

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 9th day of Jan 2006.

Original Application No. 567 of 2004.

Hon'ble Mr. K.B.S. Rajan, Member (J)

1. Surendra Singh,
S/O Shri Gauri Shanker yadav,
Aged about 45 Years,
R/o Shastri Nagar,
Ghatampur, Kanpur Dehat.
2. Ranjit Singh S/O Sri Sita Ram,
Aged about 43 years,
R/O Village- Sardey Gopalpur,
Ghatampur, District: Kanpur Dehat.
3. Kalloo S/o Raghoo,
aged about 38 years,
R/O-Village Bharwa Superpur,
Ward Imelia,
District: Hamirpur.
4. Raghunath S/o Sri Sadai Prasad,
aged about 42 years,
R/o-Village-Bhatpurwa,
Post Office-Samchi,
District: Kanpur Dehat.

. Applicant

By Adv: Sri S. Mandhayan

V E R S U S

1. Union of India through the Secretary,
Ministry of Railway, Railway Board,
NEW DELHI.
2. Railway Board, Rail Bhawan,
New Delhi
Through its Chairman.
3. General Manager, North Central Railway,
Headquarters Office,
Allahabad.
4. Divisional Railway Manager,
North Central Railway,
Jhansi.

5. Divisional Railway Manager (C),
North Central Railway,
Jhansi.
6. Senior Divisional commercial Manager,
Jhansi.

. Respondents

By Adv: Miss S. Siddiqui

O R D E R

By K. B. S. Rajan, Member-J

The applicants Four in numbers, have earlier approached the Tribunal for regularization of their services and this Tribunal in OA No. 866/1995 had, vide order dated 05-09-2003 passed the following order:-

"In view of the admitted fact that applicants were granted temporary status, the legal position is that their engagement could not be terminated except by an order in writing which has not been done in the present case. This legal position is applicable to all the employees who are given temporary status.

This O.A. is allowed with the direction to respondents to record name of the applicants in live casual register at the places where they are entitled according to their seniority and they shall be considered for regularization in job in their turn."

2. Despite the above, the applicants' cases were not considered for regularization and hence this O.A.

3. Since the earlier order contains facts upto the disposal of that OA, it would be useful to

borrow from the said order about the facts. The

same are as under:-

"(i)Applicant No.1 was appointed as Parcel Porter-cum-Safaiwala on 17.7.1976. He continued upto 30.6.1977 and then from 1.7.1977 to 31.7.1977 as Hot Weather Waterman. He was again appointed on 1.4.1983. The applicant was given temporary status on 2.4.1988.

(ii)Applicant No.2 was engaged as casual gangman on 3.2.1978. He worked upto 18.12.1980. He was again engaged as Khalasi from 1.12.1983 to 28.12.1983 and from 22.3.1984 to 28.7.1985 as hot weather waterman. He was again appointed on 10.7.1986. He was conferred temporary status on 21.4.1986.

(iii)Applicant No.3 was appointed as casual Khalasi on 18.3.1978. He worked upto 18.4.1979. Thereafter he was again engaged on 19.6.1983. He worked upto 18.1.1984. On 16.5.1985, he was engaged as hot weather waterman. He was conferred temporary status on 18.5.1986.

(iv)Applicant no.4 was appointed on 1.4.1982. He worked upto 30.7.1982. He was again engaged from 1.4.1987 as hot weather waterman. He was conferred temporary status w.e.f. 2.4.1986.

2. The case of the applicants is that all the applicants were continued upto 1992 with Respondent No.3 who without any order in writing in arbitrary manner terminated their engagement against which they made several representations but no relief was granted hence they have approached this Tribunal. Counsel for applicant submitted that as admittedly applicants were granted temporary status, their engagement could not be terminated without an order in writing and as there is no order in existence terminating their engagement, they are entitled for being taken in job. Learned counsel for the respondents has submitted that the post of Hot Weather Waterman were abolished by Railway Board order dated 3.2.1992 and consequently engagement of applicants were terminated. It is also submitted that the applicants are not entitled for relief."

