

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLD. BENCH,
ALLAHABAD

DATED :- ALLD. ON THIS 19/12 DAY OF DECEMBER, 1997

CORAM :- HON'BLE MR. JUSTICE B.C. SAKSENA, V.C.
HON'BLE MR. D. S. BAWEJA, MEMBER(A).

ORIGINAL APPLICATION NO. 246 OF 1992

Prakash Kumar aged about 32 years S/o
Sri Ram Naresh Upadhyay R/o 8/16 Lowther
Road, George Town, Allahabad.

.... Applicant

C / A :- Shri Satish Dwivedi

Versus

- (1) Union of India through General Manager,
Northern Railways, Baroda House, New Delhi.
- (2) The Divisional Railway Manager,
Northern Rly., Nawab Yusuf Road,
Allahabad.
- (3) The General Manager, Railway
Electrification, Nawab Yusuf Road,
Allahabad.

.... Respondents

C / R : - Shri A. Sthalekar

O R D E R

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

This application has been filed with a prayer that order dtd. 19.11.89 conveyed to applicant on 07.02.91 be quashed and respondents be directed to include the name of the applicant in the Live Casual Labour Register and further services of the applicant be regularised in accordance with the judgment of the Hon'ble Supreme Court in the case of Indra Pal Yadav and Dakshini Railway Employees Union.

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(2) The applicant submits that he was engaged as Casual labour w.e.f.01.11.75 to 16.11.76 and from 19.11.76 to 10.01.77 for a period of 434 days under Sr.Divisional Operating Supdt.,Railway Electrification,Aligarh. The applicant had been issued casual labour card for this working. The applicant having worked continuously for more than 120 days acquired temporary status and applied for regularisation of his services in Group 'D'. He was called for interview on 15.03.83 for screening. After being successful, he was subjected to medical examination and the applicant's name appeared at serial no.56 of the panel declared. The applicant was not given appointment and when he came to know that the person junior to the applicant was given appointment,he made a representation against the same in 1986. Having received no response, the applicant filed O.A.No.242 of 1987 Prakash Kumar V/s Union of India & Others. This O.A.was dismissed as barred by limitation. However, it was directed that in case the applicant puts in a request, the respondents will examine the case of the applicant for absorption in accordance with the scheme for absorption of casual labour introduced in the light of Hon'ble Supreme Court's order and decide the case of the applicant in accordance with the parameters laid down in the scheme. The applicant accordingly made a representation on 19.08.88 for consideration of his case for absorption. However, since the representation of the applicant had been not disposed of, applicant had filed contempt application no.14 of 1989 Prakash Kumar V/s.Arvind Kumar, Divisional Rly.Manager,Northern Rly.,Allahabad and others. This contempt application was dismissed as per order dtd.11.04.91 on the ground that the representation of the applicant had been disposed of on 19.10.89 and was communicated to the applicant on 19.11.89. The contention of the applicant is that he came to know of the order dtd.19.11.89 only on 17.02.91 when the opposite party filed counter reply in the contempt application. The contents of the order dtd.19.11.89 were neither communicated to the applicant nor a copy of the same was served on the applicant. Being aggrieved by rejection of his representation as per impugned order dtd.19.11.89, the present application has been filed on 18.02.92. The main thrust of the grounds advanced by the applicant seeking reliefs is that the applicant is entitled for regularisation in terms of direction contained in the Judgment of Hon'ble Supreme Court in the case of Indra Pal Yadav as well as Railway Board's circular dtd.12.03.87. The applicant has also cited support of order dtd.30.03.91 of this Tribunal in the O.A.No.645 of 1990 Omkar Nath Pandey V/s Union of India & Others.

(3) The respondents have filed counter reply and at the outset opposed the application on the plea that it is barred by limitation. The respondents admit working of the applicant as a casual labour in the Railway Electrification Organisation,as

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claimed by the applicant. The respondents have submitted that the case of the applicant, as directed in the order dtd.13.07.88 in O.A.No.642 of 1987, has been examined as per the extant instructions laid down by the Railway Board in compliance with the judgment of the Hon'ble Supreme Court in Indra Pal Yadav's case. The applicant had been not engaged at any time after 01.01.81 and, therefore, his name could not be kept in the Live Casual Labour Register. The respondents submit that the applicant was conveyed the speaking order passed on representation on dtd.19.11.89 and his contention that he had no knowledge of this letter is wholly incorrect. The respondents further contend that the application for similar relief had been rejected as per the order passed in O.A.No.242 of 1987 and the applicant has filed the present application with an attempt to revive the old issue again. The respondents, in view of these submissions, plead that the application has no merit and deserves to be dismissed.

