

(OPEN COURT)

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 29TH DAY OF JULY 2009)

PRESENT

HON'BLE MR. JUSTICE A. K. YOG, MEMBER (J)

ORIGINAL APPLICATION No. 396 OF 2002.
(Under Section 19, Administrative Tribunal Act, 1985)

Hidayatullah Chauhan, son of Sri Shaukatullah Chauhan, Resident of 221,
Noorullah Road, Allahabad.

.....Applicant.

By Advocate: Sri S. Dwivedi.

Versus

1. Union of India through the General Manager, Northern Railways,
Baroda House, New Delhi.
2. The General Manager (P), Northern Railway, Baroda House, New
Delhi.
3. The Chairman, Railway Service Commission/Railway Recruitment
Board, Allahabad.
4. The Divisional Railways Manager, Northern Railways, Nawab
Yusuf Road, Allahabad.

..... Respondents.

By Advocate: Shri A. K. Pandey.

ORDER

(DELIVERED BY: JUSTICE A. K. YOG, MEMBER-JUDICIAL)

Heard learned counsel for the parties. Perused the
record.

2. Following relief/s have been claimed in this OA:-

"(8) Reliefs:

*In view of the facts and circumstances stated in
para 4 and 5 above the applicant prays for the following:-*

RELIEFS

- (A) That the order dated 4-9-2001 passed by
respondent no. 3 may be declared illegal and
the same may be quashed.

[Signature]

- (B) *That the respondent no. 3 may be directed to send the name of applicant as per Railway Board letter dated 17-4-1984 to Allahabad Division of Northern Railway for reengagement and regularisation/regular appointment in the department of Railway in preference to fresh candidates and junior persons.*
- (C) *That the respondents be directed to consider and examine the matter of reengagement and regular appointment of applicant and further they be directed to reengage and regularise or to give regular appointment to applicant with all the benefits attached to the post from the date of reengagement and regularisation of junior persons and fresh candidates.*
- (D) *Any other and further relief which this hon'ble Tribunal may deem fit and proper be also awarded to the applicant.*
- (E) *Cost of proceeding be awarded to the applicant."*

3. Admittedly, the Applicant was engaged as Casual Labour by Railway Service Commission, Allahabad. He worked during August-October 1981, Joint Director, Establishment Railway Board issued circular dated 17.4.1984 directing Railway Commission to sent list containing names of 'Causal Labours' who had worked or working before or after July 1983 list of Allahabad Division of NCR (North Central Railway) for considering absorption on regular basis; the Applicant, approached Concerned Authorities for redressal of his grievance (i.e. failure to call him and regularize but to no avail, he alleges that junior/s and out-siders have been inducted; in Para 4 of the OA the applicant has alleged that

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he came to know from reliable sources that four persons (Ameer Haroon son of Sri S.M. Haroon/ Sri Ram Chandra son of Sri Heera Lal/ Sri Rashid Akhtar Khan son of Jawed Khan/Mohd Shamim Khan son of Mohd. Zakir) have been appointed and regularized giving benefit of Railway circular dated 17.4.1984 and being aggrieved, the applicant filed OA No. 948 of 1994 Hidayat Ullah Chauhan Vs. Union of India & others which was disposed of by means of the final order dated 27.03.2001 (Annexure A-9/Compilation-II). Para 5 of the said order reads:-

"5. In case the applicant makes a fresh representation within a month's time, the same may be decided by the competent authority in the respondents establishment within four months thereafter by passing a detailed speaking order with reference to rules in this regard and direction as per Railway Board's letter dated 17-4-1984. Copy of which has been annexed as Annexure-A-2 to the OA. There shall be no order as to costs."

4. In pursuance to the said order the Applicant filed Representation which has been rejected by means of the impugned order dated 4.9.2001. Feeling aggrieved, the applicant has filed the present OA but the Reliefs claimed by the Applicant have been denied under impugned order on two grounds:-

- (i) Because of the Applicant having become Overage
- (ii) No such person junior to the Applicant as well as presented has been appointed.

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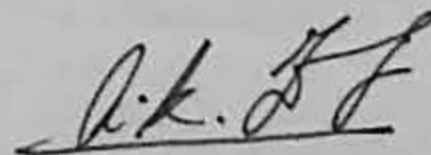
5. The impugned order refers to the fact that the Applicant had worked for 68 days in broken spells whereas those brought on 'Roll' had worked for 121 days as Casual Labour. Photocopy of appointment letters of four persons (said to be junior/outsider and referred to earlier in this order) filed as Annexure-4, A-5, A-6 and A-7 to the OA/Compilation-II, do not indicate facts to support claim of the Applicant, while, date some of them show they were issued after the Representation of the Applicant and apparently not filed before the Authority deciding the said Representation. Apart from it there is no material to adjudicate whether the applicant was sleeping or guilty of 'Laches' and this not entitled to the relief claimed because of 'EQUITY' not being in his favour.

6. Learned counsel for the Applicant, however, lays stress upon the fact that impugned order is to be seen in the light of the direction of the Tribunal vide order dated 27.03.2001 in OA No. 948/94 (referred to above in this order). It is also submitted that the impugned order could not be passed by commission since the NCR Division of Allahabad was required to pass appropriate order/s in the matter. In this context, he referred to the 'Representation' in question which is addressed to DRM, Allahabad. According to him there is no fault of the Applicant if he has attained the age of 51 years (as on date).

7. Learned Counsel for the Respondent, however, refuted all the contention. He strongly urged that 'Equity' is against the Applicant who had worked hereby 69 days only and also guilty of 'Laches' besides that case of those fair persons stands on different footing. Absence of relevant pleadings this Tribunal cannot adjudicate these issues relating to facts.

8. Since the Applicant had^{an} preferred 'Representation' on 28.08.2001 before DRM Allahabad, and he alone is competent to consider it under Tribunal Order dated 27.03.2001 in OA No. 948/1994 (Annexure A-9-Compilation-II). Accordingly impugned order dated 04.09.2001 is hereby set aside with direction to the Concerned Authority to decide the Representation in accordance with law within a period of 3 months from the date of receipt of certified copy of this order.

9. OA is allowed subject to above observations/directions.
No order as to costs.


MEMBER (J)

/S.Verma/-