.

..... Respondents

By Shri A.V.Srivastava, Advocate.

ORDER

(By Hon'ble Mr.G.Ramakrishnan, Member(A))

This is an application filed by the applicant
under section 19 of Administrative Tribunal Act, 1985 against
the action of the respondents in non-re-engaging him by

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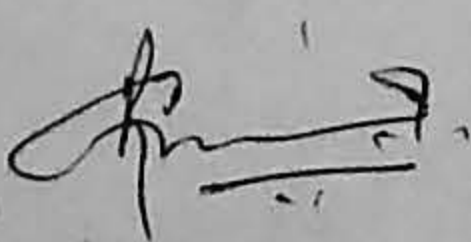
respondent No.3 and illegally sparing him to Western Railway from 26-5-83 under SEN(Const.) Suratgarh.

2. The facts which are not in dispute are that the applicant was appointed as a casual labour under IOW (Construction) Allahabad on 21-2-1981 and he continuously worked upto 26-5-83 for 797 days. On 26-5-83 the applicant alongwith some staff were transferred to work under Inspector of Works/C-I under SEN(Const.) Suratgarh. The applicant did not proceed to Suratgarh to join there.

3. According to the applicant he requested respondent No.3 not to spare him to foreign Railway as his seniority unit is in Northern Railway. The applicant stated that he requested the respondent No.3 to consider his case when work is available under IOW(C)Allahabad. Applicant claims that IOW (C) Allahabad did not take him on duty on and from 26-5-83. He claimed that his name is borne in the live casual labour register since 26-5-83 and that he had been contacting the authorities concerned for his re-engagement- He stated that on 10-4-95 the applicant represented to the Chief Administrative Officer (Const.) Northern Railway, Kashmere Gate, Delhi for his re-engagement under IOW (C) Allahabad. But did did not receive any reply (Annexure- A3).

4. Applicant sought the following reliefs :-

- (1) He be re-engaged as casual labour forthwith.
- (2) He be conferred temporary status in regular pay scale of class IV employee since 2-8-1981.
- (3) On re-engagement the applicant may start from temporary status rate of pay as per rules.
- (4) Any other relief(s) that this Tribunal may consider fit.
- (5) The cost of the suit be decreed in favour of the applicant.




5. The applicant advanced the following grounds for the relief sought for :-

1. Because the transfer of the applicant from Northern Rly. to Western Rly. was beyond the jurisdiction of the respondents.
2. Respondents did not re-engage the applicant as per his seniority inspite of he being borne on the live casual labour register, and
3. Inspite of the applicant having put in more than 180 days continuously he had not been given temporary status.

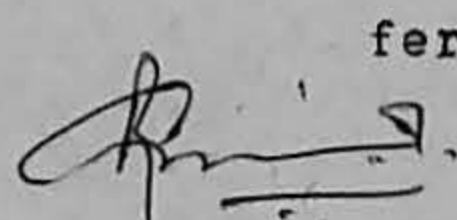
6. The applicant in a Supplementary Affidavit filed stated that S/Shri Bharat Lal S/o. Raghunath and Varan Singh S/o. Raghbir Sahai who were junior to the applicant and who were also transferred to Suratgarh alongwith the applicant were retained at Allahabad and allowed to continue by the respondent No.3 and that the said Bharat Lal became a class-IV employee under IOW(C) Allahabad and Shri Varan Singh was working as Class-IV under IOW (Line) N.Rly. Allahabad. He pleaded that in violation of Article 14 and 16 of the Constitution of India the respondent No.3 arbitrarily acted and discriminated the applicant.

7. Respondents filed Counter Affidavit and resisted the claim of the applicant. They stated that the reliefs claimed by the applicant was not within the period of limitation prescribed under Section 21 of the Administrative Tribunal Act, 1985 and accordingly the same was liable to be rejected.

They stated that the applicant had left the job

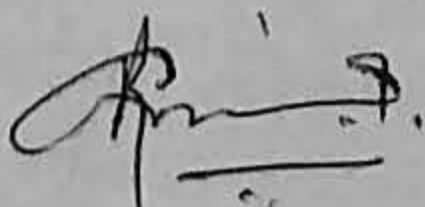


on his own accord after 26-5-83 and in support of this they referred to the entry in the copy of casual labour card filed as Annexure-C1 to the C.A. They stated that thereafter the applicant remained out of railway employment for more than 12 years before he made his first representation dated 10-4-95, and hence the present O.A. is excessively time barred. Respondents submitted that according to the extant rules only those 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 live casual labour register. According to them in case a casual labour who was retrenched on completion of work, did not accept the offer made to him or did not turn out to work on offer on availability of fresh work, he lost the benefit of previous spell of employment as casual labour, in support of which they annexed copies of Railway Boards' letters No. E(NG)II/80/CL/5, dated 10-12-84, and No.E(NG)II/78/CL/2, New Delhi, dated 22-11-84 ^{4b and} (Annexure CA-2 ~~to~~ CA-3 of C.A.). They stated that the applicant had failed to act upon the circulars issued by the administration from time to time. No relaxation/appointment could be given to the applicant. They stated that due to reduction in scope of work at Allahabad the applicant alongwith some staff were declared surplus and were transferred to work under SEN(Const.), Northern Railway, Suratgarh where at that time sufficient work was available, but the applicant did not join or report for duty. They stated that under the construction organisation under administrative control of respondent No.1 a number of units exist such as Allahabad, Lucknow, Moradabad, Delhi, Ambala, Jalandhar City, Suratgarh etc. and all these units are within the jurisdiction of Northern Railway and hence the applicant was not transferred to a station in foreign railway. They stated



that at that time under SEN(C), Suratgarh targetted work was going on and that the applicant did not report there. The question of his re-engagement after a lapse of 12 years did not arise. Respondents averred that the applicant left the services on his own accord as he did not proceed on transfer, nor he reported to SEN(C), Suratgarh for further posting order. Hence the applicant was not eligible to be entered in the casual labour live register. They denied that the applicant's name was existing in the casual labour live register maintained by the respondents. Respondents further averred that as per order of the Hon'ble Supreme Court in the case of Indrapal Yadav Vs. Union of India the applicant did not fulfil the norms and conditions as laid down in the Circular No. 220-E/190-XII-A(Eiv) dated 14-8-87 (Annexure- C4) for grant of temporary status. Respondents submitted that there had been no illegality or violation of any rules and the applicant was not entitled for any of the reliefs claimed and hence the original application was liable to be dismissed with costs.

