

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH: ALLAHABAD**

Original Application No.169 of 2002.

Allahabad, this the 18th day of January, 2008.

Hon'ble Mr. Justice Khem Karan, Vice-Chairman

Uma Shanker Pandey, S/o Sri Satya Narain, R/o Village Banki Tola, P.S. Phulwaria, Post Baurdih Tiwari, District Deoria.

...Applicant.

(By Advocate : Sri S.K. Om

Versus

1. Union of India through its General Manager, N.E.R., Gorakhpur.
2. Sr. Divisional Personnel Officer, N.E.R., Varanasi.
3. Permanent Way Inspector (Construction), N.E.R., Siwan.
4. Deputy Chief Engineer (Construction), N.E.R., Lucknow.

Respondents

By Advocate: Sri K.P. Singh.

O R D E R

Applicant-Uma Shanker Pandey, S/o Sri Satya Narain, has come with a case that he worked as casual labourer in two spells, first in 1979, and second in 1980-81, in total for 214 days in North Eastern Railways, and his name was mentioned at sl. No. 77, in the list dated 15.11.2001 (CA-2) of Ex-casual labourer, who worked upto 31.12.1980. His grievance is that so many juniors to him as mentioned in para 4.5 and 4.6 of the O.A., have been regularised, but his case has not been considered inspite of the various representations given by him. He alleges Railway

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Board issued circular dated 3.9.1996 (Annexure-3), for regularizing the services of such casual labourers, who were on roll as on 30.4.1996, and in terms thereof several casual labourers have been regularised. He has prayed for commanding the respondents to regularise his services as Khalasi, from the date junior to him was regularised and also assign seniority and give other consequential benefits. It is also prayed that circular dated 3.9.1996 be quashed to the extent it provides for a cut off date i.e. 30.4.1996.

2. Sr. Divisional Personnel Officer, North Eastern Railway, Varanasi, filed reply saying that applicant never worked in that Division and since seniority list (Annexure-2) pertains to constructions unit, hence Dy. Chief Engineer (Constructions) was the correct person to tell whether applicant worked as casual labour in 1979-81 and whether list (Annexure-2) was issued by that unit in accordance with instructions issued by the Railway Board. It is said that O.A. is time barred, as the applicant himself says that he is not in job after 30.6.1981. It has also been said that the seniority list (Annexure-2) appears to be fabricated as it was not clear under whose authority or signatures the same was issued.

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3. The applicant impleaded P.W.I. (Construction), N.E. Railway, Siwan and Dy. Chief Engineer (Constructions) N.E. Railway, Lucknow, as respondent nos. 3 and 4, who failed to file responses before the case reached the stage of arguments. After the applicant's counsel filed his written arguments, Sri K.P. Singh, counsel for the respondents wanted to file Counter Affidavit of respondent no.4 and his Written arguments. Order-sheet dated 2.8.2007 reveals though Written arguments were taken on record, but no orders were passed for taking reply of respondent no.4, on record. So, that reply of respondent no.4 filed in May, 2007 is not being considered.

4. I have gone through the pleadings and other material on record and also through the Written arguments.

5. Relying on Bhoop Singh Vs. U.O.I. and Others (1992 (21) ATC 675) and Ramesh Chandra Sharma Vs. Udhamp Singh Kamal (2000 SCC (L&S) 53), Sri K.P. Singh has argued that since the applicant is coming before the Tribunal after about 22 years, so the same should be dismissed on the ground of limitation and laches. On the other hand, the learned counsel for the applicant has submitted that since the name of the applicant is borne on Live Casual Labour Register, hence in view of the Division Bench decision of Principal Bench in

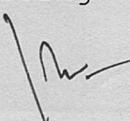


O.A. no. 1696 of 1992 in re. Hukum Singh Vs.

U.O.I. and others, reported in (1993) 24 ATC 747), the O.A. cannot be said to be time barred.

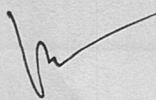
6. It need not be stated again and again that Live Casual Labour Register were opened under various circulas issued by Railway Board, pursuant to the directions given by the Apex Court in Indra Pal Yadav's case. This was in late eighties. Names of all ex-casual workers were to be mentioned according to number of days, so put in by them. It was decided/ provided that persons so put in that register, shall be re-engaged and regularised, against the vacancies to occur in future. Railway does not dispute that an ex-casual labour, finding place in such register or supplementary register, has a claim for re-engagement, as and when his turn comes in order of seniority. Such a person is not expected to make monthly or yearly enquiry from the office concerned, as to whether his turn is likely to come in near future or whether any junior to him in the list, has been offered such re-engagement or regularisation. Cause of action for such a ex-casual labourer will arise only when he gets to know that any junior to him has been accommodated, ignoring his prior claim.

7. It is asserted by the applicant that his name finds place at sl. No. 77 in the seniority list (Annexure-2), which is being characterized



(in Written arguments) as Casual Labour Live Register. If this version of the applicant is accepted, the O.A. will not be time barred. Whether list (Annexure-2) is Live Casual Labour Register, as contemplated in the instructions of the Railway Board, whether it is authentic or fabricated, whether it contains the name of applicant and whether any junior to the applicant has been re-engaged or regularised, are all the questions that have to be looked into, as the respondents dispute the authenticity of this list.

