

(A<sub>2</sub>)



...

vs.

### ... Respondents

- 30 -

HON'BLE MR MAHARAJDIN ,MEMBER(J)  
HON'BLE MISS USHA SEN ,MEMBER(A)

( by Hon'ble Miss Usha Sen, Member-A )

Wah



12/2

:2:

labour register and as he should be called back to duty. The respondent no.2 directed respondent no.3 to give a suitable reply to the applicant's representation vide his letter dated 8-2-88(Annexure-G). The applicant, however, received no reply from respondent no.3 despite further representations to him. Hence, he has approached this Tribunal.

2- The preliminary objection raised by the respondents is that the applicant was not discharged but had left service of his own accord as would be evident from the entry in his labour card. Therefore, he had lost his right to be borne on the live casual labour register as well as to payment of any compensation on account of retrenchment. Further as per his own admission the applicant's first representation is dated 30-5-87 whereas he had left service in February, 1975. Hence his case is time barred and the applicant cannot rely on <sup>the</sup> last reply of respondent no.2 dated 8-2-88(Annexure-G) for claiming to be within limitation.

3- We have examined the case. We are inclined to reject the argument of the case being time barred for consideration by this Tribunal because in this case the Railway Board has been making schemes and issuing instructions for reengagement of discharged casual labour subsequent to the Supreme Court's decision in the said Indrapal Yadav Vs. Union of India case, the judgment of which was delivered on 18-4-85. Further the NRPS 9349 which states that those discharged prior to 1-1-81 could also be considered on the conditions mentioned therein was issued in September, 1987. The applicant's first representation is dated 30-5-87 which was made when he came to know

Under



A2  
3

that those appointed after him as casual gangmen had been reengaged. This was followed by other representations including the one dated 21-1-88 (Annexure.F) in which he had advanced the argument that even those disengaged prior to 1-1-81 could be considered for reengagement vide the said NRPS 9349 issued in September, 1987. If we examine his representations with reference to the date of issue of this instruction of September, 1987 which is one of the grounds on which he had sought reengagement then the case could be considered as one within the limitation period. Hence we examined the case on merits. An argument of the respondents for not reengaging the applicant is that since he had left service of his own accord as proved by the entry on his labour card which was issued to the applicant, he had lost his claim to be borne on the live casual labour register since only those were retrenched were eligible to be borne on this register. A reading of NRPS 9349 mentioned above would show that the instructions regarding consideration of re-engagement of casual labour apply only to those who had been 'discharged'. Since this was not a case of discharge but of leaving "at <sup>his</sup> own accord," these instructions would not apply to the applicant. Although the applicant has stated in para-6(i) of the application that he was "discharged, without notice and without retrenchment compensation," he has not been able to produce any evidence in support of this statement which is contrary to the written entry in his labour card. During the hearing of the case, the counsel for the applicant could not also give any evidence to the effect that he had ever challenged or represented against this entry in the labour card. In para-3 of this Rejoinder Affidavit he has stated that the entry in the labour card was wrongly made as the labour card remains in the custody of the respondents

Uhh



A2  
4

:4:

who could make any entry they liked. This statement is contradictory to his statement in para-6(i) of his application that the labour card had been issued to him. Further the fact that he has himself attached a photocopy of the card as Annexure-A to his application shows that the card was in his possession. Hence we do not accept the statement in para-3 of his rejoinder that the card always remained in the custody of the respondent No.4 "who" might write anything in the card". As per his own admission in para-6(i) of the application the card had been issued to him. Therefore, he was free to challenge any wrong entry therein; but no evidence was produced that he had ever done that.

4- In view of our examination as recorded above we do not think that the applicant can claim any right to be borne on the live casual labour register. Hence the application is dismissed. No order as to costs.

*Uth Sen*  
MEMBER -A

*Amo*  
MEMBER -J

DATED: Allahabad December 14, 1993.

(IS PS)