

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,

ALLAHABAD.

....

Original Application No. 837 of 2000

this the 6th day of January' 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

1. prabhulal Yadav, S/o Sri Hira Lal Yadav.
2. Nagendra Kumar Singh, S/o Sri Chandra Hans Singh.
3. Rajesh Pd. S/o Ramjee Sah
All resident of Gorakhpur at present C/o D.N. Sinha
House No. 126/8 Mohalla Dharampur, P.O. Gita Vatika,
District Gorakhpur.

Applicants.

By Advocate : Sri R.N. Sinha.

With

Original Application No. 501 of 1998

Krishna Prasad Yadav, S/o Prabhu Nath Chaudhary, C/o
Janardan Chaudhary, Railway Colony, Boulia Gr. no. 359-C,
N.E. Railway, Gorakhpur.

Applicant.

By Advocate : Sri R.N. Sinha.

With

Original Application No. 388 of 1998

1. Ashik Ali, S/o Badul Aziz.
2. Bhagwan Tiwari, S/o Wakil Tiwari.
3. Kamal Kishore, S/o Raja Ram.
4. Madan Gopal, S/o Chhotely Lal.
5. Chandra Pal, S/o Maikoolal.
6. Gaya Pd., S/o Ratan.
7. Phakarey Lal, S/o Mohan Lal.
8. Ramesh Pd., S/o Sita Ram.
9. Sugriwa Pd., S/o Sita Ram.
10. phbol Chand, S/o Sheo Ratan.
11. Sant Charan, S/o Sheo Ram.
12. Khajan Chand, S/o Maikoo Lal.



13. Hanuman Pd. S/o K.L. Shaw.
14. Daya Ram, S/o Sri Ram.
15. Surendra Singh, S/o Rajendra Singh.
16. Ramesh Kumar, S/o Ram Charan
17. Gobardhan Pd, S/o Wishram.
18. Shiwan Nand Yadav, S/o Raghunath.
19. Gazraj, S/o Kishan Kumar.
20. Ramchandra, S/o Khodai.
21. Har Pd. S/o Ghanshyam.
22. Kali Charan, S/o Sheo Dayal.
23. Om Prakash Singh, S/o Ram Narain

All resident of Gorakhpur C/o D.N. Sinha, House No. 126/B Mohalla Dharampur, P.O. Gita Vatika District Gorakhpur.

Applicants.

By Advocate : Sri R.N. Sinha.

Versus.

1. Union of India through the General Manager, N.E.R., Gorakhpur.
2. D.R.M., N.E.R., Ashok Marg, Lucknow.
3. D.R.M. (Personnel), N.E.R., Ashok Marg, Lucknow.

Respondents.

By Advocate : Sri A.K. Gaur.

ORDER

These three O.As were connected as the issue involved in all was same, therefore, they are being disposed off by a common order. For the purposes of referring to facts, O.A. no. 837/2000 is being taken as a lead case.

2. In all the three cases, applicants have sought the following relief(s):

"(i) That the Hon'ble Tribunal be pleased to set aside the impugned order dated 21/23.11.1998, 9th Feb, 1990 and 10th Dec'90 passed by the DRM/NE Rly/ Ashok Marg, Lucknow.

(ii) The Hon'ble Tribunal be further pleased to command the respondents to fully implement the final & screening result of Carr-wagon depots published on 25th Sept., 1987.



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(iii) That the Tribunal/further pleased to command the respondents to issue appointment orders to all the candidates as class IVth employee of the panel list who are still out of job due to arbitrary actions of the respondents.

(iv) The Hon'ble Tribunal be further pleased to direct the respondents to grant to all the applicants consequential benefits from the date of approval of the panel list.

(v) The Hon'ble Tribunal be further pleased to direct the respondents to issue appointment letters to the applicants in pursuance of the orders passed by DRM/ P/N.E.Rly/ Ashok Marg, Lucknow nos. 559 and 1239 dated 15/16.9.1997 and 28.10.98 and regularise services of the applicants from the date of approval of the panel list dated 25.9.1987.

(vi) -----.

(vii)-----."

3. It is submitted by the applicants in O.A. no. 837/2000 that a notice was published for selection/screening test in Lucknow Division for filling the regular posts of Carr-Khalasi and Engine Cleaners in class IV in 1986-87. After the screening was done and records were verified, a final list was issued on 25.9.1987 wherein the candidates were shown to have been found suitable. The names of all the applicants figure in this list. This list was prepared on merit basis as per the number of working days in the Railway (Annexure A-5). In spite of it, number of persons from this panel were allowed to continue in service in utter disregard of seniority ignoring the applicants. They gave number of representations (Annexure A-6), but applicants were not appointed.

4. On 21/23.11.89 DRM/N.E.Rly./Lucknow cancelled the approved panel arbitrarily and gave directions to hold fresh screening for Carr Wagon depot of Lucknow Division calling only such of the candidates who were kept in service ignoring those whose services were terminated. It is submitted by applicants that neither they were informed about the cancellation of approved panel, nor about holding of fresh screening test in the year 1990-91.

5. The cancellation of approved panel was challenged by some candidates in CAT. O.A. 462/91 was decided on 4.9.92 directing the respondents to give job to the applicants -s if similarly placed juniors have been allowed to work.

