

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Dated: 28.4.95

Original Application No: 967 of 1992

Amitabha Banerjee,
S/O Shri B.P. Banerjee,
325, Mohatshimganj,
Allahabad.

..... Applicant.

By Advocate Shri K.S. Saxena

Versus

The Union of India & Ors.

..... Respondents.

By Advocate Shri V.K. Goel.

* * * *

C O R A M

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

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 re-engagement of the applicant as temporary Class IV employee conferring temporary status w.e.f. 14.6.1985 and payment of salary at the required pay scale for a period from 14.6.1985 to 14.3.1989 minus wages already paid and for a direction for preparing separate panel for the Casual Labourers of a Mechanical Branch and regularisation of the services of the applicant on the basis of the panel so prepared.

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2. The undisputed facts of the case are that the applicant was appointed as Casual Labour on daily wages on 17.4.1984. He worked as such under the Chief Train Examiner, Chowki in different spells from 17.4.1984 to 22.6.1984, 23.4.85 to 15.8.85, 14.6.87 to 15.8.87 and 27.5.88 to 14.8.88. Thereafter, he worked for another 71 days under CWS (Kumbh Mela) Allahabad from 3.1.1989 to 14.3.1989. The applicant claims to have worked for a total period of 395 days. According to the applicant, by virtue of his having worked for 324 days at the same type of work at the same unit under the Chief Train Examiner, Chowki as and when productive work was available at that unit, ^{he has} acquired temporary status. He should, therefore, have been considered for absorption against ~~regular~~ group 'D' vacancy but the respondents, instead of doing so, have dis-engaged the applicant after 14.3.1989. The further grievance of the applicant is that screening of Mechanical department, Casual Labour at Allahabad Division has not been under taken whereas in Traffic Department it has been finalised and panel issued on 3.2.1990. In addition to the above, screening of Casual Labourers of the Engineering Department of Allahabad Division was also in process at the time, this application was filed. It is alleged that failure on the part of respondent No. 2 to take simultaneous action for preparing panel of casual labourers of Mechanical Department

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was violative of the provisions of the Article 14 & 16 of the Constitution. Hence, this application for the reliefs mentioned above.

3. The claim of the applicant has been resisted by the respondents. It has been stated in their written reply ~~filed~~th that the reliefs claimed by the applicants are barred by limitation inasmuch as the applicant was dis-engaged w.e.f. 15.3.1989 and this application has been filed in the year 1992 i.e. 3 years after the cause of action is stated to have arisen. It has further been alleged that the applicant had worked as Hot Weather Staff and that on the expiry of sanction for such engagement, he has been dis-engaged and also that as no other employee junior to the applicants has been appointed under C.W.S. or C.O.I. depo, the applicant has no cause of action for filing this application.

4. We have heard the learned counsel for the parties and perused the record. The learned counsel for the respondents has argued that the applicant not having worked for 120 days continuously, was not entitled to the benefit of para 2005 of the I.R.E.M. We are unable to accept this contention of the learned counsel

for the respondents. According to Clause 'D' of para 2003 of the I.R.E.M., on completion of works or for non-availability of further productive work, when casual labour on daily wages or in regular scale of pay or 1/30th of the minimum of scale + D.A. is discontinued and employed later, when work is available. Such *breaks* in service ^{*shall not count*} for the purpose of reckoning of continuous service of 120 days or 180 days or 360 days as the case may be. In the instant case, admittedly, the applicant was employed as Hot Weather Staff. His dis-engagement obviously, was on account of non-availability of productive work. That being so, the applicant is clearly entitled to be granted temporary status. So far as the question of limitation is concerned, the Principal Bench in Hukum Singh Vs. Union of India reported in 1993 (24) Administrative Tribunal Cases page 747 held that; Casual Labourers borne on Live Casual Labour Register have continuous cause of action. That being so, the application against discontinuance of service even though filed after a delay of 11 years will not be barred by limitation.

5. Since the applicant has acquired temporary status by virtue of his having worked as Hot Weather Staff in different spells for 324 days, he is entitled to the benefits as admissible to temporary Railway servants as allowed in Chapter 13 of the I.R.E.M. This however, does not

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conclude the matter. Even a casual labour who has acquired temporary status can be dis-engaged due to non-availability of work. The respondents have very clearly stated in their written reply that the applicant was discharged from service on expiry of the sanction along with other Hot Weather Staff. It has also been stated that no other casual labour junior to the applicant has been appointed or regularised under CWS/COI Depo. Again in para 9 of their Counter Reply, the respondents have averred that whenever any appointment is to be made by the Railway administration at the C.O.I., the unit to which the applicant belongs, his case shall be considered. The learned counsel for the applicant has not been able to bring to our notice whether persons junior to the applicant have been allowed to continue or that they have been subsequently re-engaged or that they have been screened and regularised. Hence, the applicant has no legitimate reason for grievance against the respondents.

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6. So far as prayer for payment of difference of salary of regular scale of Class 'D' post and wages paid to the applicant from 14.6.85 till 14.3.89 is concerned, it may be stated at the very outset that the claim of the applicant is not tenable because the appointment on a regular scale is made only after screening and finding the incumbent medically fit. Since

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the applicant admittedly, has not been screened and regularised on some group 'D' post, the question of allowing him pay and allowances of a regular group 'D' scale as prayed for is not possible.

7. In view of the foregoing conclusion, the next question that arises for consideration is whether the applicant is entitled to relief prayed for or not. Conferment of temporary status by itself, does not create any right for automatic re-engagement or regularisation. Re-engagement is always subject to availability of work.

The counsel for the applicant has not been able to show that new faces have been inducted to

meet the requirement of Hot Weather Staff.

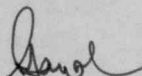
That being so, in absence of evidence to show that productive work is available and that, persons are being employed ignoring the claim of the applicant, no direction for re-engagement of the applicant, in our opinion, can be passed.

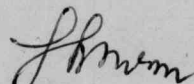
8. Coming to the relief for a direction to issue to prepare separate panel for Casual Labourers of Mechanical Branch, it may be stated that seniority of Casual Labourers on the basis of the number of days put in by them is maintained unitwise. The applicant admittedly, belongs to CWS/COI unit. Combined seniority of all those who

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come under the said unit has to be maintained, so that unfair advantage is not given to some at the cost of others who have worked for longer duration under the said unit. We are, therefore, unable to persuade ourselves to accept the argument of the learned counsel for the applicant.

9. In view of the above, we find and hold that the applicant has acquired temporary status and as such, he is entitled to the benefits admissible to temporary ~~status~~ ^Railway ~~S~~ervant, as laid down in Chapter 13 of the Manual. In that view of the matter, the respondents are directed to consider the case of the applicant for re-engagement on any suitable post, as and when work is available, according to his seniority and consider his permanent absorption on a regular group 'D' post if, he is otherwise found suitable. There will be no order as to costs.


Member-A


Member-J

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