

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

(THIS THE 30th DAY OF Oct 2009)

HON'BLE MR. S. N. SHUKLA, MEMBER-A

ORIGINAL APPLICATION NO. 942 OF 2005
(U/S 19 of the Administrative Tribunals Act)

1. Madan Gopal S/o Shri Sukhdev Prasad, R/o – Village & Post – Barua Sumerpur, Opposite Petrol Pump, District: Hamipur.
2. Hari Vishal S/o Shri Sidha Gopal R/o – Village – Badagaon, P.O. Deogaon District: Hamipur.
3. Ram Kripal S/o Shri Bhoora, R/o – Village & Post: Barua Sumerpur, District: Hamipur.
4. Nirmal Kumar S/o Shri Manhu Lal, R/o – Village: Bhavania, Post – Chandra Purwa, District: Hamipur

By Advocate:- Satish Madhyan ...Applicants

Versus

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

By Advocate:- K. N. Singh ... Respondents

O R D E R

DELIVERED BY HON'BLE MR. S. N. SHUKLA, MEMBER-A

By means of the present Original Application filed under Section 19 of the Administrative Tribunal Act 1985, the applicant have claimed following main relief/s :-

1
S/N

"(i). to issue a writ, order or direction in the nature of commanding the respondents to regularize the services of the applicants as casual labours in the Engineering Branch according to their seniority strictly as per Live Casual Labour Register.

(ii). To issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case.

(iii). Award cost of the petition to the applicants."

The brief facts of the case are as under:-

2. The above O.A. is being preferred for not calling the applicants for screening in the fresh recruitment drive which is under way, in spite of calling several junior, therefore the mandamus is being sought directing respondents to make regularization/recruitment on Group 'D' posts from amongst the live Casual Register in accordance with seniority without skipping anybody, particularly those who have applied in pursuance of call sent to each and every casual employees registered in the casual live register.
3. The applicant No. 1 & 4 are scheduled caste category and applicant No. 2 & 3 are backward category candidates and have been employed as Gangman/Khalasi on casual basis from time to time and have completed more than 120 days and have right to be regularized on the post of Gangman/Khalasi being fully eligible even otherwise according to the requirement of Indian Railways Establishment manual.
4. The applicant No. 1 is a scheduled caste candidate and initially engaged as casual Khalasi on 19.08.1980 and worked upto 18.12.1980 at the first engagement under PWI/Banda, then was again engaged from,

1
804

03.07.1988 to 18.07.1988 then again from 19.07.1988 to 30.09.1988. In between he was also engaged as casual labour under PWI/Hamirpur where in the first stint worked from 19.07.1984 to 18.08.1986 and thereafter from 19.05.1988 to 18.07.1988 (Annexure 1 & 2).

5. The applicant No. 2 is a backward category candidate. He was initially engaged as Gangman on causal basis and he worked from 20.11.1983 to 18.04.1984. Thereafter again was engaged on 20.08.1980 and worked till 23.09.1984 (Annexure 3 & 4).

6. The applicant No. 3 is also a backward category candidate and has worked as casual labour from 20.06.1982 to 18.02.1983 which is clear from the certificate issued by PWI, Barua Sumerpur (Annexure 5 & 6).

7. The applicant No. 4 is a scheduled caste candidate belonging to Kori caste and he worked with the railways from 18.04.1978. After initial engagement he continued till 20.05.1978. Thereafter he was engaged again on 24.05.1978 and continued till 18.08.1978, thereafter was engaged once again on 19.09.1978 and continued till 18.11.1978 under PWI/Palwal. Thereafter he was engaged on 03.01.1984 and continued till 18.09.1984 under PWI/Karvi (Annexure 7 & 8), and entitled to be accorded temporary status having working for more than 120 days.

