

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH,
ALLAHABAD**

Original Application No. 1210 of 2006

Allahabad this the, 4 day of February, 2011

**Hon'ble Mr. Justice S.C. Sharma, Member (J)
Hon'ble Mrs. Manjulika Gautam, Member (A)**

1. Ramjeet son of Petari, resident of village Kurwa, P.O. Kazagaon, District Jaunpur (U.P.)
2. Nafees Ahmad son of Anis Ahmad, resident of village/Mohalla Line Bazar, P.O. Sadar (Jaunpur) District Jaunpur (U.P.).
3. Jawahar son of Anrup, resident of village Trilochan Mahadeo, P.O. Trilochan Baragaon District Jaunpur (U.P.)
4. Balli Ram Son of Raghunath, resident of village Rasepur, P.O. Jalalpur, District Jaunpur (U.P.).
5. Raja Ram son of Dharam Raj, resident of village Khalispur Bhatauli, P.O. Malipur, District Akbarpur (U.P.)

Applicants

By Advocate: Mr. P.N. Tripathi

Vs.

1. Divisional Railway Manager, Northern Railways, Lucknow Division, Lucknow.
2. Senior Divisional Personnel Officer, Northern Railways, Lucknow Division, Lucknow.
3. Assistant Engineer, Northern Railways, Jaunpur,
4. Assistant Personnel Officer, R.R. Cell, Northern Railways, Lajpath Nagar, New Delhi – 110024.

Tripathi

5. Union of India through General Manager, Northern Railways, New Delhi.

Respondents

By Advocate: Mr. Ravi Ranjan

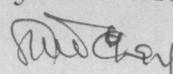
O R D E R

By Hon'ble Mr. Justice S.C. Sharma, J.M.

Under challenge in this O.A. is the order dated 29.10.2005 published in the Employment News No. 1/2005 with the last date for submitting the form on 29.11.2005 before the respondent No. 4 to fill up the several vacancies including the vacancies of Gangman/Trackman in the Northern Railway. Further prayer has also been made for giving directions to the respondents to offer the job to the applicant without any further delay and direction has also been sought for regularizing the services of the applicant.

2. The facts of the case may be summarized as follows:

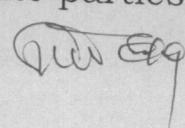
That the applicants were engaged as Casual Labours and appointed as Gangman in the year 1976-77 at C.P.C. rate in the Northern Railway at Jaunpur. On account of their working continuously for 120 days, the applicants have acquired status of temporary Government railway servants, and they are entitled to the protection of Rule 149 of Railway Establishment Code. They have also worked for more than 6 years without break, as such, they



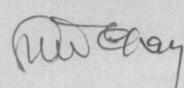
are entitled to be treated as temporary after the expiry of said period within the meaning of para-2001 (b) (i) of the Indian Railway Establishment Manual. It is stated in the O.A. that the applicants and other similarly situated persons were forcibly prevented from working w.e.f. 15.07.1982 without following the provisions of law. A suit was filed in the Court of Munsif, Varanasi but it was dismissed on the ground that remedy is available ⁱⁿ ~~to~~ the Labour Court, and that they must proceed under the Industrial Disputes Act. About 100 workers were terminated from the job and number ~~of~~ ^{of} groups were formed. Every group started pursuing their remedy separately and taking legal action in their own way. As a result of this fact, the applicants could not be initially associated with the Union, Lucknow Division, Lucknow as there was a dispute between the two rival functions of the Union. Ultimately, the matter was agitated before the Hon'ble High Court of Allahabad and thereafter before the Hon'ble Supreme Court and applicants had hope of getting assistance from the office bearers of their Union. It is stated that the applicants acquired temporary status of Railway Government servant and their services cannot be dispensed with without giving proper notice as required under Rule 149 of the Indian Railway Establishment Code and other provisions of the Section 25 (F) of the Industrial

