

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated : This the 8th day of FEBRUARY 2010

Original Application No. 303 of 2006

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

Maiya Deen, S/o Shri Pooran, R/o Village Suhana, Post Office Gancha,
District Banda.

... Applicant

By Adv : Sri N.L. Srivastava

V E R S U S

1. Union of India through General Manager, Northern Central Railway, Jhansi.
2. Divisional Railway Manager, Northern Central Railway, Jhansi.
3. Section Engineer Railway (PWI), Chitrakoot Dhan Karvi, Northern Central Railway, Distt: Chitrakoot.
4. Section Engineer (P. Way) Bharuwa, Sumerpur, Northern Central Railway, Hamirpur (UP).

... Respondents

By Adv: Sri Anil Dwivedi

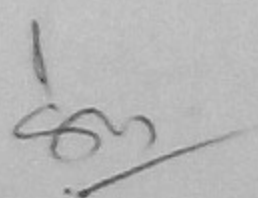
O R D E R

Heard Sri N.L. Srivastava, learned counsel for the applicant and Sri Anil Dwivedi, learned counsel for the respondents.

2. This OA has been filed seeking the following reliefs:

- a. *To issue a direction to the respondent no.2 to appoint the applicant as Gangman from the date when their juniors namely Ram Asre and Shivmangal have been appointed as Gangman with all consequential benefits.*
- b. *To issue any other suitable or equitable order or direction to the respondents which the Hon'ble Tribunal may deem fit and proper in the circumstances of the present case.*
- AND
- c. *To award the cost of the Original Application to be paid to the applicant throughout."*

3. Relevant pleadings in this regard is at para 4.4 and 4.6 of the OA which is as under:



4.4 That, thereafter, in march-2005 the respondents appointed the abovesaid two persons namely Ram Aasre and Shiv Mangal as 'Regular Gangman' in the pay scale of Rs. - 2610-3300. However, the applicant could not file the appointment letter of the abovesaid two persons because the abovesaid two persons have refused to give the copy of the same to the applicants.

4.5

4.6 That, when the applicant came to know with regard to the appointment of Ram Aasre, S/o Sri Gariba and Shiv Mangal S/o Ram Manohar as regular Gangman then he filed a representation before the respondent no.2 on 05-07-2005 and requested therein that kindly appoint the applicant as regular Gangman because he is senior than Shri Ram Aasre and Shiv Mangal as Casual Labour on the basis of working days. A TRUE COPY OF THE REPRESENTATION DATED 05-07-2005 FILED BY THE APPLICANT BEFORE THE RESPONDENT NO. 2 IS BEING FILED HERewith AND MARKED AS ANNEXURE NO- 5 TO THIS ORIGINAL APPLICATION IN COMPILATION NO-I."

4. Learned counsel for the respondents on the other hand states that first of all the applicant has not submitted any application for his regularisation within prescribed time. Even otherwise the alleged representation dated 05.07.2005 (Annexure A-5 to the OA) was never received and, therefore, any question of consideration of the same does not arise. Reference was also made to Divisional Railway Manager (P) , Jhansi letter No. JHS/P/161/C.L./Group "D" dated 30.8.2001 (Annexure CA-3). The relevant paragraph of the same is being reproduced as under:

- "1. Please find herewith a list of Ex. Casual Labour borne on live register and supplementary live register and those who have worked as Hot season waterman/water women under your jurisdiction.
2. One copy of the notice alongwith the list should be displayed on the notice board of your depot along with the proforma for particulars. While doing so it should be mentioned that this exercise is being done only to make an assessment as to the number of eligible casual labours in the live register still available for recruitment and that it should not be construed as an employment notice nor re-engagement notice for the ex-casual labour.
3. You, under whom the name of the casual labour is borne on the live register/supplementary live Register, will display the notice alongwith the list and the proforma on the notice board and report compliance to the effect that you have pasted the notice, list and proforma on the Notice Board to DRM's office Personnel Branch immediately.

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9. Whenever addresses of casual labour, Labours are available in the live Register/Supplementary live Register, this office has sent the notice alongwith the proforma by registered post to the casual labour and the same is indicated in the enclosed list."

en

5. Heard learned counsel for the parties and perused the pleadings on record. The case of the applicant is that he never had a notice because the prescribed procedure for service of notice/intimation on the prospective candidates may not have been fully followed. In as much as, whereas, it is not disputed that the notice was put up on the notice board as prescribed. The applicant, however, missed the seeing the notice board.

6. On the other hand in Annexure CA-3 it is claimed that wherever address of casual labour were in the live register/supplementary live register notices alongwith proforma have been forwarded to the casual labour as indicated in the endorsed list thereon.

7. On a specific query to the learned counsel for the respondents as to whether or not any notice was sent to the applicant through registered post as claimed in Annexure CA-3, he is not in a position to offer reply. At this point he mentioned that the notice was also published in the news paper, but again on being asked to show the pleadings in the CA and a copy of the said news paper, he again had no answer. When queried regarding the annexure containing list of names [Para 4(9)] supra, he had no answer once again.

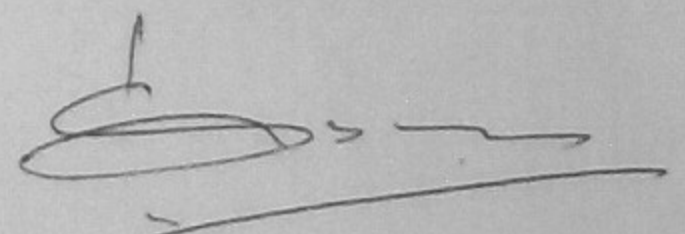
8. Needless to say that the purpose of the pleadings is to bring all the facts on record as are being relied upon by the respective parties. The respondents failed to bring forward any evidence on record to show even remotely that other than notice on the notice board, so called information through registered post was sent to the applicant or whether so called notice in the news paper was made at all. Under the circumstances only inescapable inference which can be drawn is that the applicant was not given sufficient notice to enable him to make his application in time and he

18/5/20

got missed out being considered for no fault of his. Averment that he came to know only after his juniors were regularised is convincing, particularly since the OA itself has been filed almost four years after the event of regularisation process. It is not comprehensible that the candidate who has a lot at stake in regularisation will be negligent to exercise his rights for four years.

9. Considering the fact that the learned counsel for the respondents has taken a stand that the representation of 2005 has not been received, the ends of justice will be met only if the applicant is allowed to make a fresh representation before the competent authority i.e. respondent No. 2 (Divisional Railway Manager, Northern Central Railway, Jhansi) alongwith copy of this order and copy of OA (both compilation No. I & II) within a period of 15 days from the date of receipt of copy of this order and the competent authority i.e. respondent No. 2 shall pass reasoned and speaking order in accordance with law within a period of three months from the date of receipt of representation alongwith copy of this order and copy of OA (both compilation No. I & II) in which the competent authority will consider all the accompanying circumstances by keeping in mind that the claim of the applicant cannot be ignored unless sufficient evidence is brought in the speaking order that the applicant had a notice of the regularisation process (other than notice pasted on the notice board). If it is found that the applicant indeed had no notice of the regularisation process then any delay occurred on account of filing of this OA will be ignored for considering his eligibility in terms of age of entry.

10. This OA is disposed of finally in view of the observations made above. No cost.



Member (A)

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