

RESERVE

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad this.....^{7th}.....day of June.....1996

C ORAM: Hon. Dr R.K. Saxena, Member (J)
Hon. Mr D.S. Baweja, Member (A)

ORIGINAL APPLICATION NO. 899 OF 1988

Salji Ram s/o Kuber Ram, Temporary Waterman under
Station Supdt., Northern Railway, Kanpur Central - Applicant
(By Advocate Sri Anand Kumar)

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi
2. Divisional Railway Manager, Northern Railway, Allahabad
3. Divisional Personal Officer, Northern Railway, Allahabad
4. Sr Divisional Commercial Superintendent, Northern Railway,
Allahabad
5. Station Superintendent, Northern Railway, Kanpur (Central
... .. Respondents
(By Advocate Sri N.K. Verma)

ORDER

(By Hon'ble Mr D.S. Baweja, Member (A))

The applicant was appointed as a Casual Labour under Bridge Inspector (Special) in Northern Railway, Varanasi, on 1.10.1976 and worked upto 15.12.1976. Subsequently he was again appointed as a casual waterman on 1.5.1982 under Station Supdt., Northern Railway, Kanpur. He worked there on being engaged as a Ho^g Weather waterman every year upto 15.8.1987 completing 50^g days working as casual waterman. He attained the status of temporary railway employee on 10.5.1983. The details of his working have been annexed as Annexure-A of the application.

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2. The applicant applied for engagement as a Hot Weather waterman for the year 1988 and his name was included in the list at Serial No. 33 of those, who were selected for engagement ~~at serial~~ and issued by the Sr. Divisional Commercial Supdt., Northern Railway, Allahabad. However, the Station Supdt., Northern Railway, Kanpur, did not allow him to join. The applicant represented and also personally met the Station Supdt., Kanpur. However, he was told that his case has been referred to the Divisional Office~~r~~ and only on getting reply, the applicant will be engaged. The applicant was ^{not} engaged as a ^{Hot weather} temporary waterman in April 1988. Disallowing the applicant and treating the applicant as discharged is in violation of Para 2511 of Chapter XXVIII of Indian Railway Establishment Manual as well as Section 25 F of the Industrial Dispute Act 1947.

3. The applicant was also called for screening for absorption against regular Group 'D' vacancies of Traffic and Commercial Department, and the applicant was screened on 22.12.1986. The Provisional Panel was issued on 24.9.87 (Annexure C) but the applicant's name did not feature in the panel, while juniors to the applicant and fresh ^{faces} ~~forces~~ have been included in the panel. The applicant is also scheduled caste and is entitled for absorption in regular Group 'D' vacancies against the quota of reservation. The applicant has also appeared in the subsequent screening on 21.4.1988 against the shortfall of reservation quota in Group 'D' Vacancies for schedule caste and scheduled Tribes. This screening was, however, stayed as per direction containe^d in O.A.No. 506/1988,

4. The applicant made representation against non-inclusion of his name in the provisional panel dated 2.11.1987 but no reply has been received.

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The applicant has sought the following relief:-

- (a) Direct respondents to include the name of the applicant in the provisional panel of Group 'D' vacancies of the Traffic and Commercial Department dated 24.9.1987 and he be posted against the vacancies of group 'D' category.
- (b) To direct the respondents to absorb the applicant ~~against~~ alternately against the short fall vacancies in Group 'D' category against reservation quota of Schedule Caste / Schedule Tribe and to direct to declare the result of screening done on 21.4.1988 and give due seniority and position to him at par with the fresh recruits.
- (c) Issue directions to allow the applicant to be engaged as a waterman in terms of Sr. Divisional Commercial Supdt.'s letter dated 28.4.1988 and arrange to pay the arrears of the wages.

