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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 22nd day of March 2007.

Original Application No. 333 of 2005.

Hon'ble Mr. P.K. Chatterji, Member-A

Parmanand S/o Sri Munna, R/o 151, Aligot Khirki,
Jhansi.

..... Applicant

By Adv: Sri R.K. Nigam

V E R S U S

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

..... Respondents

By Adv: Sri K.S. Saxena.

O R D E R

The dispute in this OA briefly stated are as follows:

The applicant had worked as casual labour water man in different spells from 22.11.1977 to 22.07.1991. He has stated that he acquired the status of MRCL after completing 120 days. For confirming temporary status the applicant was sent for medical examination in which he was declared fit in B-I category. It is further stated by the applicant that he belongs to OBC (Bhimar) and his date of birth is 15.06.1959. As a person belonging to OBC he is eligible for age relaxation for 3 years for regularisation as causal labour.

2. On 30.08.2001 respondent No. 2 issued a notification calling for bio date on prescribed format from ex-casual labours

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whose names were borne in the live casual labour register for considering their cases for regularisation in Group 'D' category. The name of the applicant was at Sl. No. 349 of the register and he submitted his bio date in prescribed format to the Station Superintendent Jhansi which was received by the Station Superintendent on 20.09.2001. The applicant has given a copy of the receipt from the office of Station Superintendent (Annexure VII) in which the official seal of the Station Superintendent is also there.

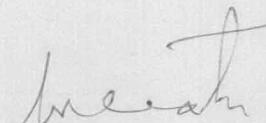
3. As the respondents did not take a favorable decision on his application he filed OA No. 639/04 before the Tribunal at Allahabad. After hearing the petition the Tribunals issued a direction to the respondents to consider and decide the representation of the petitioner by a reasoned and speaking order. The copy of the judgment is given as Annexure VIII. It is further alleged by the applicant that respondent No. 2 rejected the claim of the applicant vide the impugned order dated 25.11.2004. The ground for rejection was as under:

- "a. *The applicant did not submit the application to his last depot incharge and sent the same directly to this office.*
- b. *As per Railway Boards Instructions. The cut off age for General category candidates was 40 years he was averaged at the time of applying for regularisation in Group 'D' category in pursuance of notification dated 30.08.2001.*"

4. The applicant however, has questioned the validity of the impugned order on the following grounds:

- "a. Petitioner submitted his bio data on prescribed format with all other relevant documents to the last depot Incharge (Station Superintendent) who affixed his official seal (dated 20.09.2001) (Annexure No. VII) while the last date was 30.09.2001. The allegation of the respondent is proved totally false.
- b. The age bar for General Caste is 40 years. The petitioner belong to back ward Community (Dhimar) (Annexure No. V) for which the age for is 43 years regarding OBC candidate as per circular dated 20.09.2001."

5. The respondents have defended their action by saying that on the date of considering the case of the applicant he was already overaged. Even if it is conceded that the applicant



belongs to OBC category, he would be eligible for regularisation up to the age of 43. In November 2004 when his case was considered in pursuance of the direction of the Tribunal, he had already exceeded the age of 43. The learned counsel for the respondents further defends the action of the respondents by saying that there was no direction from the Tribunal in OA 639 that the representation should be disposed of even by relaxing the age limit. The direction was for taking the decision on the representation as per the rules. The respondents had already done that and their action cannot be stated to be illegal.

6. As to the contention of the applicant that his case was duly forwarded by the applicant through the Head of the Unit concerned, the learned counsel for the respondents stated that it was not received in the Unit Head. It was, however, not denied by him that it was received in the officer of the respondents. As per direction of the Tribunal they have considered the same ignoring the fact that it was not received through the Head of the concerned unit.

7. The contention of the applicant's counsel, however, is that on 2001 when the respondents first considered the cases of other causal labour borne on the Live Register, the applicant was still below the maximum age limit. If his case was considered on the basis of the facts on record he would have been granted regularisation. As it was not done he had approached the Tribunal for intervention. At the intervention of the Tribunal the case was reconsidered. Therefore, there was no scope for the respondents to take the age factor as a ground for rejection. They have to consider the case of the applicant notionally as if it was being considered alongwith other in the year 2001. The learned counsel for the applicant has strongly refuted the point made by the learned counsel for the respondents that the respondents had no authority to relax the age further than what was stipulated for OBC category.

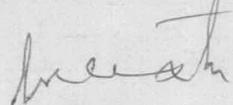
8. As the learned counsel for the respondents has not attached much importance to the dispute whether the bio date

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was received through the Head of Unit concerned and has stated that his case was considered notwithstanding the fact that the bio date of the applicant was dispatched directly, I would like to focus on the other ground i.e. the age factor. It seems that there is strong force in the argument of the applicant that the reconsideration in pursuance of the Tribunal could not take into account his age as on November 2004. He had challenged the rejection of his claim earlier in OA 639/04. The OA was not dismissed/rejected by the Tribunal which issued certain positive direction upon the respondents. The implication of the Tribunal's order is that the case of the applicant was to be considered as if the conditions at the time of receiving his bio data against the notification dated 30.08.2001 still prevailed. AS it was not done the applicant was constrained to file this O.A. The learned counsel for the applicant has further stated that it would be most unfortunate if after being inactive on the application of the applicant for over three years the plea of age was now taken by the respondents.

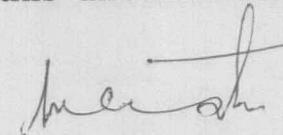
9. During the arguments the learned counsel for the respondents did not raise any issue whether the certificate of the applicants belonging to OBC category was authentic or not. It is presumed that there is no dispute on this account.

10. On the above noted consideration and on the basis of arguments for and against of the application I am of the view that there is merit in the OA. It would be indeed unfortunate to reject the case on the age factor while there is not dispute that in 2001 he was not ineligible due to age factor. The impugned order dated 25.11.2004 is, therefore, quashed with the direction that the applicant should be considered for regularisation on his eligibility on the basis of his age as on 30.08.2001 and on the basis of the records of his service as furnished by the applicant and after verifying the same from the records of the respondents. The respondents, however, would be at liberty to verify the authenticity of the OBC certificate if they have still any doubt about the same. However, on this ground the decision should not be delayed beyond the date being fixed.



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After examining the matter on the basis of these guidelines, particularly on the aspect of age, the respondent No. 2 will take a decision as admissible under the rules and communicate the same to the applicant through reasoned and speaking order. This should be done within a period of 04 months from the date of receipt of this order. With this direction the OA is disposed of. No cost.



Member-A

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