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Reserved:

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

Registration O.A. No. 583 of 1988  
Hon. Mr. S. Das Gupta, A.M. Dated: 10 November, 1994  
Hon. Mr. T.L. Verma, J.M.

Radhey Shyam, son of Kodai,  
Resident of Village Manaria,  
Post Office Zahoorabad,  
District Ghaziabad. ... ... ... APPLICANT.

(By Advocate Sri Anand Kumar)

Versus

1. Divisional Railway Manager,  
Northern Railway, Allahabad.
2. Senior Divisional Commercial  
Superintendent, N. Railway, D.R.M's  
Office, Allahabad.
3. Divisional Personnel Officer,  
Northern Railway, Allahabad.
4. Signal Inspector (W) Northern  
Railway, Allahabad.
5. Union of India, through General  
Manager, N.Rly. Baroda House,  
New Delhi. ... ... ... Respondents.

(By Advocate Sri D.C. Saxena)

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(By Hon. Mr. S. Das Gupta, A.M.)

In this Original Application filed under  
Sec. 19 of the Administrative Tribunals Act, 1985  
the applicant has prayed for the following reliefs:

(i) that the respondents be directed to engage  
the applicant as Casual Waterman in Summer  
Season, 1988 in the Traffic and Commercial  
Department of the Allahabad Division of Northern  
Railway;

(ii) that the respondents be directed to implement

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the orders of G.M.(P) Northern Railway, New Delhi dated 20.8.1987;

(iii) that the respondents be directed to engage the applicant as per seniority in the Casual Live Register and not recruit fresh faces till pre-1978 Casual Labourers are exhausted.

2. The facts of the case giving rise to this application are that the applicant is stated to have been appointed as Casual Labourer under S.I. (W) Northern Railway, Allahabad on 22.8.1978. He is stated to have been discharged without notice on 14.10.1978 consequent, upon the order of the Railway Board that Casual Labour engaged after 1.8.1978 should be discharged.

3. It has been claimed that later it was decided that the appointments made during the period from 1.8.1978 and 1.9.1978 should be deemed to be in order and those Casual Labourers should also be screened for absorption against regular vacancies. This order of G.M. Northern Railway, New Delhi was circulated vide DR.M. Northern Railway, Allahabad letter dated 20.5.1985(Annexure-B). The applicant has stated that in view of the orders contained in the letter dated 20.5.1985, he approached the concerned authorities constantly for regular absorption anywhere but there was no response to his approaches. He had also represented for engagement as Casual Waterman but to no avail.. He claims to have submitted an application dated 24.3.1987 and 31.12.1987 for enlistment of his name in

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the Casual Labour Live Register but does not know whether his name has been enlisted so far.

The applicant alleges that his non-engagement as Casual Waterman while fresh faces were so engaged is violative of the orders contained in G.M.(P) New Delhi, letter dated 20.8.1987(Annexure- 1).

4. In the counter reply, the respondents have raised a preliminary objection to the maintainability of this application on the ground of delay and laches. No submissions have been made on the merit of the case. It has simply been stated that the D.R.M. Allahabad who is the respondent no. 1 in this case has nothing to do with this matter since the applicant was working as Signal Inspector (W) Allahabad which is directly controlled by CSTE/ Construction Northern Railway, Headquarters Office, New Delhi and <sup>not</sup> by D.R.M. Northern Railway, Allahabad. It has been submitted that CSTE/Construction, Northern Railway, Headquarters Office, New <sup>not</sup> Delhi is a necessary party and since he has <sup>not</sup> been impleaded by the applicant, this petition is not maintainable.

4. We have heard the learned counsel for both the parties and carefully gone through the records of the case.

5. It would appear that the counter reply has been filed only on behalf of the respondent no.1. It is seen from the application that the Signal Inspector (W) Northern Railway, Allahabad and General Manager, Northern Railway, New Delhi are also impleaded as respondent Nos. 4 & 5 respectively.

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(P.W.)

(B)

The applicant was admittedly working under Signal Inspector (W) Northern Railway, Allahabad who is impleaded as respondents. Also impleaded as respondent is the General Manager, Northern Railway New Delhi who is in overall charge of the Signal Inspector (W) Northern Railway, Allahabad. Both these respondents could have filed a counter reply resisting the claim of the applicant but they have chosen not to do so. Therefore, merely because the applicant has not impleaded C.S.T.E/Construction Allahabad who is stated to be immediate superior of Signal Inspector (W), Allahabad does not make the application ~~not~~ maintainable. If the application had no merit or the facts stated by the applicant are incorrect, both respondent Nos. 4 & 5 could have made such submissions in counter reply. In the absence of any rebuttal of the averments made by the applicant, we cannot, but presume that these are based on facts.

6. So far as the question of limitation raised by the respondents is concerned, we find that the cause of action in ~~this~~ case arose with the issue of the letter dt. 20.5.1985 by which the appointments made between ~~on~~ 1.8.1978 and 1.9.1978 were deemed to be in order. Thereafter, the applicant is stated to have made ~~constant~~ approaches to the Railway Authorities for being considered for regularisation and also for engagement as Casual Labour. These submissions of the applicant ~~not~~ having been effectively rebutted by the respondents, we, therefore, found that the

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applicant was not sleeping over his rights and had been pursuing it assiduously. This application was filed on 11.5.1988. We are of the view that the time lag between the date of issue of the letter deeming the appointment of Casual Labour after 1.8.1978 till 1.9.1978 as regular <sup>and the</sup> date of filing of the application has been satisfactorily ~~explained~~ and therefore, we did not consider it just and fair to decline to consider this application on merit on the ground that the same is barred by limitation.

7. Since the facts of the case having been rebutted and the same are, therefore, assumed to be correct, we are of the view that the applicant is fully entitled to get the benefit of the instructions contained in the letter dated 20.5.1985. Since his appointment was on 22.8.1978, he is fully covered under the provisions contained in the said letter.

8. It is, therefore, incumbent on the part of the respondents to enlist his name in the Casual Labour Live Register and to consider him for regularisation in his own turn. We are, therefore, giving the following directions to the respondent Nos. 4 & 5.

(i) The applicant's record of service shall be examined and in case he has actually worked from 22.8.1978 till 14.10.1978, his name shall be put in the Live Casual Labour Register within a period of 2 months from the date of communication of this order.

(ii) In case any of his juniors in the Live

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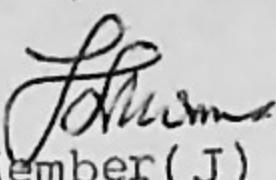
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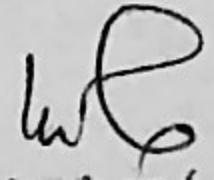
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Casual Labour Register is working as Casual Worker, he should also be engaged as Casual Labour forthwith.

(iii) He shall be considered for regularisation in his own turn.

9. The application is disposed of with the above ~~directions~~. There will be no order as to costs.

  
Member (J)

  
Member (A)

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