

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD

Dated: This the 10<sup>th</sup> day of Dec 2010

Original Application No. 1435 of 2006

Hon'ble Mr. S.N. Shukla, Member (A)

1. Brijesh Pratap Singh, S/o Sri B.B. Singh,  
R/o Village and Post – Piprauli,  
P.S. – Sahajanwa, Gorakhpur.
2. Sukhai, S/o Sri S.G. Singh,  
R/o Village – Bhanpur,  
P.O. Bathuwa Bazar, Gopal Ganj, Bihar.
3. Awadh Kishore, S/o Sri R.C. Prasad,  
R/o Plot No. 60/2, Shivedaspur,  
Singhoriya, Pokhara, Maruadeeh,  
Varanasi.

..... Applicants.

By Advocate: Sri A.K. Srivastava

V E R S U S

1. Union of India through General Manager,  
North Eastern Railway,  
Gorakhpur.
2. Divisional Railway Manager,  
North Central Railway, Varanasi Division,  
Varanasi.
3. Senior Divisional Personnel Officer,  
North Central Railway, Varanasi Division,  
Varanasi.

..... Respondents.

By Advocate: Shri D.P. Singh

O R D E R

This OA is against impugned order dated 17/25.09.2004  
(Annexure A-1) and 05.12.2005 (Annexure A-2). Vide order dated  
25.09.2004, with reference to their representations, the

67

applicants were informed that the screening test held on 30.06.2004 was in respect of substitute workers of Signal and Telecom Department and not the casual labours as the applicants are. They were however informed that as and when screening test will be proposed for Ex. Casual Labours the applicants will be considered as per their seniority and merits. Order dated 05.12.2005 relates to appointment of Sri Ram Nayan as a temporary workers after successful passing the screening test.

2. The applicants were temporary workers in the Railways and their names stood at seniority list of casual labours as on 15.07.1979 (?) at Sl. No. 48, 47 and 59 respectively (para 4.1 to the OA). Thereafter, as per policy of Railway Board no casual labours were to be appointed. It is claimed that the applicants are in the panel after getting temporary status as per list placed at Annexure A-3 to the OA captioned as "Seniority List of Casual Labours in Signal and Telecom Department as on ..... 97 (?)" . The applicants are awaiting employment in Group 'D' post as they had already attained the temporary status. While they were ignored some other candidates were called for screening test as is evident from Annexure 1 and 2.

3. It is further alleged that some of the candidates called for screening test, were initially appointed from 1997 to 2002 and included the names who were not in the seniority list of a particular department and also they were not working between

1  
CAB

1997 to 2002 yet they have been preferred for screening. It is also submitted that 13 casual labours who are given appointment as Group 'D' employee were either similarly placed or junior to the applicants.

4. The OA seeks regularization of the applicants in Group 'D' post as also seeks quashing of the impugned order dated 17.09.2004 calling upon the candidates for conducting screening test whose names do not appear in the seniority list.

5. Counter Affidavit has been filed. The first ground is for dismissing the OA for misjoinder of parties in as much as in the array of the respondents the applicants have not made Divisional Railway Manager, and Sr. DPO, North Central Railway, Varanasi as a parties. Where the applicants comes under the jurisdiction of North Central Railway. The OA is stated to be time barred in as much as the order dated 17.09.2004 has been challenged in December, 2006 after a lapse of 2 years and that too without any delay condonation application.

6. It is then submitted that the screening test was conducted for ex-casual labours of Signal and Telecom Department of the Division. The candidates listed at Annexure A-2 to the OA were considered as a special case as the screening test was held for reserved category (SC/ST candidates) by the headquarters. The screening test was not done by the division. They were given posting in the division at the direction of the Hon'ble High Court At the divisional level screening was held for substitute

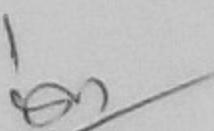
162

employees only. It was clarified that at present no screening test for casual labours has been held. That all the names appearing in Annexure A-5 of the OA calling for screening test are substitute employees.