5. The respondents in the counter-affidavit have admitted that the applicant had been engaged as hot weather waterman for the year 1982-83, 1984-85 and 1985-86. Some of these watermen participated in illegal 'Dharna' in front of DRM's Office on 25/26.5.1986, which included the applicant also. Those who participated in 'Dharna' were discharged from service with effect from 29.5.1986. Administration decided in 1987 that those of Hot Weather watermen whose record is bad should not be engaged during the ensuing hot season of 1988. This condition was applied in the interest of discipline and suitable instructions were issued vide letter dated 28.4.88 order dated at CA-1. The applicant applied for engagement in 1988 and his name was included in the list ^{of} approved watermen

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for engagement. However the engagement was not done in view of the directions contained in the circular issued at CA-I and referred to above. Therefore this was no ^{willful} ~~waiver~~ ~~fare~~ disallowing engagement by the lower authority. It is admitted that screening was done in the month of December '86. The screening was confined to those who worked on the Division prior to 1.8.78 for regular absorption against group D vacancies of Traffic and Commercial Departments. The candidates were asked to submit their working proof at the time of screening which was verified by a team of authorised Inspectors. The applicant did not submit certificate of his being engaged by the Bridge Inspector in 1976. Further he was not engaged in 1976 in the Allahabad Division and therefore any working prior to 1.8.78 was not counted. Therefore the applicant was not selected. It has also further been averred that the selection for group D post against shortfall quota of reservation ^{was a} ~~were~~ separate selection and to the mention of the other selection is merely an attempt to confuse the issue.

6. Heard the learned counsel for the applicant. Counter and rejoinder affidavits have been filed. On the date of hearing the learned counsel for the respondents was not present. As per the last order, it was stipulated that if the Counsel for the respondents does not appear, the matter will be decided on merits. In view of this we proceed to hear the case with the counsel of the respondents being not present.

7. Two issues have been raised by the applicant. One with regard to nonengagement as a hot weather waterman from April 1983 and the other is with respect to the screening for regular absorption against the group D vacancies of the Traffic and Commercial Department as well as against the shortfall quota of reservation for scheduled caste and scheduled tribes.

8. Taking the first issue, it is admitted fact that

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the applicant had been regularly engaged every year from 1982 till 1985 as hot weather waterman. It is submitted by the respondents that in 1986 due to participation in ' Dharna ' by some hot watermen, their engagement was discontinued from 29.5.1986 which included the applicant. On the other hand the applicant has averred that after enquiry it was found that the applicant was falsely included in the list of the watermen, who had participated in 'dharna' as will be clear from the letter dated 24.5.88(Annexure-II of the Rejoinder Affidavit). The applicant was continued to be engaged during 1986 and was also ^{engaged} during 1987. His name was also included in the list finalised for 1988. This is also quite clear from the certificate of working issued by Station Superintendent, Kanpur, at ANNEXURE-A. This is also substantiated by the fact that his services were not terminated for participation in ' Dharna ' as his name was included in the list of those screened on 24.9.87. ^{12.86} If he was disengaged, then how his name was included, in 'Dharna'. From the working details furnished by the applicant at ANNEXURE-A, it is seen that he worked in 1986 for 45 days only when compared with more than 100 days in the earlier years. It is obvious that the applicant was discharged from the service in 1986 and this confirms the contention of the respondents that his services were terminated on 29.5.86. For the year 1987 from the certificate of ANNEXURE-A he was engaged for 8 days ^{only} from 8.8.87 to 15.8.87. It is noted that in the earlier years for the summer season, the engagement was being done during May to August. He was engaged for a few days in 1987 ^{in August only} perhaps in terms of the letter from the Area Officer, Kanpur, at ANNEXURE-II of the Rejoinder. The respondents have not controverted th

by filing a suppl. counter to the rejoinder. In view of these circumstances, the applicant's contention that he was engaged in 1987 also will have to be accepted.

