

Open Court

Central Administrative Tribunal,  
Allahabad Bench, Allahabad.

Dated: Allahabad, This The 16th Day of March, 2000.

Coram: Hon'ble Mr. S. Dayal, A.M.

Hon'ble Mr. S.K.I. Naqvi, J.M.

Original Application No. 59 of 1992.

Mool Chandra  
son of Munshi  
R/O village Khanhaila,  
P.O. Khanhaila,  
Distt. Kanpur Dehat.

. . Applicant.

( By Sri Bhuvneshwar Prasad, Adv.)

Versus

1. The Union of India, through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. Divisional Engineer, Northern Railway, D.R.M. Office, Allahabad.
4. Asstt. Engineer, Northern Railway, Etawah.
5. Permanent Way Inspector, Northern Railway, Etawah.

. . . Respondents.

(By Sri G.P. Agarwal, Adv.)

Order ( Open Court)

By Hon'ble Mr. S. Dayal, A.M.

This O.A. has been filed with a prayer for direction to the respondents to appoint the applicant in his substantive post from the date



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he was thrown out of the job and to pay his full salary with arrears.

2. The applicant has mentioned that he was working in special gang under Permanent Way Inspector Etawah since 25.9.81. He states that he was allowed to work till 24.3.85 and was not given any work from 25.3.85 onwards. He states that his brother and sister-in-law died and therefor he went home and submitted application for leave on return. He submitted a number of applications to the respondents for being taken back on duty but to no avail. The applicant mentions that he made last representation on 16.5.91 and has filed this application after six months of making that application.

3. The arguments of Sri G.P. Agarwal for the respondents have been heard. The pleadings on record have been perused.

4. The respondents have mentioned that the application is highly time barred. They have also admitted that the applicant was directed by Permanent Way Inspector Etawah along with fit medical certificate under letter E/2/CL dated 6.10.81. They however mentioned that the applicant actually worked from 16.6.83 to 14.5.85 ( 314 days) and remained wilfully absent thereafter. He did not give any application for leave nor <sup>approached</sup> ~~lx~~ the office of the respondents. It is mentioned by the respondents that the applicant did not submit any application on return from leave in time and did not report to the office of respondent no.5. It is mentioned that

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the applicant was not given C.P.C. scale but was worked  $\frac{1}{30}$ <sup>th</sup> of the scale rate.

5. The main contention of the respondents is that the application is barred by limitation. They have in this connection relied on the judgment of the Apex Court in Union of India and others Vs. Pradeep Kumar Saxena (1996) 32 A.T.C. 70. This case, however, was of <sup>a</sup> Typist on daily wages. The Apex Court had mentioned in its order that the case of Indra Pal Yadav had no application in the said case. The Apex Court has however mentioned that an application made several years after engagement had discontinued should not have been allowed.

6. The learned counsel for the respondents has also relied on the case of Ratan Chandra Samanta and others Vs. Union of India and others A.I.R. 1993 S.C. 2276. This case relates to casual labourers of South Eastern Railway alleged to have been appointed between 1964 to 1969 and retrenched between 1975-78. It is mentioned in the judgment that after framing scheme for employing retrenched casual labourers in 1987, <sup>a</sup> letter was issued by Railway Establishment on 2.3.87 for employing casual labourers before 1981 which require representation along with documentary proof to reach the office of the Railways by 31.3.87. The applicants in this case made a representation only 1990. In this judgment it has been mentioned that the Apex Court would have been persuaded to take a sympathetic view but in the absence of any positive material to establish that the applicants were in fact

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appointed and working as alleged by them, it would not be proper to exercise of discretion. It is clear that besides limitation there were some other facts which were taken into account in rejecting the claim of the applicants.

7. In the case before us the applicant had been engaged and worked under Permanent Way Inspector as Gangman for almost four years as claimed by the applicant and 314 days as admitted by the respondents. The applicant claims that he had left his duties after 24.3.85 because of death of his brother and thereafter death of his brother's wife. He also admits that he did not return for quite sometime because he had to look after the minor children of the deceased brother. The applicant mentions that he had given the application to D.E.N. Etawah on 21.1.87 and thereafter made representations on 10.1.89, 20.1.90 and 16.5.91 copies of which have been annexed by him. The respondents have, however mentioned that the representations were not made to the Permanent Way Inspector under whom the applicant was working, and that no directions were received from the higher authorities for taking him back <sup>from 25.3.85</sup> onwards.

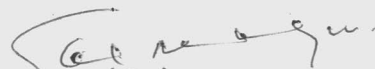
8. The applicant by virtue of leaving his job without taking leave and thereafter remaining absent for a number of months and then sending representations to higher authorities after a gap of further period of couple years or so can not claim the right to receive the appointment to the post. His averments make it clear that he was not




thrown out of job but had voluntarily left the job.

9. However, the Railways have an obligation to those who had performed work in the past and in case work of casual nature arises, the casual workers who had worked in the past should be given such work. The Railways have adopted system of maintaining Live Register for Casual Labours. The name of the applicant should have been taken in the Live Register for Casual Labour and the applicant offered work of casual nature from time to time as he had worked in the past, the casual workers who are entered in the Live Register of Casual Labour are also entitled to be considered for regularisation when vacancy arise in their turn. The applicant does not lose his right of being offered work of casual nature as well as, in case his turn comes, ~~he should~~ should be considered for regularisation and be given the benefit of such regularisation in his turn.

10. We, therefore, direct the respondents to include the name of the applicant in the Live Register for Casual Labour on the basis of days of work put in by him and consider him for regularisation as per rules on vacancies arising in <sup>the</sup> establishment. No order as to costs.

  
Member (J.)

  
Member (A.)

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