8. The learned counsel for the applicant has tried to say in his arguments (on page -9) that since list (Annexure-2) was subject matter in O.A. no. 151 of 1999 and since that O.A. was allowed, so genuineness of Annexure-2 cannot be doubted. After having gone through the decision dated 30.6.2003 (W.S.4 to applicant's written arguments) in O.A. no. 151 of 1999, I am of the view that there the facts were totally different and it is difficult to say that Annexure-2 of this O.A. was under discussion there. All the applicants there, came with a case that they were working as Substitute Safaiwala, after having been put on approved panel dated 31.12.1991, in medical department. Reference to certain general instructions of General Manager, was also made. Para-7 of decision dated 30.6.2003 makes it clear that there the respondents did not dispute that



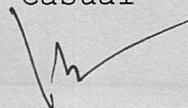
names of applicants were on panel. I fail to understand as to how decision dated 30.6.2003 in O.A. no. 151 of 1999 is being cited, for saying that authenticity of list Anneure-2 to the present O.A. has already been accepted. Present list Annexure-2 was not before the Tribunal in O.A. no. 151 of 1999.

9. The learned counsel for the applicant has also referred to certain other decisions of various Benches of this Tribunal, so as to say that directions were given for re-engagement or regularisation of ex-casual workers. All those cases turned on their own facts. In Bhagirathi and others Vs. U.O.I & Ors. (W.S.3 to applicant's written arguments), it was admitted to the Railways that applicants' names were recorded in Live Casual Labour Live Register. The factual position in Swaroop Singh Vs. U.O.I. & Ors. (W.S.5 to applicant's written argument) was also the same, as there the respondents did not dispute that the applicant's name figured in such register of Moradabad Division. W.S.-7 is an interim order and cannot be cited as precedent. Decision of this Bench in O.A. no. 827 of 1991 in re. Tilakdhari and Others Vs. U.O.I. & Ors. (W.S.-8) cannot be cited as a binding precedent, as the same was disposed of at admission stage, without reply.



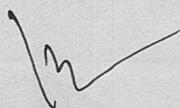
10. Here in the case, in hand, the respondents are disputing the genuineness of list Annexure-2. According to the list, persons shown therein worked upto 31.12.1980, under PWI, Siwan (East), in meter or Broad gage line (Construction). It purports to have been prepared on 28.7.1989 and attested on 15.11.2001. It is not clear who prepared and why the same could not be attested in 1989 or 1990. More-over the working periods of the persons, other than those mentioned in endorsement, were not certified nor Muster Rolls were available to verify the same. Sl. No. 77 comes in that category.

11. One cannot dispute that if applicant's name is there in relevant Live Casual Labour Register and if juniors to him have been re-engaged /regularized without screening or considering him in accordance with instructions in-force, the directions can be given to the authority concerned to consider his case also for re-engagement or regularization. I do realize that cases of a casual workers or ex-casual workers or adhoc employees, for re-engagement or regularization etc have become very very weak after Constitution Bench decision of Apex court in State of Karnataka Vs. Uma Devi reported in J.T 2006 pg 425, as cited by Shri K.P. singh, but the cases of ex-casual workers of Railways, whose names are therein on Live Casual Labour Registers/supplementary Live Casual Labour



Registers, prepared pursuant to the direction issued by the Apex court in ram pal Yadav's case, and who complain of official discrimination may not be within the teeth of that decision. The matter could be viewed from another angle, which in my opinion is ~~more~~ more crucial to preservation of faith of the people in rule of law, and the administration of justice. Various circulars/executive instructions, issued by the Railway from time to time, for screening ~~or~~ ^{or} re-engaging or regularizing such ex-casual workers, whose names figure in the Live Casual Labour Register/Supplementary Register, are continuing with or without modification, and process of re-engaging or regularization is still continuing. If we shut the door of the Tribunal to a person, aggrieved of official discrimination, we may be indirectly encouraging such discrimination and giving an impression to the aggrieved, that courts and Tribunals are not powerful enough to contain such objectionable discrimination. The observations made above will not be taken out of context and will not be construed, to mean that I have found any such discrimination in the case in hand.

12. My considered view is that respondent no.4, may be asked to examine or get it examined through responsible officer, (1) whether Annexure-2 (to the O.A.) is genuine or fabricated, (2) whether it can be said to be Live

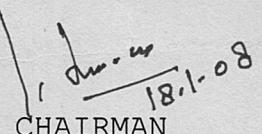


Casual Labour Register, (3) whether name of the applicant finds place at sl.no.77, (4) whether he worked at the place shown in this list and for the period shown, (5) whether any person placed at sl.no.78 onward has been re-engaged or regularized and if so why the case of the applicant was not considered and whether (6) the applicant can be re-engaged or regularized now, according to existing instructions of Railway Board, and if so to consider his case. Directions are issued accordingly as mentioned above. The above exercise shall be completed within a period of four months from the date a certified copy of this order is received. No costs. The O.A. stands disposed of with the above directions.

~~MEMBER (A)~~



VICE CHAIRMAN


18/1/08

Dated: Jan.... 2008

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