

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH,

ALLAHABAD.

Allahabad this the 3rd day of July 1997.

ORIGINAL APPLICATION NO. 1626 OF 1992.

CORAM : Hon'ble Dr. R.K. Saxena, J.M.

Hon'ble Mr. D.S. Baweja, A.M.

Ram Lal, son of Phagu, aged about 36 years,
Working as C.P.C Gangman under Control of P.W.I.
N. Railway, Chunab, District-Mirzapur.

..... Applicant.

Counsel for the applicant Shri O.P. Gupta.

Versus

1. Public Way Inspector, N. Railway, Chunab,
Mirzapur.

2. Divisional Railway Manager,
N. Railway, Allahabad.

3. Union of India through General Manager,
N. Railway, Baroda House, New Delhi.

..... Respondents.

Counsel for the Respondents Shri K.D. Pandey.

ORDER

Hon'ble Mr. D.S. Baweja, A.M.

1. Following reliefs have been prayed for through
this application :-

(i) To direct respondents to regularise the
applicant as Group 'D' employee from the date his
juniors are empanelled in Group 'D'.

(ii) To direct respondents to grant all the consequential benefits on being empanelled as Group 'D' including payment of arrears.

2. The applicant has stated his case as follows. The applicant was engaged as Casual labour on 20.8.74 under Permanent Way Inspector, Northern Railway, Chunaw, Mirzapur. The applicant was granted temporary status from 9.3.1981. The applicant since engagement on 20.8.74 has worked ^{for} about 5000 days. In 1985 screening was done for regularisation of casual labour by the Divisional Engineer, Northern Railway, Mirzapur. The applicant was not placed on the panel though juniors to the applicant with less number of days of working were empanelled. He represented against the same but did not get any response. Thereafter screening was done again in 1989 and panel was issued on 17.8.89. The juniors with 3000 days of working on 1.5.88 were empanelled and the applicant with 4027 days was left out. Here again the applicant represented but no action was taken on his representations. There was a screening again in 1992 and the name of the applicant was again not considered and juniors to him were placed on the panel notified on 26.8.1992. The applicant represented against his non inclusion of the name in his panel but with no success. Being aggrieved, this application has been filed on 12.11.1992 alleging the action of the respondents as malafide and arbitrary.

3. The respondents in the counter reply have admitted the engagement of the applicant as Casual labour on 20.8.1974 and granting of temporary status from 9.3.1981. The respondents further submit that applicant was considered by the screening committee in 1985, 1989 and 1992 and was not found fit for regularisation in Group 'D'. In view of this, the question of including his name in the panel did not arise. His plea that juniors have been empanelled is also tenable. During hearing, the respondents strongly opposed the application as being barred by limitation.

4. The applicant has filed the rejoinder reply refuting the averments of the respondents. It is also submitted that for screening of Casual labour, no written examination is conducted and the same is to be based on seniority and suitability and, therefore, the question of failing in the screening test did not arise.

5. We have heard Shri O.P. Gupta and Shri K.D. Pandey learned counsel of the applicant and the respondents respectively. We have given careful consideration to the arguments advanced during the hearing and the material on record.

6. Before considering the application on merits, we will go into the issue of limitation raised by the respondents. From the averments of the applicant, it emerges that he was not placed on the panels formed after screening of the Casual labour in 1985, 1989 and 1992. The applicant has prayed for a relief " to direct respondents to regularise the applicant as regular

Group 'D' employee w.e.f. the date his juniors referred above are empanelled". Though the applicant has alleged that the juniors to the applicant have been empanelled in all the three panels referred to above, but applicant in para 5 of the original application has furnished only the names of a few juniors who had been empanelled in the screening held in 1989. No details of the juniors have been indicated for the panels made in 1985 and 1992. The present application has been filed on 12.11.1992. From the facts detailed earlier, it is clear that the applicant has prayed for being placed on the panel of 1989. Therefore, the cause of action arose in 1989 when he was not placed on the panel and with this reference, the present application is time barred. The application has not come out with any reasons for delay in filing the application when he was not empanelled first time in 1985 and then in 1989. In the light of these considerations, we accept the submission of the respondents that the applicant is barred by limitation and hence not maintainable on this ground alone.

7. Irrespective of the findings recorded above, we are going into the merits also as the matter had been heard. The respondents have admitted the engagement of the applicant as a Casual labour on 20.8.1974 and grant of temporary status from 9.3.1981. The respondents have also admitted that the applicant was considered for screening in 1985, 1989 and 1992. The main submission of the respondents is that the Divisional Screening Committee did not find the applicant fit for empanelment in all the three screenings referred to above. The respondents contend that in addition

to seniority based on the number of working days, the Committee has to determine the suitability for regularisation against Group 'D' post. The applicant in the rejoinder reply has repelled this contention of the respondents stating that no written examination is involved in the screening and, therefore, the question of failing in the screening test did not arise. The applicant has further argued that the screening test is to be passed based on seniority and suitability and the applicant was senior enough with very good work and conduct and, therefore, deserved to be declared successful. From these rival contention, it clearly emerges that the issue involved is not the seniority of the applicant based on the working days but being not found suitable by the Screening Committee. The applicant has averred that he made a representation dated 13.0.1989 followed by two reminders on 4.6.1990 and 21.9.1990 against his non empanelment in 1989. Similarly he states that he made a representation dated 26.10.1992. The copies of the representations have been brought on record at A-1, A-2 and A-3. The respondents have denied having received any of these representations. If the version of the applicant is believed, it could be taken that the applicant was not aware of the reasons as to why his name had been ignored inspite of being senior. However, the respondents have disclosed in the counter reply the reasons for non inclusion of the name of the applicant in the panels. Once the applicant had come to know of this, then the issue of challenge is the proceedings of the Screening Committee which declare the applicant unsuitable. The seniority then does not remain the basis of the

plea that the juniors to the applicant have been empanelled. We note that the applicant had not sought any amendment to the reliefs prayed for to challenge the recommendations of the screening Committee and praying for quashing of the same. In such a situation, there is no merit in the application on the ground that the juniors with less number of working days have been empanelled. To grant reliefs prayed for, the applicant will have to be declared suitable for being placed on the panel which would imply that either the recommendations of the screening Committee are quashed or direction issued to reconsider the case of the applicant by the screening Committee based on the merits of this issue. In view of what has been said earlier, we are constrained to go into the merits of this issue in the absence of the specific relief prayed for.

8. In the light of the findings recorded above, we hold that not only the application is barred by limitation but is also devoid of merits. The application is accordingly dismissed. No order as to costs.

MEMBER (A)

MEMBER (J)

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Am