

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 29th DAY OF October 2010)

**Hon'ble Mr. Justice S. C. Sharma, Member (J)
Hon'ble Mr. D.C. Lakha Member (A)**

Original Application No. 231 OF 2004
(U/S 19, Administrative Tribunal Act, 1985)

Umashankar Sharma, son of Sri Shiv Prasad Sharma, resident of 26-E/5-B/3-A, Chak Niratul, Post Chakiya, District Allahabad.

.....Applicants.

V R S U S

1. Union of India, through General Manager, N. C. Railway, Allahabad.
2. Divisional Railway Manager, Railway, Allahabad.
3. Senior Divisional Electrical Engineer (General) N. C. Railway DRM Office Allahabad.

.....Respondents

Advocates for the applicants:-

Sri Sudama Ram

Advocate for the Respondents:

Sri Anil Kumar

ORDER

(DELIVERED BY HON'BLE MR. JUSTICE S.C. SHARMA, MEMBER (J))

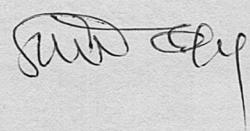
Under Challenged in this O.A. is the order dated 22nd January, 2002 and 24th June, 2002 Annexure-A-1 and A-2 further prayer has also been made for giving a direction to the respondents to reengage and regularize the services of the applicant in Electrical Department in Group 'D' category with all consequential benefits in respect of his junior person as well as fresh faces engaged in the Electrical Department. The pleadings of the parties may be summarized as follows:-



2. That the applicant was appointed as Casual Carpenter/Casual Khalashi on 24th November, 1982 in the Inspector Unit of Electrical Foreman (Air Conditioning) N. R. Allahabad on the strength of previous working of construction department. Applicant worked continuously in that unit upto 04th October, 1984 with artificial breaks. Applicant attained the Temporary Status in terms of para 2001 (b) of IREM Vol.-II after completion of continuous working of 120 days and as such he is entitled for all benefits as admissible to a Temporary Railway Servant. After 04th October, 1984 applicant was not allowed to work under Electrical Foreman for want of sanction of work. Hence the applicant was made efforts to work in another unit of Electrical Department i.e. Inspector Electrical Department after waiting for nearly one year. He worked under Senior Electrical Foreman (Train Lighting) N. R. Allahabad from 04.12.1985 to 28.02.1986 and thereafter, he was not permitted to work for want of sanction. That on enquiry applicant came to know that his name is registered in the Computerized Live Casual Labour Register at Sl. No. 5669 as per direction given by Hon'ble Supreme Court in Inder Pal Yadav's case. The juniors of the applicant namely S/Sri Raja Ram and

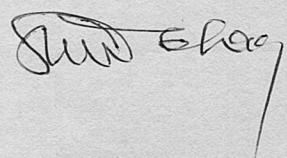
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Ashok Kumar were below to the applicant. As per circular dated 20.08.1987 seniority for the Casual Labour on open line is to be prepared for the purpose of engagement and retrenchment in Inspector wise and for screening. As per the circular letter the engagement of such casual labour has to be done on the basis of seniority as per rule of last go first in. If there are no persons on Live Casual Labour borne on the Casual Labour Register of the adjacent unit casual labour on casual labour live Register must be invoked before resorting to fresh intake. The Respondents have not maintained the Casual Labour Live Register, Seniority Unit wise as per instructions issued by the Zonal Railway from time to time. The junior person namely S/Sri Ashok Kumar and Raja Ram were allowed to continue and regularized vide penal declared on November 1988 and November, 1988 respectively. And the applicant being senior was not called for to appear in the screening and also not reengaged in preference to junior person. O.A. No. 957 of 1999 was filed by the applicant and decided on 07.08.2001 with direction to the respondents, Annexure-A-6 is the copy of the order of the Tribunal. In pursuance of the order of the Tribunal applicant preferred a representation dated 30th August,



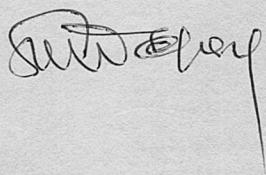
2001 alongwith copy of the order. Thereafter, representations were submitted on 18th September, 2001 also requesting the respondents to engage him as junior person and fresh faces were engaged in the Electrical Department. ~~THE~~ submitted a certificate of working periods except of working in construction department that certificate was available with the applicant. But even then the applicant was not reengaged as per direction. The Respondents have submitted an evasive reply in the earlier O.A. also, that as the Respondents are not reengaging the applicant hence this O.A.

