

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD**

PRESENT:

HON'BLE MR. A.K. GAUR, MEMBER-J

Allahabad this the 3 day of ^{April}~~March~~, 2009

Original Application No. 1613 of 2003

Lal Babu Prasad, S/o Sr. Baij Nath Prasad,
C/o Julfikar Khan, R/o Friends Press Station Road,
Post Office-Bharthna, District -Etawah U.P.,
Pin. 216242..

...Applicant.

(By Advocate : Sri. A.P.N.Giri)

Versus

1. Union ^{of} India, through General Manager,
North Central Railway, Allahabad.
2. Joint Director, Establishment (Applicant) III,
Railway Board, Rail Bhawan, New Delhi-110001.
3. Divisional Manager (Rail),
Divisional Office, Northern Central Railway,
Allahabad.

Respondents

(By Advocate Sri.P.Mathur)

ORDER

HON'BLE MR. A.K. GAUR, MEMBER-J

By means of this O.A. the applicant has prayed for quashing the order dated 31.8.2000 issued by the Joint Director, Railway Board, New Delhi and also claiming consequent reinstatement and regularization. The applicant was engaged as Waterman in the year 1983 and had worked continuously upto 227 days. The School Leaving Certificate filed by the applicant clearly indicates that he has passed Class VIII only. He has filed the Working Certificate and School Leaving Certificate as Annexures A1 and A-2 to the

O.A. The grievance of the applicant is that, he had worked for more than 342 days as Waterman and is fully eligible for regular appointment as per order issued by the Government of India. It is also alleged by the applicant that the applicant has worked for about 730 days during the spell of 15.8.55 to 14.8.91 and this period has already been verified by the competent authority. The competent authority has also certified that the applicant has completed 120 days working on 21.8.86 and the regular pay scale of Rs.750-940 may be paid to him. The 3rd respondent vide letter dated 10.12.92 modified the screening of casual labour engaged as Seasonal Waterman and those who had engaged since 1978. The letter dated 10.12.92 was issued from the office of the then Divisional Railway Manager, North Central Railway, Allahabad and in this letter it is clearly specified that the Waterman would be screened. Accordingly, all the Heads of the Sections were directed to send the list of eligible candidates who had completed 4 months continuous service, on printed proforma, by 31.12.92.

2. The applicant is aggrieved because his name was not recommended as per the notification dated 10.12.92. He made a representations to the 3rd respondent for his regular appointment. The applicant also alleged that he has sent a representation (A2) to the respondents for redressal of his grievance. An additional representation was also made to the then Railway Minister. It is also contended on behalf of the applicant that, one Shri Awadh Bihari who was appointed on 21.5.85, his service has been regularized, whereas the case of the applicant has been ignored by the respondents.

3. In the counter reply filed by the respondents 1-3, it is clearly stated that, the applicant has already been apprised by the decision taken in pursuance of his representation sent to the Hon'ble Minister of Railways for his re-engagement and vide letter dated 31.8.2000, he has been apprised of

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the situation. It is clearly mentioned therein that the applicant was not subjected to any screening held in 1988 because the casual labour who had worked for 337 days and more were subjected to the screening, for which the panel had already been declared on 3.2.1990. The name of the applicant has already been registered at Sl.No. 10 of the frozen computerized casual Labour register for the respective unit and the case of the applicant can only be considered as per its turn.

4. The applicant has approached the Tribunal on 2.12.2003 i.e. after an inordinate delay and the claim of the applicant deserves to be dismissed on the ground of delay and laches. The explanation offered by the applicant for condoning the delay is not reasonable or plausible. The applicant has not filed any application for condonation of delay supported by an affidavit. It is also asserted on behalf of the respondents that the claim of the applicant deserves to be dismissed on the ground of limitation without entering into the merits of the case being excessively time barred. The power for engagement of fresh case of Casual Labour has been vested with the department level officer prior to 1.8.78 and thereafter in the following manner.