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Disputes Act. The applicants were under the impression that their matter was looked upon by the Union but the applicant are illiterate persons and they came to know that other colleagues of the applicants had approached the Hon'ble Supreme Court by filing SLP 9601 of 1988 and got the interim relief on dated 18.04.1991 and they were taken in service as Casual Labourers. It is stated that the applicants along with about 13 more employees after knowing this fact approached the Hon'ble Supreme Court by moving application on 22.07.1991 in SLP No. 9602 of 1988 for impleadment, and their applications were converted into Civil Appeal No. 3655 of 1991 and the Appeal was finally disposed of vide order dated 17.09.1991, and the application of impleadment was rejected by the Hon'ble Supreme Court on the ground that the applicants were not party before the Central Administrative Tribunal, and hence they may proceed before the Central Administrative Tribunal, Allahabad. And thereafter, the applicants approached the Central Administrative Tribunal by filing O.A. No. 1000 of 1991. The O.A. was disposed of by the Tribunal by giving a direction to the respondents on dated 22.04.1992. The Contempt Proceedings was also initiated against the respondents in the year 1992. Notices were issued in the Contempt Petition to the opposite parties and the opposite

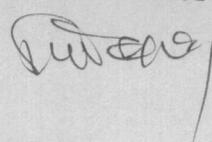


parties filed their Counter Affidavit in the Contempt Petition to the effect that since 66 senior persons are still not working due to the non-availability of work and post, therefore, claim cannot be accepted. In view of stand of the opposite parties, the Contempt Petition was dismissed. Thereafter applicants approached the respondents several times orally as well as through representations. Then applicants received through their Union a letter dated 21.05.2003 from the office of respondent No. 2 along with the form to be filled up by them detailing therein their Bio data, service record etc. and the applicant submitted the forms to the respondents for consideration but no reply was received from the respondents of their application form submitted earlier. Later on, applicants came to know in the month of August 2006 that 8 persons who are much junior to the applicants were included in the services of the respondents and were regularized without considering the claim of the applicants. It is arbitrary and illegal act. Moreover, the respondents have advertised about 3270 posts of Gangman/Trackman on which the applicants were employed besides several other Group 'D' dated 29.10.2005. It is stated that the respondents are proceeding for filling up the posts of Gangman without regularizing the applicants whereas it was stated in the Contempt Petition that there are 66 other senior persons

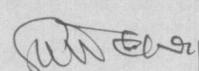


to the applicants who are to be considered for reappointment and adjustment, and due to this reason, the Contempt Petition was dismissed and notices discharged but as the respondents are proceeding for filling up the posts from open market hence, the O.A.

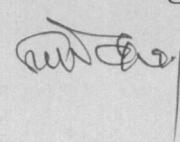
3. The respondents have contested the case and filed Counter Reply. It has been alleged in the Counter Reply that the applicants have no right to challenge the advertisement dated 29.08.2005 as published in the Rozgar Samachar against direct recruitment of group 'D' post through out the Northern Railway issued by the Railway Recruitment Board. The applicants were at liberty to apply for the same, in case they are within the zone of consideration as per the requirements as indicated in the letter itself. It is wrong to allege that the notification is illegal and against the constitutional guarantees enshrined under article 14 of the Constitution coupled with the fact that the same recruitment had already been finalized by the Railways. It will be material to state that these applicants had filed O.A. No. 1000 of 1991 before the Central Administrative Tribunal, Allahabad and the same was disposed of by the Tribunal with the direction to consider the case for regularisation in case it does not affect the rights of other employees. Civil



Contempt Petition was also filed bearing C.P. No. 1134 of 1992, which was dismissed by the Tribunal vide order dated 02.06.1995. The representations of the applicants were duly considered and appropriate order dated 16.10.1992 was passed by the Railway Administration and it was alleged that since 66 senior persons are still waiting for their turn and as such claim of the applicants are not at all acceptable. There is Judgment of the Full Bench of the Central Administrative Tribunal reported in 2000 (3) ATJ Mahabir and others vs. Union of India and others, and in that Judgment it was held that the Railway Board's Circular letters dated 25.04.1981 and 28.07.1981, which provides for placement of names of casual labourers on the Live Casual Labour Register, do not give a continuous cause of action. There are also other Judgments on this point. The Railway Administration also issued further direction that the names of casual labourers who had not worked in the Railways in the preceding complete calendar year, their names may be struck off from the Live Casual Labour Register. It is alleged that the O.A. is barred by limitation. A circular letter was also issued by the Railway Administration that there should be ban on intake of fresh casual labourers on open line. As far as possible casual labourers whose working is coming to an end in one unit should be diverted against the requirements of new ELR