3. The respondents contested the case and filed the Counter reply and denied from the allegations of the application. It has been further alleged that the applicant did not acquire temporary status and hence he is not entitled to the benefits of temporary status. The true fact is that on the basis of his previous working in the construction department the applicant was engaged as Casual Carpenter since 24th November, 1982 under SSE/AC/ALD upto 04th October, 1984 with natural breaks against short terms estimated work as per requirement. That there was no work under electrical Foreman (AC) after 04th October, 1984, that is why, he was not engaged. The applicant was reengaged as casual carpenter under Foreman (TL) w.e.f. 04th December, 1985 to 28th February, 1986 on the basis of certificate



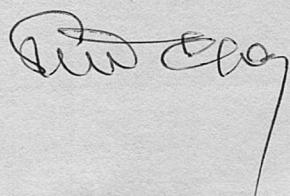
submitted for his earlier working. But the applicant left service to his own and did not turn up, thereafter. It is wrong to allege that applicant was not permitted to resume duty without any reason. But S/Sri Raja Ram and Ashok Kumar were not junior to the applicant in the subsequent screening of casual during the year 1987-88. The applicant was continuously out of employment w.e.f. 29th February, 1986 onwards. But S/Sri Raja Ram and Ashok Kumar continuously worked as Casual Labour and at the time of screening the number of total working days of Sri Raja Ram were 2246 days and of Sri Ashok Kumar were 1331 days whereas, the numbers of total working days of the applicant are 625 days. Having into account the numbers of working days of Sri Raja Ram and Sri Ashok Kumar vis-a-vis applicant they are senior to the applicant. That the Casual Live Register was strictly maintained as per order of the Railway Board and no defect was pointed out by the applicant in Casual Live Register. Applicant can't be compared with Ashok Kumar and Raja Ram as they are with continuous engagement. No notice was required to be served to a casual labour for termination. The services of the applicant came to an end when absented himself or on the close of the day. That the O.A. is liable to be dismissed.

4. On behalf of the applicant Rejoinder was also filed to the Counter, thereafter, Supplementary Affidavit was also filed by the

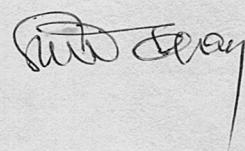
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Respondents and reply of the Supplementary Affidavit was also filed by the applicant.

5. We have heard Mr. Sudama Ram, Advocate for the applicant and Mr. Anil Kumar, Advocate for the Respondents and also perused the material available on record. It has been argued by the learned counsel for the applicant that applicant worked as Casual Carpenter/ Casual Khalasi since 24th November, 1982 in the Inspectors unit of Electrical Foreman (Air Conditioning) N.R. Allahabad. This appointment was given to the applicant on the strength of previous working in the construction department. Although, no certificate has been filed on behalf of the applicant for his previous working in the construction department. We have perused the Counter reply filed on behalf of the Respondents and it is evident from the Counter Reply that this fact had not been disputed. Moreover, it is an admitted fact that applicant worked as Casual Carpenter/Casual Khalasi since 24th November, 1982 in the Inspectors Unit on Electrical Foreman (Air Conditioning) N.R. Allahabad. The applicant worked in that Unit of the Northern Railway upto 04th October, 2004 with natural breaks. It is also admitted fact that after 04th October, 1984 applicant was engaged but not in Electrical (AC) Unit but in Foreman (TL). The applicant worked in that unit w.e.f. 04th December, 1985 to 28th February, 1986. It has been alleged by the applicant and argued by the learned counsel for the applicant that after 28th February, 1986 respondents did not

