

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

DATED: The 16th of May, 1995

Original Application No: 88 of 1992

1. Ahmad Ali, S/O Mittil.
2. Sahmat Ali, S/O Teg Ali.
3. Hamin Ali, S/O Tej Ali.

All R/O Village Singhpur Karauli,
Post Kavalda, Tahsil,
Nautanva, District Maharajganj.

..... Applicants.

By Advocate Shri Wajid Ali
Versus

The Union of India through its General Manager
Northern Eastern Railway, Gorakhpur.

..... Respondents.

By Advocate Shri P. Mathur

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C O R A M

Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J

O R D E R

By Hon'ble Mr. T. L. Verma, Member-J

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This application under Section 19 of the Administrative Tribunal's Act has been filed for issuing a direction to the respondents to treat the applicants as on service as Khallasi w.e.f. 8.1.1988, pay salary to them for working 1,799, 1,820 and 1,810 days respectively and regularise their services on the post of Khallasi with all consequential benefits.

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2. The applicants were appointed as Casual Khallasis on 31.7.1977, 16.7.1977 and 1.3.1977 respectively at different places in the district of Gorakhpur. They were, thereafter, screened for permanent absorption and were empanelled vide order dated 7.9.1988 (Annexure A-4). According to the applicants, they were appointed subject to Police Verification by the aforesaid order. The applicants on receipt of the posting-cum-appointment order on 29.9.1988 reported for duty to the Assistant Engineer but they were not assigned any duty and were asked to come again. Although the applicants went on reporting for their duty but no duty was assigned to them. Being aggrieved with the behaviour of the Assistant Engineer, N.E. Railway, Lucknow they filed representations to the D.R.M. Gorakhpur and other concerned authorities vide Annexure A-9 and A-10. The grievance of the applicants is that juniors to them in the panel have been appointed and they have not been allowed to report to duty despite repeated representations. Hence, this application for the relief mentioned above.

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3. The respondents have resisted the claim of the applicants. The maintainability of the application has been challenged inter alia on the ground that the same is barred by limitation and also that the applicants never worked as Casual Khallasis as claimed by them, and that their screening was done on the basis of the (vague) ^{fake?} working certificate.

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4. We have heard the learned counsel for the parties and perused the record. The respondents have not disputed that the applicants were screened and empanelled. It has also not been disputed that the applicants have not been given appointment as per the letter of appointment - Annexure A-4. According to the respondents, the individual staff called for screening was required to furnish their details as to the work done by them so that their seniority could be fixed and detailed investigation for legitimacy of their initial appointment could be carried out for regularisation. It is further stated that the working certificate submitted by the applicants was forged and that they had not worked as Casual Labourers at the places mentioned in their working certificate. Learned counsel for the respondents submitted that as the applicants had obtained employment in the Railway Organisation by playing fraud, no right for regularisation or appointment had been created in their favour. Hence, this application was without jurisdiction.

5. The panel on the basis of which, the applicant is claiming a right for appointment/regularisation was issued on 27.9.1988, and the present application was filed on 20.1.1992 more than 4 years after the cause of action had arisen.

The application, it would thus appear, is prima facie, barred by limitation. The applicants have filed petition for condonation of the delay in filing this application. We have perused the application. The delay in filing this application is condoned for the reasons stated in the ~~application for~~ ^{the} delay condonation application.

6. In view of the above, the next question that falls for consideration is whether the respondents can deny appointment to the applicants on the ground that they had obtained employment on the basis of forged working certificates. In terms of the procedure prescribed in that behalf, Casual Laboures/Substitutes working in the Railways are considered for regularisation/absorption after due screening test. Screening envisages medical fitness verification of the services rendered as Casual Laboures/Substitutes in the Railway organisation. It is only after the service claimed by the Casual laboures/substitutes is verified and the incumbent is found medically fit empanellment is done. The preamble of the order dated 27.9.1988 mentions that the person empanelled have passed the screening test and also that they have been found medically fit for the jobs noted against their names. This pre-supposes service claimed by the applicants ~~was~~ were verified before they were empanelled. That being so, a right ^{has} ~~for their favour~~ ^{for} for being considered for appointment in preference to their juniors had been created in their favour.

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The respondents, therefore, could not have deprived them of the aforesaid right on the ground that they had obtained employment on the basis of forged working certificate without holding an inquiry and without giving opportunity to the applicants to explain their case. This, admittedly, has not been done. We ~~are~~, ^{being} therefore, satisfied that the respondents were not justified in denying the applicants of their right for ~~considered~~ for engagement/regularisation on the ground that they had obtained employment on the basis of the forged certificates.

7. In view of the above, we allow this application and direct the respondents to hold an inquiry into the allegation that the applicants obtained employment in the Railways on the basis of forged working certificates, within 3 months from the date of service of this order after giving notice to the applicants to present their respective cases and in case it is found that the working certificates on the basis of which employment was given to them were not forged, their cases for appointment/ absorptions may be considered w.e.f. the date, their juniors in the panel have been appointed. There will be no order as to costs.


Member-J


Member-A

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