

RESERVED

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD  
ADDITIONAL BENCH AT ALLAHABAD

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Allahabad : Dated this 20<sup>th</sup> day of February 1997

Original Application No. 1134 of 1993

District : Allahabad

CORAM:-

Hon'ble Mr. S. Das Gupta, A.M.

Hon'ble Mr. T.L. Verma, J.M.

Raja Ram

S/o Shri Moti Lal

Village-Hamhraul,

Post Office-Bharwari,

~~District~~-Allahabad.

(By Sri KS Saxena, Advocate)

. . . . . Applicant

1. The Union of India through  
General Manager, Northern Railway,  
Baroda House, New Delhi.
2. The Divisional Railway Manager,  
Northern Railway, Allahabad.
3. The Senior Divisional Commercial Manager,  
Northern Railway, DRM Office, Allahabad.
4. The Senior Divisional Personnel Officer,  
Northern Railway, DRM Office, Allahabad.

(By Sri Amit Sthalekar, Advocate)

. . . . . Respondents

ORDER

By Hon'ble Mr. S. Das Gupta, A.M.

Through this application filed under Section 19  
of the Administrative Tribunals Act, 1985, the applicant has  
sought the relief of restoration in the panel processed  
pursuant to APO/Allahabad letter dated 31-12-1994 and

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tangible happened so far. He ultimately submitted a written representation dated 17-9-1992 to the DRM, which was received in the latter's office, but there has been no response to the same.

3. The applicant states that he was entitled to get temporary status on completion of 1672 days continuous work in the first spell from 17-4-1975 and 30-9-1975 at Sujahatpur Station. He has also stated that since he was retrenched after 1-1-1981, his name must be borne on the live casual labour register.

4. Although the notices were issued to the respondents on 23-9-1993 and Sri Amit Sthalekar had filed Vakalatnama on behalf of the respondents on 4-1-1994, no counter affidavit or written statement was filed by the respondents despite numerous opportunities. The case was, therefore, taken for hearing ex parte against the respondents. However, at the time of hearing, Sri Amit Sthalekar appeared and advanced arguments on behalf of the respondents. We also heard learned counsel for the applicant and perused the record carefully.

5. It is settled law that in the absence of a counter affidavit, the averments made in a petition have to be taken as admitted. In this connection a decision of the Hon'ble Supreme Court in the case of SC Rawji Vs. State of Andhra Pradesh, AIR 1964 S.C. 692 may be relied upon. Therefore, the averments which have been made by the applicant in the OA before us have to be taken as established in the absence of any counter affidavit or written statement on behalf of the respondents. We have to see whether these averments, by themselves, make out any case for grant of relief to the applicant.

The applicant had worked as casual labourer /Hot Weather

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staff under the respondents for a total period of 305 days out of which there was 167 days of continuous work in the first spell from 17-4-1975 to 30-9-1975. Also, the applicant was disengaged after 4-8-1984. Two things would follow from this. In the first place, the applicant's name should be borne on the live casual labour register on the basis of the extant orders of the Railway Board. Secondly, the applicant was entitled to be granted temporary status, after his work at Sujahatpur for 167 days continuously. It is also the case of the applicant that he was subjected to a screening and his name was placed in the panel. We have seen the letter issued dated 31-12-1984 by the APO, a copy of which is at Annexure-A-4. According to this letter it was decided that a panel would be prepared after screening of the eligible staff in the Traffic and Commercial Depts. The concerned authorities were advised to furnish the details of the eligible persons in the enclosed proforma. The conditions of eligibility were initial appointment prior to 1-8-1978 and four months working <sup>/period</sup> in the Traffic/Commercial Department on 1-12-1984. The applicant's had started working prior to 1-8-1978 as is established from the working certificate annexed by him. He had also completed much more than four months working period by the time he was engaged in 1984. The applicant was, therefore, eligible to be screened in terms of the instructions contained in the aforesaid letter dated 31-12-1984. We have further seen that his name alongwith his service details was sponsored by the Station Master of Sujahatpur in the prescribed proforma. This, therefore, lends credence to the claim of the applicant that he was found fit in the screening.

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7. Although the respondents did not file any counter affidavit, at the time of hearing the learned counsel for the respondents advanced arguments on their behalf. He could not make any submissions on the factual averments, handicapped as he was by the absence of any instructions in this regard from the respondents or any written statement. The only submission he made was that the present application is barred by limitation and he sought reliance on the decision of the Hon'ble Sumreme Court in the case of Union of India and Others Vs. Pradeep Kumar Saxena.

8. We have carefully considered the submission made by the learned counsel for the respondents. In the case of Pradeep Kumar Saxena, the respondent was a typist engaged on daily wages and, therefore, the Hon'ble Supreme Court held that the decision in Inder Pal Yadav's case shall not be applicable. It was further held that on the facts and circumstances of that case, and particularly relating to the respondent, the latter had

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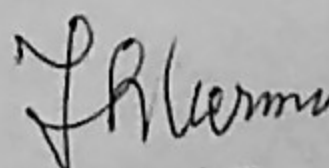


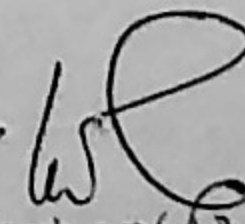
had no justified claim for regularisation to the post and that too on an application made several years after his engagement had discontinued. In the case before us, however, the facts are not similar to the facts of Pradeep Kumar Saxena's case. In accordance with the extant circulars of the Railway Board, the applicant should have found a place in the live casual labourer register. The applicant, therefore, would have a continuing cause of action and a right to be engaged as and when any of his juniors is engaged.

9. After considering the facts and circumstances of the case, we dispose it of with the following directions :-

- (i) the applicant shall be deemed to have attained the temporary status on completion of 120 days work at Sujhatpur.
- (ii) he shall be re-engaged as a casual labourer with temporary status forthwith in case any of his juniors in the same seniority unit was appointed/re-engaged after the dis-engagement of the applicant. In case, no such junior was appointed/re-engaged, the applicant shall be re-engaged as and when his turn comes on the basis of his seniority-
- (iii) the services of the applicant shall be regularised in his own turn.

10. With the above directions, the OA is disposed of ~~accordingly~~. The parties shall, however, bear their own costs.

  
Member (J)

  
Member (A)

Dube/