

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH ALLAHABAD

Original Application No. 472 of 2006

Allahabad This The 24th Day of April 2009

HON'BLE MR. JUSTICE A.K. YOG, MEMBER-J

1. Parmeshwari Dayal
S/o Sri Lachhi Ram
2. Randheer Singh
Son of Sri Bhawani Deen
3. Ram Prakash
S/o Devi Deen
4. Gaya Prasad
S/o Parmanandi
5. Beni Prasad
S/o Ram Dayal
6. Uma Shankar
S/o Kali Charan
7. Kallu
S/o Parasuram
8. Prahlad
S/o Parmanandi
9. Mangal Singh
S/o Kali Charan
10. Khem Chan
S/o Deena

Applicant No. 1 to 10 all R/o Village Kidari,
Post-Teekamau, District-Mahoba.

11. Munna
S/o Bhoora
R/o Village Pachpahra, Post-Pashwara,
District-Mahoba.
12. Deen Dayal
S/o Chudaman
R/o Village Anchana, Post-Charkhari
District-Mohaba.

..... *Applicants*

By Advocate:- Sri L. M. Singh - For all the Applicants
 Sri Ram Kamal Srivastava- For Applicant Nos. 5,6 & 9 only

Versus

1. Union of India through the General Manager,
 North Central Railway, Allahabad.
2. The Divisional Railway Manager(P)
 North Central Railway, Allahabad.
3. The Assistant Personal Officer(1),
 D.R.M. North Central Railway, Allahabad
 Division Allahabad.
4. Sr. Divisional Engineer,
 North Central Railway, Mohaba.

..... **Respondents**

By Advocate: Sri A.K. Sinha
 Sri Anil Kumar

Order

1. Heard Sri Raj Kamal Srivastava, Advocate claiming to represent Applicant Nos. 1,5,6 and 9 only, Sri L.M. Singh Advocate preferred not to appear, Sri A.K. Sinha and Anil Kumar Advocates appeared on behalf of Respondent Nos. 1,2,3 & 4.
2. Above noted O.A., along with an application (M.A.No. 1849 of 2006) purporting to be under Rule 4(5), CAT (procedure) Rules, 1987, was filed before this Tribunal on 26.4.2006. M.A. No. 1849 of 2006 has been jointly filed on behalf of all the twelve applicants-seeking permission to file single O.A. on the pleading that 'the applicants have a common cause of action'. There is no averment that the applicants have no conflicting interest and they seek to pursue common interest based on

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similar identical facts. The reliefs claimed in the O.A. are as follows :-

- "i. issue a writ, order or direction in the nature of certiorari calling for the records through which the age limit has been prescribed for regular absorption to the casual laborers and quash the impugned notification dated 17.12.2005 (Annexure No.1 to the original application) issued by the respondent no.1.
- ii. issue a writ, order or direction in the nature of mandamus commanding the respondent authorities to consider the candidature of the applicants and appoint them against group 'D' post on regular basis and pay their salary accordingly.
- iii. Any other direction as may deem fit and proper in the circumstances of the case.
- iv. Award cost of the original application."

3. On, 3.5.2006 Tribunal passed following order-(including interim order) :-

"Heard on the request under Rule 4(5) of the CAT (Procedure) Rules, 1987. It is stated that the applicants having the identical facts so the request is allowed.

The applicants have with a case that they have worked as casual laborers in the department of Railways for sufficient number of days and on the basis of the orders/circulars issued from time to time especially the guidelines pursuant to the directions of the Apex Court in the case of Indra Pal Yadav, the case of the applicants for re-engagement/re-employment is there, but the authorities concerned has issued an advertisement (Annexure-1) limiting such consideration, but only those casual labourers who have not crossed the particular age mentioned therein. The learned counsel for the applicants says that this rider of upper age limit is beyond the guidelines or scheme framed earlier. Sri L.M. Singh, Counsel for the applicants has also brought to the notice of

the Bench that in O.A. no.6 of 2006 this Tribunal has passed an interim order on the like petition.

Let Dasti notice be served on the respondents and affidavit of service be filed by the applicants within a period of 10 days from today.

In the circumstances, it is directed that in case the name of the applicants do find place in the live casual labourers register, their applications for screening/selection pursuant to the notification dated 17.12.2005 (Annexure-1) shall be considered processed, but the result of any such screening test in so far as the applicants are concerned shall not be declared except with the leave of this Tribunal.

List this case on 17.5.2006 for orders.

The respondents may file objection, if any, against the interim relief.

Let copy of this order be given to the counsel for the applicant along with the notice to be served on the respondents.

*Sd/ Illegible
Vice Chairman "*

Interim order has (emphasis laid by me) been continued from time to time and also a statement made at the Bar to the said effect.