8. All the applicants find their names in the Live Casual Register maintained at their respective places, however, are being grossly discriminated against by not providing any job after 1986. Hon'ble Court as well as Supreme Court have held that casual labours who have worked more than 120 days in a year they may be regularized and have

1
COP

laid criteria how they are to be regularized. On the basis of the judgment rendered by the Supreme Court the Railway Board has issued instruction to all the Railways to regularize such employees. Inspite of that the respondents have refused to take work from the applicants.

9. The applicants are also aggrieved by such illegal action on the part of the respondents from time to time after the scheme of 1986, 1987, 1993 and 1996. The respondent No. 2 issue general letter dated 30.08.2001 required to be sent to erstwhile casual labours so as to make them able to fill up those forms who shall be called for screening committee so constituted for registration of Group 'D' category employees including the Gangman and Khalasi. It may be specifically stated that none of the applicants have received letter dated 30.08.2001, which in itself is grossly illegal and discriminatory (Annexure-9).

10. As late as on 05.04.2004 the respondents again started screening of casual labours who were registered in the casual live register. However, none of the applicants have been called to appear before the Screening Committee thereby discriminating against them. All the applicants have applied on prescribed form (Annexure-10).

11. Number of juniors to the applicants' are already working, therefore, applicants also ought to have been regularized on those posts, the names of the few such employees are as under:-

| Sl. No. | Name | Working under |
|---------|--|-----------------|
| 1. | Shri Jagannath S/o Ghasitey | PWI/Juhi Kanpur |
| 2. | Shri Sheo Prasad S/o Shri Ghanshyam | PWI, Ghatampur |
| 3. | Shri Brij Gopal S/o Shri Maheshwari Deen | PWI, Ghatampur |



| | | |
|----|---------------------------------------|-----------------|
| 4. | Shri Shakur Khan S/o Shri Munier Khan | PWI/Juhi Kanpur |
|----|---------------------------------------|-----------------|

12. Learned counsel for the respondents stated in their Counter reply that the application is not maintainable. It is also not within the period of limitation prescribed under Section 21 of the Act No. 13 of 1985 and deserves to be rejected. There is no record available from which it may be ascertained that the applicants Nos. 1 & 4 Viz. Madan Gopal and Nirmal Kumar belong to scheduled caste category (S.C.), and that applicants Nos. 2 & 3 vis. Hari Vishal and Ram Kripal belong to other backward category (O.B.C.). Then applicant except No. 2 have not served for more than 120 days [allegedly falsely claimed] and are not entitled for regularization at Group 'D' Posts. The applicants have not filed the Original documents relating to the above in Railways. Also the applicant have not applied in response to notification dated 30.08.2001, Annexure A-1 and Annexure A-2 filed by the applicant No.1 Madan Gopal are self contradictory and do not relate to one and the same person. The documents are unreliable. It may be stated that in Annexure No. A-1 Madan Gopal is permanent residence of Village and Post Office Tindwara, Tehsil and District Banda, while in Annexure No. A-2 Madan Gopal is resident of Village of Sumerpur, Tehsil and District Hamirpur. He is over age and not entitled to any benefit of scheduled caste category candidate. Further the period of service as casual labour, shown by the applicant is not correct. It is not supported by any record maintained by the railway administration, nor any proper C.M.R. sheet or record of more than 20-26 years is available with the department. Moreover in document Annexure No. A-1, the applicant No. 1 Madan Gopal has professed to have served from 19.08.1980 to 18.12.1980 without mentioning the name of Post on which he is alleged to have served. In another part of the



same Annexure No. A-1, it is further mentioned that he has worked from 19.07.1984 continuously, but there is no mention as upto what date he alleges to have served. It seems that these are forged documents prepared for the purpose by the applicant.