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| 1. | Prior to 1.8.1978 | Senior Subordinate of the Unit |
| 2. | Onwards 1.8.1978 upto 2.1.1981 | Divisional Railway Manager(HOD) |
| 3. | From 3.1.1981 and onwards | Only General Manager of the Zonal Railways and the same is still prevailing. |

5. Any Casual Labour engaged irregularly, other than by the competent authority can not be said to be in order . As submitted by the applicant he was engaged in the year 1983 i.e. 25.4.1983, hence his engagement was irregular in as much as that engagement/reengagement from 3.1.1981 and onwards cannot be done by any Sr. Subordinate or DRM. Under these circumstances, the engagement if any of the applicant was irregular and it clearly indicates

that the applicant has produced false certificate wherein 227 days had been indicated towards his working. As per the records of the respondents the applicant has 204 days of working at his credit. According to the verified working days it is decided by the Screening Committee to call all the casual hot weather labourers for the screening who had 235 days as on 1.5.1988, so as to get the required number of candidates for the screening as per the extant rules. The last named candidate placed on the panel dated 3.2.1990 is having 337 working days. In that situation the question of placing the applicant who had worked only for 204 days on the said panel does not arise at all. No such working certificate has ever been issued on papers with the designation of officer as indicated in the Casual Labour Card filed by the applicant. The respondents seriously doubted the authenticity of the document.

6. The applicant has filed a rejoinder affidavit denying the pleas taken by the Railway Administration, but nothing new has been added therein.

7. Shri Anil Kumar, learned counsel for the respondents has also filed a supplementary counter reply on 12.10.2007 and submitted that the applicant was not found to be eligible against the screening held in 1989 and the result declared on 3.2.1990. He also filed the decision of the Hon'ble Allahabad High Court rendered in Writ Petition No. 21799/06, **Union of India Vs. Ajay Kumar**, wherein the validity of the directions of the Tribunal dated 2.1.2006 passed in the aforesaid case, were under challenge. The said Writ Petition filed by Union of India has been allowed by the Hon'ble High Court. It is also asserted on behalf of the respondents that in view of the Constitution Bench decision of the Hon'ble Supreme Court in **State of Karnataka Vs. Uma Devi reported in 2000 6 SCC (L&S) 753** the applicant has no case. Shri Anil Kumar, learned counsel for respondents also placed reliance on

the following observations of Hon'ble Allahabad High Court in the case of Ajay Kumar (Supra):

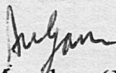
"In view of the above, we are of the considered opinion that the directions issued by the Tribunal are in futility and issuing such a direction, which cannot be carried out in accordance with law, are not permissible in law. As the claim of the respondent employee cannot be considered in accordance with law and he is not entitled for any relief, the direction issued by the learned Tribunal is in contravention of scheme framed by the present petitioner. The Court or Tribunal cannot pass an order in contravention of law. Thus asking the present petitioner's to consider the case of the respondent employee for re-employment and regularization, being a futile exercise, is not going to serve any purpose and the writ petition deserves to be allowed."

8. I have heard Shri A.P.N.Giri, learned counsel for the applicant and Shri P.Mathur learned counsel appearing for the respondents. I am fully satisfied that the O.A. filed by the applicant is inordinately time barred and for which no reasonable and plausible explanation has been offered by the applicant.
9. Learned counsel for the respondents placed reliance on the decision of the Hon'ble Supreme Court in 2000 SCC (L&S) 53 R.C.Sharma Vs. Udham Singh Kamal and argued that since the delay has not been properly explained the O.A. deserves to be dismissed on the ground of delay and latches.
10. Having given my anxious thought to the legal pleas advanced by the learned counsel for the applicant, I am firmly of the view that the original application is not supported by any delay condonation application and affidavit and as such, the O.A. is not legally maintainable and deserves to be dismissed on the ground of delay and latches. It is also seen from the records that, according to the verified working days, it was decided by the Screening Committee to call all those casual labourers, and Hot Weather staff for screening who had at least 235 verified working days as on 1.5.1988 so as to

get required number of candidates for the screening. The candidates who had worked prior to 1.8.78 and had put in 120 days or more verified working days as on 1.5. 1988 were given preference. The last candidate placed in the panel was having 337 days of working at his credit. It is also seen that the applicant had only 204 verified working days on the crucial date i.e. on 1.5.88 at his credit..

11. From the aforesaid facts it is abundantly clear that, the last man in the panel dated 3.2.1990 has 337 days at his credit and therefore, the name of the applicant rightly did not find a place in the panel dated 3.2.1990, as his verified working days are only 204 days.. It is also seen from the records that the applicant has failed to represent his case in time and to the proper authority. Giving representation to the Railway Minister is an unusual process and this practice must be deprecated

12. In view of my aforesaid observations I find no merit in the O.A. and accordingly it is dismissed. No order as to costs.


Member (J)