

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

ORIGINAL APPLICATION NUMBER 679 OF 2002

ALLAHABAD, THIS THE 3rd DAY OF June 2004

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

Prem Lal son of Mr. Raghubir,
r/o Lodhan Ka Pura, Dhumai,
P.O. Kanwar, Police Station Saini,
District-Kaushambi (U.P.).

.....Applicant

(By Advocate : N. Khan)

V E R S U S

1. Union of India through the Secretary,
Ministry of Railway, Rail Bhawan,
New Delhi.
2. The General Manager,
Northern Railway, Baroda House,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway, Allahabad Division,
Nawab Yusuf Road, Allahabad.

.....Respondents

(By Advocate : Shri A.K. Pandey)

O R D E R

By this O.A. applicant has sought the following
reliefs:-

- (a) That the respondents may be directed to appoint
the petitioner as Class IV employees on regular
basis.
- (b) That the respondents may kindly be directed to
regularise the services of the applicant in Northern
Railway, Allahabad Division, Allahabad as Class IV
employee.

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- (c) That the respondents may kindly be directed to pay the arrears of salary since the date of termination without show cause notice of opportunity being heard.
- (d) That any other relief which this Hon'ble Tribunal deem fit and proper in the facts and circumstances of the case may be awarded to the applicant."

2. The brief facts as alleged by the applicant are that he worked as Casual Labour in Northern Railway from 1981 to 1990 and had completed more than 587 days. After 1990 work was not taken from him. Since he was not being re-engaged, he filed O.A. 119/1992 which was decided on 17.08.1995 wherein respondents had stated that he shall be considered as and when vacancy arises, therefore, O.A. was disposed off by giving direction to the respondents to expedite the process of regularisation on vacancies being made available(Pg.16).

3. Thereafter applicant was sent a letter dated 26.09.2000 wherein his name was shown at Sl. No.12 in Casual Live Register in Traffic & Commercial Department and in computer list at 6250. He was further informed that no person junior to him is working and whenever vacancy is available, he would be informed(Pg.18).

4. Applicant has filed the present O.A. on the ground that persons junior to him have already been kept for work while ignoring applicant. He has given the names of Shri Jag Pooran, Shri Lalji, Shri Hamid Husain, Shri Om Prakash, Shri Ram Bhawan, and Shri Suresh Kumar. Being aggrieved he had initially filed Writ Petition No.12678/2000 but that was dismissed on 10.04.2002 with liberty to approach the Tribunal. He has, thus, explained that delay is bonafide.

5. It is submitted by the applicant that applicant was



terminated without any order or without giving him compensation or notice period salary, therefore, his termination is bad in law. He has further submitted that since he had completed 587 days as such he could not have been denied regularisation.

6. Respondents have opposed this O.A. on the ground of non-maintainability. They have submitted that O.A. is barred by principles of constructive resjudicata as his earlier O.A. had been decided on 17.08.1995 and he could not have filed 2nd O.A. without any fresh cause of action. Moreover, O.A. is also barred by limitation. He was dis-engaged in 90 whereas present O.A. has been filed only on 30.05.2002.

7. On merits they have submitted that the applicant was engaged as hot whether water man in the year 1981 and he worked for a few days every year up to 1990. It is also submitted that applicant himself left the work and did not turn up. They have further explained that the seniority of the casual labour is counted on the basis of the number of days, he has worked and not from the date of joining. Secondly the seniority is separately calculated unitwise and not in the whole division. This policy of Railway Administration has been approved by the Hon'ble Supreme Court. Respondents also submitted that he has not received any representation of the applicant after 26.09.2000. Respondents have thus prayed that O.A. may be dismissed. They have relied on the order dated 11.08.1986 passed by Hon'ble Supreme Court upholding the scheme to prepare the list with reference to each department in each division and with reference to each category.

8. I have heard both the counsel and perused the pleadings as well. Perusal of the O.A. shows that applicant has prayed for direction to the respondents to appoint him in Class IV on regular basis and to pay him arrears since the date of termination



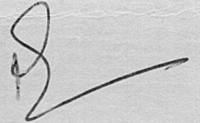
termination as he was terminated without any show cause notice.

9. Admittedly applicant had worked up to 1990 and thereafter he was not engaged therefore, if he was aggrieved of his termination, he ought to have challenged it at that stage. In the earlier O.A. applicant had not challenged his termination at all, but had only sought a direction ~~direction~~ to the respondents to absorb him w.e.f. 1986. This prayer of applicant was not acceded to and the Tribunal had disposed of the O.A. by ^{giving R} ~~direction~~ ^{to R} the respondents to expedite process, on vacancies being made available, therefore, now it is not even open to the applicant to challenge his termination after over 12 years when he had not taken this plea in the 1st O.A. therefore, to that extent this O.A. is not even maintainable. It is rightly submitted by the respondents that the O.A. is hit by constructive resjudicate because he could have taken this ground in earlier O.A. also but not having taken it at that time he cannot file the 2nd O.A. after over 12 years to challenge his termination in 1990. Even otherwise, the O.A. would be barred by limitation also. According to applicant he was terminated in 1990 whereas the present petition is filed in 2002 that too without filing an application for condonation of delay. Hon'ble Supreme Court has held in *Ramesh Chand Sharma's* case that Tribunal cannot even entertain a petition which is barred by limitation and cannot ~~be~~ condone the delay unless it is specifically prayed for.

10. Applicant has not shown any fresh cause of action for filing the present O.A. though he has given certain *names R* but it is not stated when were they re-engaged or how they were junior to him. He has not even challenged the letter dated 26.09.2000, therefore, this O.A. is absolutely misconceived and is not at all maintainable. He has not shown that vacancies are available because on the ~~ground~~ ^{ground} alone he could have filed the

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present O.A. Therefore, O.A. is found to be devoid
of any merit. The same is accordingly dismissed. No
order as to costs.



Member (J)

shukla/-