4. While the O.A. was pending, applicants filed M.A. No. 1301 of 2008 vide Para 10 of the affidavit of Uma Shankar (filed in support of the said amendment application) the applicant prayed for incorporating proposed Para Nos. 4.16A, 4.16B, 4.16C, 4.16D and 4.16E, corresponding legal grounds in Para 5 of O.A. and to add relief to quash impugned Railway Board Circular dated 28.2.2001 and 20.9.2001. It is, apparent that circulars/orders relating to the year February and September, 2001 are now sought to be challenged in the O.A. filed in 2006. Though,

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amendment of the O.A. vide Amendment Application presented in the registry on 2.7.2007. Evidently said relief is time barred. No effort is made to explain the delay by 'application for condonation of delay' or otherwise in the affidavit (filed in support of amendment application)

5. On other hand respondents filed 'counter-reply' along with
 - (i) M.A. No. 4126 of 2008 (with the prayer to condone delay in filing C.A. It is allowed), now and Counter Affidavit reply taken on record. (ii) M.A. No. 4127 of 2008 (with the prayer to vacate interim order dated 3.5.2006) (It is rejected through this order as infructuous, Para-9 of the counter reply reads:-

"That the contents of paragraphs 4.5 to 4.14 of the O.A. are not admitted as stated. They are matters of records. Since the applicants do not belong to Allahabad Division their applications cannot be entertained by the Allahabad Division. It is stated that in view of the Appex Court's judgment in the case of Indrapal Yadava & Ors the case of casual labours for engagement/re-engagement and their subsequent regularization are to be considered division-wise. Since the applicants have never worked as Casual Labour on Allahabad division their case for engagement/regularization cannot be considered by Allahabad division. They are amendable to the jurisdiction of Jhansi division because all of them have worked at Mahoba which falls under the control of Jhansi division. Thereafter, in view of the Hon'ble Court's interim order dated 03.05.2006 the applicants are not entitled for consideration of screening/ regularization on Allahabad division".

6. Apart from the above, respondents filed 'supplementary-counter reply' along with M.A. No. 4128 of 2008-with the prayer to accept the same on record. M.A. allowed.

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Supplementary Counter reply is taken on record. Para 5 to 10 of the said counter reply read:-

- "5. That it is also stated that the applicants have not impleaded DRM, N.C.Railway, Jhansi as one of the respondents and therefore, the instant O.A. is bad for non-joinder of the necessary party.
- 6. That the applicants have filed an amendment application challenging the two Railway Board's orders dated 28-02-2001 and 20-09-2001. These two orders are statutory orders passed by the Ministry of Railways and suffer from no malafide, bias or any arbitrariness. These orders have been issued framing a policy under the consultation with the NFIR, New Delhi in its PNM held with the Railway Board and are not liable to be challenged in any court of law. From a perusal of the Railway Board's order dated 20-09-2001, it is seen that the Railway Board have already relaxed the age restriction by 10 years in consultation with the NFIR and it is not feasible to give more relaxation further.
- 7. That further an order dated 2nd January, 2006 passed by the court was set aside by the Hon'ble High Court, Allahabad vide its order dated 03.08.2006 in WP No. 21799 of 2006 UOI & Ors. Vs. Ajai Kumar and another.
- 8. That similar order dated 16.11.2006 passed by this Hon'ble Court has also been set aside by the Hon'ble High Court, Allahabad vide its order and judgment dated 14.02.2007 passed in WP No. 8148 of 2007 UOI and others Versus Shankar Prasad Sen & another.
- 9. That a similar case of Ratan Chandra Samanta & Others Vs. UOI & Others in WP (Civil) no. 71 of 1992 was dismissed by the Apex Court vide its judgment and order dated 13.05.1993 duly forwarded by DRM, N. Rly., Allahabad letter dated 25-09-2000.
- 10. That in view of the aforesaid judgments and order passed by the Hon'ble High Court, Allahabad and the Hon'ble Apex Court as well as the Railway Board's order dated 20.09.2001 coupled with the non-joinder of the necessary

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party the instant O.A. is not maintainable and is liable to be dismissed".

Applicants filed Rejoinder, Para 8 of it reads:-

"That the contents of para 9 of the Counter Affidavit are misconceived and wrong hence denied. When the Applicants were working as Casual Laborer the Jhansi Division was not in the existence, office only Allahabad Division was there and the claim of the Applicants may be considered either by the Divisional Rail Manager Jhansi or by the Divisional Rail Manager Allahabad."

Respondents filed supplementary written reply (through Anil Kumar, Advocate), Para 3 to 7 the reproduced:-

"3. That during the pendency of the above similar matter Hon'ble Tribunal has issued final order dated 2.1.2006, in O.A. I/2003-Sri Ajai Kumar Vs. U.O.I. & others.

"The respondents may after verifying ascertaining that all the seniors to applicants have been accommodated, may consider the case of applicant, for regularization in accordance with law save that in case the applicant is by age, necessary age relaxation should be granted from the competent authority and subject to conditions being fulfilled, his services regularized for group "B" post."

The above drill may be accomplished may be within a period of six months from the date of communication of this order.

The O.A. stands disposed of in the above terms, no costs.

4. That against the said judgment and order dated 2.1.2006 of Hon'ble Tribunal, Allahabad, the Railway Administration has preferred a writ petition no. 21799 of 2006 Union of India Vs. Ajay Kumar and others before the Hon'ble High Court Allahabad, which has been allowed.

