

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD.

Dated : This the 1st day of January 2003.

Original Application no. (1539 of 1994) 7610/1995

Hon'ble Mr.Justice R.R.K. Trivedi, Vice-Chairman
Hon'ble Maj Gen K K Srivastava, Member (A).

1. All India Hot Weather, Watermen Association through its President, Shri Ram Bahadur, S/o Ram Prakash, House no. 470, Mahavir Enclave II, Shukra Bazar, Gali no. 13, New Delhi.
2. Janak Singh, S/o Matoi Ram, Nai Abadi, Shiv Nagar, P.O. Dhnauli, Agra.
3. Rajinder Singh, S/o Sri Mahavir Singh, R/o New Janta Colony, Mustafa Quarters Agra Cantt.
4. Satya Prakesh, S/o Sri Rattan Singh, Sohala, Agra, Cantt.
5. Ram Bahadur, S/o Sri Ram Prakash, New Janta Colony, Near Baba Market, Agra Cantt.
6. Surendra Kumar, S/o Sri Nanak Ram, R/o Pulia Ka Nagla House no. 23, Agra Cantt.
7. Naval Singh, S/o Kunwar Singh, R/o Pulia Ka Nagla Agra Cantt.
8. Ramesh Chand, S/o Sri Ram Babu, R/o New Abadi Shiv Nagar Agra Cantt.
9. Bhoori Singh, S/o Sri Deoji, Village Samogarh Post Sabla Ka Nagla Agra.
10. Jyoti Prakash, S/o Sri Kalyan Singh, R/o Vill & Post Bamrauli, Agra.
11. Mahendra Singh, S/o Sri Lahrey Lal, R/o Vill Sohalla Patappura, Agra.
12. Ramole, S/o Sri Shiv Lal, R/o vill Biraharu Agra.
13. Ram Charan, S/o Sri Ram Dulare, New Janta Colony, Agra Cantt.
14. Dhaniram, S/o Sri Bhagwanta, R/o Vill Sutaini Post Gadsani Malpura Agra.
15. Dhani Singh, S/o Sri Nathi Lal, R/o Budda-Ka Nagla,

Dhanauli Malpura Agra.

16. Bacchu Singh, S/o Sh. Ved Ram, R/o Sohalla Patapura Agra.
17. Umesh Chandna, S/o Sri Ameri Singh, R/o Nangla Pulia Dhamauli, Agra.
18. Ram Narain Singh, S/o Sri Sobaran Singh, R/o vill Bhamrauli Ahir Malpura Agra.
19. Man Singh, S/o Sri Mangal Singh, R/o vill Bhamrauli Ahir Malpura Agra.
20. Ram Baboo, S/o Sri Ram Phal, R/o vill and post Sikandarapur Khas Bungalow no. D/25 Agra Cantt.
21. Purshottam, S/o Sri Padam Singh, R/o Vill and Post Nangla Bhuria Malpura Agra.
22. Ghanshyam, S/o Sri Narain Singh, R/o Sohalla Pratapura Agra.
23. Layak Singh, S/o Sri Puttoo Ram, Sohalla Pratapura Agra.
24. Surendra Singh, S/o Sri Balkishan, R/o Vill Nangla Kali Post Sameri Thana Tajganj, Agra.
25. Prem Singh, S/o Sri Ram Dass, R/o Vill Dhanauli Post Malpura Agra.
26. Mohammad Kalim, S/o Sri Mohd Ismail, R/o Rasorepur Agra. Agra Cantt.
27. Rajendra Prasad, S/o Sri Mata Prasad, R/o Mustafa Quarter, Agra Cantt.
28. Gopal, S/o Sri Nihal Singh, R/o Vill and Post Mahasolia Agra.
29. Dharambir Singh, S/o Sri JS Banchawali, PPO Chola Sinkandrabad, Distt Bulandshahr.
30. Sunil Kumar, S/o Sri Raghbir Prasad, r/o G 189 Railway Colony, Agra Cantt.
31. Biri Singh, S/o Sri Sobha Ram, 12/146 Sheik Bulakhi Dalhai Tajganj, Agra.
32. Ram Deo, S/o Sro Narain Singh, Nagla Gathidia Birharu Sainya, Khebagarh, Agra.
33. Taj Singh, S/o Sri Ram Singh, R/o Khavaspura, Distt Agra Cantt.
34. Satya Prakash, S/o Sri Damodar Prasad, R/o Village and Post Baramai, Nathura.
35. Om Prakash, S/o Mahabir, R/o House no. 316 Kachhipura Sultenapura Sadar Bazar Agra Cantt.

