

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH  
ALLAHABAD**

\*\*\*\*\*

(THIS THE 2 DAY OF 7 2009)

**Hon'ble Mr. A.K. Gaur, Member (J)**

**Original Application No.32 of 2005**

(U/S 19, Administrative Tribunal Act, 1985)

1. Mohd. Zaheer aged about 40 years and 11 months son of Shri Mohd. Rafique resident of 26, Schoolpura, Prem Nagar, Jhasni.
2. Mohd. Hanif aged about 45 years son of Shri Mohd. Fafique resident of 19/1 Schoolpura, Prem Nagar, Jhansi.
3. Hardayal aged about 46 years son of Shri Chhakkilal R/o Village and Post Idkil Bujurg, Tehsil Garotha, District-Jhansi.

By Advocate : Shri R.K. Nigam

..... Applicants

**Versus**

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.

By Advocate : Shri D. Awasthi

..... Respondents

**ORDER**

**(Delivered by Hon'ble Mr. A.K. Gaur, J.M.)**

By means of this O.A. the applicants have claimed following main relief/s :-

- i. to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 03.12.2004 (Annexure A-1).
- ii. to issue another writ, order or direction in the nature of mandamus thereby commanding the respondents through a positive direction that the applicants' case be considered for the purpose of screening/absorption/regularization in Class-IV Group 'D' post for which a time bound direction is fervently prayed.

✓

2. The applicants had also filed O.A. No. 640 of 2004 (Mohd. Zahir & others Vs. Union of India & another) which was disposed of on 12.08.2004 with a direction to dispose of the representation of the applicants dated 19.10.2003. According to the applicants a notification was issued by the respondents on 30.8.2001 under which all the Casual Labour/MRCLs/Substitutes/Watermen were called upon to submit their Bio-data in prescribed proforma for the purpose of screening/absorption/regularization. The last date for submission, of applications duly completed in all respects was to be forwarded through the office of Depot Incharge, where they had worked last was 30.09.2001. It was a necessary requirement that all the applications were to be sent to the respondents through the concerned Depot Incharge. It is also submitted by the applicants that their claim for screening/absorption/regularization was rejected by the order dated 03.12.2004, the ground for rejection of the claim of the applicants are reproduced hereunder:-

**Applicant No.1**

- (a) Did not submit bio-data through his Depot Incharge.
- (b) His name is not borne in the Live Casual Labour Register.

**Applicant No.2**

- (a) Did not submit his bio-data through his Depot Incharge.
- (b) He has become age barred i.e. above 40 years.

**Applicant No.3**

- (a) Did not submit his bio-data through his Dept Incharge.
- (b) His name is not borne in the live casual labour register.
- (c) He has become age barred i.e. above 40 years.

It is, also submitted by the applicants that their bio-data were not forwarded by their Depot Incharge on account of non payment of illegal gratification, which the applicants could not meet; nonetheless admittedly the bio-data have been sent and have been duly received by the D.R.M.

✓

N.C. Railway, Jhansi, which is admitted to the respondents themselves and, therefore, whatever entries or physical working shown in the bio-data were merely subjected to verification by the Depot Incharge. It is submitted by the applicants that they had made out an iron clad case of absorption in their favour as the counter parts of similar merits have been considered for absorption and after due process of absorption they have been put to work against working whereas, the applicants are being discriminated. The applicants are not overage and their names are available in live casual labour register.

3. In the reply filed by the respondents, it is submitted that the earlier O.A. No. 640 of 2004 was filed by the applicants, which has been disposed of vide judgment and order dated 12.08.2004 at admission stage, with a direction to the respondents to consider and decide the representation of the applicants filed on 19.10.2003 by a reasoned and speaking order within a period of three months from the date of communication of the order. Vide order dated 03.12.2004 the competent authority has passed reasoned and speaking order with the observation that the applicants failed to submit their Bio-data through their last depot Incharge, as indicated in the notification dated 30.08.2001. The Applicant No.2 Mohd. Hanif and Applicant No.3 Hardayal, whose date of birth is 09.07.1959 and 03.09.1958 respectively, as mentioned in Annexure No. A-4, of the earlier O.A. No. 640 of 2004, are overage. The eligibility criteria laid down by the Railway Board, was that only those ex-casual Labours will be considered, who are having a minimum 120 working days and their names must find place in the Casual Labour Register/Supplementary Casual Labour Register maintained by the concerned depot. Further age limit was also prescribed, which was as under:-

✓

*For General Category*  
*For OBC Category*  
*For SC/ST Category*

*Upto the upper age limit of 40 years.*  
*Upto the upper age limit of 43 years.*  
*Upto the upper age limit of 45 years.*

4. In the notification dated 30.08.2001, it was clearly mentioned that no application/Bio-data will be entertained after the specified date. A bare perusal of the postal receipt attached to Annexure No.A-II, A-III, & A-IV of the O.A., it is amply clear that the applications and Bio-data were addressed to Sri Madhuresh Kumar, DRM, Jhansi, who is not depot Incharge, and all the applications were sent beyond the cut off date i.e. 30.09.2001, which was the last date of submitting bio-data. According to own admission of the applicants, the last depot Incharge of the applicants were situated at Lalitpur, Dabra and Orai, whereas applicants have sent their bio-data/applications to the D.R.M. Jhansi, which is wholly improper. From the perusal of the bio-data filed by the applicants, it is crystal clear that the applicants have failed to submit Bio-data through their last Depot Incharge for verification. There was clear instruction in the notification dated 30.08.2001 that the Bio-data of individual be submitted through the depot Incharge upto last date i.e. 30.09.2001. There was no instruction to send bio-data directly to the D.R.M. Jhansi. According to the applicants, they sent their bio-data/applications to the Divisional Office, whereas the record/Casual Live Register of the applicants and others are available in the depot of the concerning casual labours. Moreover, it was not the duty of Divisional office to send bio-data of the applicants through concerning depot Incharge for verification because thousands of applicants/candidates applied in the above scheme, and it was not practically possible to follow the same. The applicants belong to General Community and as per Railway Board Circular dated 28.02.2001 and 20.09.2001, the age limit was prescribed upto 40 years for general candidates, admittedly, the applicants were

