

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 2 DAY OF 7 2009)

PRESENT :

HON'BLE MR. A. K. GAUR, MEMBER-J

ORIGINAL APPLICATION NO. 437 OF 2005
(U/s, 19 Administrative Tribunal Act.1985)

Sunder Singh, S/o Sardar Singh, aged about 44 years,
Resident of Village Sadarban, P.O. Bichpuri, District-Agra.

..... Applicant

By Advocate : Shri B.L. Kulendra

Versus

1. Union of India, through General Manager,
N.C. Railway, Allahabad.
2. D.R.M. (P), N.C. Railway, Jhansi.

..... Respondents

By Advocate : Shri Anil Dwivedi

O R D E R

1. This is the second round of litigation in which the applicant has claimed following main reliefs:-

"1) That this Tribunal may graciously be pleased to issue order or direction in the nature of mandamus commanding the respondent No.2 to reinstate the applicant in service without any further delay.

2) issue order or direction for reinstatement the applicant maintaining his seniority over his juniors with consequential benefits."

2. Brief facts of the case are, that the applicant has earlier filed OA No.1506 of 2004 (Sunder Singh Versus Union of India and Ors.) which was finally disposed of by this Tribunal vide judgment and order dated 10.12.2004 with a direction to the respondents to

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consider and pass a reasoned and speaking order on the representation of the applicant. In the year 2001, a notification was issued by the respondents on 30.08.2001 calling applications on prescribed proforma from the Ex Monthly Rated Casual Labours/Hot Weather Watermen, whose names were borne on live registers, for considering their case for regularization in Group 'D' categories subject to fulfilling the conditions. In the order dated 31.01.2005 the respondent no.2 has stated that the case of the applicant could not be considered for the following reasons:-

That all the applications were to be sent to the respondents through the concerned depot In-charge only. However, the applicant did not submit his applications to his last depot In-charge and sent the same directly to the office of D.R.M. Jhansi.

Secondly, the applicant has mentioned his date of birth as 20.10.1960 and has shown his caste as General. Since as per Railway Board's instructions, the cut off age for General Category candidates was 40 years, he was over-aged at the time of applying for regularization in Group 'D' category. According to the applicant his name finds place in the third Casual Labour Live Register. It is alleged by the applicant that he submitted an application on prescribed proforma to the Station Master, Runkuta on 26.09.2001 who verified the same on the same day and sent the same to D.R.M. (P) Jhansi. According to the applicant, there were two persons working as Watermen at Runkuta Station namely Ram Singh Son of Charan Singh and the applicant. Ram Singh who happens to be junior to the applicant has been reinstated and posted in the Engineering department at Mathura. It is alleged by the applicant that the names of both the employees namely the

applicant and Shri Ram Singh were sent by the Station Master to D.R.M. Central Railway, Jhansi.

3. In paragraph 4.8 of the original application, it is clearly stated by the applicant that he has nowhere mentioned as his caste 'General'. He has shown as "Baghel (Hindu)". Baghel is the surname in the community Gadaria which has been declared as O.B.C. by the State of Uttar Pradesh. The applicant was not at all overage on the date of consideration of his case being OBC candidate. He was entitled to get relaxation of three years of age. On the relevant date the applicant was only 40 years 11 months and 10 days i.e. on 30.09.2001.

4. By filing counter reply the respondents submitted that in view of circular and letter dated 28.02.2001 and 30.08.2001 ex casual labours who fulfilled all the conditions had to sent their Bio-Data through Department Incharge duly verified within time limit i.e. upto 30.09.2001 for screening and absorption of the Casual Labour in Group 'D' post. It is submitted by the respondents that application of the applicant had not at all been received by the Divisional Office. The date of birth of the applicant was shown as 20.10.1960 and the applicant has shown his caste as General. As per Railway Board instructions the cut off date of General Category candidates was 40 years. The applicant was over aged at the time of applying for regularization in Group 'D' category and that is why his case could not be re-considered for regularization in Group 'D' category in the department of respondents. It is also submitted by the respondents that the

applicant has not submitted any proof of his caste in his previous OA No.1506 of 2004 and the OA deserves to be dismissed on this ground alone. The applicant is put to strict proof of allegations that his application containing Bio-Data was received in the office of respondents through concerned depot In-charge. The applicant has also falsely stated that junior persons have been engaged; in fact no junior persons were regularized as alleged. The applicant has never submitted his OBC caste certificate at the time of his initial engagement as casual labour. The applicant has himself shown to be a Member of General Category and that is why the competent authority had rightly treated him under general category.

5. In the rejoinder reply filed by the applicant the facts enumerated in the counter reply have been denied and the applicant submitted that he filed application on prescribed proforma in triplicate along with necessary documents and certificates on 26.09.2001 for verification and further disposal. According to the applicant, he has never shown his caste as General. His school leaving certificate clearly indicates that he belongs to 'Baghel Hindu" community.

6. The respondents also filed supplementary counter reply controverting the facts enumerated in the rejoinder reply. It is submitted that on verification of the documents the applicant was found over aged and, therefore, his case could not be considered for regularization.

7. I have heard Shri B.L. Kulendra learned counsel for the applicant and Shri A.K. Dwivedi, learned counsel for the respondents. Shri B.L. Kulendra, learned counsel for the applicant submitted that the applicant has sent his application containing Bio-Data through the Station Superintendent, Runkuta and the same was sent to the competent authority in triplicate. He also submitted that the applicant has clearly specified his caste as "Baghel (Gadaria)" and this caste has been duly classified as O.B.C. by notification issued by the State of Uttar Pradesh.

8. On the other hand, learned counsel for the respondents Shri A.K. Dwivedi, vehemently argued that the applicant must have sent his Bio-data in the duly prescribed format, through his Depot In-charge, which he did not follow and as such his case was rightly not considered for screening. Shri A. K. Dwivedi, learned counsel for the respondents would further contend that there is not an iota of evidence to indicate that the Bio-data of the applicant duly filled in format was sent to the prescribed authority through Depot Incharge and was received by him. The applicant has measurably failed to give any evidence in this regard. It is also seen from Annexure A-3 that the applicant did not mention his caste in the application. He also did not annex any caste certificate showing his caste as OBC at the time of sending his Bio-data.

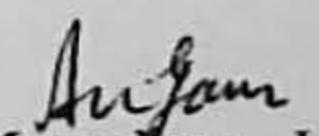
9. Having given my thoughtful consideration to the pleas advanced by the parties counsel, I am satisfied that applicant did not submit his application through the depot In-charge concerned under whom he lastly worked. The applicant has also failed to give

any documentary proof in order to show that his Bio-data in duly filled format was received by the competent authority in time. In the notification dated 30.08.2001, it is clearly and specifically mentioned that the application must be forwarded through the last depot In-charge. In the instant case, no such requirement was at all followed by the applicant. In his application, the applicant has indicated his date of birth as 20.10.1960 and has shown his caste as General Candidate.

10. I have carefully perused the Railway Board letter, which clearly indicates that the cut off age for General Category candidate was 40 years, as the applicant did not submit his Bio data supported by documentary evidence indicating his caste, the benefit of the applicant being an OBC candidate could not be granted to him by the respondents. Admittedly the applicant was overage on the crucial date 30.9.2001 (Being 40 years 11 months & 10 days).

11. In view of the above, the case of the applicant could not be considered for regularization in Group 'D' category. No other point has been argued by the applicant in support of his case.

12. Having given my thoughtful consideration to the pleas advanced by the parties counsel, I do not find any merit in the OA. It is accordingly dismissed. No Costs.


Member-J

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