sanctions of adjacent unit. Moreover, it has become essential for the Railway system with a view to meet out the challenges of the changed circumstances to review the standard of the staff particularly in the Group 'D' category to deal with such modern technology with the background of the education, which is required for their engagement. A circular letter was also issued by the Railway Administration for relaxation of age and qualification required for the purpose of absorption of ex-casual labourers born on Live/Supplementary Live Casual Labour Register, and according to the Circular letter the upper age limit is 40 years in case of general candidates, 43 years in the case of OBC and 45 years in the case of SC/ST candidates. Hence, there can be no relaxation in the age. It is stated that since 1991 much water has flown after the order of the Hon'ble Apex Court in a Constitution Bench Judgment in Secretary, State of Karnataka vs. Uma Devi 2006 (4) SCC (1), which specifically deals with such situation. The candidature of the applicant for regularisation was considered as they were within the zone of consideration and after due scrutiny of their records, they have rightly been recorded for their placement, as alleged by the applicants regarding junior persons. It is stated that names of the applicants are not entered in the Live Casual Labour Register, and applicants



cannot derive any benefit out of the Order of the Tribunal.

It is claimed that most of the applicants are over age and there can be no relaxation in the age. That in all circumstances O.A. is liable to be dismissed.

4. We have heard Mr. P.N. Tripathi, Advocate for the applicant and Mr. Ravi Ranjan, Advocate for the respondents and perused the entire facts of the case.

5. It is an undisputed fact that the applicants worked as Casual Labour and initially appointed as Gangman in the year 1976-77. It is also undisputed fact that there is circular letter of Railway Administration that an employee who has worked continuously for more than 120 days will acquire the status of temporary Railway Government Servant and he is entitled for the protection of Rule 149 of Railway Establishment Code. The applicants alleges that they had worked for more than six months without any break and hence they are entitled to be treated as Temporary Railway Servant. There had been earlier litigation in the Civil Court and the Hon'ble High Court. It is also undisputed fact that some of the employees approached the Hon'ble Apex Court by filing the S.L.P. No. 9602 of 1988 and those employees similarly situated got the interim relief vide order dated 18.04.1991. On the

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strength of that order of the Hon'ble Apex Court, they were taken in service as casual labourers. It is the case of the applicants that their pairokar also obtained the copy of the Order dated 18.04.1991 of the Hon'ble Apex Court and applicants moved before the Hon'ble Apex Court on 22.07.1991 in SLP No. 9602 of 1998 for impleadment, and it is also undisputed fact that it was treated as Civil Appeal No. 3655 of 1991 Vishwanath and others vs. Union of India and others but the Appeal was disposed of by the Hon'ble Supreme Court vide order dated 17.09.1991, and the application for impleadment of the applicant was rejected on the ground that they were not party before the Central Administrative Tribunal hence they must agitate before the Central Administrative Tribunal, Allahabad Bench. Thereafter, O.A. No. 1000 of 1991 was filed before the Central Administrative Tribunal, Allahabad Bench.

