

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

Dated: This the 21st day of September, 2004.

Original Application No. 1479 of 2001.

Hon'ble Mr. Justice S.R.Sigh, Vice-Chairman

Avinashi Prasad, S/o late Sri Laxman Prasad,  
R/o Vill. Bheeti, P.O. Mahgaon, Tehsil Chail,  
Distt. Kaushambi.

... Applicant

By Adv : S/Shri R. Verma,  
A.Yadav

V E R S U S

1. Union of India through General Manager,  
Northern Railway, Baroda House,  
New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, Allahabad.

... Respondents

By Adv : Shri A.K.Gaur

O R D E R

By Justice S.R.Singh, V.C.

Heard Shri R.Verma, learned counsel for the applicant and Shri A.K.Gaur, learned counsel for the respondents.

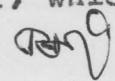
2. The applicant and nine others had earlier instituted O.A.No. 944 of 1991, alleging that they were engaged as Casual Labour/Hot Weather Watermen in Allahabad Division of Northern Railway, seeking direction to the respondents to regularise/absorb them by including their names in the Live Casual Labour Register (LCLR) and to implement the Railway Board's letter dated 14.08.1987. The Railway Administration, it appears, agreed to include the names of the applicants therein in the

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LCLR and also to screen and regularise them in their turn. The Tribunal accordingly, directed the respondents to include the names of the applicants therein in the LCLR and also in the computerised list at appropriate places of their seniority and consider their re-engagement in the vacancies that existed in the vacancies likely to occur in future. It was also provided that in case, similarly placed persons who were juniors to the applicants had already been engaged, they should be screened and regularised in their turn as per rules. It appears, that a Contempt Application no. 922 of 1993 was instituted by the applicant with the allegation that the aforesaid order passed by the Tribunal had not been complied with by the respondents. The said Contempt Application was taken up along with certain other contempt applications which were all dismissed in view of the averment made in the counter affidavit filed therein that their names had been entered in the LCLR. In the contempt application the Tribunal had recorded the finding that " the least number of days worked by the persons included in the list is 165 days."

3. It appears that though the names of the applicant was entered in the LCLR but despite the order aforesaid, the applicant was not re-engaged, whereupon he filed another O.A. no. 1057 of 1997 with the allegation that he had worked for 220 days and yet not re-engaged, whereas persons having rendered 165 days of work were screened and regularised. The respondents contested the said O.A. with the allegation that the applicant had not worked for number of working days he was claiming. In that view of the matter the Tribunal disposed of the O.A. with the direction that in case the applicant preferred a representation within 04 weeks mentioning therein the actual number of working days and also producing the authentic and reliable evidence in support thereof, the same be decided within 4 months. The applicant preferred the representation as per direction given by the Tribunal, which has been rejected by the impugned

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order dated 19.04.2001.

4. The order impugned herein, is sought to be quashed on the ground that the Competent Authority has illegally and arbitrarily ignored the working days the applicant had to his credit during the period between 16.4.1980 to 14.5.1981 on the ground that the applicant was minor and attained majority only on 15.5.1981. The Competent Authority in its order impugned herein, has held that minimum age prescribed by the Railway Board for engagement of Casual Labour is 18 years and, therefore, initial engagement of applicant from 16.4.1980 till the date he attained majority was not liable to be taken into reckoning due to the reasons that the applicant was under age and ineligible for engagement as Casual Labour and the period of age would be treated as void for the purpose of engagement/screening/regularisation. The view taken by the Competent Authority in this regard is unsustainable. The applicant was earlier directed by the Tribunal to be entered in the LCLR and his name accordingly entered in the LCLR even though his initial engagement, according to the respondents was, at the time of engagement, 16 years 11 months and one day. In Om Prakash Vs. U.P. Power Corporation Ltd, 2004 (1) UPLBEC 736, the Hon'ble High Court has held that the muster roll employee cannot be denied absorption on the ground that they were not 18 years of age at the time when they were taken in employment on muster roll. It is true that no age limit was fixed for employment for muster roll employees in the case cited above. But in the instant case the respondents having engaged by the applicant while he was minor, would not be justified in denying the benefit of service rendered by the applicant in the absence of any statutory Rule to the contrary. No rule has been brought to my notice for excluding the services rendered during the minority for

the purpose of regularisation/re-engagement etc.

5. The other ground on which the applicant has been denied re-engagement/screening for regularisation is that there are more than 400 casual labours available at the Divisional level register with much more working days than the applicant. The fact that certain casual labours with 165 working days were re-engaged/screened for regularisation stands established in view of the order dated 21.11.1996 passed by the Tribunal in contempt application no. 922 of 1993. In the circumstances I am not persuaded to accept the contention of the respondents counsel that no one with 165 working days have been re-engaged/screened for regularisation. I am of the view that the applicant has been illegally discriminated in the matter of employment.

6. Accordingly, the O.A. succeeds and is allowed. The impugned order dated 19.4.2001 is set aside. The respondents are directed to consider the applicant for re-engagement/screening/regularisation after taking into reckoning the service rendered by him as casual labour during the period he was minor.

7. There shall be no order as to costs.

  
Vice-Chairman

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