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RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.**

ORIGINAL APPLICATION NO. 190 OF 2002.

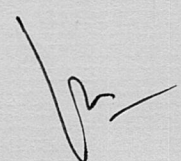
ALLAHABAD THIS THE 2nd TH DAY OF November 2006.

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

1. Naumi Nath, son of Sugrim r/o Village, Basharatpur, Post Basharatpur, District Gorakhpur.
2. Om Prakash son of Satai Prasad r/o Village Jangaltola, Post Basharatpur, District Gorakhpur.
3. Rajendra Prasad, son of Garib Lal, R/o Village Moti Ghogra, Post Basharatpur, District Gorakhpur.
4. Sahhidanand, son of Jainarayam, r/o Village; Jangaltola, Basharatpur, Post Basharatpur, District Gorakhpur.
5. Lalchand Prasad, son of Ram Aasrey, R/o Village; Purana Asuran Chungi Rozana Lal Gola (Degree) Post Basharatpur, District Gorakhpur.
6. Buddhiram, son of Sunder, R/o Village: Belwa Tikar, Post Belwa Tiker, District Maharajganj.
7. Rajman Prasad son of Dukharan Prasad R/o Village: Moti Pokhra (Basharatpur), Post Basharatpur, District Gorakhpur.
8. Ram Saran, son of Banshu, r/o Village: Ekla Mishraulia, Post Ekla Mishraulia, District Deoria.
9. Ramayan Prasad, son of Ramsmujh R/o Village Bhaisaha Dhoda (Gattitola), Post Bhaisaha, District Gorakhpur.
10. Prashuram, son of Vindhyachal, R/o Village Jungal Kaudiya (Kaharpurwa), Post Jungal Kaudia, District Gorakhpur.
11. Ram Aasrey, son of Shankar, R/o Village Bhaisaha (Dhodra), Post Bhaisaha, District Gorakhpur.
12. Bechu, son of Nithuri, R/o Village Sahpur (Somra) Post Sahpur, District Gorakhpur.
13. Ram Pyarey, son of Mahesh, R/o Village Bhaisaha (Dhodra), Post Bhaisaha, District Gorakhpur.
14. Dinanath son of Chirkut, R/o Village Bhaisaha (Dhodra) Post Bhaisaha, District Gorakhpur.
15. Mewa Lal, son of Shankar R/o Village Karmaha Khurch, Post Gularia Bazar, District Gorakhpur.
16. Harish Chand, son of Gumai, R/o Village Rawatganj (Kurch), Post Rawatganj (Kurch), District Gorakhpur.

.....Applicants.

(By Advocate: Sri G.D. Mukherjee/Sri Satyajit Mukherjee)



Versus.

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. The General Manager, North Eastern Railway, Gorakhpur.
3. The Deputy Chief Engineer, Gorakhpur Area, North Eastern Railway, Gorakhpur.
4. Inspector of Works (Karkhana), North Eastern Railway, Gorakhpur.

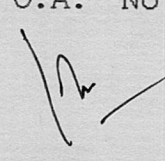
.....Respondents.

(By Advocate: Sri Anil Kumar)

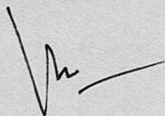
ORDER

The applicants pray for commanding the respondents to absorb and regularise them. They also pray that the respondents be directed to pay salary allowances including back wages from the date last junior to them was given this benefit.

2. In brief, their case as disclosed in the O.A., is that in between 1972 to 1979, they worked as Casual Labourers in Open Line under Inspector of Works (Kharkhana) under the control of Deputy Chief Engineer, Gorakhpur and their names appeared in the Live Casual Labour Register. They say that it was in September 1988, that they received call letters from the office of respondent NO.3, asking them to appear for screening test to be held on 12.9.1988 and in compliance of this letter, they appeared for the said test. Photocopies of the call letters are Annexure 2 to this O.A. They say that they kept waiting for result of such screening test. In para 7, it has been said that some similarly situated Casual Labourers filed O.A. No 358 of 1989

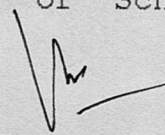


(Sita Ram & Others Vs. Union of India & Others) before this Bench, which this Tribunal allowed with a direction to the respondents to absorb the applicants therein and in compliance of those directions, they were re-engaged. They say that certain others similarly situated casual labourers filed another O.A. No.61 of 1992 (Tirath and others Vs. Union of India & others) which was also allowed by this Bench. Copies of these decisions are Annexure Nos. 3 and 4 to this O.A. They go on to state that Railway Administration prepared a list of 142 Labourers on the basis of Screening Test held on 29.8.1988, 30.8.1988 and 12.9.1988 but the panel was not made public and after the decisions of this Bench in the abovementioned cases of Sita Ram and Tirath (supra), the said panel became operative and whosoever of that panel approached this Tribunal, was re-engaged on the basis of orders passed by this Tribunal. Photocopy of the list/panel is Annexure 5 to this O.A. They say that when they approached the Authorities for re-engaging or absorbing them, claiming similarity with the applicants in the said O.As, the respondents paid no heed rather asked them to bring orders of the Tribunal. They say that they belong to Scheduled Caste category and deserve to be given the same treatment as has been given to similarly situated persons. They complain in para 15 that Casual Labourers mentioned at Sl. Nos.33 to 41 in the said panel, though juniors to the applicants, have also been re-engaged on the directions of this Tribunal.