Similar orders were passed in O.A. no. 144/90 also and several other O.As were also filed and after directions were given, applicants therein were screened in 1995-96. Some cases even went upto Hon'ble Supreme Court and in compliance with the apex court's order, some candidates of the same panel were given duty by the DRM on 15/16.9.97 viz. candidate at sl. no. 710 was appointed even though he was junior to the applicants (Annexure 5 to 9). Applicants also approached the respondents, but nothing was done so they had no other option, but to file the O.A. They have submitted that same relief be given to applicants as was given to the applicants of other cases.

6. Respondents have filed objections stating therein that the panel dated 25.9.87 was cancelled by the DRM's order dated 21/23.11.1989 as there were certain complaints and discrepancies in the proceedings of screening, but the said order had not been challenged by the applicants. More-over, they have alleged to have worked since Dec.1986 to 31.12.86, but no details have been given about their working, and casual labour on construction side cannot be treated at par with those who have worked in open line. More-over, the O.A. has been filed only in the year 2000, while panel was cancelled in 1989 without explaining the inordinate delay.

7. They have further submitted that repeated representations cannot extend the limitation, therefore, the O.A. is liable to be dismissed on this ground alone.

8. Applicants have admitted in Rejoinder that they belonged to different departments of N.E. Railway and worked as Casual labour or Substitute in Civil Engineering C&W depot and loco sheds of Lucknow division, but since they were in service before 31.12.80, therefore, they are entitled to be screened and re-appointed. They have further submitted that even apex court directed the respondents

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to carry on the screening of some casual labourers. They have, thus, submitted that since they are similarly situated they are also entitled for same relief.

9. I have heard both the counsel and perused the pleadings as well.

10. In these cases, admittedly applicants were dis-engaged in 1986 itself and the panel in which they were declared successful was also cancelled in 1989, therefore, even if we stretch the limitation their, cause of action would start from 1989 and as per Section 21 of the A.T. Act, 1985, they should have approached the Court within 1 year from the date of such cause of action. Admittedly, applicants did not challenge the action of respondents though some others did challenge the same by filing various O.As. In different O.As different orders were passed and directions were given to screen the petitioners therein, therefore as and when directions were issued they were complied with by the department. Applicants have not been able to show from any of the judgments that the letter by which panel was cancelled was quashed by the Courts. On the contrary in order dated 21.12.95 passed in batch of contempt petitions leading case being no. 341 of 1993 in O.A. no. 462/91, the Tribunal had observed as follows;

"It has now been submitted by the respondents that the applicants were called by the respondents for fresh screening in compliance with the directions given by us in the order dated 30.11.94 in which we had given an opportunity to the respondents to retrace their steps. It has also been stated that although the notices were sent to the applicants to appear for the screening tests by registered post and also through their counsel, the applicants did not appear for the same. The learned counsel for the respondents stated that even now the respondents are prepared to arrange for screening test for the applicants, if they are so willing. In our view, it would be advisable on the part of the applicants to accept this offer and appear in this screening test. We expect that in case in they appear for the screening test, such test will be held in an objective manner."

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11. The applicants challenged the cancellation of earlier panel as well as the notice for fresh screening and sought the relief that the cancellation of earlier panel be quashed and they be regularised on the basis of the result of earlier screening. The Bench heard the O.As and held there was no infirmity in the cancellation of earlier panel. However, Bench assumed that applicants appeared in subsequent screening, therefore, directed the respondents to declare the result of subsequent screening and to regularise the applicants if they had succeeded in screening test. It was further held that now it has been clarified by the respondents that the alleged juniors who are employed belong to different seniority units and, therefore, they are not similarly placed as the applicants. Perusal of the above order, thus, shows that different directions were given on the basis of averments made in different O.As and in none of the O.As judgment in rem was passed as the letter of cancellation was not found to be illegal in any case. Those applicants who approached the Court got different relief(s), which were complied with by the department, but since applicants were not party to those O.As naturally they could not get the benefit of same. If the court had quashed the cancellation letter and directed the respondents to give effect to the panel already declared, applicants could have asked the benefit of such judgment, but that is not the case which is apparent from the perusal of various judgments as shown by the applicants. I am, therefore, satisfied that after such a long time, applicants herein cannot claim the benefits given to the petitioners in those cases.

12. It would be relevant to quote the judgment of Bhoop Singh Vs. U.O.I. & Ors reported in JT 1992 (3) SC 322, wherein the apex court held as under :

" The judgment and order of the Court passed in other cases do not give cause of action. The cause of action has to be reckoned from the actual date. Termination of service - challenged after 22 years on the ground that similarly dismissed employees have been reinstated as a result of their writ petitions - inordinate and


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unexplained delay - relief(s) refused."

13. Similarly in Ratan Chandra Samanta & Ors. Vs. U.O.I. & Ors. reported in JT 1993 (3) SC 418, the apex court held as under ;

"Casual labourer-petitioners were employed between 1964 to 1969 and retrenched between 1975 to 1979 - Lapse of over 15 years- Delay deprives the person of the remedy available in law- A person who has lost his remedy by lapse of time loses his right as well."

14. Simply because some relief was granted to those who came to Court, relief cannot be granted to others who sleep over their rights. This case is fully covered by the judgment of Hon'ble Supreme Court as mentioned above. It is seen this O.A. has been filed in the year 2000 wherein an effort is made to challenge the letter dated 23.11.89 meaning thereby that applicants have approached the Court after 11 years. They have not shown any justified cause for such inordinate delay, therefore this case is clearly barred by limitation. The O.As are, therefore, dismissed being barred by limitation. No costs.


MEMBER (J)

GIRISH/-