36. Mohd Rafiq, S/o Sri Mohd Gafoor, R/o Khawagaki Sarairasoolpur, Agra Cantt.
37. Irshad Mohd, S/o Sri Ramjan Mohd. R/o House no. 61/101 Khwaja Ki Sarai, Agra Cantt.
38. Kishan Govind, S/o Sri Roshan Singh, R/o vill Arseena Achnera, Tehsil Kirawali Distt. Agra.
39. Man Singh, S/o Sri Bhanwar Singh, R/o vill Arseena P.S. Achhaera Tehsil Kirawali Distt. Agra.
40. Bhyam Lal, S/o Sri Rej Pal, R/o vill Arseena P.S. Achnera Tehsil Kirawali Distt. Agra.
41. Hammed Khan, S/o Sri Kadar Bux, R/o vill Hodal P.S. & Tehsil Palwal Distt. Paridabad (Haryana).
42. Brijesh Kumar, S/o Sri Lakhan Lal, R/o Jaganvihar Colony, Acchnera Distt. Agra.
43. Janak Singh, S/o Bhatey Shiv Nagar Agra Cantt.
44. Siya Ram S/o Sri Ramesh Chand, Jadu Khera P.O. Jadu Khera Distt. Agra.

... Applicants

By Adv : Sri Sudhir Agarwal

Versus

1. Union of India through the Chairman, Railway Board, Railw Bhawan New Delhi.
2. General Manager, Central Railway, Bombay, V.T.
3. Divisional Railway Manager, Central Railway, Jhansi.

... Respondents

By Adv : Sri G.P. Agarwal

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ORDER

Hon'ble Maj Gen K.K. Srivastava, Member (A).

The present O.A. had been filed under section 19 of the A.T. Act, 1985, before the Principal Bench, New Delhi. However, vide order dated 7.7.1995 the Original Application has been transferred to this Bench and the same was received on 7.8.1995. 44 applicants including the association namely "All India Hot Weather Waterman Association" have sought for the following reliefs :-

- i. to direct the respondents to provide employment to the Temporary Hot Weather Watermen M.R.C.Ls by observing them in different departments of the Railways;
- ii. to direct the respondents to prepare a consolidated seniority list of the MRCLs working in all the departments of Railways and to frame a scheme to regularise them accordingly to their seniority within a reasonable time;
- iii. to direct the respondents to take the applicants back in job and to pay them the arrears of salary for the period they were kept illegally out of employment with interest and to pay them part of the salary during off seasons till their regularisation and/or
- iv. such other orders as this Hon'ble Tribunal may deem fit and proper in the circumstances of the case.

2. The facts, in short, are that the applicants 44 in number were engaged as casual labour and Hot Weather Watermen from time to time and they have worked for more than 120 days and, thus, they have acquired temporary status. A detailed chart has been furnished showing the number of working days as casual labour as well as monthly rated casual labour (Ann G). Apart from it 2 supplementary affidavits have also been filed on behalf of the applicants showing the entire period of their working with their respective stations in which they have worked. From a perusal of the details of their working (supplementary affidavits) it appears that all of them

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have worked upto the year 1991. The assertion of the applicants, ^{is that thereafter the services of the} applicants ⁱⁿ were terminated orally in April 1992 without any notice. In para 6 of the O.A., applicants have stated the details regarding grant of MRCL status to them and have referred to a report published in 'Aaj' news paper dated 3.6.1994 whereby the Railway Minister has given directions to all the railway divisions that fresh drinking water should be supplied to the passengers and in particular to the women passengers. After noticing the news paper report, applicants made a representation to the Railway Board dated 15.5.1992 regarding regularisation of their services. Since no decision was taken by the Railway Board on the representation, they filed an original application no. 664 of 1993 before the Principal Bench and vide order dated 7.4.1993, Principal Bench directed the Railway Authorities to decide representation of the applicants. The applicants have further stated that the Railway Authorities did not pass any order on the representation of the applicants, and, as such, they filed a contempt petition no. 333 of 1993 before the Tribunal and in that contempt petition respondents filed a reply on 15.4.1994, annexing copy of the order dated 5.4.1994 by which the representation of the applicants was decided. The copy of the order dated 5.4.1994 has been annexed in the present O.A. as Annexure A. The applicants have cited several judgments passed by the Apex Court and submitted that while disposing of the representation of the applicants respondents have refused to regularise the applicants whereas the applicants who have completed 120 days and have been granted MRCL status, they are entitled for the regularisation and, therefore, the action of the respondents is violative of Article 14 and 16 of the Constitution of India. Hence, this OA which has been contested by the respondents.