4. The respondents have rejected their cases on the sole ground that since they were employed only as a weather waterman and the post was abolished as early as in 1992, they are not entitled to any regularization.

5. The applicants have prayed for the following relief:


"i)to quash the order dated 17.03.2004 passed by respondent no.6.

ii)to issue a writ, order or direction in the nature of mandamus commanding the respondents to screen the applicants as well who have already applied in pursuance of the general order dated 30.08.2001.

iii)to issue a writ, orders or direction in the nature of mandamus commanding the respondents to take back the applicants in service in compliance of the judgment dated 5.9.2003 passed by this Court in O.A. No.866 of 1995.

iv)to issue a writ, order or direction in the nature of mandamus commanding the respondents to regularize the services of the applicants as Casual labours in the Commercial Section.

6. Respondents have contested the OA. According to them, the applicants' engagement was only as a weather waterman and further they had not applied at the time when they were supposed to, whereas, Shri Tej Ali who was junior to one of the applicants did apply through proper channel and hence his services have been regularized.




7. Necessary rejoinder has also been filed, reiterating the contentions as raised in the OA.

8. Arguments were heard and pleadings perused. Admittedly, the earlier order of this Tribunal mandated the respondents to consider the case of the applicants for regularization in their turn. The seniority list prepared by the respondents clearly reflects the names of the applicants and one Shri Tej Ali was also figuring in the said list. The said individual is admittedly junior to at least one of the applicants. This is the admitted position.

9. The respondents have in fact admitted the fact of the said Tej Ali having been regularized in service. It is also the admitted fact that the said individual was also functioning as Weather Waterman.

10. The main reason for rejection of the case of the applicants is that the applicants having been engaged only as weather waterman, they were not entitled to regularization. If this contention is accepted in its face value, then how come the service of Shri Tej Ali, who was also similarly placed like the applicant could be regularized, is the question? To that there is no satisfactory response from the respondents.



Thus, merely on the ground that the applicants were weather waterman cannot be the ground for rejection.

11. The respondents had, in their counter, stated that the applicants did not apply in accordance with the procedure. This was canvassed during the course of the arguments as well. This is clearly an after-thought. There was no whisper whatsoever in rejection order about the irregularity in application. It is settled law right from day of judgment in the case of **Mohinder Singh Gill v. Chief Election Commr., (1978) 1 SCC 405**, an order bad at the beginning cannot be got validated by additional grounds later. The verdict of the Apex Court in this regard is as under:-

8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in *Gordhandas Bhanji*²:

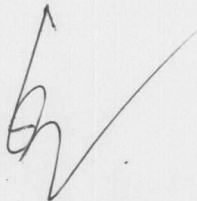
"Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the acting's and conduct of those to whom they are addressed and

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must be construed objectively with reference to the language used in the order itself."

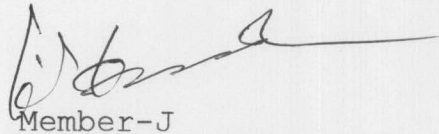
12. In view of the above, other grounds for rejection as contained in the counter or as canvassed, cannot be considered. And the one given in the impugned order also cannot be sustained in view of a similarly situated person having been granted regularization. Thus, the impugned order is liable to be set aside and accordingly the same is quashed and set aside.

13. Respondents are directed to make available necessary forms to the applicants for processing their case for due regularization and for this purpose, notwithstanding the fact that there is certain age limit and some of the applicants might have crossed the age limit now, their cases should be considered setting the clock back. For, the non regularization is not on the ground of any mistake on the part of the applicants but the respondents are to be blamed for this kind of situation. It is settled law that the respondents cannot take advantage of their own mistakes, vide **Rekha Mukherjee v. Ashis Kumar Das, (2005) 3 SCC 427** wherein the Apex Court has held, "The respondents herein cannot take advantage of their own mistake".



14. Again, the regularization will be from the date the juniors to the applicant have been regularized and all the consequential benefits would entail.

15. This order shall be complied with, within a period of four months from the date of communication of this order. No costs.



Member-J

/ns/