

Reserved
CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Misc. Application No. 3346 of 2002
In
Diary No. 3393 of 2002

_____ this the 15th _____ day of _____ September, 2006

Hon'ble Mr. P.K. Chatterji, Member (A)

Uma Shanker, Son of Lakki Ram, resident of Village Sehmalpur, Post Aurihar, District Ghazipur.

Applicant

{By Advocate Shri S.K. Om}

Versus

1. Union of India through General Manager, N.E. Railway, Gorakhpur.
2. Senior Divisional Personnel Officer, N.E. Railway, Varanasi.
3. Assistant Personnel Officer, N.E. Railway, Varanasi.

Respondents

{By Advocate Shri Anil Kumar}

ORDER

In this application, which is registered as Diary No.3393 of 2002, the applicant has requested for intervention of the Tribunal in directing his employer to regularise his services, which he has rendered with the employer as casual labour. In the application, he has stated inter-alia that he had worked in the Organisation in the capacity of a casual labour up to 1985. Thereafter he was not engaged again although subsequently the Employer have offered the job of casual labour to some other people junior to him and also subsequently regularized their services. The applicant has sought the relief from the Tribunal to direct the respondents to regularize his services, and for fixation of seniority and salary with reference to his juniors.

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2. Heard, counsel for the parties on the question of admissibility of the application on the ground of limitation. The grounds for condonation of delay in filing the application, as stated by the applicant, are as follows: -

"4. That every time whenever petitioner met the respondents and gave representation, he was assured that petitioner would be screened according to his turn in the live casual labour register. However, in the meantime of December, 2001 from very reliable source petitioner had come to know that a screening took place in the year 1987 wherein some juniors were considered and petitioner had been left only because there was no application on his behalf. However, after inspecting the relevant record petitioner has further come to know that screening took place twice but the petitioner was never called or informed and this fact was well within the knowledge of the respondents and suitable orders were also passed but the same could not be implemented for the reasons best known to them."

3. Learned counsel for the respondents vehemently objected admission of this case stating that this case is severely barred by limitation as the applicant had worked with the respondents last in the year 1985. Thereafter in 1994 his case was under consideration for re-engagement but it was not given effect to because his seniors were waiting for the job at that time. Thereafter, there has been no action towards engagement of the applicant as a casual labor or for his regularization. As there is a long gap of 11 years since the last action on this aspect was taken, the applicant is debarred by Rule of Limitation in filing this O.A. Therefore, he is not entitled to get the relief, which have been sought, in the O.A. Learned counsel also emphasizes that no junior to the applicant was ever engaged by the respondents as casual labour, therefore, even if the case is examined on merits, there is no merit in this case, which has to be disallowed. However, the learned counsel for the respondents is of the view that on the very question of limitation, this O.A. can be dismissed because 11 years have already passed since the last action on this issue.

4. Learned counsel for the respondents cited a Judgment of Full Bench of Delhi High Court (Jagdish Chandra Vs. U.O.I. [2002] 3 UPLBEC 2760), which had dealt with the question of limitation for entering one's name in the Live Casual Labour Register. In this case, the Hon'ble High Court decided that the request was rightly rejected as

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time barred because the cause of action for getting the name entered in the register is not a continuous one. The decision of Full Bench of Delhi High Court also referred in the Apex Court Judgment in the case of 'Ratan Chandra Sammanta and Ors. Vs. The Union of India and others J.T. 1993 (3) S.C. 418', wherein it was held: -

"5. The representation does not give any detail. It is not mentioned if the scheme was given due publicity or not. No explanation is given as to why the petitioners did not approach till 1990. Nor it is stated if any of the casual labourer of the project were re-employed or not. It is vague and was lacking in material particulars.

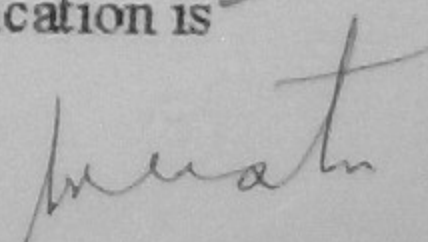
6. Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railway and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979."

Meath

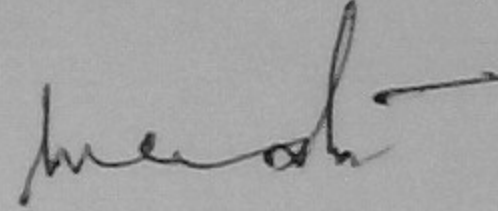
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5. Learned counsel for the applicant says that as number of juniors have been appointed after his disengagement, so the matter involves recurring cause of action and therefore, rule of limitation will not come in the way. He cited a Judgment of Principal Bench of Central Administrative Tribunal, New Delhi in the case of 'Hukam Singh Vs. Union of India and others (1993) 24 A.T.C. 747'. In this case, the aspect of non-engagement of casual labour was discussed and it was held that non-engagement of casual labours borne on the Live Casual Labour Register will be a continuous cause of action. Therefore, application against discontinuance of service even though filed after a delay of 11 years would not be time barred. While passing the Judgment, the Tribunal has referred to the case of Amir Hussain Vs. Union of India O.A. No.1346 of 1992, decided on 06.11.1992, in which also the same view was expressed.

6. The case, which was referred to by the learned counsel for the respondents, deals with the aspect of limitation of applications for entering one's name in the Live Casual Labour Register. In this case, it was declared to be time barred. The case of the applicant in this O.A. is not similar, therefore, this Judgment will not apply in this case. Although, the matter is not wholly unrelated but here the situation is different in the way that the applicant's name already figured in the Live Casual Labour Register and he has a grievance that he was not re-engaged since the last engagement in the year 1985 and thereafter his juniors have been engaged. Although the engagement of juniors have been denied by the respondents but that is subject matter of the Original Application. Here, we are dealing with the limited aspect of limitation. Therefore, I am of the view that the Judgment quoted by learned counsel for the applicant of Principal Bench, Central Administrative Tribunal is relevant to the present case and for this reason, there should not be any objection from the angle of limitation. Accordingly, M.A. No.3346 of 2002 for condoning the delay in filing the application is



allowed. The delay in filing the application is condoned. Registry is directed to give Original Application number. The respondents are directed to file counter affidavit on the merit of the O.A. within 4 weeks. Rejoinder Affidavit may be filed within 2 weeks thereafter. The case may be listed for orders on 27th October 2006.



Member (A)

/M.M./

O/R

No C.A. has been
filed so far.

Submitted.

U.V.
13/1/06.