

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH : ALLAHABAD**

ORIGINAL APPLICATION NO.1236 OF 2003
ALLAHABAD, THIS THE 05TH DAY OF DECEMBER, 2005

HON'BLE MR. D. R. TIWARI, MEMBER-A

Brijesh Kumar Singh, aged about 45 years,
S/o Late Ram Sarikha Singh
R/o Village Kundauli, P.O. Lar Road,
And District-Deoria.

.....Applicant

Counsel for the applicant : Sri T.S. Pandey

Versus

1. Union of India, through the General Manager,
North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager,
North Eastern Railway,
Lucknow.
3. Senior Divisional Personnel Officer,
North Eastern Railway,
Lucknow Division, Lucknow.
4. Senior Divisional Mechanical Engineer,
Diesel Shed, North Eastern Railway,
Gonda.

.....Respondents.

Counsel for the Respondents : Sri K.P.Singh

O R D E R

HON'BLE MR. D. R. TIWARI, MEMBER-A

By this Original Application filed under section 19 of Administrative Tribunals Act 1985, the applicant has prayed for issuance of direction to the respondents for registering the name of the applicant in Live Casual Register according to the seniority

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coupled with the further direction to provide the applicant temporary status and re-engage him in service.

2. Briefly stated, the applicant was appointed as Khalasi/Casual Labour vide appointment letter dated 12.08.1980 (Annexure-1). He was disengaged by respondent no.4 without any show cause notice vide his order dated 16.03.1981. Even this order of disengagement was not served upon the applicant in writing and he was not allowed to carry out his duties after 16.03.1981. However, Foremen working under respondent no.4 issued the certificate of his working days on 17.03.1981 (Annexure-2). The applicant, by representation dated 18.08.2000 after coming to know that so many junior persons were still in service and their names also find place in Casual Labour Live Register, wrote to the Competent Authority about his grievance. When he did not hear anything from respondent no.2 to 4 till 26.03.2001, he made another representation dated 27.03.2001 when the respondent no.4 inquired about the service records of the applicant (Annexure Nos.3 and 4).

3. It has been pleaded by the applicant that respondent no.1 has circulated vide his letter dated 17.02.1999 Railway Board's letter dated 23.10.1997 which provides the mode of determination of seniority of Casual Labourers (Annexure 5 & 6). The Railway Board's circular dated 23.10.1997 clearly provides that after completion of 120 days of working, the name of the Casual Laborer should be registered in Casual Labour Live Register. The main grievance of the applicant is that irrespective of having worked for more than 120 days, the respondents have not acted according to Railway Board's circular dated 23.10.1997. It is under these circumstances that the instant O.A has been filed and the action of the respondents has been challenged on various grounds mentioned in Para 5 of the O.A. such as disengagement of the applicant amounts to denial of fundamental right guaranteed under article 16(1) of the

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Constitution of India, non-registration of his name in Casual Labour Live Register is violative of Railway Board's circular dated 23.10.1997, Non-grant of temporary status after completion of 120 days continuous work is violative of Article 14 of the Constitution of India in as much as the juniors to the applicant have been re-engaged and are in service.

4. Respondents, on the other hand, have filed counter affidavit resisting the Original Application and refuting all the claims made by the applicant. It has been argued that the applicant was engaged as daily rated Casual Khalasi and he joined duties as such in Diesel Shed Gonda and left the job of his own. He came to the office on 17.03.1981 and got the working certificate from Loco Foreman and he never joined the duty. It has been further argued that his request for putting his name in Live Casual Labour Register and re-engaging him after a lapse of 19 years is time barred. They have further argued that as per rules he should have submitted his representation to authorities of the Diesel Shed, Gonda regarding his re-engagement at appropriate point of time. It would have been proper for him to represent to Headquarters Gorakhpur after exhausting the proper channel of authorities at Diesel Shed Gonda. The cause of action arose at Gonda and it would have been proper for the applicant to take up his case through proper channel with the authorities at Gonda only. They have also argued that the papers for the period 1980-81 had already been weeded out and it is not possible for the Railway Administration to locate those papers after they had been weeded out. As such, they have pleaded that it is not possible to take any action in this regard at this belated stage and the O.A. lacks merit and be dismissed.

5. During the course of the argument, Counsel for the applicant Shri T.S. Pandey has reiterated the facts and the legal pleas from the O.A. He has placed heavy reliance on the Judgment of Hon'ble Delhi High Court in the case of Shish Pal Singh and Others Vs.

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Union of India and Others reported in 2000(1)ATJ 153 and the head note of the judgment is as under:-

"Casual Labour -Regularization -Limitation- Applicant worked as a casual labour during the period 1980-1982-Acquired temporary status-Scheme for regularization formulated-As per Scheme all casual workers up to 1.1.1981 were to be kept on the live register-Junior to him re-engaged in 1997-98- Held his application for re-engagement cannot be rejected on the ground of limitation-Cause of action accrued to him to 1997-98 and even otherwise the cause of action is a continuous one-Matter remitted to Tribunal for fresh disposal."

He has also relied on the circular of the Railway Board dated 23.10.1997 which stipulates the provisions regarding grant of temporary status to the Casual Labour. He has also drawn my attention to Para 7 of the rejoinder affidavit wherein it has been submitted that at the time of appointment the applicant had given all necessary papers. The counsel for the respondents has also argued that it is a case which is highly time barred and the circular referred to by the Counsel for the applicant is about the left over Casual Labour for screening and regularization. His case could not be considered because he did not approach the authorities through proper channel and in view of non-availability of the papers relating to his education, age etc., it would not be possible to consider his case. Additionally, he has argued that necessary papers have already been weeded out. It has been argued that in view of these reasons, the O.A is devoid of merit and be dismissed.

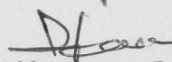
6. I have heard very carefully the Counsels for the parties and perused the pleadings.

7. From what has been discussed above, the only question which follows for consideration is the availability of the action taken by the respondents.

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It is admitted fact that the applicant was appointed as Casual Labour Khalasi on 12.08.1980 and was disengaged on 16.03.1981. From this, it would be clear that he has worked for more than 120 days and accordingly, he is entitled for grant of temporary status. The contention of the applicant that necessary records have been weeded out and it would not be possible to process his case cannot be accepted. The respondents may even at this late stage may obtain necessary papers regarding age and educational qualification etc., from the applicant and process the case. There could be other collateral evidence on the basis of which the respondents can process his case because after completing 120 days of service he acquired temporary status. The action of the respondents to terminate his services by verbal order on 16.03.1981 is invalid and is quashed. It is a matter of common knowledge that a Casual Labour is not expected to know the proper channel for addressing his representation. If he has directed his representation to the authorities, who were not concerned about it, this would have been directed to proper authorities at the appropriate time. The sum and substance of this direction is that the respondents may obtain necessary papers from the applicant and process his case for his further engagement. This exercise should be completed within a period of three months from the date of receipt of a copy of this order.

8. The O.A. is disposed of as per the directions given in the preceding Para.


Member-A

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