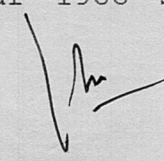
It is further stated in para 17 that since their names are in Live Casual Labour Register hence they have a recurring cause of action.

3. The respondents have filed Written Reply contesting the claim of the applicants. The sum and substance of their defence is that applicants never worked as Casual Labourer in the said Unit nor their names existed in the Live Casual Labour Register and so the allegation in the O.A. that they were called for Screening Test is totally illfounded. They say that it has been found from verification of the Muster Sheets that none of them (excepting Mewa Lal) worked in the Unit of Dy. C.E./G.A/GKP, in 1972 and onwards. They, however, conceded in paras 4 and 5 of the reply that Live Casual Labour Register in the said unit was opened as late as in the year 1994. In para 8, it is said that the relevant record pertaining to screening test held on 29.8.1988, 30.8.1988 and 12.9.1988 is missing and is not available but this much is clear that the result of Screening Test was not declared under orders dated 3.1.1989 of General Manager. It is conceded in para 9 that as per directions given by this Tribunal in O.A. 358 of 1989, Sita Ram Vs. Union of India and Ors., the applicants therein were appointed in this unit as they were admittedly retrenched Open Line Casual Labourers. According to the respondents (see para 10) list of Screening Test held in respect of Scheduled Caste

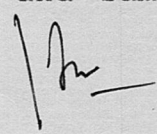


candidates in the year 1988 was prepared but was not available in the office and this fact was brought to the notice of the Tribunal in the case of Sita Ram and Tirath and others (supra). They say that entire records of the Screening Test held in 1988 in the office are not available and so it cannot be ascertained whether the applicants were called for the Screening Test. They say that genuineness of the list (Annexure-5) cannot be verified for want of relevant original records and so the same is not acceptable to the respondents. They want to say that when in the year 1994 steps were being taken for preparing Live Casual Labour Register and when Ex-Casual Labours were called for to come and produce the relevant records, these applicants (excepting Mewa Lal) did not turn up. They say that O.A. is highly time-barred and deserves to be dismissed on this ground alone. Reference to Sukhai's case is being made in para 22 so as to say that like petition by him and few others was dismissed.

4. By filing the rejoinder, the applicants have tried to say that their case stand on the same footing as that of the applicants in O.A. No. 358/89, O.A. NO.61/92, O.A. No.1092/91, 1255/91 and O.A. NO.1226/91, which were allowed by this Tribunal, directing for re-engagement and absorption etc. of the applicants therein. In para 6 (b) of this rejoinder, they have tried to say that in the year 1988 seniority list of

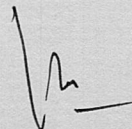


casual labourers belonging to Scheduled Caste was prepared as at that time muster sheets were available. They say that in the beginning a list of 90 such casual labourers was published and was pasted on the Notice Board, inviting objections and after objections, names of other casual labourers were included and in this way, a list containing 142 persons was placed in the screening list and on the same basis letters were issued to such Casual Labourers for screening test to be held on 12.9.1988. With a view to substantiate this averments, they have referred to reply filed by the respondents in O.A. No. 73 of 1992, Baij Nath and others Vs. Union of India and others, Sita Ram Vs. Union of and others and Tirath and others Vs. Union of India and others. They say that in 1994, they did not apply for putting their names in the Live Casual Labour Register as they had already been screened in the year 1988. They argue in para 11 that when the record is missing, then how the respondents say that applicant did not work as Casual Labourers or call letters were not issued to them for the Screening Test. It is stated in para 17 of the rejoinder that it was after the decision of this Tribunal in Baijnath case that the Live Casual Labour Register was opened in the Unit but for general candidates only and not for Scheduled Caste candidates as list in the shape of Annexure 5 was already there in respect of such candidates and same was treated to be



Live Casual Labour Register in respect of such candidates.