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by the Hon'ble High Court vide order dated 3.8.2006 and the Hon'ble Tribunal's order dated 2.1.2006 has been set aside, observing as under -

"In view of the above, we are of the considered opinion that the directions issued by the Tribunal are in futility and issuing such a direction, which can not be carried out in accordance with law, are not permissible in law. As the claim of the respondent employee cannot be considered in accordance with the law and he is not entitled for any relief, the direction issued by the learned Tribunal is in contravention of Scheme framed by the present petitioner. The Court or Tribunal cannot pass an order in contravention of law. Thus asking the present petitioner's to consider the case of the respondent employee for re-employment and regularization, being a futile exercise, is not going to serve any purpose and the writ petition deserves to be allowed.

The petition succeeds and is allowed. The impugned judgment and order dated 2nd January, 2006 is hereby set aside. "

5. That same ratio has been further confirmed by the Hon'ble High Court in view of various judgment of the Hon'ble Supreme Court, in writ petition no. 8148 of 2007 U.O.I. Vs. Shanker Prasad Sen & others, decided on 14.2.07.
6. That further in view of the Five Judge judgment of Hon'ble Supreme Court passed on 10.4.2006 in Civil Appeal, Secretary, State of Karnataka and others Vs. Umadevi & others, where in Para 44 it has been held as under-

"The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this court in the cases above referred to and in the light of this judgment. In that context, Union of India, the state Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals and should further ensure that regular recruitment are undertaken to fill those vacant sanctioned post that required to be filled up. "

7. That in view of the facts and circumstances stated above, the facts of the present O.A. are similar to the O.A. of Ajai Kumar and points

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involve are the same, same has been already decided by the High Court in the writ petition no. 21799 of 2006 as well in the case of Umadevi by Hon'ble Apex Court, in view of the same the present O.A. is also liable to be dismissed".

7. It is to be noted that above referred supplementary counter reply and supplementary written counter reply were served upon the counsel representing the applicant on 5.10.2007 and 1.12.2008 respectively. No steps taken on behalf of the applicants to oppose the same or to controvert categorical factual contents in those pleadings.

8. When this O.A. was taken up today Sri Raj Kamal Srivastava appeared and stated that he represents only applicant nos. 1, 5, 6 and 9 and that he does not represents rest of the applicants (namely-applicant Nos. 2, 3, 4, 7, 8, 10, 11 and 12). He further, stated that earlier counsel (Sri L.M. Singh, Advocate) confused the facts inter-se. The applicants and the case of the applicants 1, 5, 6 and 9 is not at par with other applicants, the O.A. does not contain correct facts. Sri L.M. Singh, Advocate, has not appeared to press this O.A. on earlier date (22.4.2009) and today (24.4.2009).

9. From the above factual matrix one can see that this O.A. remained pending for about three years with an ex-parte interim order providing opportunity to the applicants (subject to certain condition) to be screened (for Regularization) but their result has

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not been declared. The interim order is thus of no advantage to either of the parties.

10. I find and hold as follows:-

- i. All the applicants cannot be permitted to join together in single O.A. Misc. Application No. 1301 of 2008-praying for seeking permission to permit all the 12 applicants to join together in single O.A. is misconceived maintainable. Conclusion is fortified from the fact that Applicant Nos. 1, 5, 6 and 9 (represented by Sri Raj Kamal Srivastava, Advocate) want to withdraw from the O.A. as stated by their said counsel. This application is rejected. O.A. has not been admitted as yet and liable to be dismissed on the ground of 'Misjoinder' of 'Parties' and 'Cause of action'.
- ii. Much water has already flown down the stream since O.A. was filed. Several judgments of the High Court and the Apex Court have come into existence on the subject. Besides a new notification has been issued by the Respondents. Question of relaxation of age/ cut off date, etc. has to be seen and ascertained with respect to each applicant separately as per existing Board Circular/Rules etc.
- iii. M.A. No. (Amendment) No.1301 of 2008 proposes to incorporate facts, legal ground and relief-which shall

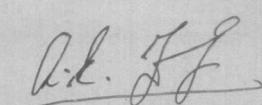
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change nature of the case, new facts and time bared 'Cause of action.' "No relief can be granted since, applicants have not sought condonation of delay."

11. It is clear that 'Appearance of the applicants in the examination under interim order shall be ignored, as this O.A. is not being pressed by the Applicants on merit and no advantage can be taken by a person under interim order unless matter is finally heard and adjudicated.

12. In the totality of the circumstances, this O.A. is dismissed as infructuous/redundant with liberty to the applicants to file their separate comprehensive representations raising their grievances before concerned competent authority and the said authority shall decide the same under relevant Board Circular/Rules.

13. In view of the above this O.A. stands dismissed as redundant to the extent of the reliefs claimed by the Applicant Nos. 2, 3, 4, 7, 8, 10, 11 and 12 and dismissed as withdrawn by the applicant Nos. 1, 5, 6 and 9 subject to the observation made in the preceding Para of this order.



Member- J

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