

**CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH, ALLAHABAD**

O.A. No.769/2006  
O.A. No.770/2006

Allahabad, this the 25<sup>th</sup> day of November, 2011

**HON'BLE MR. A.K. BHARDWAJ, MEMBER (J)**

O.A. No.769/2006

Anand Prakash Tiwary, Son of Sri Hari Kishor Tiwary,  
R/o Village Rasoolpur, Post Ram Nagar Bhojpur,  
District-Pratapgarh.

... Applicant

(By Advocate: Shri Vinod Kumar)

Versus

1. Union of India through General Manager,  
North Central Railway, Allahabad.
2. Divisional Railway Manager,  
North Central Railway, Allahabad.
3. Divisional Railway Manager,  
North Central Railway, Allahabad.
4. Divisional Superintending Engineer-II,  
North Central Railway, Allahabad.

... Respondents

(By Advocate: Shri Anil Kumar)

O.A. No.770/2006

1. Ram Bahadur son of Raghubir,  
R/o Village Malkhanpur, Hanumanganj, Allahabad,  
District-Allahabad.
2. Udai Raj son of Raghubir,  
R/o Village Malkhanpur, Hanumanganj,  
District-Allahabad.
3. Ram Jiyawan son of Ram Autar,  
R/o Village Malkhanpur, Post Hanumanganj,  
District-Allahabad.
4. Ram Naresh son of Gopal,
5. Brij Lal son of Ram Das,  
R/o Village and Post Jamunipur,  
District-Allahabad.



6. Radhe Shyam son of Shiv Bhajan,  
R/o Village Malkhanpur, Post Hanumanganj,  
District-Allahabad.
7. Preetam son of Hardayal,  
R/o Village Malkhanpur, Post Hanumanganj,  
District-Allahabad.
8. Baij Nath son of Ram Swaroop,  
R/o Village Malkhanpur, Post Hanumanganj,  
District-Allahabad.

...Applicants.

(By Advocate: Shri Vinod Kumar)

Versus

1. Union of India through General Manager,  
North Central Railway, Allahabad.
2. Divisional Railway Manager,  
North Central Railway, Allahabad (Now N.C.R).
3. Divisional Railway Manager,  
North Central Railway, Allahabad (Now N.C.R).
4. Divisional Superintending Engineer-II,  
North Central Railway, Allahabad.

... Respondents

(By Advocate: Shri Anil Kumar)

### **ORDER**

#### **O.A. No.769/2006**

Claiming to have worked as casual labour under the Chief Controller, North Central Railway, Allahabad in the year 1977 and again in the year 1988, the applicant has filed present Original Application making a prayer that the respondents should be directed to consider him for his regularization without insisting age limit stipulated in the advertisement placed on record as Annexure A-1 to the Original Application.

2. It is pleaded on behalf of the applicant that in terms of order dated 23.03.1995 passed by the Tribunal, he is entitled to be considered for regularization on availability of vacancies. It is also

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pleaded that once the respondents have invited applications from former casual labourers subject to their fulfilling certain conditions, it is apparent that the vacancies available with them in Group 'D' category, <sup>✓</sup> thus they should consider him for his regularization.

3. Respondents have filed a detailed counter reply pleading therein that in terms of the Ministry of Railway's letter No.E(NG)II/91/CL/71 dated 25.07.1991, casual labourers /substitutes are entitled to age relaxation subject to upper age limit of 40 years in case of 'General' candidates and 45 years in case of 'SC/ST' candidates. Making reference to the Railway Board's letter No.E(NG)II/99/CL/19 dated 20.09.2001, the respondents have stated in para-6 of the Railway Board's letter dated 28.02.2001 that the relaxation of upper age limit for absorption of ex. casual labour borne on the Live /Supplementary Live Casual Labour Registers has been allowed upto 40 years in case of 'General' candidates, 43 years in case of 'OBC' candidates and 45 years in case of 'SC/ST' candidates. Raising the aforementioned plea, respondents have contended that no age relaxation can be given to the casual labour.

4. Respondents have also filed supplementary counter reply on 01.05.2009 stating therein that the Notification dated 17.12.2005 in terms of <sup>which</sup> <sup>✓</sup>, applications from ex.casual labours were invited is not acted upon. In para-10 of the said supplementary counter reply, respondents have categorically stated that the Headquarters Office, N.C.Railway, Allahabad have issued letter No.797-E/NCR/C.L.Grade 'D'/Rectt./Ald dated 17.07.2008 making it clear that after the judgment of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka and Others vs. Uma Devi & Others, 2006 (4) SCC 1 the

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regularization /engagement of casual labours in Railways is not permissible. In the said supplementary affidavit, respondents have further stated that in view of aforementioned letter dated 17.07.2008, screening process initiated vide Notification dated 17.12.2005 is dropped and is not being finalized. Paras 10 to 16 of the said affidavit read as under:

- "10. That in terms of above reference Headquarters Office, N.C.Railway, Allahabad had intimated vide letter No.797-E/NCR/C.L.Grade 'D'/Rectt./Ald dated 17.07.2008 that regularization /engagement of casual labours in Railways is not being permitted after Supreme Court's judgment in Uma Devi's case. The photocopy of letter dated 17.07.2008 is being filed here with and marked as Annexure No.1 to this Supplementary reply.
11. That in view of instructions received Headquarters Office/ N.C.Railway/Allahabad letter dated 17.07.2008
12. That the applicants of these OAs were allowed to appear in the screening only on provisional basis in regard to Hon'ble Tribunal's interim order. They were not fulfilling the eligibility conditions of their age etc. As such their result was kept in abeyance subject to final decision of the OAs as per interim order of Hon'ble Tribunal.
13. That as per Hon'ble Supreme Court's judgment in Uma Devi's case(4 SCC (2006) and Head Quarters Office instructions the screening has become infructuous.
14. That in this regard it is stated that by letter dated 17.07.2008 approval of General Manager in respect of all the screening tests carried out in respect of all the applicants of the present Original Applicant as well as of other eligible/non-eligible candidates was not granted in view of the guidelines of Hon'ble Supreme Court laid down in Secretary, State of Karnataka and Others vs. Uma Devi & Others, 2006 (4) SCC 1.
15. That in view of the instructions contained in the letter dated 17.07.2008 relying upon the Guidelines of Uma Devi's case (supra) the competent authority decided not to approve the screening test held in respect of all the candidates including the applicants.
16. That in view of the facts stated herein above when the competent authority denied approval of the screening test held, the present Original Application having become



infructuous is liable to be dismissed as infructuous in the interest of justice."

