

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

O.A./A. /CCA No. 828/02

Date of decision 10/4/06

Manumangsi Applicant(s)
Sri A. Srivastava Counsel for the applicant(s)

Versus.

U.O. Tandel & Co. Respondents(S)
Sri K.P. Singh Counsel for the respondent(s)

CORAM

Hon'ble Mr. A.K. Singh V.C./Member(A)

Hon'ble Mr. _____ Member ()

1. Whether Reporters of local papers may be allowed to see the judgment?
2. ✓ To be referred to the Reporters or not?
3. Whether their Lordship wish to see the fair copy of the judgment?
4. Whether to be circulated to all Benches?

A.K. Singh
SIGNATURE

Manish/-

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.**

ALLAHABAD this the 10th day of Feb 2006.

ORIGINAL APPLICATION NO. 828 OF 2002.

HON'BLE MR. A.K. SINGH, Member-A

1. Hanumanji,
S/o Shri Lalan Prasad,
R/o Mohalla Mohaddipur,
Mool Chandra Seth Gali, Gorakhpur.
2. Ram Samujha,
S/o Shri Shakhu, R/o Mohalla Mohaddipur,
Tehsil Sadar, Gorakhpur.
3. Nimbu,
S/o Shri Thakur,
R/o Gram Ekala Bazar,
Post Bagha Gora,
Gorakhpur.
4. Ram Dass,
S/o Shri Ritu Raj,
R/o Gram Ekala Bazar,
Post Bagha Gora,
Gorakhpur.
5. Jagdeesh,
S/o Shri Swami Nath,
R/o Khikhaniya,
Post Sadar, Gorakhpur.
6. Barkhu,
S/o Shri Bali Raj,
R/o Chhotaka Pathra,
Post Aazad Chowk Shivpuri,
Nai Colony, Rostpur,
Gorakhpur.

.....APPLICANTS.

Counsel for the applicants: - Sri Ashish Srivastava.

V E R S U S

1. Union of India through General Manager,
N.E. Railway, Gorakhpur.
2. Divisional Railway Manager,
N.E. Railway, Gorakhpur.
3. Permanent Way Inspector, (PWI) (Construction),
N.E. Railway, Gorakhpur.

.....RESPONDENTS

Counsel for the respondents: - Sri K.P. Singh.

O R D E R

BY HON'BLE MR. A.K. SINGH, Member-A

O.A. 828/02 has been filed by Sri Hanuman Ji and others against their retrenchment as casual labour even though they had put in more than 120 days of work during the period varying from the year 1981-83. The name of the casual workers appear in the live casual register of Lucknow construction division dated 7.4.85 which has been admitted at per para 9 of the counter filed by the respondents. Live casual register was prepared on 1.4.85 covering all project labour who were on roll as on 1.1.1981 and onwards department-wise and categories wise after publication of seniority list. After publication of seniority list the senior Ex-project casual labours who, were out of employment were offered job and were re-engaged in construction organization. The railway board subsequently issued a circular in 1996 wherein it was stated that the persons who were on the roll on 30.4.1996 were to be regularized and accordingly the casual employee who were on roll on 30.4.1996, were regularized.

2. Applicants, Sri Hanuman Ji submits that his date of birth is 01.7.1958 and hence in the month of December 2005 he will cross 47 years. Hence as per Rules, he cannot be regularised. The other applicants also submit that they have either attained the age of 45 years or more and have come up with similar grievances in the O.A.

3. The applicants further submit that even after putting in the required minimum period of service of over 120 days the retrenchments of the applicants without complying with the requirements of section 25 of the Industrial Dispute Act 1947 is illegal in as much as they have not been given one month notice

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in writing before such retrenchment and were also not paid the wages due to them as per rules. Applicants have also cited Apex Court judgment in the case of Indrapal Yadav Vs. Union of India and others.

