

Open Court.

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD.

original Application No. 05 of 2002.

this the 1st day of March 2004.

HON'BLE MRS. MEERA CHHIBBER, MEMBER(J)

Subhash Singh, S/o Sri Lagan Singh, R/o Village Pandeypur,
post Kushahari, District Deoria.

Applicant.

By Advocate : Sri V.K. Srivastava.

Versus.

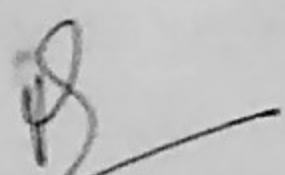
1. union of India through its General Manager, N.E.R., Gorakhpur.
2. D.R.M., N.E.R., Lahartara, Varanasi.
3. Station Supdt., N.E.R., Chhupra, Kutchurey, Chhupra.

Respondents.

By Advocate : Sri Anil Kumar.

O R D E R

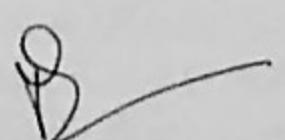
By this O.A., applicant has sought quashing of the order dated 3.9.2001 by which he was informed that as per verification, it is seen that ~~the~~ applicant had worked for different duration as unauthorised Substitute and his name did not find place in the ^{list of} authorised Substitutes maintained by the operating department. More-over, since he was not on roll as on 30.4.1996, his name did not find place in the letter dated 30.9.1996 as authorised Substitute. The position now is that some of the authorised Substitutes are yet to be regularised, but due to non-availability of the vacancies, the same has not been done. However, in compliance of the Tribunal's order dated 5.7.2001 after authorised Substitutes are regularised, his case would also be considered subject to availability of vacancies and available instructions at that relevant time (page 19).



2. The applicant has further sought a direction to the respondents to regularise his services from the date when his juniors have been given regular appointment and pay him salary since 22.8.90.

3. The grievance of the applicant in this case is that earlier his name ^{was} at sl no. 229-A in the casual labour live register and even though he ~~had~~ put in 2207 working days, ~~but~~ yet instead of regularising his services, respondents have regularised number of persons junior to him, who ~~were~~ ^{had} worked lesser number of days. To be more specific, he has given the name of one Sri Shahid who is reported to have worked for only 943 days, which is evident from page 30. Counsel for the applicant, thus, submitted that once the direction was given by this Tribunal to consider the case of the applicant for appointment, he was entitled to be regularised in accordance with the seniority ^{list} ~~maintained~~ by the respondents in the casual labour live register.

4. O.A. is opposed by the respondents, who have submitted that the applicant's name did not find figure in the list of authorised Substitutes of operating department as on 30.4.96 as he was not on roll on the said date. As per Railway Board's letter dated 30.9.96 so long the authorised Substitutes are still available, his case cannot be considered for regularisation. However, in compliance of the direction given by this Tribunal, respondents have prepared a list of unauthorised Substitutes as well, wherein applicant's name figured at sl. no.2 and his case shall be considered when his turn comes in accordance with the relevant instructions available at the relevant time. They have further submitted that none of the persons who were unauthorised Substitutes have been regularised from the list maintained by the operating department. As far as Sri Shahid is concerned, he was authorised Substitute as



he was engaged with the approval of the competent authority, therefore, applicant cannot compare himself with Sri Shahid.

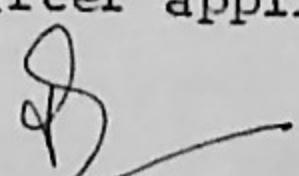
5. I have heard both the counsel and perused the pleadings as well as the list of authorised and unauthorised Substitutes maintained by the respondents. The list of authorised Substitutes does not bear the name of the applicant at all, whereas his name finds place in the list maintained by them as unauthorised Substitutes. Page 30 of the O.A., which has been annexed by the applicant, shows ~~that~~ the name of Sri Shahid, but in the last column, it is clearly mentioned that he was engaged with the approval of the Headquarters, whereas, applicant has not been able to show us any document ~~that~~ his engagement was also done with the prior approval of the competent authority. Therefore, it is clear that the applicant cannot claim similarity with Mohd. Shahid as he cannot be said to be on the same platform.