13. The Annexure No. A-3 filed with the Original Application by the applicant in support of his alleged working certificate is a forged document. It is incorrect that he was engaged from 20.08.1980 to 23.09.1984 as casual labour during the alleged period of time and day in the railways. On Inquiry the concerned senior section Engineer (P.Way) N.S. Railway, Mahoba reported that the applicant No. 2 Hari Vishal was not a casual labour, and that the document Annexure No. A-3 filed by the applicant is a bogus and forged document, and the signature thereon of the Railway Engineer is also forged one, and that no such certificate of working was issued by the department (Annexure No. CA-1). This is also pointed out that this applicant has not applied as per notification dated 30.08.2001.

14. Annexure No. A-4 filed by the applicant No. 2 Hari Vishal as certificate of O.B.C. (Teli) it may be stated no such original document has been filed by the applicant with the railway administration to establish that he belongs to O.B.C. category. He is over age and not entitled to any benefit available to O.B.C. category candidates.

15. Applicant No. 3 Ram Kripal claims to have worked for the period 20.06.1982 to 18.02.1983 as casual labour in the railways and it is also wrong that his name is recorded in L.T.I. Register No. 5 at page No. 110. The document in proof of the claim filed by applicant No. 3 as Annexure

69

No. A-5 is a bogus and forged document. It also does not bear the real signature of the concerned railway official. The signature on Annexure No. A-5 is forged one. In this regard the senior engineer (Permanent Way) North Central Railway, Mahoba vide his letter already filed as annexure No. CA-1 has certified that no such certificate of working was issued by the concerned engineer, and that the signature thereto is forged and the document is also forged one.

16. The Annexure No. 6 the applicant No. 3 Ram Kripal as certificate of O.B.C. (Teli), it may be stated that no such original document has been filed by the applicant with the railway administration to establish that he belongs to O.B.C. category. Even this applicant has not applied as per notification dated 30.08.2001.

17. It is incorrect to say that the applicant No. 4 Nirmal Kumar worked for broken periods between 18.04.1978 to 18.09.1984 as casual labour in the railways. The applicant has not stated as to from what offices and by which officer the alleged Card No. 168849 (Annexure No. A-7 to the Original application) was issued to him. As per available record no such card in the name of Nirmal Kumar was issued by this office and a certificate dated 19.08.2006 in this regard issued by the office of senior Divisional Engineer (PERMANENT WAY) North Central Railway, Ghatamur is filed (Annexure No. CA-2.)

18. In the H.T.I. Register A-13 at page 68 an entry from 03.01.1984 to 18.03.1984 only of 76 days is recorded, but the same is unverified and unconfirmed. And if any case it does not entitle the applicant No. 4 to any benefit of regularization. A copy of

62

letter dated 24.08.2006 issued by the Assistant Engineer (Permanent Way) North Central Railway, Ghatapur is filed (Annexure No. CA-3)

Had
 19. ~~That~~ ^{On} the applicant No. 4 worked for more than 120 days, he must have been got medically examined by the Railway departmental concerned. But no such medical exam was done on record. Further the card aforesaid, on inquiry was found to be bogus & farzi.

20. As regards the caste certificate of being Kori in S.C. Category annexure No. 8 filed with the original application by applicant No. 4 Nirmal Kumar, it is stated that no such original document was filed by the applicant with the railway administration to establish that applicant No. 4 belongs to S.C. (Kori) category. He is over age and is not entitled to any benefit available to S.C. category candidate. Casual workers who had worked for more than 120 days are got medically examined by the railway department concerned. However, in the present case, as per record available, none of these 4 applicants were got medially examined. Moreover the name of these applicants except applicant No. 2 does not exist on Live Casual Register as on the Supplementary Live Casual Register.

21. Ministry of Railways Government of India through its Railway Board had issued a circular Order No. E (NG) II-99/CL/19 dated 28.02.2001 providing for absorption in the Railway of Ex. Casual

Copy

Labour born on live casual labour Register/Supplementary live register, if the candidates is general category did not exceed the age limit of 40 years. It was relaxed to 43 years for O.B.C. candidates, and 45 years for S.C./S.T. category candidates. This absorption was to be done in Group 'D' posts on their turn based on seniority as per total No. of days put in by them as casual labour, mentioned on live casual labour register and there after those born on supplementary live casual register.

