

RESERVED

CENTRAL ADMINISTRATAIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 12 day of 9 2008.

Original Application No. 1365 of 2002

Hon'ble Mr. A. K. Gaur, Member (J)

Lekhpal Singh, S/o Sri Rameshwar, R/o Village Sonebarsa, Post Office Maitha, P.S. Shivli, Tahsil Akharpur, District Kanpur.

. . . Applicant

By Adv: Sri S. Dwivedi

V E R S U S

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Allahabad.
3. The Sr. Traction Foreman, Northern Railways, Phaphund .

. . . Respondents

By Adv: Sri Hari Ashok Kumar

O R D E R

Through this OA the applicant has prayed for a direction to re-engage and regularize the applicant in service as Class IV Employee in the Railways in preference to outsider and junior persons. It is alleged that he was initially engaged as casual labour under respondent No. 3 w.e.f. 10.10.1971. He was allowed to work upto 12.09.1987. He further alleged that he had worked for 2472 days and these working days are recorded in casual labour card of the applicant. According to the applicant his rest of the working period during which he worked under the PWI,

Special, Northern Railway, Etawah have not been recorded in the casual labour card. The applicant acquired temporary status by working for continuous period of 120 days and he is entitled to avail all the benefits admissible to temporary Railway Servant under the law. The applicant vide letter dated 23.10.1993 was directed to appear in the screening test which was going to be held on 02.11.1993. Copy of the letter dated 23.10.1993 is annexed as Annexure A-2 to the OA. Screening test was held on 04.11.1993 consisting of 03 officers of the Railway. According to the applicant the result of the said screening test has neither been published nor communicated to the applicant till date. As the result of the screening test was not declared, the applicant submitted several requests orally as well as in writing. Copy of the application/representation submitted by the applicant on 19.10.1996 to Divisional Railway Manager, Northern Railway, Allahabad (Annexure A-3 to the OA), but no heed was paid by the respondents on the said representation of the applicant. The applicant in the month of July 2001 for the first time came to know that the persons whose working days are less than him and were much junior, as well as fresh candidates, have been reengaged and regularized by the respondents. For the purpose of regularization of services the candidates from the Live Casual Labour Register maintained at Divisional level were called as per seniority and their services were regularized. In

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the present case the respondents ignoring all norms of law reengaged Shri Mohd. Rasheed whose working days was much less than the applicant and his services have been regularized. Even fresh candidates have been appointed by the respondents. The name of fresh candidates and outsiders have been mentioned in paragraph No. 11 of the OA.

2. The main grievance of the applicant is that non declaration of the result of screening test held on 04.11.1993 and the action of the respondents in reengaging and regularizing the services of the junior persons is wholly illegal and arbitrary and violative of Article 14 and 16 of the Constitution of India. The applicant had earlier filed OA No. 1805/92 before this Tribunal challenging order of termination of services dated 12.09.1987, the same was dismissed on 24.12.1997 by a Bench of this Tribunal (Annexure A-9 to the OA) on the ground that the applicant was discharged from service due to lapse of ELA sanction.

3. In the reply filed by the respondents it is clearly submitted that the OA is barred by principle of limitation and also principle of res-judicata. The applicant has already approached this Tribunal by way of filing OA No. 1805/92 with the same relief.

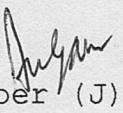
4. Having heard parties counsel I am fully satisfied that the OA is barred by principle of delay and

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latches, as well as principle of res-judicata. Hon'ble Supreme Court has clearly held in its several decisions that a direction can only be issued in favour of a person who has some right and not for the sake of probing enquiry leaving scope of maneuvering. The delay itself deprives the person of his remedy available under law. It is also seen from the record that in the earlier OA No. 1805 of 2002, the order of termination of the applicant dated 12.0.1987 was challenged. The applicant was discharged from service because of expiry of ELA sanction. No reasonable or plausible explanation has been given by the applicant for condoning the inordinate delay in approaching this Tribunal. In view of **2000 SCC (L&S) 53 : Ramesh Chandra Sharma Vs. Udhamp Singh Kamal**, the OA is not legally maintainable. It is also held in this decision that the merits of the case cannot be looked into without condoning delay. I have carefully seen the judgment of Hon'ble Supreme Court in **1999 SCC (L&S) 643 : Commandant P.S.P. Vs. Eswarmuthy**. In this case the Hon'ble Supreme Court has gone to the extent of saying that delay cannot be condoned on the ground that some judgment came to the knowledge of the applicant and as such the same benefit be granted. In support of this contention **1996 SCC (L&S) 1488 : State of Karnataka Vs. S.M. Katrayya** has been placed reliance by the respondents.

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5. In view of my aforesaid observation, the OA is misconceived and deserves to be dismissed on the ground of delay and latches. The OA is accordingly dismissed on the ground of delay and latches. No cost.



Member (J)

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