6. Counsel for the applicant submitted that ~~the~~ respondents ~~had~~ raised contention about unauthorised Substitutes before the Full Bench in Mahabir's case, ^{also} but their contention was rejected by the Full Bench, therefore, respondents cannot be allowed to raise the same issue in this case also. I have read the Full Bench judgment and find that the question raised before the Full Bench was whether ^{un}authorised casual labour who have been engaged without taking prior approval of the G.M. had a right to be considered for re-engagement or not. It was in this background that the full Bench observed as follows:

" We have considered the rival contentions and we are inclined to hold that the aforesaid clarification sought to be made by the circular of 6.5.1998 cannot be invoked to deny casual labourers their claim for placement in the live casual labour register merely because they were engaged without the prior approval of the General Manager. Casual labour have no means of knowing whether they were appointed with the prior approval of the General Manager or not and they have not

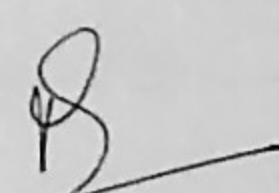
been put to notice in respect of the circular of 3.1.1981. These casual labourers are often uneducated and unemployed youths. They are employed on emergent basis for works undertaken which are not on a regular basis. As far as they are concerned, it hardly matters to them whether their engagement has been with the prior concurrence of the General Manager or some other authority. Aforesaid circular of 3.1.81 nowhere finds a place in the circular of 28.8.1987. It would, therefore, be unjust and in any event inequitable to foist the said circular and the later explanation contained in the circular of 6.5.1998 upon them so far as to deprive them of the benefit of the aforesaid circular of 28.8.1987."

The effect of the decision of Full Bench would be that even those casual labourers who were engaged without taking the prior approval of the competent authority would also have a right to be considered, but it nowhere shows that they would have a better claim than those who were engaged after obtaining the prior approval of the competent authority. More-over in the earlier O.A., when the applicant had approached this Tribunal, the Tribunal had directed the respondents to consider the case of the applicant for appointment to class IVth post in accordance with eligibility and entitlement of the applicant as per rules and care be taken that he is not discriminated against those who do not have better claim than him. This order was passed on 5.7.2001, therefore, the respondents have to consider the case of the applicant and to keep in mind that he is not deprived of his right as compared to a person who is below him in the seniority list. While doing so, if the respondents have made two categories one for authorised Substitutes and another for unauthorised Substitutes, I do not find any irregularity in the said process because ultimately respondents have clearly and categorically stated that they will consider the case of the applicant also as per his turn, after all the persons who are in the list of authorised Substitutes is fully exhausted. The list which has been shown to the Court of authorised Substitutes as issued in the year 2001 has only 37 persons in the operating department and thereafter applicant's name at sl. no. 2 is



in the list maintained of unauthorised Substitutes.

Applicant has not been able to show us ^{that} ~~any~~ other unauthorised Substitutes from the list maintained by the respondents, who is below the applicant, has been regularised sofar, therefore it cannot be said that any of the rights of the applicant have been violated sofar. The list of unauthorised Substitutes is shown to have been prepared on 20.5.2003 and ~~as~~ ^{the} eight names shown therein who are all unauthorised Substitutes. The persons shown below the applicant are Sri R.Prasad S/o Sri B. Yadav, Sri Jamuna S/o Sri Murli, Sri Shiv Bachan Yadav, S/o Sri K. Yadav, Sri Jagdish Prasad, S/o S. Prasad, Sri Ram prasad Yadav, S/o Sri R.S. Yadav and Gauri shanker Singh S/o Ramjeet Singh. If any of these persons have been regularised ahead of the applicant, applicant can have a valid ground, but at the moment since no such averments have been made by the applicant in the O.A. that any person junior to him as unauthorised Substitutes has been regularised, I do not think ~~that~~ any case is made-out for interference by the Tribunal. The O.A. is accordingly dismissed being devoid of merit. No costs.



MEMBER (J)

GIRISH/-