

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD**

Original Application No.196 of 2003

Friday, this the 14th day of November 2008

Hon'ble Mr. K.S. Menon, Member (A)

1. Ashok Kumar Prasad S/o Yoga Prasad, R/o Muda Post K.T. Parculi, Distt. Siwan.
2. Ram Janam Prasad S/o Ram Kishore Bhagat, R/o Batarouli Post Amlori, Distt. Siwan.
3. Madan Yadav S/o Dev Muni Yadav, R/o Gram Dephan, Post Dephan, District Siwan (Bihar).
4. Shankar Chaudhary S/o Bhutauli Chaudhary, R/o Gram and Post Sarsar Distt. Siwan (Bihar).
5. Param Ram S/o Bhutali Ram R/o Gram and Post Sarsar, Siwan (Bihar).

Applicants

By Advocate: Sri Rajesh Pathik

Versus

1. Union of India through Secretary, Ministry of Railway, New Delhi.
2. Divisional Railway Manager, North Eastern Railway, Varanasi.

Respondents

By Advocate: Sri Anil Kumar

ORDER

By K.S. Menon, Member (A)

The applicants 5 in number have filed this O.A. seeking relief to the effect that the respondents be directed to consider their applications for the post of labourer and include their names in the seniority list published by the respondents and thereafter absorb them in the permanent post of class IV employee. Relief is being sought on the grounds that they have worked as Substitute/Casual labourer between the years 1981 to 1988 for 469, 1191, 1549, 191 and 135 days respectively. They contend that on the basis of the aforesaid number of days they have worked, they have acquired 'temporary

status' in the light of provision in the Indian Railway Establishment Manual.

2. The reason for filing this O.A. ^{arose} ~~above~~ on account of the fact that the respondents published a seniority list on 06.12.1996 of 156 casual labourers working on roll which did not contain the name of the applicants. Being aggrieved the applicants along with some others, filed O.A. No. 1126 of 1998 (Singhasan Chaudhary vs. U.O.I. and others) before this Tribunal seeking the relief (s) prayed for in this O.A. During the pendency of O.A. No. 1126 of 1998, the applicant No. 1, in that O.A., Singhasan Chaudhary was regularized vide Order dated 02.11.1999. This case was decided by Order of this Tribunal dated 05.12.2000 wherein the applicants were directed to file fresh representations which was to be decided by the respondents within four months by a reasoned and speaking order with a copy to the applicants. Liberty was also given to the applicants to file a fresh O.A., if their grievances still remained. This order was passed on account of the fact that applicant No. 1 in the said O.A. Singhasan Chaudhary had already been regularized. In pursuance of the aforesaid order of the Tribunal dated 05.12.2000 the applicants filed a combined representation on 31.01.2001 followed by reminders on 14.05.2001 and 31.07.2001 and a legal notice on 16.08.2001.

3. The representation of the applicants dated 31.01.2001 was rejected vide the impugned order dated 03.09.2001/07.09.2001 on the grounds viz. (i) applicants were employed after 31.12.1980 and (ii) applicants were not on roll on 30.04.1996. Scrutiny of the pleadings indicates [✓] that three other applicants out of the ten applicants in O.A. No. 1126 of 1998 filed another O.A. No. 1118/2002. The Tribunal vide its Order dated 12.04.2006 allowed the O.A. and directed the respondents to conduct screening and regularize the applicants in that O.A. in case their ages as on 1998 (the date they approached the Tribunal in O.A. No. 1126 of 1998) were within the prescribed age relaxation limit. Being aggrieved by the impugned orders the applicant filed the present O.A. In support of their contention they have in para-5 of their Rejoinder Reply cited the cases of several candidates who were employed as Casual Labourers after 31.12.1980 who did not have the requisite number of days worked and have not been granted temporary status yet their names have featured in the seniority list

dated 06.12.1996, and they have been regularized. Several other irregularities in the seniority list have been pointed out in the R.A. and Written Submissions. The applicants therefore submit that the impugned order dated 03.09.2001 should be quashed and set aside as it is illegal and arbitrary.

3. The respondents have filed their Counter Affidavit and Written Submission. While denying the averments of the applicants they submit that details of days worked by the applicants, which range from 1982 to 1989 are given in para-12 to 16 of their Written Reply to the O.A.