The applicant has worked for more than 501 days as per Annexure-A and acquired the temporary status. The Services had been terminated from 29.5.86 for misconduct for participating in Dharna. But at the same time the applicant had been engaged in 1987. There is material on the record brought by the applicant to support his submission that he did not participate in the Dharna. Non engagement of the applicant during 1988 based on the order dated 28.4.88 of the respondents ~~was therefore~~ without following appropriate procedure as per the extant rules for terminating services is irregular, arbitrary and not sustainable in law. The applicant is therefore entitled for the relief of being engaged as Hot ^{Water} Weather Man. However we do not pass any order with regard to payment of the arrears as the appointment of the applicant was seasonal depending upon the requirement of Hot Weather Man. *in each season*

11. As regards the second issue of prayer for inclusion of his name in the provisional panel, the respondents have explained that those who had been engaged on the Division before 1.8.1978 were only considered for screening. Further the applicant did not bring the certificate regarding working details of his engagement in 1976 on another Division. Neither the applicant nor the respondents have produced the notification laying down the stipulation that only those who had worked on the Division before 1.8.78 will be ~~only~~ considered. Further the applicant has produced a letter dated 5.5.82 written by Station Superintendent Kanpur Annexure III to the rejoinder to Bridge Inspector

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Varanasi, On which the Bridge Inspector itself has certified the working of the applicant during 1976. This is stated ~~to be~~ ^{by} the applicant, ^{to be} in the possession of the respondent No. 5 and was also produced before the Screening Committee. The applicant has also submitted that juniors to him have been empanelled. However the names of the juniors have not been indicated to support his assertion inspite of the fact that the panel has been brought on record with the application.

The applicant was engaged at Kanpur on 1.5.82 on Allahabad Division after having worked during 1976. It is not averred by the respondents that as to how he was engaged ^{on Allahabad Division either} as a new face or his previous working in 1976 was taken into account ^{and} ~~and~~ engaged as an old face. In para 9 of the counter it is averred that screening was done for the particular Division covering those who had worked in the Division prior to 1.8.78. But at the same time in the same para, it is submitted that the certified version of the working with Bridge Inspector in 1976 was not furnished. If the applicant was not eligible for screening as per the criteria laid down, then it is not clear as to why at the first instance the applicant was called for screening then. The non production of verified previous service of 1976 before the screening committee will have no significance being eligible for screening. We are therefore unable to understand ~~that~~ ^{and} contradictory averments. The reasons advanced for ~~not~~ considering the name for inclusion in the panel are ~~therefore~~ ^{therefore} not convincing.

In view of these facts, we are of the opinion that the claim of the applicant for being placed on the panel declared on 24.9.87 needs a review after verifying the facts brought out by the applicant. We therefore direct that the applicant will furnish the details of the juniors who have been empanelled within one month of the date

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of judgement. The respondents will verify the same with reference to his working in 1976 certified by Bridge Inspector Varanasi (Annexure-III to the rejoinder) by the similar committee to be constituted for the purpose. If he is found eligible, then his name will be placed on the panel at the appropriate place and also absorbed in group D in his turn and if his juniors have been already appointed, then he will be also appointed forthwith. If he is not eligible to be considered for empanelment, then a reasoned reply shall be given to the applicant with reference to his representation dated 2.11.87 (Annexure-D). The action to comply these directions will be completed within four months from the date of the judgment.

12. The applicant has also made a prayer for declaring the result of screening done in 21.4.88 for filling up the reservation short fall quota. The applicant has himself submitted that the same has been challenged against O.A. 506/88 and the declaration of the panel has been stayed. In view of this we refrain ourselves to examine this issue and pass any order.

13. Considering the above facts, we partly allow the application. The applicant will be engaged as hot weather Waterman for the current season if the vacancy is available and his junior has been engaged and for subsequent years ^{if hot weather men are engaged} as due as per seniority. He will be also entitled to maintain his seniority as if he was continued to be engaged from 1988 onwards, with respect the engagement of his juniors. As regards the placement on the panel issued on 30.9.87, the direction as detailed above in para 12 will be followed.

No order as to costs.

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Member - A

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Member - J