

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 1488 of 1993

Allahabad this the 5th day of April 1995

Hon'ble Mr. S. Das Gupta, (A) Member
Hon'ble Mr. Jasbir S. Dhaliwal, (J) Member

Murli Manohar Gupta, S/o Sri Swami Nath Gupta,
A/a 36 years, Substitute Gatekeeper, Salempur Jn.
Railway Station under T.I. Mau Jn. Varanasi Division
Applicant.

By Advocate Shri J.P. Gupta

Versus

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Divisional Railway Manager (Personal), Varanasi
Division, N.E. Railway, Varanasi.

Respondents.

By Advocate Shri G.P. Agrawal

O R D E R

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

This application has been filed
under Section 19 of the Administrative Tribunals
Act, 1985, seeking the relief of regularisation
of the services of the applicant as Gatekeeper from
the date such regularisation was due, with all
benefits.

2. The applicant's case is that he
was employed as a casual labour under P.W.I.,
Bhatni for the first time on 19.11.1975 and

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since then, he has been working on a different capacity as casual labour. He was allowed the regular time scale on 16.9.1987 and was called for screening test on 17.11.1988. He was medically examined on 10.4.1990 and was found fit. He has enclosed a copy of order dated 30.9.1988 by which he was called for screening at Annexure-5 and the medical certificate of fitness at Annexure-6. The applicant's claims that he worked for about 1752 days at the time of this application was filed and according to seniority list of casual labour/substitutes published by the order dated 10.10.1990 (Annexure-7) his name finds place at serial no. 134. His grievance is that although he has been working since 19.11.1975, due to arbitrary pick and chose policy of the respondent no.4, he has not yet been regularised, though several persons junior to him have already been regularised. In this regard, he has submitted that the substitute@ Gateman, Sri Hari Ram Yadav and Sri Amla Yadav whose names do not even figure in the seniority list and are much juniors to the applicant are transferred from Allahabad to Jakhania and Salempur respectively by the order dated 25.8.1993 Annexure-8. Thereafter, on 08.9.93, the applicant who was working at Salempur as substitute Gateman, was illegally relieved of

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his duties.

3. The respondents in their counter-reply, have not disputed the contention of the applicant that he was employed as casual labour for the first time on 19.11.1975 and has been working since then in different capacity. They have also not specifically denied that the applicant started receiving the time scale w.e.f 16.9.1987 and have stated that he was given temporary status on account of completion of 120 days work. They have, however, admitted that the applicant was called for screening and was medically tested. They have, however, stated that they had called all the casual labours/substitutes who had completed 500 days of working but, only those casual labours/substitutes who ~~had~~ completed 850 days work on 13.1.1987, were actually screened. Since the applicant had not completed 850 days on that date, he was not screened. They have further submitted that the services of the applicant shall be regularised after the services of the senior casual labours/substitutes who have already been screened are regularised. As regards Sri Hari Ram Yadav and Amla Yadav, though they are junior to the applicant, but they are discharging the work on account of operation

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of stay order granted in O.A. no.764 of 1991. They have denied that the applicant had worked for 1752 days as claimed by him and have stated that as the applicant has not mentioned the details of his working and the working certificates, it is not practicable for the respondents to ascertain the exact number of working days of the applicant.

4. The applicant has filed a rejoinder-affidavit reiterating the contention made by him in the O.A. He has further stated that he was actually screened and only thereafter medically examined.

5. We have heard the counsel for both the parties and have carefully gone through the pleadings.

6. There was no point of law involved in this application which we ~~were~~ ^{are} called upon to adjudicate. The only controversy is on facts. While the applicant claims that he was actually screened and thereafter medically examined, the respondents aver that the applicant was not actually screened as he has not completed 850 days' working on a particular date. There is also a dispute on actual working days put in by

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the applicant. We are not in a position to come to a definitive conclusion on these facts in the absence of adequate documentary evidence. This in fact is a job of the respondents. They must verify with reference to the attendance record and other collateral evidence whether the applicant's claims regarding number of days he worked is correct or not. The facts remains that the applicant was actually called for screening test. It is also a fact that the applicant was medically examined. There would be a presumption that the applicant was actually screened. This, however, is a fact to verify by the respondents.

7. In view of the foregoing, we direct the respondents to hold an inquiry associating the applicant in order to establish actual number of days which he worked and whether on the basis of number of days worked, he was entitled to be screened. In case, he has been screened and passed the test and any of his juniors has already been regularised, he shall also be regularised forthwith. If, however, he was not screened but was entitled to be screened on the basis of number of days

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worked, he shall be subjected to screening test forthwith and incase he passes the test, he shall be regularised forthwith incase any of his juniors has already been regularised. Incase none of his juniors has so far been regularised, he shall await his turn for such a regularisation. The applicant shall produce before the Inquiry Officer whatever documents he has in his possession to substantiate his claim regarding number of working days. The entire exercise shall be completed within a period of 3 months from the date of communication of this order.

8. This application is disposed of with the above directions. There shall be no order as to costs.

J. A.
Member(J)

/M.M./

t.R.
Member(A),