3. Sri Sudhir Agarwal, the learned counsel for the applicants also pointed out that applicants have been discriminated, in as much

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as, persons with lesser number of working days have been regularised. It has also been pointed out on behalf of the applicants that the last person (According to respondents) engaged in 1992 has put in 1765 number of days whereas Ram Dev who is one of the applicants has put in 1560 days as casual labour and 433 days as MRCL. Thus, the total number of working days of Ram Dev is 1993 but the number of working days of Ram Dev as casual labour has not been counted by the respondents. He has worked for more number of working days than the person last regularised in the year 1992 and, thus, it is discriminatory. The learned counsel further stated that applicant number 21, Purshottam has also worked for 1998 days, but, he has also been left for regularisation because the number of working days as casual labour has not been considered and respondents are maintaining the seniority list according to number of working days as MRCL only. It has also been stated that there are as many as 150 persons who have put in more than 1000 days as Hot Weather Watermen and they have also put in more than 1000 days as casual labour but respondents are not placing the applicants in live casual labour register according to total number of working days as casual labour and MRCL.

4. Counsel for the respondents filed a counter reply wherein it has been submitted that casual labour, Hot Weather Watermen are appointed as per sanction from Head Quarters Office from time to time and since there was no sanction, therefore, the services of the applicants were correctly terminated and they have no right of regulation either under contract or under Industrial Disputes Act. It has further been stated on behalf of the respondents that facility of time scale pay, per month, medical pass and P.T.Os does not render a casual labour for automatic regularisation unless he is screened and selected for regularisation by duly constituted Selection Committee. In the present case also the

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^{Wt. No. 1}
strength of Hot Weather Watermen have been gradually reduced over the years due to water coolers and other drinking water facilities provided at platforms. Shri G.P. Agarwal, learned counsel for the respondents also objected to the maintainability of the OA on the following grounds :-

i. The OA is barred by principle of res-judicata as similar relief was claimed in OA no. 664 of 1993 and the same was not allowed. Only the direction was given to decide the representation of the applicants.

ii. The OA is barred by period of limitation as the services of the applicants were terminated in April 1992 and the present OA has been filed in July 1994.

5. We have heard learned counsel for rival parties, considered ^{in clearly in} their submissions and ~~clearly~~ perused records.

6. From the various submissions of the parties following issues are required to be considered :-

i. Whether the present OA is second petition seeking similar relief as was claimed in OA no. 664 of 1993 and is barred by the principle of res-judicata.

ii. Whether the OA is barred by time.

iii. Whether the OA is liable to be rejected on the ground of ⁱⁿ vague ⁱⁿ pleadings.

iv. Whether the termination of the applicant's services in April 1992 as Hot Weather Waterman/MRCL was valid and non-engagement of the applicants was also valid or whether the persons having lesser number of working days to the applicants being retained dis-engagement/non re-engagement of the applicants by the respondents was illegal.

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v. Whether the applicants are entitled to be considered for regularisation?

7. Learned counsel for the respondents has vehemently contended that the relief as sought in the present OA were also sought in OA no. 664 of 1993, but the Principal Bench of the Tribunal did not grant the same and hence it is to be deemed that the said relief have been rejected. Hence the present OA seeking the same relief is barred by the principles of res-judicata. We are not inclined to accept the same. A bare perusal of the order dated 7.4.1993 passed by the Principal Bench of this Tribunal in OA no. 664 of 1993, it is clear that the Principal Bench did not enter into merit of the case, but remitted the matter back to the Railway Board or the appropriate authority to decide the applicant's representation dated 15th May 1992. The said orders passed on the aforesaid representation, ~~which shall be open to applicants to challenge the validity if it is decided against them.~~ Hence there was no adjudication in respect of the reliefs sought by the applicants in OA 664 of 1993. Hence the submission of learned counsel for the respondents that the present OA is barred by the principle of res-judicata and amounts to second OA is wholly misconceived and is rejected.

8. The next preliminary objection raised by the learned counsel for the respondents is that the Original Application is barred by time. The applicants, as admitted, were terminated in April 1992 although the OA has been filed in the year 1995, and hence it is barred by time. The facts stated above show that against the termination the applicants approached the higher authorities by means of representation dated 15.5.1992 which ultimately culminated into the order dated 5.4.1994, Where after the applicants approached this Tribunal. In the circumstances it cannot be held that the Original Application is barred by time

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and the aforesaid contention of learned counsel for the respondents is also rejected.