(4) The applicant has filed rejoinder reply. The applicant while controverting the submissions of the respondents have submitted that policy circular no.8989 of Northern Rly relied upon by the respondents has been subsequently modified by the Railway Board in view of the decision of the Hon'ble Supreme Court and those of the casual labour, who were working prior to 01.01.81 were to be also brought on the Live Casual Labour Register and preference given to such casual labour in the matter of regularisation.

(5) On 27.11.97 no one responded on behalf of the applicant. In the Misc.Application no.2951 of 1997, the applicant had prayed that the O.A. be disposed of finally at the stage of admission. We accordingly proceeded to hear Shri A.Sthalekar, learned counsel for the respondents in the absence of the learned counsel for the applicant.

(6) The material brought on record has been carefully gone through.

(7) Before going into the merits, we will first consider the plea of limitations raised by the respondents. The applicant has filed the present application challenging the impugned order dtd.19.11.89 as per which the representation made by the applicant in pursuance of direction contained in the order dtd.13.07.88 in the O.A.No.242 of 1987 had been rejected. The applicant has taken a plea that the applicant came to know of disposal of his representation as per order dtd.19.11.89 only when counter reply was filed by the opposite party in the contempt application no.14 of 1989 filed by the applicant for non-compliance of the order in O.A.No.242 of 1987. The respondents have contested this plea of the applicant stating that the order dtd.19.11.89 was communicated to the applicant.

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The respondents, however, have not brought on record any documentary evidence indicating as to how order dtd.19.11.89 was communicated to the applicant. Keeping this in view, a benefit of doubt should go to the applicant and, therefore, we agree that the applicant came to know of disposal of his application through counter affidavit filed in the contempt application. Taking this as a reference, we are of the opinion that the application filed on 18.02.92 is not barred by limitation.

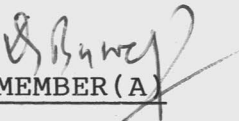
(8) Coming to the merit of the case, only ground advanced by the applicant in seeking reliefs prayed for is that his case is covered by the judgment of Hon'ble Supreme Court in the case of Indra Pal Yadav and the circular dtd.02.03.87 issued by Railway Board in pursuance of directions in judgement of Hon'ble Supreme Court in the Indra Pal Yadav's case. We have carefully gone through the judgment of Indra Pal Yadav's case and find that the contention of the applicant is not valid. In this judgment the ~~Scheme~~ ^{Project} prepared by the Railway Board concerning casual labour had been considered and the same was approved with a modification that the cut off date will be 01.01.81 instead of 01.01.84 proposed by the Railway Board. The ~~circular~~ ^{scheme} prepared by the Railway Board and modified by the Hon'ble Supreme Court was applicable to those casual labour who were in service as on 01.01.81. Since the applicant was not in service as on 01.01.81, the applicant is not covered by the judgment in the Indra Pal Yadav's case. The applicant has referred to circular dtd.12.03.87 at A-11. ^{circulating Railway Board's letter dated 2-3-87} This circular has been issued by North Eastern Rly. and not by Northern Railway. This letter of Railway Board clearly brings out that in pursuance to direction given by Hon'ble Supreme Court in their order dtd.23.02.87 in Writ Petition no.332 of 1986, the case of project casual labour, who had worked before 01.01.81 and discharged due to non-availability of further work should also be considered for the purpose of implementation of this scheme as laid down in the earlier orders of Ministry of Railways dtd.01.06.84 & 25.06.84 and as modified by letter dtd.11.09.86. As per provision of this letter, it was clearly provided that such of the casual labour, who had worked prior to 01.01.81 and not worked any time thereafter have to make an application with documentary proof of having worked as a casual labour so as to reach the concerned Divisional Office on or before 31.03.87. The applicant's case is covered by this circular as the applicant had worked before 01.01.81, as admitted by the respondents and had been not engaged any time subsequently. Though the applicant has relied upon this circular but the applicant has not made any averments ~~that~~ in pursuance of this circular, the applicant had submitted the representation as per the stipulated date of 31.03.87. Para no.5 of the circular dtd.02.03.87 clearly provides that any application reaching the concerned office after 31.03.87 shall not be considered. Since

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the applicant has failed to make representation as per the stipulated date, the applicant is not entitled to claim benefit of this circular for including his name in the Casual Labour Live Register and also for absorption/regularisation.

(9) The cited judgment of this Bench in the O.A.No.645 of 1990 dated 30.09.1991 at A-12 is of no help to the case of the applicant in view of the clear law laid down by the Hon'ble Supreme Court in the case of Indra Pal Yadav and subsequently in the Writ Petition no.332 of 1986 as per which the Railway Board's Circular dated 02.03.87 was issued.

(10) In the result of the above, we are unable to find any merit in the application and the same is dismissed accordingly. No order as to costs.


MEMBER (A)


V.C.

/rsd/