

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH

THIS THE 20TH DAY OF JULY, 2000

Original Application No.642 of 1993

CORAM:

HON.MR.JUSTICE R.R.K.TRIVEDI,V.C.

HON.MR.S.DAYAL, MEMBER(A)

Yadunath Singh Chauhan, Son of
Shri Manna Singh Chauhan,
R/o Block No.406-A,
South Colony, Old Station,
Northern Railway, Kanpur.

.... Applicant

(By Adv: Shri R.G.Padia)

Versus

1. Union of India through the Secretary, Ministry of Railways, New Delhi.
2. Divisional railway Manager, Northern Railway, Allahabad.
3. General Manager, Northern Railway, Baroda House, New Delhi.
4. Divisional Engineer, Head Quarters Northern Railway, Kanpur.

.... Respondents

(By Adv: Shri A.V.Srivastava)

O R D E R(Oral)

(By Hon.Mr.Justice R.R.K.Trivedi,V.C.)

This application has been filed under section 19 of the A.T.Act, 1985 challenging order dated 19.6.1990 by which claim of the applicant for including his name in the Live Casual Labour Register and for providing work of casual mason mechanic has been rejected. It appears that the applicant was appointed on 8.8.1980 as Casual Mason Mistri, however, after 29th May 1984 he was not engaged in the work. Consequently he filed OA No.573/1987 in this Tribunal. The OA was rejected as time barred by order dated 27th July, 1987. Thereafter he filed the review application which was disposed of by order dated 10th March 1988 with the

observation that the applicant, in view of the direction of Hon'ble Supreme Court given in writ petition No.332/86, may make a claim before authorities and if such a claim is raised, it shall not to be prejudiced on account of rejection of his earlier petition on the ground of limitation. The applicant then filed a fresh case registered as O.A.No.215 of 1989 which was disposed of by this Tribunal on 26.10.1989. The operative part of the order reads as under:-

"We have heard counsel for the parties. We are of the opinion that direction as prayed for would be issued by us. We, accordingly direct the respondents to dispose of the representation vide Annexure 7 & 8 within 90 days hereof. A speaking order shall be passed by the respondents, while disposing of the above said representation. There will be no order as to costs.."

In pursuance of the aforesaid direction the representation of the applicant was decided by order dated 19.6.1991 (Annexure 1) to the application. For rejecting claim of the applicant 3 reasons have been assigned. The first reason is that the appointment of the applicant on 8.8.1980 was illegal in view of the Railway Board letters dated 27.2.1978 and 3.1.1981. The second reason assigned is that the applicant voluntarily left the work on 29.5.1984 and thereafter he never turn up for work. The third reason stated is that for inclusion of name in Live Casual Labour Register, general notice was given, inviting applications upto 31st May, 1987. However, the applicant failed to make any application, consequently his name was not included. Aggrieved by aforesaid order applicant has approached this Tribunal again.

We have heard Shri prakash Padia for the applicant and Shri A.V.Srivastava learned counsel for the respondents. Shri padia has submitted that the ground that the applicant was illegally appointed on 8.8.1980 has been disclosed for the first time in the impugned order. It is submitted that

if appointment was illegal it was obligatory for the respondents to provide opportunity of hearing to the applicant which has never been done. Reliance has been placed in case of 'Basudeo Tiwari Versus Sido Kanhu University and Others, J.T. 1998 Vol(6) SC 464 and 'Pancham Ram and Others Versus Chief Engineer, U.P.Jal Nigam and others, 1991(1)UPLBEC-537.

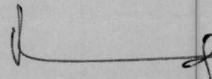
Shri A.V.Srivastava, learned counsel for the respondents on the other hand submitted as the appointment was made by an authority which was not competent, the appointment was void-ab-initio and no opportunity was required to be given to the applicant. We have carefully considered the submissions of the learned counsel for the parties. We find force in the submission made by Shri Padia. It is not disputed that applicant was engaged by the appointment order dated 8.8.1980, and he worked upto 1984, i.e. for about 4 years. His appointment was not questioned and he was paid salary by the Railways against the services rendered. This ground has been for the first time ~~stated~~ in the impugned order after more than nine years. In our opinion such an appointment which was continued for long period, cannot be held to be void or non-est. Even if appointment was irregular, there was implied approval as he worked on the post and was paid salary without objection. In any view of the matter the order of appointment could not be ignored in this manner without affording reasonable opportunity of hearing to the applicant.

The applicant has stated that he was not allowed to work on the post after 29th May 1984. The stand of the respondents on the other hand is that applicant voluntarily left and never turned up to resume his duties. In our opinion for taking this view by respondents, also it was

necessary to provide opportunity to the applicant. It is evident from the record that he approached this Tribunal when he failed to convince the authorities and he was not allowed to work. In the circumstances, for us it is difficult to believe that he had lost interest in the job and could have left it voluntarily for no apparent reasons whatsoever. In our opinion applicant is entitled for relief, consequently this application is allowed. The applicant's name shall be included in the Live Casual Labour Register and he shall be provided opportunity to work on the post as and when the work is available. For purposes of his regularisation he shall be deemed to be on duty through out this period but he shall not be entitled to any back wages. Accordingly the OA is disposed of with no order as to costs.



MEMBER(A)



VICE CHAIRMAN

Dated 20.7.2000

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