

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 8 day of April 2011.

Present:

Hon'ble Mrs. Manjulika Gautam, Member (A)

ORIGINAL APPLICATION NO. 1264 OF 2002

Dhan Prasad, son of Shri Charan Das, Resident of Village Nagla Ratti, Post Tundla, District Firozabad.

.....Applicant.
VE R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Senior Divisional Personnel Officer, Northern Railway, New Delhi.

.....Respondents

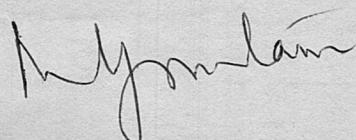
Advocate for the applicant: Sri Sudama Ram

Advocate for the Respondents : Sri P. Mathur

O R D E R

The applicant was engaged as Casual Labour on 24.7.1981 and acquired temporary status after working for more than 120 days. But after 28.7.1988, he was disengaged.

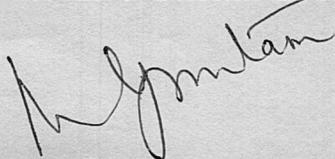
The applicant filed O.A. NO. 1222 of 1999 with direction to the respondents to verify the working period of the applicant and allow the benefit to which he is entitled. On 31.10.2000, the applicant was asked to submit his documents regarding his days of working, which he accordingly submitted. Vide letter dated 15.01.2002, the applicant was informed that working period has been verified and the same has been sent



to Headquarter Office for verification. Vide letter dated 19.02.2002, the applicant was informed by the Divisional Personnel Officer, New Delhi that the Competent Authority has given approval to enter his name in Casual Labour Live Register. On 20.9.2001, the Railway Board has announced the policy that 60% of the open market recruitment vacancies, in the category of Gangman in Civil Engineering Department will be filled up by Ex-Casual Labour borne on Live/Supplementary Casual Labour Register and remaining 40% will be filled through direct recruitment. The age relaxation was also given in this connection for absorption in the Railways, which was 40 years in the case of general, 42 years in Other Backward Classes and 45 years for Scheduled Caste and Scheduled Tribes. The case of the applicant was that he was within the age limit of Scheduled Caste candidates but he had not been absorbed, therefore, he filed the present O.A seeking following relief(s):-

- (i) *The Hon'ble Tribunal may graciously be pleased to issue a writ, order or direction in the nature of mandamus directing the respondents to screen/absorb the applicant against Group 'D's post in the light of the instructions contained in the Railway Board's letters dated 9.10.1998 28.02.2001 and 20.9.2001 (Annexure Nos A-1, A-6 and A-2 respectively).*
- ii) *The Hon'ble Tribunal may further graciously be pleased to issue any other suitable writ, order or direction which is deemed fit and proper in view of the facts and circumstances of the case mentioned above.*
- (iv) *The Hon'ble Tribunal may kindly be pleased to award the costs of this Original Application in favour of the applicant".*

2. The case of the applicant is that in compliance of the orders in the O.A. No. 1222/99 filed by him and vide orders dated 19.2.2002 placed at Annexure A-1, his name has been incorporated in the Live Casual Labour Register at Sl. 429A



and that he will be considered for engagement on his turn and availability of posts. But this has not done.

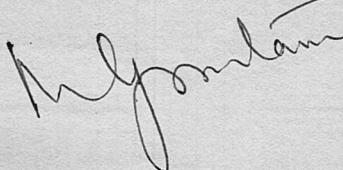
3. In the counter affidavit filed by the respondents, it has been stated that in compliance of the direction in the O.A. No. 1222 of 1999, the name of the applicant has been entered in the Live Casual Labour Register and that his case will be taken up in turn and in accordance with vacancy available/ Respondents have also stated that the applicant ceased to work in 1982 whereas the O.A was filed in the year 2002. In this connection, they have referred to Full Bench Judgment of Central Administrative Tribunal, Principal Bench, New Delhi dated 10.5.2002 in which it has been held the limitation would apply even to the cases of casual labours. Since the applicant in the O.A. ceased to work in Feb. 1982, according to the respondents his claim is excessively time barred. It has also been stated by the respondents that the name of the applicant has been placed in Live Casual Labour Register in pursuance of the direction of the Tribunal and no benefit whatsoever can be given to the applicant.. In para 8 of the counter affidavit, it has also been denied by the respondents that applicant had acquired temporary status as according to counter affidavit he had not completed 120 days of continuous working. In brief, the stand of the respondents is that in accordance with Tribunal orders, the name of the applicant has been entered in the Live Casual Labour Register but it does not give him fresh right for consideration particularly in the circumstances when the applicant had not

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approached at the earliest coupled with the fact that number of persons are awaiting appointment on the Live Casual Labour Register.

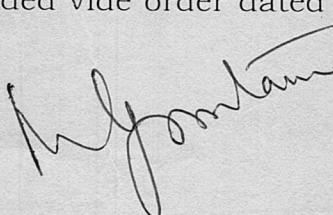
4. In the rejoinder affidavit filed by the applicant, it has been stated that although the name of the applicant has been entered in the Live Casual Labour Register at Sl. No. 429-A , but he has not informed as to how many casual labour are still waiting ahead of him or the numbers of persons, who have already been absorbed. It has also been stated that question of limitation will not arise in his case as his case as his name has already been entered in the Live Casual Labour Register. The applicant has also stated that respondents are making fresh recruitment in Group 'D' in Engineering Department from the open market instead of considering the regularization of ex-casual labour. He has also referred to advertisement No. 1/03 regarding recruitment against reserved vacancies from the open market. Recruitment should not be done until all the names entered in the Live Casual Labour Register are first considered.