✓

overage on the date of their screening. The allegations levelled by the applicants that the respondents demanded illegal gratification are baseless and objectionable. The applicants have no proof in this regard. The applicants have utterly failed to lodge the First Information Report against the concerned persons. Such kind of wild allegations made by the applicants are wholly untrustworthy and unwarranted.

5. In the Rejoinder reply filed by the applicants, it is submitted that the Railway Board Circular dated 28.2.2001 followed by HQrs circular dated 14.12.2001, the criteria of screening/absorption has undergone radical change. It has been provided in the aforesaid circulars that while screening/absorption of ex-casual labour, the following eligibility conditions have to be fulfilled:-

- (a) *Name of the ex-casual labour must be borne in the Live Casual Labour Register.*
- (b) *He should have put in 120 days service instead of 180 days (which was previously prescribed).*
- (c) *He ought to have been within the prescribed age limit at the time of his initial recruitment.*
- (d) *Educational qualification of Viith standard has also been relaxed while absorbing in the Engineering department.*

According to the applicants, the finding in the impugned order that the bio-data of the applicants were not routed through their controlling authority is ridiculous, inasmuch as, that the respondents were duty bound to notify regarding the last date of submission of bio-data. The applicants were never given any communication or information regarding the closing date of submission of Bio-data and therefore, merely on the ground that bio-data were not submitted by the applicants within time cannot be made the ground for rejection of their candidature.

✓

6. We have heard Shri R.K. Nigam, learned counsel for the applicants and Shri D. Awasthi, learned counsel for the respondents. It has been contended by the learned counsel for the applicants that applicants are fully eligible for the purpose of screening/absorption in Group 'D' category and the grounds taken by the respondents for rejecting the candidature of the applicants are prima facie, illegal, erroneous and perverse. In any view of the matter, the applicants were within the age limit prescribed at the time of entry into the service, as per provisions of Indian Railway Establishment Manual, subsequent age bar cannot be invoked for the purpose of rejection of candidature of the applicants.

7. Learned counsel for the respondents, on the other hand invited my attention to the notification dated 30.08.2001(Annexure CR-3) filed by the respondents, this letter has been issued by the D.R.M. Jhansi to all concerned of Jhansi Division. Para 3 to 6 of the said letter are being reproduced hereunder:-

3. *You, under whom the name of the casual labour is borne on the live register/ supplementary live Register, will display the notice along with the list and the proforma on the notice board and report compliance to the effect that you have pasted the notice, list and proforma on the Notice Board to DRMs office Personnel Branch immediately.*
4. *The Casual labour should submit their particulars in the proforma in duplicate to depot in charge which should cover all the relevant data i.e. name, father's name, date of birth, permanent address, present address, educational qualification, Personal marks of identification Office/ Department and place in which initially engaged, the office from last discharged, date & reason there of, attested copies of casual labour Card, proof of work on the Railways, Photograph and of LTI. The onus of correctness of the personal data/service particulars being furnished lies with the casual labour.*
5. *The last date for submission of the particulars to you by the ex. Casual Labours is 30.09.2001. The particulars received in your office after the cutoff date should not be entertained. The defaulter, if any, will be taken up severely under DAR.*
6. *You will then make out a list of candidates whose particulars are received and will send the same along with one copy of the particulars received in prescribed proforma, to Recruitment section, Personnel branch, Jhansi per bearer immediately on 01/10/2001 and obtain acknowledgement of the casual labour cell of the office.*

W

The applicants have failed to submit any proof that they had submitted their bio-data/applications through their last depot Incharge, as clearly and specifically mentioned in the notification dated 30.08.2001. The applicants have not appended postal receipts in this regard. The applicants are overage on the crucial date of notification. It is also seen from the record that Annexure A-II, A-III, A-IV, which are postal receipts issued by the Post Office, and a minute perusal of the said postal receipts clearly indicates that the application/Bio-data of the applicants were addressed to Shri Madhuresh Kumar, DRM, Jhansi, who is not the depot Incharge. Since the applicants have themselves failed to abide by the instructions contained in notification dated 30.08.2001, they are estopped from challenging the action of the respondents in considering their case for absorption and regularization. It is also evident from the record that all the bio data and applications of the applicants were sent beyond the cutoff date i.e. 30.9.2001, which was the last date for submitting the bio data.

**8.** Having gone through the pleadings of the parties and after a careful perusal of the record, I am satisfied that the Bio data was not sent through Depot Incharge and the same was addressed to DRM directly. The respondents have committed violation of instructions issued by notification dated 30.08.2001. In view of the aforesaid observations, I am firmly of the view that the applicants have utterly failed to make out any case warranting interference. The O.A. is accordingly dismissed. No costs.

*Anjan*  
Member-J