

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

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Allahabad : Dated this 2<sup>nd</sup> day of June, 1998

Original Application No.379 1993

District : Gorakhpur

CORAM:-

Hon'ble Mr. S.K. Agrawal, J.M.

Krishna Mohan Lal Gupta,  
S/o Sri Binda Prasad,  
R/o Village Bichhiya Jangal Tulsi Ram,  
Post-Bichhiya P.A.C. Gate, Gorakhpur.

(Sti D.P. Agrawal, Advocate)

. . . . Applicant

Versus

1. Union of India  
Through D.R.M. N.E. Railway,  
Gorakhpur.

(Sri V.K. Goel, Advocate)

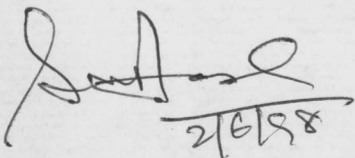
. . . . Respondent

O R D E R

By Hon'ble Mr. S.K. Agrawal, J.M.

This OA has been filed under Section 19 of the Administrative Tribunals Act, 1985 by the applicant praying that the respondents be directed to take the applicant in service from 2-7-1985 and the termination order dated 3-7-1985 be quashed and the applicant be reinstated with back wages and full benefits of service including promotion.

2. In brief, the facts of the case as stated by the applicant is that the applicant was engaged as casual labour in 1974 during strike period and worked from 30-5-1974 to 5-6-1974. Thereafter, he has again worked as casual labour from 5-11-1984 to 31-1-1985 and 3-5-1985 to 1-7-1985 and 9-9-1985 to 23-9-1985 and 23-1-1986 to 20-2-1986. It is submitted that the applicant told the respondents at the time of his engagement that his date of birth is 1-9-1956 and he was below 18 years of age by 3 months. It is also

  
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submitted that the applicant was <sup>/not</sup> approved by the screening committee due to bias and he belongs to backward class and persons junior to the applicant have been appointed. He made a complaint dated 31-5-1988 but that has not been looked into. It is, therefore, requested that the respondents be directed to take back the applicant in service and to quash the termination order dated 3-7-1985 and reinstatement with full back wages.

3. That a counter has been filed by the respondents. In the counter it has been stated that this application is hopelessly barred by limitation. The applicant appeared before the screening committee in the year, 1987 but could not be given appointment on the ground that his first appointment as casual labour was below the age of 18 years as well as on account of the fact that the applicant was not working in any way of the Loco Sheds at the time of screening and the applicant was declared unfit by the selection committee. The applicant was engaged as casual labour on 30-5-1974 and the applicant was below 18 years of age. The respondents have denied that the applicant was re-engaged on 5-11-1984 and the respondents have also denied that junior persons than the applicant have been appointed. The applicant was found unfit by the screening committee. Therefore, there is no case for his regularisation. Therefore, on the basis of counter filed by the respondents, it is stated that this OA be dismissed with costs.

4. I have heard learned counsel for the applicant and the learned counsel for the respondents and perused the record.

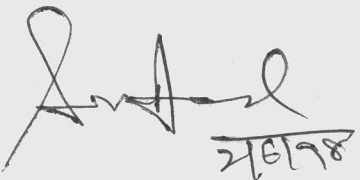
  
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5. The learned lawyer for the applicant has submitted that the applicant was working with the respondents as casual labour since long but on screening the applicant was not approved on the ground that on the first date of entry he was under age. He has also submitted that after amendment was allowed by this Hon'ble Tribunal, the ground of limitation no more exists. Therefore, it is submitted that necessary direction be given to the respondents to quash the order of termination and reinstate the applicant in service w.e.f. 3-7-1985 with all consequential benefits.

6. On the other hand, learned lawyer for the respondents, while objecting the aforesaid arguments stated that on screening the applicant was not found fit and this OA is hopelessly barred by limitation as the applicant was considered by the screening committee in the year 1987 whereas aggrieved by this, the OA was filed in the year, 1983.

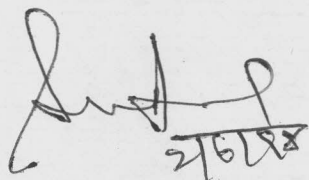
7. That I have given my thoughtful consideration to the arguments of counsel for both the parties and also perused the whole record carefully.

8. It is clearly evident from the letter dated 7-2-1990 at Annexure-1 that the applicant was informed the reason why he was not approved by the screening committee. The Hon'ble Supreme Court in the case of S.S. Rathore Vs. State of Madhya Pradesh, 1990(1) SLJ 98 held that the limitation will start from the date of appeal/representation was disposed of or the date 6 months expired from filing of the appeal etc. It is also an admitted fact that the application for amendment as submitted by the applicant was allowed and

  
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the amendment has been carried out. In view of that fact ~~fact~~, I am, therefore, of the opinion that this application is within limitation.

9. Admittedly, the applicant was engaged during the strike period i.e. on 30-5-1974 and he worked only up to 5-6-1974. The respondents have denied the fact that the applicant was engaged in the year, 1984 onwards due to non-availability of record. It has been mentioned very specifically replying by the respondents that no person was engaged by the respondents, who had worked for less number of days than the applicant. No bias or malafide has been established by the applicant in this case. As per the counter, the screening committee did not find the applicant suitable for the appointment and one of the reason was that on the date of the first engagement i.e. on 30-5-1974 the applicant was under age. The applicant failed to establish that he was engaged as casual labour by the respondents in 1984 and he also failed to establish that his services were terminated on 3-7-1985. No documentary evidence whatsoever kind has been produced by the applicant. The respondents have categorically denied the engagement of the applicant as casual labour in the year 1984 and stated specifically that since he was not engaged the question of termination of his services does not arise. The applicant also failed to establish the fact that there was any post to regularise the services of the applicant. The question of regularisation of his services as daily wages worker is no more res integra. The Hon'ble Supreme Court in the case of Ghaziabad Development Authority Vs. Vikram Chaudhary, (1995) 5 SSC 210, laid down that

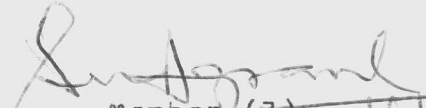
  
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so long as the applicants are daily wages employees and there are no regular posts available for the appointment, the daily wages employees cannot be given regularisation of services and can also not be paid at par with regular employees.

10. In another case viz. The State of U.P. Vs. Madhyamik Shikshak Parishad, the Hon'ble Supreme Court has laid down the law that directions to consider regularisation of services on the basis of seniority and length of service can only be given if some posts are created. In the case of H.P. Housing Board Vs. Vs. Om Pal, 1997 (1) SCC 269, the Hon'ble Supreme Court held that the Tribunal when holding that the termination of services was invalid was in error in giving direction regarding regularisation of services.

11. That in the facts and circumstances of the case, the applicant has considerably failed to prove the fact that he was further engaged in the year, 1984 by the respondents and his services were terminated w.e.f. 3-7-1985. Therefore, the applicant is not entitled to any relief sought for and this OA is devoid of any merit.

12. I, therefore, dismiss this OA with no order as to costs.

  
Member (3) 2/6/88

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