5. In the supplementary affidavit filed by the applicant, it has been stated that the name of the applicant is at Sl. NO. 429 A of the Casual Labour Live Register. Applicant also drew attention to 7 casual labours, who name are below him in the Live Casual Labour Register, who have been re-engaged against regular vacancies as substitute Gangman vide letter dated 6.8.2001. He has placed a copy of the same at



Annexure S.R.A -1. A perusal of this letter dated 6.8.2001 shows that the name of various candidates who have been engaged, figure are below the serial No.429A allotted to the applicant. The working days also less than 100 days.

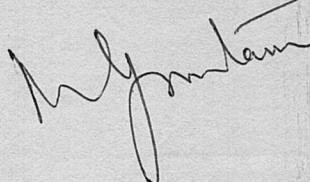
6. A supplementary counter affidavit has been filed by the respondents. In para 2 of the supplementary counter affidavit that they have again reiterated that OA is time barred but they have themselves admitted that name of the applicant has been entered at Sl. NO. 429A in the year 2002. It has been clarified by the respondents that Shri Latoor Singh and Shri Naresh Kumar were appointed in pursuance of the direction of the Tribunal in O.A. NO. 2423 of 1997, which were confirmed by the Hon'ble Supreme Court. It has also been stated that the present applicant had filed O.A No. 1264 of 2002 claiming regularization but vide order dated 5.9.2006, it was decided that "***thus no special consideration can be given to the applicant on the ground that his name has been entered in the Live Casual Labour Register and he belongs to reserve category.....***". Respondents have also clarified that at present 10 ex-casual labours from Sl. NO. 1 to 9 and 11 in the Live Casual Labour Register are still waiting for their engagement as their matters are still under consideration of various Courts. It has also been stated that Live Casual Labour Register is not being operated since 2005 and they have referred to writ petition No. 3380 of 2007, which was decided vide order dated 7.5.2007, which reads as follows:-



".....It is also submitted that having found several anomalies and irregularities in the LCLR, the LCLR is not being operated since 2005 in consultation and consent of the two recognized union".

It has also been stated by the respondents that applicant cannot be considered for engagement as he is more than 51 years of age and, therefore, there is no merit in the O.A.

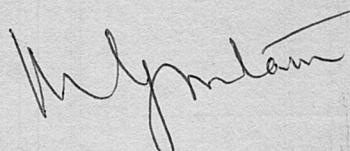
7. In the supplementary rejoinder affidavit filed by the applicant, it has been stated that vide letter dated 19.2.2002, applicant had been given the undertaking that he would be considered for regularization on his turn and on availability of posts but applicant has pointed out that large number of appointments have been made by the Delhi Division and person junior to him in the Live Casual Labour Register or fresh persons have been engaged while his claim has been ignored. The applicant has again reiterated that limitation does not arise in his case as his name has already entered. In fact applicant has stated that at the time of appointment of Latoor Singh and Naresh Kumar, he should have been considered as his name is above them in the seniority list of Live Casual Labour Register and he has also more working days than them. If he had been considered at that time, he would have been within the age of 45 years as S.C. candidate. Applicant has placed his T.C. from Junior High School which shows that his date of birth is 1958. Relying on this in the



year 2001 when Shri Latoor Singh and Naresh Kumar were appointed he would have been less than 45 years.

8. I have heard Shri Sudama Ram, Advocate for the applicant and Shri P. Mathur, Advocate for the respondents and perused the record on file.

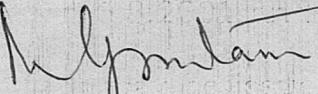
9. The case of the applicant is that he should have been considered for regularization in his turn subject to availability of posts. The applicant has mentioned that large number of vacancies were advertised by the Delhi Division and this fact has not been rebutted by the respondents. Applicant has also stated the fact that two person below him in the Live Casual Labour Register and who had less working days than him were appointed in 2001. According to him, he should also have been considered at the same time. The defence of the respondents is that O.A. is time barred, that 10 persons senior to him in Live Casual Labour Register have not yet been regularized and that at present his age above 51 years. It is very clear that this O.A. is not time barred as the entry of the applicant's name in the Live Casual Labour Register was made in the year 2002 and O.A. has also been filed in the same year. The case of ex-casual labour figured at Sl. No. 1 to 9 and 11 in the Live Casual Labour Register have not been regularized but respondents have themselves mentioned that this is not done due to the fact that Court cases are pending in their matter. No Court case is pending in the case of the applicant and, therefore this is improper reason for not

A handwritten signature in black ink, appearing to read "Sudama Ram".

considering his case, 7 persons junior to the applicant have been considered positively and this is also admitted by the respondents that they have done this in compliance of direction of Hon'ble High Court's order. It is painful to observe that action is being taken in only those cases where direction coming from the Court. Even at the time of considering 7 cases, which came as per direction of the Court, all cases above him should have been taken up and decided on merits. It is only when a pick and choose policy is followed that there is resentment. From the facts available on record, it is clear that the applicant is liable for consideration. The fact that others senior to him have not been regularized because of Court cases pending does not deprive of the applicant of being considered in his turn and if any persons juniors to him in the Live Casual Labour Register were considered in 2002, he should have been considered. At the point of time, he was well within the age limit. Respondents are directed to consider his case for regularization on the basis of facts which existed before the orders of regularization issued on 6.8.2001 and if he was eligible at that time, suitable orders may be issued. This exercise is to be completed within 2 months from the date of receipt of this order.

10. O.A. is accordingly allowed with the direction to consider the regularization of the applicant prior to 6.8.2001 and to pass suitable orders. No costs.

Member (A)
Manish/-


Member (A)