8. In a Supplementary Reply filed by the respondents, they stated that S/Shri Bharat Lal, S/o. Sri Raghunath was transferred to Suratgarh on 25-5-83 and he did not join at Suratgarh. He was re-engaged by SEN/C/CNB on 2-9-89 and not by the office of Dy.C.E.(C) Northern Railway, Allahabad. Further Sri Varan Singh S/o. Raghuvir Sahai was transferred under SEN(C)/SOG on 25-5-83 joined there and later on became very seriously ill and as he was in dying stage, on Doctor's advice that the climate of Suratgarh did not permit him to continue at Suratgarh he applied for transfer from

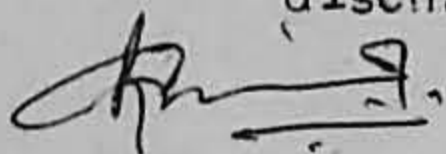


Suratgarh to Allahabad, and therefore, after examination of his case the competent authority decided to transfer him to Allahabad on medical ground and he joined at Allahabad on 8-11-83. Since then he was screened in Allahabad Division, after which he was spared to work under DRM/ Allahabad. They stated that the applicant did not turn up for re-engagement upto 2-9-89. Further at the present juncture there was no vacancy and neither any re-engagement was considered and if any vacancy arose, casual labour whose name appeared on the live register would be considered for re-engagement.

9. Applicant filed Rejoinder Affidavit and reiterated the pleas made in the original application.

10. Heard the learned counsel for the parties. Learned counsel for the applicant submitted that he did not propose to file any Supplementary Rejoinder to the Supplementary Counter Affidavit.

11. I have given careful consideration to the submissions made by the learned lawyers for the parties and rival pleadings and have perused the records. In the copy of the representation submitted by the applicant on 26-5-83 to respondent No.3 (enclosed as Annexure- A1 to the O.A.) applicant stated "that my transfer to Western Rly is illegal, hence may be cancelled. That I may be allowed to remain at Allahabad and if there is no work, I shall wait my chance when work is available." It will clearly indicate that applicant had chosen to leave the work. In terms of Railway Boards' No. E(NG) II/78/CL/2, dated 25-4-86 referred to in para 7 of the Northern Railway's circular No.220(E)/190 XII-A(Eiv) dated 14-8-1987 (Annexure CA-4), casual labour who were discharged at any time after 1-1-1981 on completion

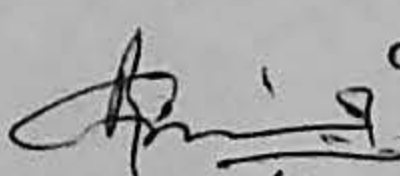


of work or for want of further productive work should continue to be borne on live casual labour register. Applicant pleaded in the rejoinder that according to para-9 of the circular he should be borne in the live casual labour register. Para-9 is reproduced below :-

"From the above discussion it is summarised that while maintaining live casual labour registers, those casual labour discharged prior to 1-1-1981 and had not worked for 2 years their name should be deleted except such casual labour who had made special representation in terms of P.S.No.9191 and 9195 (to be executed upto 31-3-87) and considered eligible. Further all casual labour discharged after 1-1-81 their names are to be continued on the live casual labour register indefinitely."

I find that the benefit of para-7 or para-9 of the above circular would be available to only those casual labour discharged after 1-1-81. However the applicant in this O.A. had chosen not to proceed to Suratgarh where work was offered to him and his was not a case of 'discharge'. Therefore ^{the} applicant is not entitled for the benefit of having his name on the live casual labour register. I also find that the applicant's plea that he had been transferred outside Northern Railway is also not found correct.

12. The cause of action arose in this case as far as the applicant is concerned in 1983. He did not approach this Tribunal at the first opportunity i.e. within six months of the establishment of the Tribunal. Again cause of action arose when Sri Bharat Lal, junior to the applicant was engaged under SEN/C/CNB on 2-9-89. At that stage also he did not approach



for legal remedy. It is only in March, 1996 that the applicant has approached this Tribunal. In the case of Ratan Chand Samanta & Others Vs. Union of India & Ors 1994 (26) ATC 228 Hon 'ble Supreme Court held -

"Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation, a person who has lost his remedy by lapse of time loses his right."

13. Keeping in view the above ratio laid down by the Hon'ble Supreme Court I am in agreement with the plea of limitation and delay advanced by the learned counsel for the respondents. Further even as per the executive instructions as stated above, the applicant is not entitled to be borne on the live casual labour register. Therefore, the plea of continuing cause of action as held by the Principal Bench of this Tribunal and as advanced by the learned counsel for the respondents will not be applicable.

14. In the result, the applicant is not entitled for any of the reliefs sought and the original application is liable to be dismissed.

15. Accordingly, I dismiss this original application with no order as to costs.


31/5/96.
MEMBER (A)

/satya/