6. We have perused the different Orders passed by the Hon'ble Supreme Court, and by the Central Administrative Tribunal, Allahabad Bench in this connection. As we have stated that it is undisputed fact that some of the known applicants similarly situated filed SLP No. 9602 of 1988 before the Hon'ble Apex Court (Annexure A-1) is a copy of the Order of the Hon'ble Apex Court dated 18.04.1991. The applicants also alleged that after knowing this fact

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they moved application before the Hon'ble Apex Court for impleadment but the applicant was rejected with the observation that they must agitate their matter before the Central Administrative Tribunal and no relief can be granted to them as they were not party in the case before the Central Administrative Tribunal, Allahabad Bench. Annexure A-3 is the copy of the Order passed in O.A. No. 1000 of 1992. This O.A. was filed by the present applicants before the Central Administrative Tribunal, Allahabad Bench and this O.A. was disposed of vide Order dated 22.04.1992. The O.A. was disposed of by the following Order: -

"It is the duty of the Railway administration to consider the case of the applicants and there should be no reason for reappointment. It is for the railway administration also to consider the case of the applicants for regularization in case it does not effect any other employees. With the above observations this application is being disposed of."

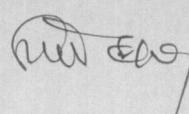
O.A. of these applicants was disposed of with a direction to the respondents to consider the case of the applicants for regularization provided it may not affect the rights of the others. It is also undisputed fact that as the applicants were not regularized in pursuance of the direction of the Tribunal hence a Contempt Petition was filed before the Tribunal. A representation was also submitted to the respondents as per direction of the Tribunal and this representation was rejected on the ground that since 66 senior persons are still not working



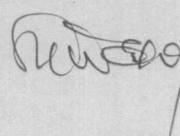
due to non-availability of work and post, therefore, their claim cannot be accepted as it will affect other employees.

In the Contempt Petition also the respondents informed the Tribunal that 66 senior persons to the applicant have also not been regularized due to non-availability of work and post and thereafter the Contempt Petition was dismissed and notices were discharged.

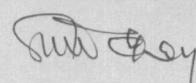
7. It has been alleged by the applicants that after the order in the Contempt Petition, the applicants approached the Railway Administration for regularization but they have not considered their claim for regularization. It was the definite case of the respondents that as 66 senior persons are still to be regularized hence in case the applicants are regularized then it will affect the rights of senior persons. The respondents specifically submitted this fact in the Counter Reply in paragraph No. 3. It has been alleged in the Counter Reply in the above para that "vide Judgment and Order dated 02.06.1995, as the representation of the applicant were duly considered and appropriate order dated 16.10.1992 was passed by the Railway Administration clearly indicating therein that since 66 senior persons are still waiting for their turn and as such the claim of the applicants are not at all acceptable. The only inference can be drawn from this



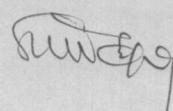
assertion of the respondents that firstly 66 persons senior to the applicants are to be regularized and thereafter turn of the applicants comes but in the Counter Reply inconsistent plea has been raised to the effect that some of the applicants are over age. There is a provision for relaxation of age, according to the instructions of the Railway Administration and in view of the instructions contained in the letter that age relaxation to the extent of service put in as casual labourers subject to upper age limit of 40 years in the case of general candidates, 45 years in the case of SC/ST candidates and 43 years in the case of OBC candidates, and further alleged that the same has been observed by the Hon'ble High Court of Allahabad. Considering the facts that the applicants are over age hence their cases cannot be considered. But from perusal of the record and documents filed by the applicants as well as admitted by the respondents, it is apparent that the case of the applicants was not rejected on the ground of over age or lack of requisite qualification. As per direction of the Tribunal in O.A. No. 1000 of 1991, the Contempt Petition was moved and in the Contempt Petition it was specifically stated that there are 66 other senior persons to the applicants although this point has been kept in-complete so that according to their convenience it may be interpreted in any manner. The



respondents should have specifically stated in the Contempt Petition that firstly 66 senior persons are to be considered for re-engagement and then the turn of the applicants comes. Only inference can be drawn from the assertion of the respondents that they want to allege that firstly case of 66 persons shall be considered and thereafter case of the applicants shall be considered. It was also stated during the contempt proceedings that for want of vacancy, 66 senior persons could not be regularized. But in the advertisement, so much posts of Gangman/Trackman were advertised and it shows that there are vacancies. Annexure-1 is the copy of Employment News dated 29.10.2005. Applications were invited from persons for different posts including 3270 posts of Gangman/Trackman. Last date for submitting the applications was 29.11.2005. It appears strange that all of sudden so much vacancies occur of the Gangman whereas during the contempt proceedings it was alleged by the respondents that there is no vacancy with them and hence case of 66 senior persons to the applicants could not be considered. Earlier of 1991, these applicants ~~we~~^{are} pursuing their case and it may be possible that they may be over age due to lapse of time and it is a normal course that by passing passage of time, every persons grow older and same is the case regarding applicants. But