9. Learned counsel for the respondents has contended that the O.A. is liable to be rejected as the pleadings are vague which we do not consider to be so and the objection of the respondents is rejected.

10. Now the main question is as to whether the termination of the applicants in April 1992 was valid and the respondents were justified in not engaging the applicants thereafter. It is apparent that number of working days of the applicants were duly communicated to the respondents. Whereafter it has passed the order dated 5.4.1994. The number of working days of the applicants as claimed by them is nowhere being disputed by the respondents in its order dated 5.4.1994 (Para 10 of counter affidavit). The applicants have filed details of their service book etc. and also two supplementary affidavits giving further details of their working period, which have not been disputed by filing any reply to the said supplementary affidavit. During the course of arguments a supplementary counter reply was filed by the respondents and in para 8 (d) number of the working days have been shown differently, to what has been shown in the supplementary counter reply. The said facts stated in para 8 (d) shows contradiction even to the facts stated in Divisional Commercial Manager's order dated 5.4.1994 (Ann A to Comp I), inasmuch as taking the case of Ram Dev, applicant no. 32, his total number of working days, have been shown as 1994 while in para 8 (d) of the supplementary counter reply the number of working days of Ram Dev has been shown as 553. Nothing has been placed by the respondents before us to show that number of working days as claimed by the applicant was incorrect and/or the manner in which they have counted number of working days for the purpose of placing them in the Live Register. We have,

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therefore, no reason to disbelieve the number of working days as disclosed by the applicants earlier when the same has also not been disbelieved by the respondents while passing the order dated 5.8.1994. In this view of the matter it is apparent that number of the applicants who were having more number of working days were terminated/disengaged while the persons having lesser number of workingdays were retained and continued in service.

11. Learned counsel for the applicants have referred to Rule 2001, Note-8 sub para (2) of the Indian Railway Establishment Manual Vol II which reads as under :-

"Should it become necessary to engage additional casual labourers, discharged Casual labourers who have not been re-employed they will be re-engaged against the future requirement in order of priority on the basis of total period of service prior to their discharge...."

We are in ^{the} agreement with the submission advanced by learned counsel for the applicants that their entire period of working is to be taken into account for considering their seniority amongst MRCL/Casual labourers and the respondents having not acted in the said manner have illegally terminated the applicants and their non/engagement even subsequently is wholly unjustified.

12. Learned counsel for the applicants has relied upon the judgments of this Tribunal in case of Ashok Kumar Vs..Union of India & Ors 1996 (1) CAT (SLJ) page 279 wherein Chandigarh Bench of this Tribunal has held that ~~varibus~~ spells of discharge of duties as Casual labour/Watermen will have to be counted without any distinction. The learned counsel for the applicants has further relied upon the judgment of this Tribunal dated 3.9.1995 passed in OA no. 963 of 1992 Bhagirathi and others Vs. Union of India

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and others. It was also the case of Hot whether Waterman and their non-engagement by the Railway department. This Tribunal has disposed of the aforesaid OA no. 963 of 1992 as follows :-

"6. In view of the foregoing we dispose of the Application with the following directions to the respondents:

(i) All the applicants shall be considered for regularisation in their own turn and in case any of the juniors has been so regularised the applicants who were senior and are considered fit for regularisation shall be considered to have been regularised from the dates of regularisation of such juniors.

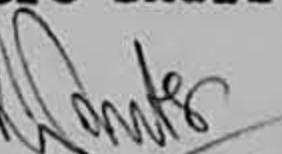
(ii) Meanwhile they shall be considered for re-engagement as casual waterman in preference to their juniors."

13. We are in respectful agreement with the view taken by this Tribunal in the above cases and the present OA is also disposed of in the same terms and with the same direction and also in the light of observations and findings recorded above. However, we further direct that if the persons having lesser number of total working days, as Casual labourers/MRCL than the applicants, have ^{been} continued in service and/or regularised, the applicants would also be entitled for their reinstatement and re-engagement with effect from the said date. However, the applicants shall not be entitled for any back wages, but shall be entitled for the benefits of seniority, pay fixation etc. after re-engagement from the date their juniors have been ^{been} reinstated/regularised, as the case may be and other consequential benefits. The respondents shall comply with aforesaid directions within three months from the date of communication of this order.

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There shall be no order as to costs.

/pc/


Member (A)


Vice-Chairman