

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 1398 OF 2001

ALLAHABAD, THIS THE 26th DAY OF may 2004

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. Chhotey Lal Giri
son of Shri Ram Chandra Giri,
resident of village and Post Office-Pipra
Bitthal District-Deoria.
2. Ram Nath Kushwaha son of Shri Ram Lachhan
Kushwaha.
3. Ram Darash Kushwaha son of Shri Ram Lachhan
Kushwaha.

Both resident of village-Balivan Khas, Post
office-Bhawani Chhapar, District-Deoria.
4. Hansh Nath Yadav son of Shri Moti Yadav
resident of Village and Post Office Chhanti,
District Deoria.
5. Prabhu Nath Chaurasiya son of Shri Ram Jeet
Chaurasiya resident of village-Chhanti(Barai Tola)
Post office Chhanti, District-Deoria.
6. Nand Lal son of Shri Dheera Prasad
resident of village Jigna Dixit, Post Office-Bhatani
District- Deoria.
7. Nand Lal Son of Moti
resident of village-Jigna Dixit, Post Office
Bhatani, District-Deoria.
8. Ramasharker son of Shri Ram Deo
resident of village Parsiya Vanshi
(Bharthuwa) Post Office, Salempur, District-Deoria).
9. Rajendra son of Baleshwar Yadav
resident of village and post office-Pipra
Bitthal District-Deoria.
10. Manohar Lal son of Shri Chandra Bali
resident of village-Adhaila, Post Office-NoonKhar,
District-Deoria.

.....Applicants

(By Advocate : Shri Umesh Vats)

V E R S U S

1. Divisional Railway Manager(Karm ik)
N.E. Railway, Varanasi Division, Varanasi.



2. Union of India through General Manager,
N.E. Railway Gorakhpur.

.....Respondents

(By Advocate : Shri K.P. Singh)

O R D E R

By this Original Application, applicants have sought the following reliefs:-

- "(a) to issue a direction to the respondents to consider the application for appointment to the regular post considering the seniority of the applicants.
- (b) to implement the panel list prepared pursuant to the notification dated 09.02.1988 and 28.11.1995 by appointing to the applicants to the regular post.
- (c) to issue any other order or directions as this Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case."

2. It is submitted by the applicants that they were appointed prior to 01.01.1981 as Casual Labourers in N.E.R. Railway, Varanasi Division and they were made to work in different capacity. All the applicants had rendered more than 120 days continuously without any break. Therefore, they are entitled to get status of the temporary employee and regular absorption. They have further submitted that on 09.02.1988 a notification was issued for preparing a panel of the casual employees who had rendered their services prior to 01.01.1981 and had not attained the age of 28 years as on 01.01.1981. They were of course required to have passed 8th Class. Since all the applicants fulfilled the eligibility as provided by notification dated 09.02.1988, therefore, they all applied and their period of working was verified pursuant to which a list was prepared. After verification of list, 174 persons was prepared and the same was forwarded for

approval



approval on 12.09.1992 to the Divisional Railway Manager, Varanasi but neither he has ~~been~~ given his approval so far, nor any appointment has been made from the panel. But subsequently a fresh panel was made and the persons who ^{were B} are empanelled pursuant to said notification, ^H They have been given the appointment as well. It is submitted by the applicants that most of the persons who have been given appointment pursuant to the notification dated 01.07.1992 and 02.03.1994 had not even rendered their services prior to 01.01.1981. Therefore, it is absolutely wrong on the part of the respondents who have ~~been~~ given appointment to those fresh persons while ignoring the applicant. All such persons ^{have been B} engaged ^{to} due vested interest, therefore, the action of the respondents is violative of Article 14 of the Constitution. They have further submitted that ^{B their list B} list neither been cancelled till date nor any notice has been intimated for not implementing the panel prepared pursuant to the notification dated 09.02.1988. They have, thus, submitted that applicants have a better legal right to be appointed as ^{conferred to B} fresh hands regularised, after that.

3. They have further submitted that some of the casual labourers who were similarly situated ^{as that of B} and applicants had filed O.A. No.63/1996 by the name of Shri Ashwani Kumar and Others Vs. Union of India and Others seeking regularisation in accordance with the verified list dated 21.04.1989. The said O.A. was allowed on 04.06.2001 by the Tribunal(Annexure-1). They have thus, submitted that applicants are also entitled to the same benefit, therefore, the relief as prayed for may be granted.