7. In the Rejoinder Affidavit it is submitted that there was a Writ Petition No. 47970/04 filed against award dated 11.08.2004 passed by the Central Government Industrial Tribunal cum Labour Court. In that the Hon'ble High Court gave a finding that the workers who were parties to the litigation were given 'time pay scale' and had worked for more than 120 days and successfully cleared the interview and passed the medical test but not conferred with the regular status formally and hence, workers were entitled to be regularized. SLP was dismissed by the Hon'ble Supreme Court.

8. It is contended that the applicants in this OA are also in receipt of 'time pay scale'. That they were medically examined and found fit and, therefore, covered under the judgment in Writ Petition No. 47970/04 (Rajendra Sahi's case). Support was also sought from the Hon'ble Supreme Court decision in Civil Appeal No. 5082/97 : K.C. Sharma and Others decided on 25.07.1997 wherein it was held down that benefit of earlier judgment should be extended to similarly placed persons and no limitation would be attracted.

9. Supplementary Affidavit is filed. It is contended that the judgment in Writ Petition No. 37970/04 is not applicable to the

A handwritten signature in black ink, appearing to be a stylized 'S' or a similar character, followed by a checkmark symbol.

present controversy since the Writ Petition was against award under Industrial Disputes raised by the Workmen against their termination. It is submitted that the applicants were not a party in that judgment and that litigation and, therefore, cannot seek benefit of the said decision.

10. Heard learned counsel for the parties and perused the material on record. As is evident the applicants are seeking two reliefs:-

- a. That the applicants are seeking engagement ahead of certain candidates who have been called for screening test vide impugned order dated 17.09.2004 stated to be juniors of the applicants;
- b. That following the decision of Hon'ble Allahabad High Court in the case of *Rajendra Sahi Vs. Union of India and others : Writ Petition No. 47970 of 2007.*

11. Reliance is also placed on this Tribunal's decision (Jodhpur Bench) in the case of *Name Singh Vs. Union of India and others : OA No. 273 of 2002*, wherein it was held that, "when the benefit of earlier judgment is prayed by similarly placed persons, the bar of limitation would not be attracted". Similarly, reliance is also placed on the Hon'ble Supreme Court's decision in the case of *Mineral Exploration Corpn. Employees' Union Vs. Mineral Exploration Corpn. Ltd. And another : (2006) 6 SCC 310*, wherein it has been held as under:-

102

*"Constitution of India - Arts. 16, 14 and 309 - Public employment - Instrumentalities of State (government company) - Regularisation of "irregularity" appointed employees against "illegally" appointed employees as explained in paras 15-17 and permitted as one-time measure in para 53 of Umadevi (3) case, (2006) 4 SCC 1 - Scope of such regularisation - Ample material on record showing that temporary/casual/contingent employees of respondent Corporation were doing work of permanent nature of work which used to be done by skilled employees, but were continued as temporary/contingent workmen for long duration of time - Respondent Corporation found to be permanent in nature and to have had sufficient regular work an to have been in a satisfactory financial condition in the past - It also appeared that work of Corporation would not come to an end - Usual practice of Corporation had been to keep contingent workmen for long duration of time and to offer regular appointment periodically - Hence, held, it shall be proper to regularize services of such workmen who had worked for several years - However, workmen in order to succeed will have to substantiate their claims as per established principles of law - Matter remitted back to the Tribunal with detailed direction to consider case of each employee claiming regularisation on such ground, to be decided strictly in accordance with and in compliance with all the directions given in Umadevi (3) case, (2006) 4 SCC 1, and in particular paras 53 and 12 thereof, and without being influenced by any of the observations made in this judgment - Interim order dt. 3-5-1999 directing respondent Corporation to provide there was work available, to continue - Words and Phrases - "Temporary employee", "Casual employee", "Contingent employee" - Service Law - State-Owned/Operated Corporations - Public sector - Regularisation."*