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permitted the applicant to work for want of sanction, whereas, it has been alleged by the Respondents that after 28th February, 1986 applicant did not turn up for work hence no question ~~was~~ ^{had} arisen for not permitting the applicant to work after 28th February, 1986. It is the applicant who did not turn up to work w.e.f. 29th February, 1986 both the parties are alleging the contrary averments about this fact. It has also been alleged by the applicant that respondents permitted reengagement and regularization to S/Sri Raja Ram and Ashok Kumar who were juniors to the applicant. Although, there is no specific denial of this fact that whether S/Sri Raja Ram and Ashok Kumar were junior to the applicant or not but it has been stated in a different manner. It has been alleged that S/Sri Raja Ram and Ashok Kumar were not junior to the applicant in the subsequent screening of Casual Labour during the year 1987-88. Applicant left the service on his own accord on 28th February, 1986. Applicant was continuously out of employment w.e.f. 29th February, 1986 but S/Sri Raja Ram and Ashok Kumar were continuously working as Casual Labour at the time of screening and they were empanelled. ^{With} this averment of the Counter Respondents tried to ~~justify~~ their denial of the fact that applicant is senior or junior to S/Sri Raja Ram and Ashok Kumar. But it is an undisputed fact that S/Sri Raja Ram and Ashok Kumar were reengaged, regularized and empanelled. It is a case of the Respondents that as the applicant did not turn up to work on his duty and thus persons who are continuously working they are senior to the

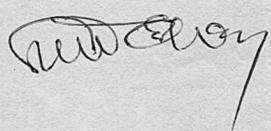


applicant. It has also been alleged that number of working days of S/Sri Raja Ram and Ashok Kumar were much more than working days of the applicant. The total number of working days of the applicant are 625 days whereas, S/Sri Raja Ram and Ashok Kumar are 2246 days and 1331 days, respectively.

6. It has been argued by the learned counsel for the applicant that earlier O.A. No. 957 of 1999 was filed on behalf of the applicant and decided on 07th August, 2001 with a direction to the following effect was given to the Respondents:-

"For the above, the O.A. is decided with the observation that the applicant shall contact the competent Authority in the respondents establishment with all evidences available with him to show that he worked earlier and after due scrutiny from the relevant record, the applicant be provided with benefit as per his entitlement and admissibility under rule and directions in this regard. No cost. It be done within a period of six months."

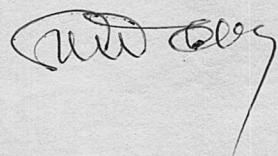
7. Learned counsel for the applicant further argued that in view of the order of the Tribunal applicant preferred a representation to the respondents on dated 30th August, 2001, 01st November, 2001, 07th May, 2002 & 22nd July, 2002. That the representations were decided by the Respondents vide order dated 22nd January, 2002 and 24th June 2002 Annexure-A-1 and A-2 respectively. It has been alleged in that order dated 22nd January, 2002 Annexure-A-1 "*your case has been considered and examined in detail on the basis of record and it was found that neither any*



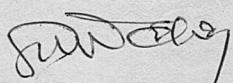
non-working Casual Labour junior to you have screened/empanelled nor reengaged in Electrical Department of the concerned unit.

In addition to above it is informed that a large number of medically de-categorized staff in Group-'D', Compassionate ground appointment candidate and surplus staff are waiting for suitable appointment for want of vacancies. Further no, non-working Casual Labour is being reengaged from Live Casual Labour Register at present. However, your case will be considered on your turn according to number of working days in future if vacancies arise and non-working Casual Labour are entertained as per extant rules. The perusal of the order dated 22nd January, 2002 shows that in case vacancies arise then the applicant's case shall be considered on his turn. It can't be said that the applicant out-rightly rejected. However, a different order was passed on 24th June, 2002 it has been alleged in the order "As you had left working as Casual Labour w.e.f. 29th February, 1986 on your own and did not present yourself for the screening you hence we ~~are~~ ^{have} ~~not~~ ^{not} considered for screening and regularization.