22. It is also provided that except for category of gangman, the casual labour would have minimum Educational qualification of class VIIIth passed. A copy of Railway Board letter dated 28.02.2001 filed (Annexure CA-4.) Relaxation already granted under aforesaid circular dated 28.02.2001 shall remain unaltered. In this regard a copy of Railway Board's order dated 28.08.2001 is filed as Annexure CA-5.

23. Railway Administration (D.R.M. Jhansi) issued a notification order dated 30.08.2001 directing the concern officers and the concern casual labour to submit their particulars and details in prescribed proforma in duplicate to the depo Incharge along with attested copy of their casual labour card, proof of work in the Railway. The cutoff date for submission of the above application and details was fixed at 30.09.2001. However, none of these applicant ever applied as per notification dated 30.08.2001.

82

24. Under para 123 of the Indian Railway Establishment Code Volume - 1, the Railway Board has full powers to mark rules of General application to C and group D posts and Railway servant under their control. As such the aforesaid of Railway Board dated 28.02.2001 and 20.09.2001, have the force of law and are binding. Central Administrative Tribunal Bench, Allahabad (D.B.), have given a judgment dated 23.05.2006 that unless the condition attached to the Railway Board Circular order dated 28.02.2001 are fulfilled by the applicant and they are below 40 years of age as on the date of circular dated 28.02.2001, the applicants have no case for regularization and their petition being devoid of merit was rejected. A copy of C.A.T. Judgment dated 23.05.2006 filed as Annexure CA-7.

25. The contents of para 4.10 of the Original Application are incorrect and denied, no screening committee for such absorption was held in the year 2004. As regard the contents of para 4.11 of the original application it may be stated that answering respondents have no knowledge of the same. The said application may have been sent directly to the D.R.M. Office without any information to the answering respondent.

26. Perused the pleadings and documents on record and heard learned counsel for the respective parties, also carefully perused the photocopies of the Work Experience, Caste Certificates a few of other photo copies of the alleged certificate filed with the O.A. on

CSN

perusal of the same it is extremely difficult to disregard the contention of the Respondents made in respect of each of the candidates with regard to their work experience [minimum required 120 days] and the statement that the original caste certificate of the applicant are not born on the record of the Respondents department.

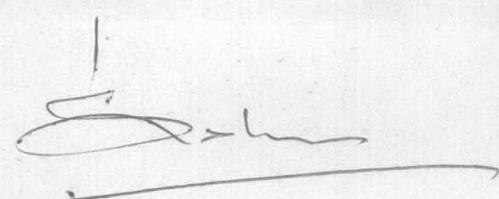
27. We have carefully perused some of the work certificate filed along with the O.A. and have strong reasons to come to a conclusion that there is of force in the contention of the Respondents.

28. Annexure A-3 is supposed to be a certificate or the numbers of days of working of the applicant No. 2 Shri Hari Vishal. These documents is on the plane paper, bearing no file reference number from which these document is issued, no date of issue, no name of the issuing officer, innocuous scribbling in the name of signature of the issuing authority. A similar certificate is place on Annexure A-5 in respect of Respondent No. 3 and so on. The Annexures filed with the Counter Affidavit have also been gone through and it is easily discernable to even a casual observer that official/genuine documents bear proper file numbers subject number, reference number, date of the letter and authentication by the officer whose name can be clearly read.

Sh

29. In view of the above there are compelling reasons to accept the contention of the respondents that the applicant were over age and that the caste certificate were not reliable and similarly they did not have minimum required work experience for being considered for screening as also there is no evidence available to suggest that the applicant applied to the appropriate authority in response to the notification dated 30.08.2001.

30. In view of the observations made above the O.A. stands dismissed. No costs.



Member A

/Dev/