

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

ALLAHABAD this the 25<sup>th</sup> day of July, 2007.

**HON'BLE MR. P.K. CHATTERJI, MEMBER- A.**

**ORIGINAL APPLICATION NO. 750 OF 2005**

Govind Prakash Saini, S/o Daya Ram Saini,  
R/o Vill. 122, Maseehganj, Sipri Bazar, Jhansi.

.....Applicant.

**VERSUS**

1. Mandal Rail Prabandhak, Uttar Madhya Railway,  
Jhansi.
2. Union of India through G.M.,  
N.C.R., Allahabad.
3. Station Superintendent, Jhansi.

.....Respondents

Present for the Applicant:  
Present for the Respondents :

Sri R.C. Shukla  
Sri Prashant Mathur

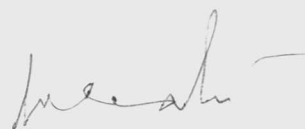
**ORDER**

The applicant in this O.A is an Ex Casual Labour , who had worked with the Railways from 01.04.1987 for a period exceeding 120 days. As per submission made by the applicant and as per Annexure A-3 (Pg. 27), he had worked for 565 days. Some Ex casual laboureres including the applicant went to the Labour Court under Industrial Dispute Act for settlement of their claim . After the decision of Labour Court, the matter came before Hon'ble High Court, Allahabad for

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consideration in Writ Petition. In pursuance of the direction of the Hon'ble High Court, the respondents under took the exercise for special drive for considering the cases of ex casual laboureres for screening and subsequent regularization. The circular for special drive was issued from the office of DRM, Jhansi on 30.08.2001 (Annexure A- 7, pg. 40). As per circular, the last date for furnishing the applications with necessary details was 30.09.2001.

2. The applicant says that he had submitted his application quite in time, a copy of which has been enclosed as Annexure A- 3 (Pg. 27), in which it is seen that the application was received by the respondents' office on 18.09.2001. Although the application was received in time, the applicant is aggrieved that his case for screening and regularization was illegally rejected by the respondents on the ground that it was received beyond the stipulated last date for accepting the applications i.e. 30.08.2001. The learned counsel for the applicant has drawn my attention to the impugned Letter dated 02.05.2005 (Annexure A-1, pg. 11.B). From perusal of the impugned letter, it is seen that the respondents had turned down the application for regularization assigning the reason that it was received beyond the last date of receipt the application i.e. 30.08.2001. By citing this impugned letter, the learned counsel for the applicant argues that the respondents wrongly rejected his application by mentioning the last date as 30.08.2001 while , in the Circular Dated 28.02.2001, it was mentioned as 30.09.2001. The dispute, therefore, appears to be that while the last date for application was 30.09.2001 and while the applicant submitted his application well within time, it was rejected on the plea that the application was beyond



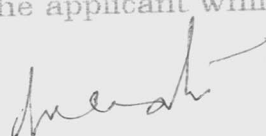
30.08.2001 i.e. the stipulated last date. With theses submissions, the applicant has prayed for the following relief(s): -

- i. to issue a writ order or direction in the nature of mandamus commanding and directing the respondents to appoint the applicant on the post of Group 'D' before the respondent No. 2;
- ii. to issue a writ order or direction in the nature of mandamus commanding and directing the respondents to consider the application of the applicant which is pending till date.

3. The learned counsel for the respondents, on the other hand, has taken me through the relevant paragraph of 8 and 9 of the Counter Affidavit, in which, the respondents have stated that the applicant has placed wrong facts before the Tribunal in the O.A It was not that his case was rejected without application of mind and without considering his case. He was screened for the regularization but as he was found to be over aged at the time of screening, he could not be regularized in service.

4. Learned counsel for the applicant strongly objected to the reply placed by the respondents by mentioning that this fact was not mentioned in the impugned order. This is an after thought and by citing the judgment in M.S. Gill Vs. U.O.I. & Ors, he has submitted that the illegalities or correctness of a decision /order has to be viewed in the light of the reasons contained in the order itself and it cannot be validated by any subsequent explanation through additional submission.