4. The respondents argue that all the applicants were engaged after 31.12.1980 without the approval of the General Manager-a requirement, which is mandatory for appointment as Casual Labour as per Railway Board Circular dated 18.12.1980 (Annexure CA-1 of the Counter Reply). The services of all the applicants were terminated between 1985 and 1989. The Railway Board circular dated 30.09.1996 stipulates that only those persons who were on roll as on 30.04.1996 are eligible for being placed on the seniority list ^{for} ~~from~~ purposes of screening and regularisation. Since the applicants were engaged after 31.12.1980 and were not on roll as on 30.04.1996 their names were rightly not included in the seniority list so prepared on 06.12.1996, consequently they were not considered for screening/regularisation. Respondents claim that since the applicants have not challenged their termination order or the seniority list dated 06.12.1996, they have no grounds to approach the Tribunal by filing this O.A. Respondents further add vide para-6 of their Written Submission that all the names included in the seniority list dated 06.12.1996 and the case of Singhasan Chaudhary are those that fulfilled the criteria laid down by the Railway Board in their Circulars dated 18.12.1980 and 30.09.1996 or as per the directions of the Tribunal.

5. Respondents have also placed reliance on the Judgment of the Allahabad High Court in Writ Petition No. 17571 of 2006 Union of India and others Vs. Harinath Yadav and others (Annexure-1 to the Written Submission). Since the applicants' engagement was not as per extant rules and they have not challenged their disengagement, therefore under the extant rules and as per legal position they are not entitled to

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any relief as claimed in the O.A. hence the respondents urge that the O.A. being devoid of merit is liable to be dismissed with cost.

6. Heard Sri Rajesh Pathik, learned counsel for the applicants and Sri Anil Kumar, learned counsel for the respondents and perused the pleadings and Written Submissions, filed by both parties.

7. Perusal of the pleadings on record shows that the applicants have worked for more than 120 days but in broken spells. The main issues for consideration however ^{are in} ~~is~~ firstly whether the applicants were appointed after 31.12.1980, if so did it have the approval of the General Manager and secondly were they on the roll as on 30.04.1996.

7. The applicants themselves indicated in their O.A. and Written Submissions that applicants No. 1, 2 3 and 5 were appointed after 31.12.1980 whereas applicants No. 3 and 4 were appointed prior to 31.12.1980, this contention has however not been substantiated by them besides most of the certificates attached are illegible, whereas the respondents in para-12 to 16 of their Counter Affidavit have indicated the dates clearly though they have also not been able to substantiate their submissions on the plea that most of the paid vouchers being more than 10 years old have been destroyed as per rules. Even for argument sake, ^{if the claims of} ~~are~~ applicants No. 3 and 4 ^{claim} ~~claim~~ is accepted, the fact of the matter is that all the applicants' services were terminated between 1985 and 1989. They were not on roll on 30.04.1996 as per Railway Board's Circular dated 31.09.1996. Besides they have not challenged their disengagement at that time or even the seniority list dated 06.12.1996 in which their names were omitted.

7. The respondents claim that the applicants were appointed after 31.12.1980 without the General Manager's approval lacks force as the respondents ^{were in} ~~are~~ responsible for making ^{such} ~~such~~ appointments after 31.12.1980 without the approval of the competent authority i.e. the General Manager and they themselves are responsible for violating their own instructions and therefore this argument of the respondents cannot be accepted.

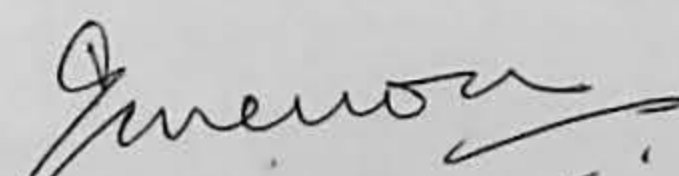
8. Given the facts and circumstances of the case, it is clear that the applicants have approached the Tribunal about 13 to 17 years after

their disengagement and about six years after the seniority list was published by the respondents which was in pursuance of the order of this Tribunal in O.A. No. 1128 of 1998, filed by the applicants themselves. Reference is made to Allahabad High Court Judgment in Writ Petition No. 17571 of 2006 Union of India and others vs. Harinath Yadav and others (annexure-1 to the Written Submissions), wherein it was held that: -

"It is settled legal proposition that relief of regularisation can be claimed by a person, who is working continuously for a very long period and is not being made permanent in such eventualities, the action of the employer becomes arbitrary and is hit by Article 14 of the Constitution of India. A person not in service can never claim his re-engagement or regularization, unless he has first challenged the order of dis-engagement/termination, as held by the Apex Court in the case of H.P. Housing Board vs. Om Pal & ors.; 1997 (1) SCC 269, and Ram Chander & ors. Vs. Additional District Magistrate & ors.; 1998 (1) SCC 183."

It is also evident that the applicants were not within the zone of consideration as they did not fulfill the criteria laid down in the Railway Board's circulars, consequently their names did not feature in the seniority list dated 06.12.1996 and they were accordingly not screened or regularized. The actions of the respondents appear to be in order and cannot be faulted.

9. In view of the above, no valid grounds have been put forth calling for any interference by this Court. O.A. being devoid of merit is accordingly dismissed. No costs.


[K.S. Menon]
Member 'A'

/M.M./