It is again reiterated that no fresh faces and junior to you have been reengaged, screened empanelled and regularized from the non-working Casual Labour of TL side in Electrical General Department of concern unit." The factum of regularization of job w.e.f 29th February, 1986 has also been alleged in subsequent order dated 24th June, 2002. But from the perusal of both the orders it is evident that the case of the applicant was not rejected outright but the case of applicant was kept opened till the availability of the vacancy. From the perusal of the pleadings of the

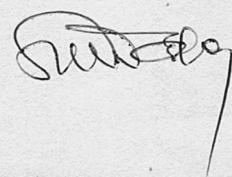


parties it is evident that operative part of the Railway Board's circular regarding reengagement or re-employment of the Casual Labour have not been disputed. The circular letter of the Railway issued for regularization of Casual Labour has also not disputed, by the applicant. From the perusal of the orders as well as Counter Reply shows that the applicant is eligible for regularization, re-engaged as per circular letter by the Railways. ^{wa} ~~wa~~ have earlier stated above that the applicant specifically alleged that S/Sri Raja Ram and Ashok Kumar who were junior to the applicant were regularized and reengaged. And that there is no specific denial by the Respondents of this fact that whether S/Sri Raja Ram and Ashok Kumar were junior to the applicant or not but they have alleged that the applicant himself did not turn up to join duty after 29th February, 1986 and S/Sri Raja Ram and Ashok Kumar were continued to work as Casual Labour, hence, therefore, number of working days of S/Sri Raja Ram and Ashok Kumar were much more in comparison to the applicant hence considering the number of days they were regularized, reengaged and empanelled. Although, it is also a point for consideration to this Tribunal that whether the applicant himself opted not to resume the duties after 29th February, 1986 or the respondents did not permitted him to work, but it is fact that the applicant is fulfilling all the requirements as per circular letter of the Railways. It may be possible ^D that the applicant due to certain reasons did not work ~~not~~ after 29th February, 1986 whereas, S/Sri Raja Ram and Ashok Kumar continued



after. Thereafter, applicant, as per requirement of the Circular letter, ^{also} ~~Worked much~~ had above ~~to~~ the minimum working days as per circular letter of the Railway Board and hence he was entitled to be regularized and reengaged. It has been argued by the learned counsel for the Respondents that as the applicant was a Casual Labour and no formal notice is required to be served for termination of work of Casual Labour at the end of the ~~year~~ ^{day} automatically came into effect.

8. Railway Board issued direction for regularization of Casual Labours providedly on fulfilling certain qualifications regarding age, number of working days and facing of screening test. It has been alleged by the Respondents that as the applicant did not turn up for screening test hence he was not regularized. But it has not been alleged by the respondents that whether any notice in writing was served on the applicant in order to appear for the screening test. Incase a written notice was served by the respondents earlier to present himself before the screening committee for screening in response to ^{and} ~~that letter~~ if the applicant failed to appear before the committee then the position would have been different, but nothing have been alleged in this connection. Moreover, from perusal of Annexure-A-1 & A-2 it is evident that the case of the applicant was not rejected outright but it was kept pending for consideration till the availability of vacancy. It has been alleged that large number of medically de-categorized staff in Group-'D', Compassionate ground appointment candidate and surplus



staff are waiting for suitable appointment for want of vacancies. It has also been alleged that the case of the applicant shall be considered on availability of vacancies. Hence it can't be said that the case of the applicant was rejected outright. But in the Counter Reply, Supplementary Affidavit respondents have alleged that, it has not been specifically alleged that what is age of the applicant and later on it has been alleged that applicant is overage. And as he had already completed 50 years. And this has also not been disputed by the applicant.

9. Learned counsel for the applicant argued that there is catena of judgments in which it has been held that in the matter of regularization there is no bar regarding age. He also argued that applicant was not to be appointed fresh rather he had temporary status and he was only to be regularized and hence it has wrongly been alleged that as the applicant is overage hence not entitled to be regularized. We have already stated above that the applicant's name found place in Casual Labour Live Register. It is also undisputed fact that applicant ought to have been regularized in view of different circulars and letters of the Railway Board. And the applicant is contesting his matter since 1999 before the Tribunal and also before the Respondents. It has not been alleged that in the year 1999 applicant was overage. It has also been alleged by the learned counsel for the applicant that he belonged to the category of O.B.C. and in his case the upper age limit must be 43 years.