6. I have heard Sri S. Mukherji, learned counsel for the applicant and Sri Anil Kumar, learned counsel for the respondents. Photocopies of the certificates issued by the Inspector of Works (Karkhana) N.R. Gorakhpur as back as 1978 (available as Annexure 1) reveal that applicants No.1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14 and 16 worked as Casual Khalasi for 319, 397, 291, 265, 235, 147, 198, 398, 305, 294, 298, 298, 368, 260 and 298 days respectively in between 1972 to 1978 in that unit. Letters (as available in Annexure 2) issued in September 1998 from the office of Deputy Chief Engineer, Gorakhpur Region, Gorakhpur reveal that they were asked to appear on 12.9.1988 at 10 A.M. alongwith relevant papers for Screening Test. There is a general denial from the side of respondents that the applicants worked as Casual Labour or such letters for screening test were issued to them. I fail to understand as to when the respondents have lost relevant record, how can they say that the applicants did not work for such numbers of days as noted in the abovenoted certificates or were not issued call letters for screening test. The respondents could have verified whether the certificates about the working as Casual Labourers for said number of days in the said period were really issued by Inspector of Works (Karkhana). They could have also verified

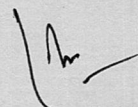


whether the call letters dated 8.9.1988 available as Annexure 2 ^{by} ~~bear~~ the signature ^{by} ~~of~~ Authorities concerned, bore the signature of officer concerned. There is no whisper in the reply that these certificates as Annexure 1 or these call letters as Annexure 2 did not bear the signature of Authorities concerned or were fake or forged. When the applicants say that such certificates or letters were issued by the Authorities concerned and when the respondents have no relevant records with them so as to authoritatively dispute the genuineness thereof and when the respondents do not say that on enquiry, it was found that these did not bear the signature of the Authorities concerned, the Tribunal has no reason not to accept these papers as genuine and true. The respondents should thank themselves for creating mess in the office. They themselves ~~conceded~~^s in reply that no Live Casual Labour Register in the said unit was opened before 1994, inspite of the directions of the Railway Board issued earlier and when they themselves ~~consider~~^{admit} that the relevant records relating to the Screening test is missing, there is no option left with the Tribunal ^{but} to accept the averments made by the applicants that they worked for the days mentioned in the certificates and they were called for screening test and they appeared in the screening test held on 12.9.1988, especially when the above assertions is supported by papers like Annexures 1 and 2. The applicants have placed on record photo copy of the list which is Annexure 5. They say

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that this list was prepared in 1988. Though the respondents have tried to disown it on the ground that it does not bear the signature of any Authority but much is not disputed that many of the persons of this list approached this Tribunal by way of filing O.As and on the basis of directions issued therein have been engaged or absorbed. I accept the submissions of Sri S. Mukherji that this was the list of Scheduled Caste candidates, who worked as Casual Labourers in the relevant period. I need not go at length on this point.

7. A perusal of the decision given by this Tribunal in O.A. NO.61/92 Tirath and others Vs. Union of India and others, decision in O.A. NO.1226/91, Sampath and others Vs. Union of India and others, decision dated 15.7.1994 in O.A No.1190/96 Ram Nath and 23 others Vs. Union of and India and others and decision in O.A. NO.1092/91, Bhola and others Vs. Union of India and others would reveal that the cases of applicants therein were similar in nature. In all those cases directions were issued to absorb the applicants therein against the vacancies available in respect of categories of General and Scheduled Caste etc. It is never the case of respondents that the matter was taken to any higher court or the decisions given therein were reversed or were not implemented. It would be highly ridiculous to refuse the relief to these poor applicants, whose cases are almost similar to them. Refusal to give relief to

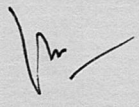


these applicants may create an impression that Courts or Tribunal are not unanimous in such matters.

8. As regards the plea of limitation raised by the respondents, this much is sufficient to say that when the names of the applicants were placed in the list of Ex-Casual Labourers and when they were screened as back as 1988, they had a recurring cause of action. It is true that they are coming after years of decisions given by this Bench in the abovementioned O.As but that alone will not be ground to say that their O.As are barred by time. One who has been kept on a list, has to be considered in his turn and respondents should have considered them. These extremely poor and almost illiterate or semi-literate persons should not be shown the door simply on the ground of delay, if any. So the plea that the O.A. is barred by limitation, is rejected.

9. In the result, I am inclined to direct the respondents to re-engage/absorb these applicants (excepting applicant NO.15 who has, already been absorbed) in Class IV against available vacancies in the Scheduled Caste quota after subjecting them to medical test.

10. So this O.A. is disposed of with a direction to the respondents to call the applicants (excluding applicant NO.15) for medical test and those who are



found fit in the medical test, be re-engaged/absorbed in Class IV against available vacancies of Scheduled caste quota. This exercise should be completed within a period of three months.

No costs.

/ *Ans - u*
02.11.07

Vice-Chairman

Manish/-