

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE ^{18th} ^{*****} DAY of April, 2013)

Hon'ble Mr. Shashi Prakash, Member (A)

Original Application No. 1542 of 2001
(U/S 19, Administrative Tribunal Act, 1985)

Shiv Prasad, S/o Shri Bachchan,
R/o Village and Post Saiyad Sarawan,
Tahsil Chail, District Allahabad.

..... Applicant

Present for Applicant : Shri Satish Dwivedi.

Versus

1. Union of India through the General Manager,
Northern Railways, Baroda House,
New Delhi.
2. The Divisional Railways Manager,
Northern Railways,
Allahabad.
3. The Assistant Operating Superintendent,
Northern Railways,
Allahabad.
4. The Chief Controller (Engineering),
Northern Railways,
Allahabad.
5. The Permanent Way Inspector/Section Engineer
(Special), Northern Railways,
Etawahh.

..... Respondents

Present for Respondents: Shri Anil Kumar.

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O R D E R

Through the present OA main relief sought by the applicant is as below :

That the order dated 4/14-12-2000 passed by Divisional Railways Manager, Northern Railways, Allahabad may be declared illegal and the same may be quashed and further respondents be directed to pass appropriate order regarding appointment of applicant on the post of Flag Man or on any other post of Class IV employee in the department of Railway.

2. In brief, the facts of the case as stated in the OA are that the applicant who is working as a Casual Labour with the respondents from 6-7-1977 to 14-1-1979, was issued Casual Labour card no. 97963 by Permanent Way Inspector (Special), Northern Railways, Etawah. In the year 1990 the respondents started filling the regular vacancies of Class IV employee by the Casual Labourers who had worked in the department. After conduct of a due enquiry, applicant was called for giving appointment to the post of Flag Man. For this purpose he was issued a medical memo dated 06.2.1990 by the Chief Controller (Engineering), Northern Railways, Allahabad. The Chief Engineer also wrote a letter to the Chief Booking Supervisor, Northern Railway, Allahabad for permitting the applicant to deposit the medical examination fees for the post of Flag Man which he duly did. The applicant was medically examined and found fit, thereafter, the applicant submitted fitness certificate before the Assistant Operating Superintendent, Northern Railways, Allahabad for being provided appointment as Flag Man. Being

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aggrieved with the non-response of the of respondents to offer the applicant any appointment even after sufficient lapse of time, he filed an OA No. 762/1992 which was disposed of on 16.12.1999 with the direction to the respondents to dispose of representation submitted by the applicant within a period of 8 weeks. It is alleged by the applicant that without providing him an opportunity to prove the genuineness of the document submitted by him and without any inquiry rejected his representation. The applicant has filed the present OA challenging the rejection of his representation by the respondents.

3. In the counter affidavit respondents disputed the averments made by the applicant in the OA and have stated that applicant has not approached this Tribunal with clean hands. It has been submitted that the applicant has not given any explanation for his non action regarding redressal of his grievance dated 15.1.1979 to 16.9.1990 i.e. for more than 11 years. It is alleged that the applicant managed issuance medical examination certificate in the connivance with some fraudulent people and got the photo attested by Assistant Operating Manager (since expired). It has been further stated that even if a medical certificate was issued in applicant's favour, it did not confer any right of re-engagement on the part of the applicant. Hence, staking of claim by the applicant in this OA is based upon fraud and therefore, not liable for any consideration.

4. Sri Satish Dwivedi, counsel for the applicant argued that the card No. 97962 mentioned in the impugned order is not the casual labour card of the applicant as the number of casual labour



card of the applicant was 97963 as issued by PWI (Special), Northern Railway, Etawah. He stated that the Casual Labour Card No. 97963 of the applicant is genuine. He further asserted that the applicant had been working as casual labour worker under PWI (Special), Northern Railway, Etawah and not under PWI PQRS Northern Railway, Etawah. He argued that since PWI (Special), Northern Railway, Etawah is a Unit distinct from PWI PQRS Northern Railway, Etawah, the records of the applicants were required to be checked from the office of PWI (Special) as his entire record of working and payment of wages would have been available only in that office. Reliance on the report of PWI PQRS, Etawah is totally misplaced. Concluding his argument the counsel for the applicant stated that since the casual labour card was the genuine on its basis the medical memo was issued, the applicant is fully entitled for an appointment and rejection of his claim is highly arbitrary and illegal.

