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Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No. 354 of 2002

Friday, this the 15th day of **February** 2008

Hon'ble Mr. K.S. Menon, Member (A)

Triloki Nath Yadav, Son of Sri Bhulai Yadav, Resident of Village Akolha,
Post Office Unchagaon Police Station Golabazar, District Gorakhpur.

Applicant

By Advocate Sri S.C. Tripathi

Versus

1. Union of India through G.M. Northern Railway, Baroda House,
New Delhi.
2. Mandal Rail Prabhandhak, Eastern Railway, Varanasi.
3. Maha-prabandhak (Karmik), Eastern Railway, Gorakhpur.

Respondents

By Advocate Sri K.P. Singh

ORDER

By K.S. Menon, Member (A)

The present O.A. has been filed against the inaction of the respondents in reengaging the applicant as a casual labour in Eastern Railway, Varanasi.

2. The applicant was appointed as a casual labour on 10.01.1983 under the Works Inspector Construction (BG) Bhatni and is said to have worked up to 31.08.1987. The applicant states work certificates have been issued to him from time to time during the above period. His services were dispensed with on 31.08.1987 and after that he has not been reengaged. Applicant came to know that many persons who were initially appointed alongwith him have been subsequently reengaged and also appointed on the vacant post. He has cited the example of one Shri Tara son of Shri Jagdish ex casual labour (annexure-IV of the O.A.). The applicant submitted several representations to the respondents requesting he be reengaged in view of his past satisfactory service record but the respondents have not responded. These representations dated 03.12.1996, 02.01.1998 and 12.10.2001 are collectively annexed at Annexure-6 to the O.A. Being aggrieved by the

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inaction of the respondents, he filed this O.A. seeking directions of this Tribunal to the respondents to consider his case for re-appointment as casual labour under the said Zonal Railway and also consider his representations which are pending before the respondents and dispose off the same with a reasoned and speaking order. (19)

3. The respondents have denied all the averments made by the applicant. Respondents submit that as per the applicant's own admission he worked only upto 31.08.1997 hence this O.A. filed on 14.03.2002 is heavily barred by limitation and is liable to be dismissed on this ground alone. The applicant rebutted this stating that he came to know about the reengagement of similarly placed persons and only after there was no response to his various representations, he filed the O.A. On the issue of merits the respondents contend that the period the applicant was engaged as a casual labour being very old they are unable to certify the said period. However, based on enquiries made with the various offices where the applicant worked, it was verified that he worked for a total period of 243 days in broken spells from 12.07.1983 to 31.08.1987. The Railway Board issued a circular dated 18.12.1980 on the issue of recruitment of casual labour (annexure-1 to Counter Affidavit), which inter alia states: -

"A reference is invited to Board's D.O. of even no. dated the 16th May, 1980 on the above subject. The position has recently been reviewed by the Board who have decided that intake of fresh casual labour should be resorted to only after obtaining prior personal approval of the General Manager; this authorisation not being delegated to a lower level. You may kindly arrange issue of instructions accordingly to your subordinate units and evolve an effective machinery to ensure that this instruction is fully complied."

Respondents submit that since the applicant was appointed in 1983 after the issue of the above circular his appointment should have been approved by the General Manager. Applicant's appointment was not approved by the General Manager till his date of discharge, hence, the applicant came under the category of unauthorized substitute, hence he was not regularised. Besides the subsequent circular of Railway Board dated 11.12.1996 stipulated the revised procedure for regularisations of casual labour who were on the roll as on 30.04.1996. Since the applicant was not on the roll, as on 30.04.1996, he was not eligible and so his case was not considered. They further clarified that casual labourers who worked before 31.12.1980 and those who were on

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the rolls on 30.04.1996 have been considered as authorized substitutes. Responding to example of Shri Tara Prasad cited by the applicant, the respondents submit that Shri Tara Prasad's date of initial appointment was 16.05.1978 as per records available with them, hence he was accordingly considered and reappointed, while the applicant's case is different and was therefore not considered hence his contention is not tenable. In view of the above they claim that the applicant's case has no merit whatsoever and is liable to be dismissed.

4. Heard Shri S.C. Srivastava, learned counsel for the applicant and Shri K.P. Singh, learned counsel for the respondents and perused the pleadings on record.

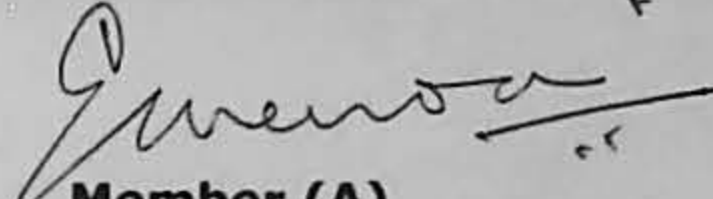
5. There is no doubt about the delay in filing the O.A. and even though the applicant has not given any convincing reasons for the same the delay is condoned as there appears to be some merit in his case and merely on technicality he should not be denied a fair chance. There appears to be no dispute about the period the applicant worked in broken spells for a total period of 243 days from 12.07.1983 to 31.08.1987. Respondents have however not been able to confirm the period prior to these dates from 10.01.1983 i.e. date of initial appointment as the records pertain to a very old period hence not susceptible to verification. Admittedly the point made by the respondents that the applicant's appointment was post 1980 but was not approved by the General Manager as required under the provisions of the Railway Board Circular is correct but lacks force because if the applicant was recruited in 1983, it was the responsibility of the respondents to ensure that the approval of the Competent Authority as per the rules or policies in vogue, was obtained. If respondents have violated their own departmental instructions or directions and extracted work from the applicant right upto 31.08.1987 albeit in broken spells, without obtaining the approval of the General Manager, the Competent Authority, then the applicant cannot be faulted. The contention of the respondents on this point cannot therefore be accepted. A careful reading of the Railway Board Circular dated 18.12.1980 shows that the respondents were not required to make fresh recruitments at all from 1980, as they already had a sizeable number of men working on casual basis yet the applicant was recruited on 10.01.1983. If the appointment of the applicant had been done with the due approval of the General Manager concerned he could have continued to be on the roll as on 30.04.1996 and he could have stood a chance of being

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regularised and there would perhaps have been no occasion to cite the 11.12.1996 circular of the Railway Board to deny him regularisation.

6. In view of the above, it is felt that since the applicant was recruited in 1983, it was incumbent on the respondents to have regularised his appointment by obtaining the General Manager's approval as per Railway Board's Circular dated 18.12.1980 and thereafter to regularise his services as per the rules in force, which they failed to do despite repeated representations from the applicant.

7. It would therefore be only just and proper for the applicant to file a fresh representation within a period of two weeks from the date of this Order and the respondents shall consider the same in accordance with the rules and the above observations of this Tribunal and dispose off the same within a period of three months thereafter with a reasoned and speaking order. The O.A. is accordingly disposed off. No costs.



Member (A)

/M.M/