prior to issue of the advertisement in the Employment Notice, case of the applicants was not considered and was not rejected on the ground that they are over age. During the Contempt Proceedings, it was the case of the respondents that as there is no vacancy and there are 66 senior persons in the waiting list and their cases shall be considered first but all of a sudden an advertisement was issued in the Rozgar Samachar in order to invite the applications for filling up the numerous posts of different cadre including that of Gangman. It cannot be said justified on the part of the respondents. It is a fact that as per circular letters of the Railway, the maximum age is 40 years of general candidates and 45 years in the case of SC/ST, and 43 years in the case of OBC but nothing has been alleged that if the Railway Administration itself had been guilty of delay, then what will be the position. As we have stated above that these applicants were pursuing their matter since 1991 and earlier to that then now in the year 2007. It was not justified on the part of the respondents to allege that some of the applicants are over age. In the Counter Reply, the cases of three persons have been set up showing that they are over age. It has been alleged regarding Hari Lal, Raghunandan and Ram Kewal that their date of birth is 08.05.1953, 30.05.1958 and 30.06.1952 respectively. It has also been alleged that the



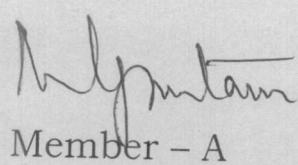
respondent No. 1 is aged about 54 years, applicant No. 2 is aged about 49 years and applicant No. 3 is aged about 55 years. In the present O.A., the applicants are six in number, and except 3 persons nothing has been alleged for rest of three whether they are also over age or not. But moreover if the respondents are responsible for the delay then whether the respondents shall be benefited from their own fault is also material to be seen. It is also a fact that the cases of the applicants were not rejected on the ground of over age. Due intimation ought to have been given to the applicants prior to getting published in the Employment News they are over age hence they cannot be considered. As they had worked earlier and there is Judgment of the Tribunal in O.A. No. 1000 of 1991 hence their case must be considered prior to advertising the post but it has not been done by the respondents hence we are of the opinion that the case of the applicants must be considered by the respondents for regularization in the light of various directions and Judgment.

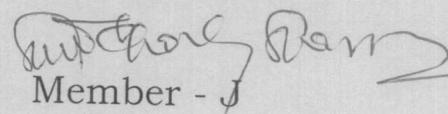
8. For the reasons mentioned above, we are of the opinion that as the applicants had worked for more than 120 days hence as per Railway Board's instructions, they are entitled to be regularized and they are agitating the matter since 1992 and earlier to that they have also moved to the Hon'ble Supreme Court in another case for



impleadment as party but that application was rejected with the direction that they must agitate the matter before the Central Administrative Tribunal, and thereafter O.A. No. 1000 of 1991 was filed and even a Contempt Petition was moved, which was disposed of ^{on} ~~7~~ submitting the written reply to the effect that 66 senior persons to the applicants are waiting for their regularization but even then the case of the applicants was not considered rather the vacancies were advertised. In these circumstances, O.A. deserves to be allowed partly.

9. O.A. is allowed partly. The advertisement dated 29.10.2005, published in the Employment News, is modified to the extent that case of the applicants shall also be considered as per direction of the Tribunal in O.A. No. 1000 of 1991 and Contempt Petition No. 113 of 1992. The case of the applicants shall be considered as per direction in that O.A. and in the body of this Judgment within a period of three months from the date of receipt of a copy of the order. The respondents shall be apprised about the order by the Advocate for the respondents as well as a copy of the order shall also be delivered to the respondents by the applicants forthwith. No order as to costs.


Member - A


Member - J