4. In view of the above, applicants submit that the respondents should have offered appointment according to their seniority in the Live Casual Register but the respondents offered appointment to unauthorized persons in violation of established law laid down by the Apex Court. Since the name of the applicants are in Live Casual Register the name of the applicants should have been considered for appointment first and their seniority fixed above the fresh hands. The applicants are, therefore, entitled for appointment with back wages and their seniority has to be fixed over and above to those who have been recruited in violation of law, as stated above.

5. The relief sought by the applicants is as follows: -

- "(a) To give re-engagement to the petitioners forthwith and regularize their services at an early date.
- (b) To fix the original seniority of the petitioners and pay all consequential benefits to the petitioner's alongwith back wages with interest to which the petitioners are rightly entitled.
- (c) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case, may be given in favour of the petitioners.
- (d) Cost of the petition may be awarded in favour of the petitioners".

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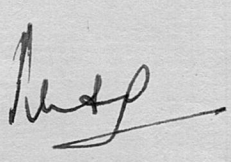
6. Respondents have opposed the O.A. They concede that the name of the applicants appear on the Live Casual Register prepared on 1.4.85 covering all project labours who were on roll on 1.1.81 and onwards department wise and category wise. They also admit that the recruitment to Gr. D posts was conducted in 1996, and that applicant's case was not

considered for the post of Safaiwala as they did not give option for the same. Moreover any subsequent engagement of casual labour related to Varanasi Division and not to Lucknow Division hence the respondents submits that the question of ignoring them in the matter of recruitment does not arise. As per para 14 of the counter affidavit, respondents have stated. The process of reengagement is still being carried on. The applicants will be re-engaged if there will be a vacancy provided they turn up at the relevant time.

7. Respondents have also opposed the O.A. on the ground that it was time barred under section 21 of the Administrative Tribunals Act 1985 and have cited the Apex Court judgment in the case of **Ramesh Chandra Sharma Vs. Udham Singh Kamal** and others. Accordingly they pray for dismissal of the O.A. in question.

8. The applicants as well as respondents were also heard in person through their respective counsels and were also directed to file their written submissions. I have carefully considered the submissions made on behalf of both sides the applicants as well as respondents.

9. I find that the principle laid down by the Apex Court in the case of National Federation of Railway Porters Vendors and Bearers Vs. Union of India and others reported in J.T. 1995 (4) S.C. 568, an extract which is quoted below applies to this case also:-

 "Absorption and regularization of the petitioners in the writ petitions, who could be appointed as permanent Railway Parcel Porters shall be done according to the terms indicated above and no such other terms to which they may be subjected to according to the Rules or Circular of the Railway Board, as expeditiously as possible, not being later than six months from today, those who have put in longer periods of work as Railway Post Parcel Porters on contact labour getting preference in the matter of earlier appointment"

In another case of Inder Pal Yadav Vs. Union of India and others, it has been held by the Apex Court that "To avoid violation of Article 14, the scientific and equitable way of implementing the scheme is for the Railway Administration to prepare a list of project casual labour with reference to each Railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in the Industrial jurisprudence that the men with longest services shall have priority over those, who have joined later on. In other words, the principle of last come first go or to reverse it, first come last go, as initiated in section 25G of the Industrial Disputes Act 1947 has been accepted. We direct accordingly.

10. The above two judgments of the Apex Court sparsely apply to the facts and circumstance of the present case.

11. Moreover as per Para 179, sub para 13 (a) of the Indian Railway Establishment Manual, the casual labour and substitutes will be given preference over fresh recruits in the matter of recruitment. Para 179 sub para 13 reads as under:

"Substitutes, casual and temporary workmen will have prior claim over others to permanent recruitment. The percentages of reservation for Scheduled Castes and Scheduled Tribes should be observed in recruitment to temporary or permanent vacancies."

"Substitutes, casual and temporary workman who acquire temporary status as a result of having worked on other than projects for more than 120 days and for 360 days on projects or the casual labour with more than 120 days or 360 days service, as the case may be, should be considered for regular employment without having to go through employment exchange".