4. Respondents on the other hand have opposed this O.A. on the ground that it is barred by limitation and applicants have not even filed an application for condonation of delay, therefore, this O.A. is liable to be dismissed on this ground alone. They have further submitted that applicant had not

worked continuously ^{for} 120 days as he had worked for 30 days in March 1980 and from 01.06.1984 to 31.08.1984 ^{for} 92 days only. They have further submitted that after verification the divisional accounts Officer had sent the list on 16.08.1990, 15.03.1990 and 20.11.1989 to the Personnel Department and service of all persons at placed at Sl.No.9, 18, 21, 38, 44, 46, 51, 57, 61, 64, 67, 69, 71, 77, 78, 98, 108, 111, 124, 134, 137, 148, 151, 152, 155, 157, 160, 168, 185, 195, 196, 199, 204, 216, 234, 237, 240, 274, 292, 326 and 327 ^{were} not verified. The notification dated 09.02.1988 was issued by the Mechanical Department for preparation of Life Register for taking work as per requirement, but after 1989 since Steam Loco Shed were closed, the regular employees were declared surplus there under, therefore, it became the ^{duty of} respondents to engage said employees who were regular but had become surplus. Therefore, utility of including the names of applicants in the Life Register ^{had} become obsolete. They have further submitted that since no approval of competent authority was received for listing the name of casual labourers as per notification dated 08.02.1988, as such it was kept in abeyance/postponed and it was not published. In the year 1989 as per direction of Railway Board only SC and ST candidates were considered. They have, thus, submitted that there is no merit in the O.A. the same may, therefore, be dismissed.

5. I have heard both the counsel and perused the pleadings as well.

6. Perusal of the judgment dated 04.06.2001 given in O.A. No. 63/96 ^{shows} that there were as many as 19 applicants in the said O.A. who had claimed a direction to the respondents to regularise them pursuant to the notification dated 09.02.1988

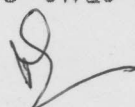


as their names also figured in the list prepared by the respondents, which was not given effect to. Perusal of the said judgment shows that same defence was taken by the respondents in the said O.A. also that due to closing of Steam Loco Shed, staff working there under was to be accommodated and adjusted. Therefore, the surplus staff was given preference and the list dated 21.04.1989 was kept pending due to this reason. It was further accorded in the judgment that respondents had stated that list is still alive but stayed, therefore, whenever vacancies arise or ^{are} fulfilled, the candidates as per verified list will be considered and absorbed. Accordingly, the O.A was disposed off by giving direction to the respondents to re-consider the case of the applicants expeditiously for their regularisation in accordance with the verification done in this regard as per list dated 21.04.1989, subject to availability of vacancies and to take care that no fresh face or junior to the applicants is preferred against the claim of those applicants(Pg.24 at29).

7. Counsel for the applicant further placed on record the judgment given by this Tribunal in Review Application No.25 of 2002 in the same case whereby the order dated 04.06.2001 was recalled. The operative para of the judgment was modified as under:-

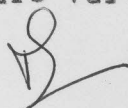
"Respondents are directed to re-consider the case of those applicants whose particulars about working period have been found to be correct on verification in the list dated 21.04.1989 for regularisation in accordance with the instructions available at the relevant time and subject to availability of the vacancies. Respondents are further directed to take care that no fresh face or juniors to be applicant is given preference over applicants for regularisation."

8. It is, thus, clear that applicants in O.A. No.63/96 were also similarly situated as that of applicants before us



and since in their case, this Tribunal had already directed the respondents to re-consider the case of applicants whose working period had been found to be correct on verification in the list dated 21.04.1989 for regularisation in preference to freshers and juniors in accordance with the instructions available at the relevant time subject to the availability of vacancies. Therefore, applicants herein also need to be given the same relief because two identically stated persons cannot be treated differently by at least the court. I have seen that the names of applicant No.s 1,2,4, 5,6,7 and 8 figure at serial No.166,195, 82, 236, 217, 150 and 182 respectively in the list annexed with the petition. As far as respondent's reply is concerned, only applicant No.2 is the person whose name figures at serial No.195 of the said list, whose service period has not been verified. Other applicants as mentioned above, do figure in the list as annexed with the petition itself. Therefore, I do not think, this case can be dismissed on the ground of limitation as this Tribunal had already been given the direction to the respondents as modified on 01.03.2004 in the review application No.25/2002 in O.A.63/96 to re-consider the case of applicants as mentioned above. In the present counter also, respondents have stated that the list was deferred/postponed meaning thereby that the list has not yet been cancelled.


9. In view of the above, the contention of the limitation is rejected and this O.A. is partly allowed by giving direction to the respondents to re-consider the case of those applicants herein also whose particulars about working period have been found to be correct on verification in the list dated 21.04.89 for regularisation in accordance with the instructions available at the relevant time and subject to availability of vacancies. Respondents are further directed to take care



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that no fresh face or juniors to the applicants is given preference over applicants for regularisation.

10. With the above directions, this O.A. is partly allowed with no order as to costs.


Member (J)

shukla/-