Along with supplementary rejoinder filed on behalf of the applicant a copy of order dated 03.08.2006 passed by the Hon'ble High Court, Allahabad is enclosed. In the said Writ Petition, Hon'ble High Court allowed the petition of Union of India taking a view that the Court or Tribunal cannot pass an order in contravention of law. Said Writ Petition reads as under:

"This writ petition has been filed against the impugned judgment and order dated 02.01.2006 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad (hereinafter called the 'Tribunal'), allowing the Original Application of the respondent employee and directing the present petitioners to consider his case for regularization.

The facts and circumstances giving rise to this case are that the respondent employee filed an Original Application before the learned Tribunal contending that the applications had been invited from the casual labourers, who had worked 120 days or more, for regular appointment. He further contended before the Tribunal that he had earlier worked for the aforesaid period but his case was not considered and even though he was retrenched long ago, the learned Tribunal directed to consider his case for regularization in accordance with law. However, in case the said employee was over age, the relaxation in age be granted by the Competent Authority and his services be regularized.

Undoubtedly, there is a scheme framed by the present petitioners for reemployment and regularization of those casual workers who had been retrenched. The maximum age for consideration of reemployment and regularization in the same scheme is 40 years. However, a relaxation has been provided upto certain age, i.e. in case OBC category candidate, it can be relaxed upto 43 years and in case of SC/ST candidates, upto 45 years. The respondent employee admittedly belongs to OBC category and he is about 50 years of age. Thus, in view of the admitted facts, no purpose would be served if his case is considered for reemployment and regularization, as no relaxation is permissible beyond the age of 43 years to the OBC candidates.

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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 cannot 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 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 petitioners. The Court or Tribunal cannot pass an order in contravention of law. Thus, asking the present petitioners to consider the case of the respondent employee for reemployment 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 2<sup>nd</sup> January, 2006 is hereby set aside."

5. In view of aforementioned decision of the Hon'ble High Court, <sup>which</sup> this Tribunal passed order dated 17.10.2006 reads as under:

"Shri Rakesh Verma for the applicants in all the OAs and Shri R.C.Joshi for Respondents in OA 61/2006 and 494/2006 and Shri P.N.Rai, for respondents in OA 207/2006.

2. Heard learned counsel for both the parties.
3. Though these OAs the following reliefs have been prayed for:

(i) To issued a writ, order or direction in the nature of certiorari for quashing the impugned recruitment notification dated 17.12.2005 to the extent which stipulates the maximum limit of 43 years in the case of OBC candidates and further to direct the respondents to regularize/absorb the applicant pursuant to the judgment passed by this Tribunal on 03.11.1995 in the earlier OA 963 of 1992 (Bhagirathi & Others vs. Union of India & Ors.) and

(ii) To issue a writ order or direction in the nature of mandamus direction the respondent no.2 to grant age relaxation in the case of applicants with a further to consider the case of the applicants for recruitment / appointment in Group 'D' post in Allahabad Division, North Central Railway, pursuant to the impugned recruitment notification dated 17.12.2005, as published in 'Amar Ujala' Newspaper."





4. As can be seen, the reliefs have been prayed for pursuant to the judgment passed by this Tribunal on 03.11.1995 in OA 963/1992. It has been brought to our notice that a similar matter was dealt with by the Tribunal, which has been decided on 02.01.2006, and the decision thereof was challenged in CMW Petition No.21799/2006 before the Hon'ble High Court of Judicature at Allahabad. The Hon'ble High Court, through its order dated 02.06.2008, in the aforesaid CM Petition allowed the petition, quashed and set aside the order of this Tribunal.

5. The learned counsel for the Respondents submitted that this case is fully covered by this judgment as the issue in this Writ Petition and the concerned OA is similar to the present OAs.

6. In view of this fact, we find that there is no merit in the present OA. It is dismissed. No order as to costs."

6. In view of aforementioned particularly in view of the fact that the process of re-engagement / regularization of casual labours initiated in terms of Notification dated 17.12.2005 has been dropped, I do not find any merit in the Original Application filed by the applicant. Having worked for few days that is <sup>100</sup> more than a decade ago, applicant cannot claim regularization on the basis of such casual service. The OA is accordingly dismissed. However, it is made clear that in case the respondents resume the process of screening pursuant to the Notification dated 17.12.2005, they would also examine the claim of the applicant in such process in accordance with the relevant rules, instructions/ Railway Board's letter on the subject. No order as to costs.

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This OA is also dismissed of in terms of order passed in OA 769/2006. However, it is made clear that in case the respondents resume the process of screening pursuant to the Notification dated

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17.12.2005, they would also examine the claim of the applicant in such process in accordance with the relevant rules, instructions/ Railway Board's letter on the subject. No order as to costs.

2. A copy of this order be also placed in OA No.770/2006.

  
**(A.K.BHARDWAJ)**  
**MEMBER (J)**

/kdr/