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But in the year 1999 as the applicant was within the permissible age limit hence it ~~was~~ ^{were} the respondents who were responsible for delaying the matter of the applicant hence they cannot take the benefit of their delaying tactics and laches. Learned counsel for the applicant argued that the C.A.T. Bench of Ernakulam in O.A. No. 866 of 2006 V.A. Chandran Vs. Union of India and others delivered on 06th June, 2007 relied on the judgment of Hon'ble High Court of Kerla has quashed the Ministry of Railways letter to the extant it relates to the retrenched Casual Labour. And the Tribunal ordered that the case of the applicant may be considered for regular absorption in the existing vacancies having regard to the seniority. Learned counsel for the applicant further argued that Hon'ble High Court of Kerla confirmed the judgment of the Tribunal of Ernakulam Bench in O.A. 633 of 2003 in W.P. (C) No.21777 of 2007 Union of India Vs. A. Sabidharan and others as follows:-

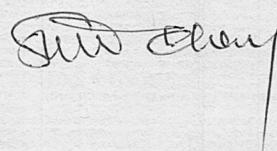
"The Tribunal had noticed that these instructions had come long after the petitioner had been brought to the live register and the Railway Administration had not taken note of the circumstances that it was not a case of fresh recruitment as such. There was no such embargo, prescribed as could be gathered from the judgment of the Supreme Court in Inderpal Yadav. It was for the above reason that the Tribunal that the Tribunal had directed that the case of the applicants should be considered ignoring the age factor."

10. In view of the above judgment the embargo of over age will not be applicable in the case of the applicant. Learned counsel for the applicant argued that there are various other judgments of different Hon'ble High Courts and Hon'ble Supreme Court that embargo of

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overage cannot be applicable in the case of regularization. We have also stated above that it is the Respondents who are responsible for delaying the matter for 11 years of the applicant.

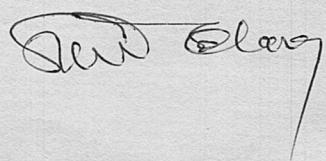
11. Learned counsel for the applicant argued that this defence is not available to the applicant that the case of Rakesh Kumar Sharma was considered for regularization and his case was considered, when he was over aged as per direction of the Tribunal. The judgment passed by the Principal Bench of Central Administrative Tribunal, New Delhi in the case of Rakesh Kumar Sharma delivered on dated 28th April 2003 has also been enclosed. That as per the direction of the Tribunal the case of the Rakesh Kumar Sharma was considered by the Tribunal. And similarly on same ground the case of the applicant may also be considered with direction to the Respondents to ignore the fact of overage. Learned counsel for the applicant also stated that ^{there are a} number of cases of different Benches in which the Casual Labours were regularized irrespective of the fact that they were overaged. We are of the opinion that the applicant can't be prohibited for consideration of his case for regularization on the ground of overage. We have to reiterate again that it is respondents who are responsible for delaying the matter for more than 11 years. It has also been argued by the learned counsel for the applicant that junior persons to the applicant were regularized. We have earlier stated above that it has not been disputed that S/Sri Raja Ram & Ashok Kumar were junior to the ^{not}


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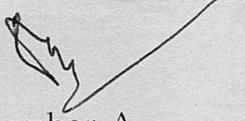
applicant but it has been alleged that they worked for more number of days in comparison to the applicant. But in the case of S/Sri Raja Ram & Ashok Kumar principle of Pick and Choose was adopted and the applicant was not permitted to resume the duties whereas, S/Sri Raja Ram & Ashok Kumar were permitted to continue as Casual Labour. There appears no force in the submission of learned counsel for the Respondents that it is the applicant himself who deserted working as Casual Labour, but there is no evidence at all to this fact hence this argument of learned counsel for the Respondents is not at all tenable, otherwise there appears no reasons for the applicant to relinquish his work, but as the Respondents did not permitted the applicant, hence he could not work for number days in comparison to S/Sri Raja Ram & Ashok Kumar. Being senior, applicant ought to have been regularized prior to S/Sri Raja Ram & Ashok Kumar.

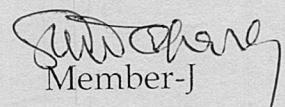
12. For the reasons mentioned above, we are of the opinion that, the O.A. deserves to be allowed and the Respondents are to be directed to consider the case of the applicant for regularization as he is fulfilling all the qualification as provided in Circular and letters.

13. O.A. is allowed. Respondents are directed to consider the case of the applicant for regularization within a period of six months from the date when a copy of this order is produced before them. It is specifically ordered that applicant's case shall not be rejected on the

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ground of overage. Applicant shall produce the copy of this order before the Respondents forthwith. No Cost.


Member-A


Member-J

/Dev/