5. Learned counsel for the respondents however, strongly opposed the points made by the applicant by saying that the applicant while coming



to the Tribunal has not revealed full facts of the matter. He has mentioned the impugned letter dated 02.05.2005 without mentioning the other letter, which was issued by the respondents as a corrigendum to impugned letter dated 02.05.2005 (Annexure CA- 5 pg. 25). By taking me through this letter, learned counsel for the respondents has stated that indeed there was a mistake in the impugned letter to the extent that instead of mentioning the last date for submitting the applications as 30.09.2001, it was wrongly written as 30.08.2001. The mistake was soon detected and corrected. Learned counsel for the respondents has also contradicted the allegations made by the learned counsel for the applicant that his case was rejected out right only on the issue of late receipt of application and that he was not considered for screening and regularization by referring to the office documents relating to the screening of ex-casual labourers through this special drive (Annexure CA- 3 and CA- 5). He has submitted that the applicant, whose name figures at Sl. No. 969, was considered for screening alongwith others . In the remarks column, it is written as follows: -

"He is over aged as per date of birth declared and also produced affidavit dated 03.04.2004"

6. The learned counsel for the applicant however, said in reply that the corrigendum issued by the respondents was of September, 2005 whereas this O.A was filed more than three months before the corrigendum was issued. There was no question therefore that he was aware of this corrigendum. He has, therefore, to go by the reasons placed by the respondents in the impugned order. It's authority has to be seen in the light of judgment of Hon'ble Apex Court in the case of M.S. Gill (Supra). If

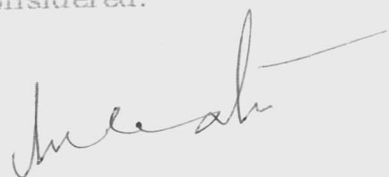


the respondents have made any mistake, it cannot be covered up by a subsequent explanation/ submission.

7. The points, which has to be decided in this O.A, are

- i. Whether the impugned letter would stand the test of the settled law laid down by the Apex Court in the case of M.S Gill (Supra);
- ii. If it is invalid/irregular in the light of the said judgment, whether the subsequent action of the respondents in correcting the mistake made in the impugned letter would be considered as irregular;
- iii. Whether in the factual situation raised in this O.A, the record produced by the respondents at Annexure CA- 3 as a proof that he was screened alongwith other candidates for the purpose of regularization, would be taken as a sufficient action on the part of the respondents;
- iv. Whether setting aside the impugned letter solely on the basis of standard set in the case of M.S. Gill (Supra) would validate the claim of the applicant for screening and regularization notwithstanding the facts brought out through Annexure CA- 3 and CA- 5.

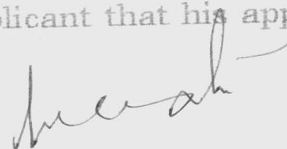
8. Looking at the relief prayed for, I find that the applicant has sought for a direction to the respondents to appoint the applicant on the post of Group 'D'. The other relief prayed for is that the applicant's application, which is still pending, should be considered.



9. Here it is found that the applicant has not prayed for quashing the letter of the respondents dated 02.05.2005 (at page 11-B). It is true that he has taken exception to this letter as it contains a wrong date for the last date for submission of application and stated that the same was actually the reason for rejecting his application. It is also true that the applicant objected to the subsequent explanation offered by the respondents through the CA, which he has stated to be invalid in the light of the judgment of Hon'ble Apex Court in M.S. Gill (Supra). To this extent, arguments of learned counsel for the applicant is acceptable but as he has not sought for quashing of the impugned letter dated 02.05.2005, I am not dwelling on the matter any further.


10. From the two annexure placed by the respondents in the Counter Affidavit i.e. Annexure CA- 3 and CA- 5, it becomes quite clear that the applicant's application was not rejected straight way for not having been submitted within time. Annexure CA- 5, which is letter dated 02.09.2005 explain the matter adequately. Annexure CA- 3, which is the office record pertaining to the screening of the ex casual laboureres, shows that the applicant was also considered alongwith other candidates. In Annexure CA- 3, his name appears at Sl. No. 965/ 176. It was not the applicant's case that facts placed in these two documents were altogether false. The only point that the applicant successfully made out is unacceptability of the letter dated 02.05.2005.

11. The question is to what extent, if any, does strengthen and validate as the claim of the applicant for being given a job as group 'D', as prayed for. On the second relief prayed for by the applicant that his application



should be considered also, I have applied my mind. There seems to be no possibility of providing this relief when it is clear that the application of the applicant was considered and he was screened alongwith rest of the ex casual laboureres. It is a different matter that he could not be regularized as he was already over aged, even after giving him the benefit of age relaxation as ex casual labour belonging to O.B.C category. The respondents did not appear to have committed any irregularity in making the applicant ineligible for regularization on the ground of being over aged. The fact, which remains is that notwithstanding , the initial impugned letter communicating same reasons for not regularizing the applicant, his case was duly considered for the screening, but he could not be regularized due to his being over aged.

12. For the reasons discussed above, it is not possible to provide the relief, as prayed for in the O.A , which is dismissed with no order as to costs.

  
(P.K. CHATTERJI)  
MEMBER- A.

/ANAND/