

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1206 of 1992

Phool Chandra S/O Indra,  
R/O Village Basoni, P.O.  
Manjhanpur (Karrow).  
Distt. Allahabad.

..... Applicant.

By Advocate K.S.Saxena

Versus

1. The Union of India (Th: General Manager, Northern Rly, Baroda House, New Delhi.)
2. The Divisional Railway Manager, Northern Rly, Allahabad.
3. The Divl. Superintending Engineer(C), Northern Rly, DRM Office, Allahabad.

..... Respondents.

By Advocate G.P.Agarwal

JUDGEMENT

Hon'ble Mr. T.L.Verma, Member-J  
Hon'ble Mr. K.Muthukumar, Member-A

(By Hon'ble Mr. T.L.Verma, J.M.)

This application has been filed for issuing a direction to the respondents to re-engage the applicant, confer temporary status on him and be considered for empanelment for absorption permanently on some Group 'D' posts.

2. The facts of the case giving rise to this application briefly stated are as follows;

The applicant, it is stated, was engaged as Casual Labour on 14.5.1975. He continued to work

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in that capacity in different spells till 14.7.1984. The applicants claims to have worked in for a total period of 1888 days during the period from 14.5.1975 to 14.7.1984. The applicant, it is stated, has acquired temporary status in terms of para 2001 (1) (b) of the Railway Establishment Manual by having worked for more than 120 Days continuously in a particular year. The name of the applicant, it is stated, should have been entered in the Live Casual Register maintained in the office of the respondent No. 2 & 3 as per extant order as he was discharged/dis-engaged after 1.1.1981 but the same hasnot been done in violation of the extant rules. It has further been alleged that persons junior to the applicant have already been engaged and regularised but the claim of the applicant for such engagement and regularisation has been unjustly bypassed by the respondents despite several representations filed by him. Hence, this application for the reliefs mentioned above.

3. This application has been opposed by the respondents. In the Counter Affidavit filed on behalf of the respondents, it has been stated that the name of the applicant has already been entered in Live Casual Register and his name is at Sl. No. 59 of the said register. It has further been stated that the applicant will be given engagement whenever his turn comes in terms of the principle laid down by the Supreme Court in Inder Pal Yadava's case.

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4. We have heard the rival contentions and perused the record. The learned counsel for the respondents urged that this application is not maintainable as the same has been filed 12 years after the applicant was dis-engaged and therefore, is barred by limitation. In support of his argument, he referred to the decision of Supreme Court in R.C.Sammanta Vs. Union of India (S.C.) reported in 1993 (67) F.L.R. page 70. In this case, the Supreme Court has held as follows;

Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979.

5. ~~We have~~ ~~followed~~ The principle as laid down in the case relied upon by the respondents has no application to the facts of the present case. In the case relied upon by the learned counsel for the applicant, the Casual Labourers alleged to have been appointed between 1964 to 1969 and retrenched between 1975 to 1979 approached the Court for ~~said~~ direction to opposite parties to include their names in the Live Casual Register after due screening and

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give them re-employment according to their seniority. In the instant case as has been admitted by the respondents that the name of the applicant has already been entered in the Live Casual Register for being engaged according to his seniority and permanent absorption after screening in terms of the extent rules. The principle of law laid down in 1993 (24) Administrative Tribunal Cases Page 747, Hukum Singh Vs. Union of India & Ors. is to the effect that a Casual Labour whose name is borne in Live Casual Labour Register has a continuous cause of action. Hence, his application against discontinuance of service even though filed after delay of 11 years is not barred by limitation.

6. The respondents have also stated in the Counter Reply that whenever there is vacancy, the applicant will be considered for appointment according to his seniority in terms of principle laid down by the Supreme Court in Indar Pal Yadav's case. The Railway Ministry framed a scheme for re-engagement of Casual Labourers employed on project. The scheme prepared by the Railway Board came up for consideration in Indar Pal Yadav's case reported in 1985 S.C.C. (L & S ) page 526. The scheme was <sup>approved</sup> ~~modified~~ by the Supreme Court with some modifications. According to the modified scheme, a Casual Labour employed on project may be treated as temporary on completion of 360 days of continuous employment. The scheme covered

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- 1) Casual labour on projects who are in service as on January 1, 1981; and
- 2) Casual labour on projects who, though not in service on January 1, 1981, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future.

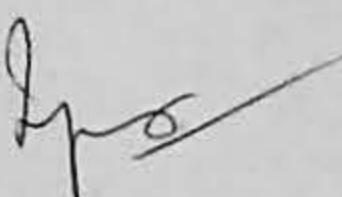
7. The respondents have disputed the claim of the applicant that he had worked for a total period of 1888 days. This denial of the respondents does not appear to be consistent with the details given in Annexure A-2 (photo copy of the record of service of the applicant as Casual Labour). The learned counsel for the applicant placed the original Casual Labour Card for our perusal at the time of argument. The original Casual Labour Card as well as the photo copy (Annexure A-2) *prima facie* indicated that the applicant has worked for 1888 days from 14.5.1975 to 14.7.1984. The respondents, it is expected, will reexamine their record and determine the seniority of the applicant with reference to the length of his service as Casual Labour. While doing so, the original Casual Labour Card in possession of the applicant shall be taken into account.

8. In view of the fact that the name of the applicant has already been entered in Live Casual Labour Register for the purpose of reengagement and permanent absorption according to his term. There is no material on record to show that juniors to the applicant or new faces in preference to the applicant, have been appointed after his dis-engagement on

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14.7.1984. That being so, in absence of satisfactory evidence to establish that juniors to the applicant have been given re-engagement in preference to the applicant, we are not in a position to issue directions as prayed for by the applicant. We may, however, like to note that the applicant is entitled to be considered for re-engagement as and when vacancy arises in terms of seniority and thereafter for regular absorption on group 'D' post according to rules.

9. In view of the discussions made above, we deem it fit and proper to dispose of this application with a direction that the applicant be considered for re-engagement as and when vacancy arises according to his turn in preference to his juniors and thereafter, be considered for permanent absorption on Group 'D' post according to rules. There will be no order as to costs.

  
Member-A

  
Member-B

Allahabad Dated: 3-10-94  
/jw/