

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

Allahabad this the 29th day of March 1995.

Original Application no. 1486 of 1992.

Hon'ble Dr R.K.Saxena, Judicial Member
Hon'ble Mr D.S. Baweja, Administrative Member.

1. Amar Nath son of Jaikaran, R/o Village Tiwaripur, Post Dubawal, District Allahabad.
2. Ram Adhar S/o Ganga Deen, R/o Village Tiwaripur, Post Dubawal, District Allahabad.
3. Chhote Lal son of Bhagirathi, R/o Village Tiwaripur, Post Dubawal, District Allahabad.
4. Ram Deen son of Shiv Nath, R/o Village Tiwaripur, Post Dubawal, District Allahabad.
5. Shiv Shankar Son of Kamata Prasad R/o Village, Tiwaripur, Post Dubawal, District Allahabad.
6. Chabinath S/o Data Deen, R/o Village Tiwaripur, Post Dubawal, District Allahabad.
7. Paras Nath son of Narmada Prasad R/o Village Jamunipur, Post Jamunipur, Allahabad.
8. Baij Nath son of Bhageru R/o Jamunipur, Post Jamunipur, Allahabad.

..... Applicants.

C/A Sri H.P. Pandey

Versus

1. Union of India through General Manager, Northern Railway, N.R. Baroda House, New Delhi.
2. Divisional Rail Manager, Allahabad Division, Allahabad.

3. Divisional Superintendent Engineer, Allahabad Division, Northern Railway, Allahabad.
4. Assistant Engineer, Permanent Works, Allahabad Division, Allahabad.

... Respondents.

C/R Sri Satish Chaturvedi.

ORDER

By Hon'ble Dr R.K.Saxena, Judicial Member.

These applicants who are 8 ⁱⁿ ~~Number~~ have filed this OA after seeking permission to file the OA jointly. Through this OA, they are seeking relief of being absorbed because juniors to them, have been re-employed by the respondents.

2. The brief facts of the case are that the applicants were employed as Casual labourers—some of them on 2.6.66 and some of them on 9.6.76 under the Divisional Superintending Engineer, respondent No. 3. They were posted with the Permanent way Inspector, Mirzapur and they had worked to the fullest satisfaction of the respondents. They also claimed to have worked regularly for more than 300 days. Their services were, however, terminated by P.W.I., Allahabad and Kanpur without showing any reason or without giving any notice therefor. They, were, however, not allowed to resume duties since 29.5.78. The contention of the applicants ^{is} ~~say~~ that the Railway Board had imposed ban on the fresh employment till the employees who had worked, were not absorbed. It is further averred that the junior casual labourers to the applicants were absorbed whereas the applicants' claim was ignored. It appears from the

pleadings that the respondents, vide letter dated 20th May 1985, had invited the applications for engagement of such casual labourers who had worked prior to 1.8.78. Accordingly the applicants had applied but to their utter surprise, their case was not considered. The applicants had been approaching the respondents particularly respondent No. 4 to allow them join their duties but nothing was done. According to their case, the representations dated 20.3.89 and dated 13.8.92 Annexure A-4 and A-5 remained pending but with no result. It is also the case of the applicants that they belong to Schedule caste and they have become over-age and thus they cannot get any job elsewhere. The ground taken by the applicants is also to the effect that they are workmen and the compliance of Section 25-E of the Industrial Dispute Act was not done. Hence, this OA with the relief that the respondents be directed to employ the applicants on the posts of Khalasis on which they had already worked for more than 240 days with artificial breaks here and there. They again emphasized that juniors to them had been re-engaged by the respondents and their claim was ignored.

3. This case was filed on 20.10.92 and was put up before the Bench on 6.11.92. It was then listed on 24.11.92, 8.1.93 and 16.2.93. It was on this date 16.2.93 that the notices were issued to the respondents to file Counter-reply within 4 weeks and RA, if any, within 2 weeks thereafter. The matter was listed on 23.4.1993 when it was discovered that the notices which were sent, were received back unanswered. The counsel for the applicants was, therefore, directed to furnish correct address. Sri Prasant Mathur, Standing counsel for the Railways was also directed to take notices and file reply within 4 weeks. The matter then adjourned to 5.8.93. A perusal of the order of 5.8.1993 shows that the counsel for the respondents had sought

2 weeks' time to file CA and it was granted. The matter was ordered to be listed for completion of pleadings before the Deputy Registrar (Judicial), and accordingly the matter remained pending with the Deputy Registrar (Judicial). No Counter was filed on 2.9.93, 5.11.93, 10.3.94 and 31.3.94. Then, the matter was listed before the Vice-Chairman on 21.4.94 for orders about its listing. The matter was then listed on 12.8.94 before the Bench when Sri Satish Chaturvedi, learned counsel for the respondents appeared and raised preliminary objection that no cause of action was there for of the applicants to join the petition. It was held that there was no merit in the objection and therefore, it was rejected. The applicants were permitted to join as co-applicants. On the request of learned counsel for the respondents, however, one month's time was granted to file Counter-reply and thereafter rejoinder, if any. The matter was then ordered to be listed on 24.10.94. Accordingly, it was listed on 24.10.94, 13.12.94, 31.1.95, 5.4.95, 25.5.95, 28.8.95 and 1.11.95. On none of the dates, Counter-reply was filed. Sri Satish Chaturvedi, learned counsel for the respondents appeared on 25.5.95 and contended that despite repeated reminders to the department, neither the parawise comments were sent nor any instructions for filing Counter-reply were received. Any way, the result is that during this period from the date of institution of OA upto 1.11.95 when the arguments of the learned counsel for the applicants were heard, no Counter was filed. Sri Satish Chaturvedi did not appear after 25.05.1995 and he was not present on 1.11.1995 when the arguments were heard. Thus, we were deprived of the Counter-version of the respondents and the arguments from the side of the respondents on facts and legal points raised by the

applicants.

4. The facts, as are set out earlier, do reveal the case of the applicants that they had worked as Casual labourers from the year 1976. They have also asserted that they had worked more than 300 days. They claimed to have acquired status on Temporary Railway Servants. The Photostat copy of the judgment of OA No.439 of 1992 Baba Deen and others V/s Union of India and others decided on 11.1.1993 by this Bench, has also been brought on record.

5. The main question in this case is whether the applicants are entitled to get any relief particularly when they were not allowed to resume the duties since 29.5.1978. There is nothing on record which may show that the non-resumption of duties from 29.5.1978 was in any manner challenged or agitated by the applicants. Besides, it has also been claimed that the respondents had invited applications in the year 1985 for employment but their names were not shown in the panel. The applicants have failed to bring any evidence on record of the said panel. Even if we take into consideration the date 29.5.1978 when they were put off the duties or year 1985 when their names were not found in the panel, we find that this OA is barred by limitation because it was filed in the year 1992. It means that it was filed after 14 years from the date of the ~~their~~ having been put off the duties, and 7 years after the names were not found in the alleged panel. No explanation for this delay has been shown. Also there is no application for condonation of delay. Thus, we can not allow the OA to be entertained for decision despite fact that no counter-reply has been filed. The OA is dismissed accordingly. No order as to cost.

Shrivastava
Member (A)

D. D. Dandekar
Member (J)