

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

DATED THIS THE 23rd MARCH, 1999.

Coram:- Hon'ble Mr. S. Dayal, A.M.

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

ORIGINAL APPLICATION NO.113 of 1993.

Bir Bahadur Pandey,
son of Sri Raja Ram Pandey,
Resident of village Nidheria, Post
Ballia, District Ballia

Counsel for the Applicant:- Sri N.L. Pandey, Adv.
Sri K.K. Mishra, Adv.

. . . Applicant.

Versus

1. The Divisional Railway Manager,
Allahabad.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.
3. The Union of India
through Secretary
Ministry of Railways, New Delhi.

Counsel for the respondent:- Sri V.K. Goel, Adv.
. . . Respondents.

Order

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

This application has been filed by the
applicant for seeking the relief of direction to
the respondents to appoint/absorb him on the

post of casual labour as permanent class IV employee in the department of Railways. It is also prayed that the direction be issued to the respondents to treat the applicant in continuous service and consider his case immediately and pay his salary along with consequential benefits for the post of casual labour/permanent Class IV employee.

2. The case of the applicant as contained in paragraph 4 of his O.A. is that the applicant was appointed on the post of casual labour (Khalasi) in the department of Railways on 30.12.1976 and subsequently discharged on 16.4.1977. Subsequently the applicant was directed not to come on duty by the authorities concerned and no order regarding removal/dismissal had been passed in writing. The applicant claims to have submitted representation dated 26.2.77, 28.1.1978 and 7.3.1979 to the respondents but these representations were not considered. Another representation was given by him to respondent No.1 on 20.4.92 and again on 30.6.92 and thereafter on 2.7.92. The applicant filed O.A. No. 1049/92 and the respondents were directed to consider the representations of the applicant dated 30.4.92, 20.6.92 and 2.7.92 by order dated 5.8.92. It is the contention of the learned counsel for the applicant that despite the order of the Tribunal, the case of the applicant was not considered and that the reply submitted along with the counter affidavit filed by the respondents dated 14.5.93 was not based on actual facts because the applicant never submitted any record nor was called by the Divisional Engineer(T) as mentioned in the order.

3. The arguments of learned counsels have been considered. The pleadings on record have been gone through.

4. The case of the applicant of having worked for a period beyond 73 days between 10.12.1976 and 16.4.1977 is not there. What the traces is that he was removed from service without any notice and was not taken in service although persons junior to him were taken back in service and regularized.

5. We have carefully considered the submissions made by the learned counsel for the applicant. Since the applicant had not worked for more than the number of days mentioned by the respondent in the counter reply, no right accrues to him of being considered for being taken back as casual labour or for regularization.

6. The names given in rejoinder of the applicant regarding employees who were taken back and regularised by the respondents claimed to be his juniors is contained in paragraph 11. The juniority of these persons appears to be based on the date of engagement. Since the applicant was engaged on 30.12.1976 and the persons mentioned in paragraph 11 of the R.A. were engaged subsequently, therefore it is contended that they are juniors. As a matter of fact the seniority or juniority is based in cases of those who are not working on number of days they have put in as worked in the past. Therefore the contention of the applicant that the persons mentioned were his juniors can not be accepted.

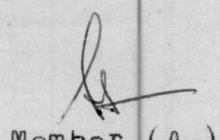
7. As far as mode of engagement or disengagement is concerned, the casual labours were engaged on the basis of availability of work in the past and they

were allowed to work on the days when work was available and were disengaged when the work was not available. The only record regarding their work used to be casual labour card which mentioned the number of days, a casual labour had put in or has worked in particular month. No such record has been filed by the applicant in this case. This is only a working certificate supposedly given by Inspector of Works(ii) Northern Railway to the effect that his total period of work was between 30.12.76 to 16.4.77 which comes to 73 days. In Secretary to Government of India Vs. Sheo Ram Mahadu (1995)30 A.T.C. page 635 the Apex Court has held that where the order discharging the applicant is not challenged within time and the claim of the applicant is not registered in Casual Live Register and the applicant did not turn up thereafter, the claim of the applicant can not be allowed. On the basis of the judgment of the Apex Court in so far as it mentions limitation as one of the reasons for rejecting such claims, we reject the claim of the applicant in this O.A.

The application is therefore dismissed. There shall be no order as to costs.



Member (J.)



Member (A.)

Nafees.