

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

(THIS THE 19/5 DAY OF 2012, 2012)

PRESENT:

HON'BLE MR. D.C.LAKHA, MEMBER-A

ORIGINAL APPLICATION No. 981 OF 2006
(U/s, 19 Administrative Tribunal Act.1985)

Prakash Chandra Son of Moti Lal, Resident of 158, Subhashganj, Jhansi (U.P.)

..... .Applicant

By Advocate: Shri Dharmendra Tiwari

Versus

1. Union of India through General Manager, North Central Railway, Allahabad.
2. Divisional Rail Manager, North Central Railway, Jhansi.

..... .Respondents

By Advocate: Shri P.N. Rai

ORDER

(DELIVERED BY:- HON'BLE MR. D.C.LAKHA, MEMBER-A

This application has been instituted for the following relief(s) :

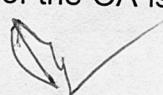
- "(i) To issue an order or direction setting aside the order dated 21.4.2006 and 30.6.2006.
- (ii) To issue an order or direction commanding the respondent to regularize services of applicant as Group 'D' employee under Divisional Rail Manager, North Central Railway, Jhansi expeditiously as possible.
- (iii) To issue any other order or direction which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case."

2. The brief facts of the case, as stated in the OA are that the applicant who worked for 146 days in broken spells from 17.5.1987 to 28.7.1987 and 17.5.1988 to 28.7.1988, claims for regularization under para 179 (XIII) (b) of Railway Establishment Manual having worked for more than 120 days. In pursuance of notification dated 30.8.2001 issued by DRM Jhansi calling for applications the applicant sent his application on 26.9.2001 by Registered Post. The vacancies up to 2004 were to be filled up through the advertisement dated 30.8.2001. The applicant was not considered while one Shri Laxmi Narain having 140 days (less

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than applicant was regularized). The applicant vide his application dated 28.1.2006 and 10.7.2006 requested for consideration of his case. The DRM Jhansi vide his letter dated 21.6.2006 intimated to the applicant regarding any application having not been received from the applicant. It is further submitted that vide letter dated 30.6.2006 the DRM Jhansi addressed to Shri Pradeep Jain Aditya, M.L.A. Jhansi intimated that the name of the applicant was not in the list of casual labourers entitled to be regularized, and by letter dated 25.7.2006 it was informed that action will be taken for regularization according to rule. The applicant being of SC community and his date of birth being 6.7.1968 he is eligible to be regularized.

3. On notice, Counter reply has been filed by the respondents in which firstly, they have raised preliminary objection regarding the O.A. being highly time barred and no application for condonation of delay having been filed. It is submitted that the respondent No. 2 issued notification dated 30.8.2001 calling for Bio data of Ex casual labours through their Depot Incharge whose names were still figuring in the casual labour live register/supplementary register, last date being 30.9.2001. Suitable candidates, as nominated for screening by the committee of officers constituted for the purpose were considered for regularization and this process came to end in the year 2004 and thus the claim of the applicant is highly time barred as he filed the O.A. in the year 2006 without explaining the delay. It is further submitted that the applicant has not worked for more than 120 days. There is no record from which it could be ascertained that the applicant had worked as casual labour with Station Superintendent Central Railway Jhansi and the name of the applicant does not exist on the Causal Labour Register of Station Superintendent Central Railway Jhansi. In accordance with notification dated 28.2.2001 and circular dated 20.9.2001, the applicant does not fulfill the requirements. The respondents denied any application dated 12.9.2001 having been received in the office of respondents till 30.9.2001, which fact was intimated to the applicant vide letter dated 21.4.2006. The case of regularization of Makhan Lal and Mithlesh Singh referred to in para 4.6 of the OA is different from the case of



the applicant. Annexures impugned in the OA are only the correspondence between the department and Shri Pradeep Jain Aditya, M.L.A. The judgment dated 4.9.1992 of CAT, Allahabad is not applicable in the case of the applicant because the applicant was not eligible for consideration nor he had worked for 120 days. The screening and regularization was done fully in accordance with the Railway Board Notification dated 28.2.2001 and 20.9.2001. The claim of the applicant is unfounded and not verified from records and he is over also age, therefore ineligible. The O.A. lacks merit and is liable to be dismissed.

4. Rejoinder Affidavit has also been filed on behalf of the applicant, in which, the points in his favour are reiterated and the allegations made in the Counter reply have been denied. It is further stated that the application of the applicant was received in the office of DRM, Jhanai on 26.9.2001 as shown in the Annexure RA-1. Claiming to be of Dhobi Caste (S.C.) he has filed Caste certificate as Annexure R.A.-3

5. The respondents have filed Supplementary C.A., denying the allegations made in the Rejoinder. It is submitted that the application was to be submitted through Deport Incharge and not directly to the DRM in the prescribed proforma which was not received before 30.9.2001 as provided in the circular dated 30.8.2001. It is further submitted that the application dated 28.1.2006, in response to railway circular dated 31.8.2001 is highly belated and time barred. It is stated that in a similar matter in O.A. No. 1397/2007 decided on 24.7.2007 the O.A. was dismissed on the ground of delay. In similar matter Writ Petition No. 45739 of 2006 Rajendra Singh and others vs. CAT Allahabad, it was held that the relief of regularization in service will be considered only till the petitioner continued in service.

6. Written submissions have also been filed by the parties reiterating their stand taken in their respective pleadings.

7. I have heard the learned counsels for both the parties and have also gone through the documents submitted alongwith their pleadings. The learned counsel for the applicant has vehemently argued that the respondents have not regularized



the applicant while the persons having less number of working days as averred in the O.A., have been regularized, even after his application having been received in the office of DRM Jhansi within time. It is further argued that the applicant is eligible for regularization after working for 120 days and no direct recruitment can be made before consideration of the case of the applicant for regularization. The learned counsel for the respondents, on the other hand has mainly argued that the O.A. is not maintainable being highly time barred, as the O.A has been filed on 22.8.2006 claiming relief against the circular dated 28.1.2006. To support his claim on the point of O.A. being time barred, the learned counsel for the respondents has placed reliance on the following orders/judgments:

- i) O.A. No. 380 of 2008 Tahir Ali vs. Union of India (O.A. No. C.A.T., Allahabad) decided on 29.5.2009.
- ii) SLP (Civil) No. 31085/2009 Tahir Ali vs. Union of India decided on 7.7.2010 of Hon. Supreme Court.
- iii) O.A. No. 992/2008 Narayan Singh vs. Union of India, (C.A.T., Allahabad) decided on 9.5.2011
- iv) O.A. No. 1495 of 2006 Ram Shai and others vs. Union of India (C.A.T., Allahabad) decided on 9.5.2011.

8. Having heard the learned counsel for the parties and on perusal of entire pleadings, I agree with the arguments of the learned counsel for the respondents that the O.A. is highly time barred, in view of the judgment of Hon. Supreme Court in the case of Tahir Ali (supra) and other orders of the CAT, referred to above and the judgment of Hon. Supreme Court in the case of R.C. Sharma vs. Udhamp Singh Kamal (2000 SCC(L&S)53). The O.A. is, therefore, liable to be dismissed on the ground of delay and is accordingly dismissed. No costs.



Member(A)

s.a.