12. Learned counsel for the respondents has placed reliance on the decision of Hon'ble Supreme Court in the case of *State of Karnataka and others Vs. Ganapathi Chaya Nayak and others* : (2010) 3 SCC 115. The headlines of the said decision reads:-

*"Service Law - Regularisation - Daily-wage employees - Claim based on premise that respondents had been in continuous service for ten or more years - Whether entitled to regularisation - Appellant Government's plea that respondents were recruited after 1-7-1984 and therefore not entitled to scheme for regularisation applicable to those recruited prior to 1-7-1984 - Held, in view of law laid down in Constitution Bench decision in Umadevi (3) case, (2006) 4 SCC 1 and subsequently reiterated in Dayanand case, (2008) 10 SCC 1, respondents not entitled to regularisation - Respondents' further claim based on premise that they were covered by Industrial Disputes Act, 1947 - Held, such pleas was not raised in lower courts nor was there any pleadings to this effect in Supreme Court - Such, plea, therefore, not entertained - Liberty, however, given to respondents to approach appropriate forum under ID Act, if such a remedy and right was available to them."*

6/

13. The facts as they emerge from the rival pleadings are summarized as under:-

- a. Applicants were in receipt of 'time pay scale'.
- b. Their names appears in the last (?) seniority list of casual labours published by the Railways.
- c. Apparently regularization has been made either of SC/ST candidates or, if at all, of substitute employees.
- d. There does not appear to be water-tight case to demonstrate that the juniors of the applicants who fall in the last list of casual labours (Annexure A-3 to the OA) have been engaged ahead of the applicants are in the same category as the applicants.

14. The decision quoted by the learned counsel for the applicant have been carefully studied. For the applicants to be considered at par with the applicants who were the party in the Rajendra Sahi's case (supra), one has to first considered whether on facts the applicants case was identical to the one before the Hon'ble High Court in Sahi's case. The facts as narrated in the order of the Hon'ble High Court at relevant para at page 5 of the judgment are as under:-

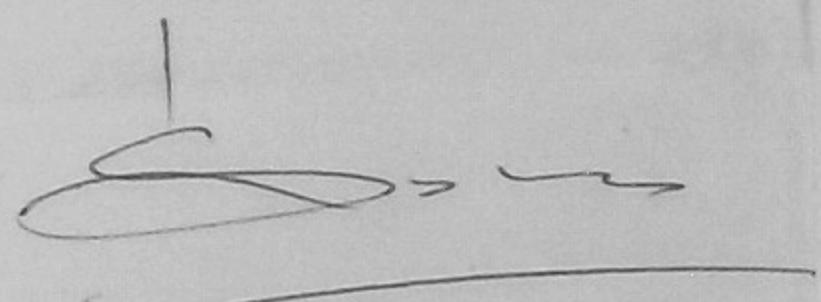
*"It is clear from the award that vacancies existed at the relevant time against which all formalities for regularization of the petitioner had taken place, they were also medically examined because of surplus staff becoming available due to phasing out of the steam locomotives, these workers were not regularized in service and had been retrenched."*

*b7y*

15. In the instant OA before this Tribunal there is no evidence brought on record to indicate that the applicants, even if they were granted 'time pay scale', there is nothing to suggest that their engagement or granting of 'time pay scale' and holding of medical, if at all, was in preparation for regularizing them against existing vacancies. The fact of the instant case not being identical, the applicants may have overstretch their case by claiming that the mere granting of time pay scales entitles a casual labours to be regularized in Group 'D' post regardless of the availability of vacancies.

16. Since the OA fails on its main ground it has not been considered necessary to go into the other aspects of the matter such as misjoinder of the parties, delay in filing the OA and extension of benefit of the judgment to all similarly placed employees.

17. In view of the above discussions the OA has no merit and is accordingly dismissed. No cost.

A handwritten signature consisting of a stylized 'S' or 'D' shape with a vertical line above it, followed by a horizontal line.

Member (A)

/pc/