

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 485 of 1992

Allahabad this the 04th day of September, 2000

Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. S.K.I. Naqvi, Member (J)

Manmohan Dhuriya, aged about 31 years, Son of
Babu Duli Chand, resident of Chawni Chauraha,
Banda.

Applicant

By Advocate Shri A.K. Dave

Versus

1. Union of India through General Manager,
Central Railway, Bombay V.T.
2. Divisional Railway Manager, Central Railway,
Jhansi.
3. Station Superintendent, Banda.

Respondents.

By Advocate Shri Prashant Mathur

O R D E R (Oral)

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

This application has been filed under
Section 19 of the Administrative Tribunals Act,
1985 for a direction to the respondents to con-
tinue the applicant in employment and post him
on permanent ^{basis} ~~side~~, setting aside the order of
removal/ termination of the applicant.

2. The applicant has claimed that he has been working as Casual labour since 06.7.89 (amended by learned counsel for the applicant to 06.7.79 during his arguments on the basis of annexure no.1). He has claimed that he was declared as Monthly Rated Casual Labour on 15.4.1987 and had till his termination on 7.8.90 put in 1759 days of work. He claims to have been called for screening to be held around 13.4.1987, and also subjected to medical examination, and was declared fit. He was subsequently thrown out of employment w.e.f.07.8.90 by Station Superintendent, Banda without following mandatory provisions of 2512 of Indian Railway Establishment Manual. He has claimed relief in the backgrounds of these facts.

3. The arguments of Shri A.K. Dave, learned counsel for the applicant and Shri P. Mathur, learned counsel for the respondents have been heard.

4. Learned counsel for the respondents states that the applicant had worked for a period of 982 days between 1979 to 1987. He has drawn attention to annexure C.A.-7, which is notional seniority list and which shows that the applicant had put in 982 days of work till 31.12.1986. The respondents have denied that the applicant was subjected to screening. He states that screening of Commercial department of casual labour was conducted in the year 1988 and the screened

casual labour had not yet been absorbed against regular vacancy till the date of filing of the C.A. on 25.1.1993. He has stated that the applicant's name has been included in the Live Register of Casual Labour and his case will be considered for absorption and regularisation in the department as per his turn.

5. Learned counsel for the respondents vigorously states that the application is time barred as the cause of action had arisen in the year 1987 and the application is being filed in the year 1992. We do not know how the learned counsel for the respondents has found out this date of 1987, when he himself admits in the counter-affidavit that the services of the applicant was dispensed with w.e.f. 07.9.90. The applicant being casual labour would have waited for consideration of his case by the respondents. The applicant claims to have filed his representation on 23.11.1991 (annexure A-7), when he was not paid any heed by the respondents, he filed this O.A. Under the circumstances, we condone the delay in filing the O.A.

6. Although there is denial of the respondents that the applicant was screened in the year 1988. It is clear from annexure A-3 that a Special duty pass had been issued to the applicant on 20.4.1987 for journey from Banda to Jhansi and back, and the purpose of his journey is mentioned as for purpose of screening. Thus, the applicant

had spent time between 20.4.87 to 30.4.87 at Jhansi for the purpose of screening. The respondents have not explained as to why the applicant was issued Special Duty Pass in the year 1987. They merely said that the applicant was found fit in B-1 medical category, which entitled him to work as Waterman. It has also been stated by the learned counsel for the respondents that the medical certificate mentions in its body that the certificate was for appointment for Waterman and, therefore, it was not a regularisation against a group 'D' vacancy in Commercial cadre.

7. Lastly the period of 1759 days which is said to be upto 07.8.90, has been certified by the respondents to be merely a period of 958 days upto 31.12.1986. The respondents have clearly not taken into account the services of the applicant after 31.12.1986 in their counter-reply. The respondents have mentioned that the services of the applicant were dispensed with because he was working as substitute and the post of Goods Operator on which he was working as Substitute, were surrendered and the D.R.M., Jhansi directed respondent no.3 to dispense with the services of the applicant. The applicant has claimed that he was declared as Monthly Rated Casual Labour w.e.f. 15.4.1987. We have taken the facts given by the parties into consideration. It appears that the screening in 1987 was done to confer the temporary status on the applicant and not for purposes of regularisation.

because the screening was done in April, 1987 and the applicant has conferred temporary status w.e.f. the same month. Hence, it has not been established that the applicant was screened for absorption against ground 'D' post.

8. The applicant claims that he was conferred temporary status w.e.f. 15.4.1987 and yet he in annexure-1 to his O.A. claims work of 119 days in July, 1987 and 119 days in 1988 from May to 28 July, 1988 and 7 days of work as Goods Operator on 31.12.1988 and 09 days of work as Goods Operator on 11.1.1989, and thereafter he worked as Goods Operator from 30.8.89 to 07.8.90 as per annexure-A.

9. Under the circumstances, we direct the respondents to take his period of total work into account and consider him for regularisation based on total number of days of work put in.

10. Learned counsel for the respondents has mentioned that the applicant can ^{not} be absorbed against the vacancy in commercial department. Since there is a list drawn division wise and vacancies of post which do not require ^{special skills} ~~particular skills~~ in group 'D' post arise from time to time, the applicant shall be considered against the post which may arise as per his seniority in the divisional list. The order shall be carried out within 3 months from the date of communication of this order by the applicant ^{to the respondents}. No order as to costs.