5. Sri Anil Kumar, counsel for the respondents contested the claim of the applicant for appointment on the ground that the applicant did not possess any genuine casual labour card. After conduct of an inquiry by the PWI (Special)/PQRS/Etawah, it was found that the casual labour card no. 97962 in the name of the applicant was totally fraudulent and the stamps and signature as contained in the casual labour card was also fraudulent. This fact was taken into account while passing the impugned order by the respondents. It has been made clear therein that the applicants casual labour card was one of 325 casual labour card which were identified as non-genuine and not to be given cognizance for any

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purpose. He further submitted that it would be seen from the present live casual labour Register that the name of the applicant never occurred in the live casual labour Register of the office of CPWI (Special), Etawah. Learned counsel for the respondents also stated that as per the Railway Board circular dated 04.3.1987, those who had worked before 01.01.1981, for the purpose of getting their name entered in the live casual labour register cut off date for submission of application was fixed as 31.5.1987. The applicant did not submit any application in pursuant of this Railway Board Circular within the stipulated period.

6. While referring to the argument of the learned counsel for the applicant the counsel of the respondent stated that the casual labour card issued to the applicant contained the No. 97963 and not 97962 as mentioned in the impugned order and the moment this discrepancy was detected an investigation based upon the office record of the Railways was carried out and after ascertaining the correct position the mistake was duly rectified in Para 4 of the counter reply filed by the respondents. In the impugned order, casual labour card number is shown as 97963 instead of 97962 which was an inadvertent mistake and which was duly corrected and same mentioned in the counter reply. Completing his arguments the learned counsel for the respondent reiterated that casual labour card No 97963 is totally a forged one and that applicant never worked in the PWI/Special/PARS unit. He also stated that the card number of the 97963 was also found to be a part of the list of 325 casual labour cards which were not to be taken into account for any purpose. From the narration of the



aforesaid fact, it is evident that the applicant did have any claim for appointment.

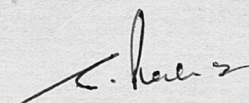
7. Heard learned counsel for the parties and perused the pleadings. The limited point that is required to be decided in the present OA is whether the casual labour Card No. 97963 belonging to the applicant was genuine or not. It is observed that as per the impugned order the applicant's card No. 97962 was found to be fraudulent and forming a part of the list of 325 fraudulent casual labour card which were notified for not being taken cognizance for any purpose. The applicant challenged this contention contained in the impugned order on the ground that his card number was 97963 and not 97962 as mentioned in the impugned order. To that extent the applicant has contended that the impugned order is not based on facts. However, this point of discrepancy seems to have been resolved by the respondents by making of necessary correction in the number of the casual labour card (97963) of the applicant and which has duly been reflected in the counter affidavit filed by the respondents. The number of the casual labour card (97962) of the applicant as incorrectly mentioned in the impugned order prima facie appears to be an inadvertent mistake which had been realized by the respondents and duly corrected. The necessary correction in this regard has been clearly explained in the para 4 of the counter. Hence reliance by applicant on this inadvertent clerical mistake of respondents cannot become a ground for interference by the Tribunal.

8. On the direction of the Court respondents were required to file a copy of the live casual labour register of

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CPWI/Special/Etawah Unit. The same was filed by the couonsel of respondents. It is seen from the aforesaid document that the name of the applicant nowhere occurs in the list. If the name of the applicant does not appear in this live casual Register, it is not under stood as to how he came in possession of a casual labour card. It is only if he had been working, his name would been mentioned in live casual labour register and a casual labour card issued to him. As the relevant document clearly shows that the name of the applicant does not occur in the live casual register of CPWI/Special/Etwah, it would not be unreasonable to infer that he had never worked as casual labour for the period as alleged by him. Hence, the contention of the respondents that the labour card of the applicant was a fraudulent one appears to have some substance. Further more from the document it also emerges that the arguments on the part of the applicant that the PWI (Special) Etawah and PWI PQRS Etawah are two distinct units does not seem to relevent, as the live casual register furnished by the respondents pertain to CPWI (Special) Unit Etawah where the applicant's purportedly claimed to have worked. Hence, on this ground also the applicant has no case.

9. In view of the foregoing facts and circumstances the applicant has failed to establish the fact that he had worked as casual labour and his claim for appointment does not have any basis. Accordingly, OA lacks merit and is dismissed.


Member (A)