

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH
ALLAHABAD

(This the 2 day of 7 2009)

Present

Hon'ble Mr. A.K. Gaur, Member-J

Original Application No.252 of 2007
(u/s 19, Administrative Tribunal Act, 1985)

Vidhi Chandra, aged about 46 years, son of Baljeet, Resident of, Village Bardhly, Post Pipargaon, District Farrukhabad.....

...Applicant.

By Advocate : Shri T.S. Pandey

V E R S U S

1. Union of India, through the General Manager, North Eastern Railway, Gorakhpur.
2. The Divisional Railway Manager, North Eastern Railway, Izzatnaga Division, Bareilly.
3. Sri Krishna Singh, Assistant Divisional Engineer, North Eastern Railway, Mathura Chhavani, Izzatnagar Division, Bareilly

By Advocate : Shri P. Mathur

...Respondents

O R D E R

(Delivered by : Hon'ble Mr. A.K. Gaur, Member-J

The applicant through this O.A has prayed for quashing the impugned order dated 30.11.2005/01.12.2005 (Annexure 1 of the O.A.) and for a direction to the respondents to publish the Divisional seniority list of entire casual labour of North Eastern Railway Division.

2. The facts of the case, in brief, are that the applicant who was working as casual labour in Fatehgarh sub division was retrenched and his name was not recorded in Casual Labour

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Live Register, he alongwith five others filed O.A. 2849 of 1997 before Principal Bench of this Tribunal which was disposed of vide judgment and order dated 21.01.1999 with direction to the respondents to consider the claim of the applicants for placement of their names in the Casual Labour Live Register. In compliance of the said judgment the respondents recorded the name of the applicant in Casual Labour Live Register at serial no. 4. Learned Counsel for the applicant further submitted that vide order dated 21.08.2000/Annexure-6 of O.A. the respondents engaged one Purushottam Kumar Singh instead of the applicant ignoring the order of Tribunal including all statutory provisions of IREM. Learned counsel for the applicant further submitted that vide order dated 21.08.2000/Annexure - 7 of O.A., the respondents instead of regularizing the services of the applicant appointed Sri Salhad Kumar Gond. Aggrieved the applicant filed O.A. 166 of 2001 which was allowed vide judgment and order dated 23.12.2004/Annexure-8 of O.A., with direction to the respondents to appoint/re-engage the applicant as casual labour. Learned Counsel for the applicant invited my attention to Railway Board circular issued vide General Manager (P) Gorakhpur's letter dated 10.01.1991 and submitted that the seniority of the casual labour has to be maintained division instead of sub division wise but till date the respondents have not at all issued any complete list of casual labourers at divisional level. As the respondents did not comply the order dated 23.12.2004 passed by this Tribunal in O.A. 166 of 2001 the applicant file contempt petition no. 174 of 2005 which was dismissed vide order dated 12.02.2007. Learned Counsel for the applicant vehemently argued that the order

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dated 30.11.2005/01.12.2005 passed by respondent no.2 is totally violative of Article 14, 16 (1) and 311 of the constitution and also not in accordance with the direction given by the Tribunal in O.A. 166 of 2001 and submitted that respondents may be directed to prepare and complete the divisional seniority list of all the casual labourers working in the division in terms of Railway Board Circular.

3. On notice, the respondents filed their Counter Reply stating therein that the name of the applicant was available in the Live Casual Labour Register maintained with the Assistant Divisional Engineer, Mathura Cantt, therefore, the claim of the applicant can only be considered on the basis of his seniority maintained in the respective Sub Division on his turn. Learned counsel for the applicant submitted that in compliance of judgment dated 21.01.1999 passed by Principal Bench of this Tribunal in O.A No. 2849/99, the names of S/Sri Attar Singh, Vidhi Chand and Rajveer, who were working under Sub-division, Mathura Cantt, were placed on the respective panel on the basis of their computed number of working days. As far as Sri Anil Kumar and Ved Pal are concerned, learned counsel for the respondents submitted that as their names were available in the Live Casual Labour Register maintained with Fatehgarh Sub-division, therefore, on the basis of computed number of working days, they have been engaged and subsequently screened and placed on the panel dated 18.10.2004, which was duly approved by the Divisional Railway Manager, North East Railway, Izzatnagar, Bareilly on 28.02.2004. Learned counsel for the respondents further submitted that the name of the

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applicant is already placed at Sl. No. 215 of the Live Casual Labour Register maintained with the Sub-division Mathura Cantt whereas, the seniority list, annexed by the applicant as Annexure A-3 of O.A, is a tentative list prepared on the basis of the instructions and the original position of the applicant vis-à-vis others, whose names were placed in the respective seniority list of Sub Divisional Engineer, Mathura Cantt., Mathura shall remain unaltered. Learned counsel for the respondent vehemently argued that the applicant neither in the present O.A nor in earlier O.A raised the question of 'hostile discrimination' by pointing out name of any individual , whose name is available in the respective Live Casual Labour Register of the Sub-division and submitted that as per the provisions contained in para 2006 of I.R.E.M. Vol. II (1990 Edition), absorption of casual labour in regular Group 'D' employment may be considered in accordance with instructions issued by the Railway Board and that too on availability of vacancies and eligibility of individual casual labour. Learned counsel for the respondents denying the pleas taken by the applicant stated that the seniority list of casual labour is to be prepared at Divisional Level submitted that the same is maintained Subdivision-wise and on availability of the regular vacancy and requirement of casual labour in respective seniority unit. Learned counsel for the respondents vehemently argued that the Sub Divisional Incharge is empowered to take necessary decision and for the purpose of regularization, the seniority list maintained by the Sub-division is to be considered by the Sub-divisional Incharge alongwith the officer of the personnel branch, who on the basis of their recommendation, place the name of an individual on

the respective panel duly approved by the Division Railway Manager of the concerned Railway.

4. Applicant has filed Rejoinder Affidavit reiterating more or less contents as stated in the Original Application and submitted the Rules annexed by the respondents as CA-2, provide that the seniority of casual laboureres either of project or open line shall be combined and will be maintained Division-wise and not Subdivision-wise.

5. We have heard learned counsel for both sides and perused the pleadings as well.

6. The controversy involved with regard to the seniority of casual labourers whether to be maintained by Division-wise or Subdivision-wise, we may refer to the contents of letter No. E/57/2/General (V) Dated 10.01.1991 issued by the General Manager (P), N.E. Railway, Gorakhpur, which has been referred by the respondents in their Supplementary Affidavit filed in CCP No. 174/2005 (Vidi Chand Vs. A.N. Mittal, D.R.M, N.E. Railway, Izzatnagar)/Annexure-9 of O.A, which reads :-

“ Before screening a combined seniority list will be prepared by the Divisions, AEN wise, by distributing the project casual labour equally amongst the open line AENs.

Only after distribution the project casual labour, a combined seniority list of the project and open line casual labour can be prepared AEN wise, on the basis of the total working days, before the screening is done for the regular absorption...”

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Meaning thereby the seniority of the casual labourers is to be maintained Subdivision-wise and not Division-wise as the 'Unit of AEN-wise' refers to 'Subdivision' of concerned 'Division', therefore, the applicant's seniority could only be maintained with the concerned Unit where he worked and not otherwise,

7. In view of the above observation, as there is no provision to maintain seniority at Divisional Level, I find no illegality or arbitrariness in the order dated 30.11.2005/1.12.2005. Accordingly the O.A is dismissed having without merit.

8. There will be no order as to costs.

Anand
MEMBER-J.

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