"A register should be maintained by all Divisions concerned to indicate the names of casual labour, substitutes and temporary workmen who have rendered 6 months service either continuous or in broken periods, for the purpose of future employment as casual workmen and also as regular employees.....The names should be recorded strictly in the order of their taking casual appointment at the initial stages and for the purpose of employment for regular Gr. D posts. They should, as far as possible be selected in the order maintained in the aforesaid conditions being equal, total length of service as casual labour, either continuous or broken periods, irrespective of whether they have attained the temporary status or not, should be taken into account so as to ensure that casual labour who are senior by virtue of longer service are not left out".

Moreover, Railway Board vide para F(1) of their circular letter NO. ~~E~~ (NG) II-77/CL/46 dated 8.6.1981 have also issued the following instructions in this regard.

"No outsider should be appointed to class IV posts which become available upto 31.12.1987 and all such posts should be filled only from among casual labour and substitutes".

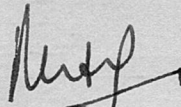
The instructions of the Govt. are, therefore, clear on the point that casual labour and substitutes will be preferred to any direct recruit in the matter of regular recruitment.

As regards the age limit, para F (VII) of the aforesaid Circular clearly lays down:-

"As long as it is established that a casual labour has been enrolled within the age limit relaxation at the time of actual absorption should be automatic and guided by this

factor"....."Even in old cases where the age limit was not observed relaxation of age should be considered sympathetically D.R.Ms may exercise such powers to grant relaxation in age limit".

12. The respondents have also raised the points of limitation and submit that the O.A. is time barred under section 21 of Administrative Tribunal Act, 1985. In my opinion, the provision of section 21 will not apply in this case as the respondents themselves admit that the names of the applicants are alive on Live Casual Labour Register and therefore, the cause of action is continuous and recurring in this case and hence no limitation will apply to the cases of applicants. Moreover, they are illiterate labour and it was obligatory on the part of the Railway Administration to comply with the requirement of para 179 sub paras 13 XII (a), (b) and c as well as the direction by the Apex Court in the case of Inder Pal Yadav Vs. Union of India and it is clear that they have failed in their obligation to comply with these instructions. They cannot, therefore, blame the applicants for the same.

 14. From the above, it becomes crystally clear that age limit cannot form an impediment in either regularization/regular recruitment of a casual labour and that they have to be given preference over fresh recruits in the matter of regular employment.

15. The facts of the case, therefore, clearly establish that the authorities have been unfair in denying, the just claim of the applicants and in so doing, have also violated the provisions of law quoted above. It is also established that age limit does not, and also should not apply to a casual worker at the time of regularization as he has already entered the service of Indian Railways at a fairly young age, as in this case. Hence, relaxation of age in this case has to be automatic, in view of the instruction quoted above.

16. In view of the above, the O.A. succeeds and the following directions are issued to respondents in the matter:

(a) The applicants will be given preference over their juniors as well as fresh recruits in the matter of regularization, as and when regular vacancies arises.

(b) In case applicants have exceeded the maximum age limit for such regularization, the same shall be ignored and relaxation in age limit provided to them automatically. This direction is being issued on this ground also, that they have become overage as a result of non-compliance of their obligation to regularise the applicants, in their turn, as per settled law laid down by the Apex Court as well as various instructions issued by the Railway Board on the subject.

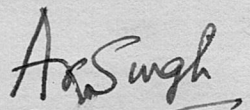
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(c) When the applicants are regularized on the availability of vacancies, they will be assigned higher seniority over their juniors who have already been regularized earlier superceding them.

(d) Respondents are also directed to continue the name of the applicants in the Live Casual Labour Register and also in the computerized list at appropriate places in their seniority and also to consider their re-engagement in the vacancies that are likely to arise in future.

17. Accordingly, the O.A. succeeds and is allowed in terms of above direction.

No order as to costs.


Member-A

Manish/-