

Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH ALLAHABAD

(THIS THE 8TH DAY OF August , 2012)

PRESENT:

HON'BLE MR. D.C. LAKHA, MEMBER-AORIGINAL APPLICATION NO. 371 OF 2007

(U/s, 19 Administrative Tribunal Act. 1985)

Wahid Khan, aged about 46 years, S/o Shri Gafoor Khan, R/o House No. 16, Pulia
No. 9, Near Badi Masjid, Jhansi.

.....Applicant

By Advocate: Shri S.M. Ali.

Versus

1. Union of India through General Manager North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway-Jhansi.
3. Senior Section Engineer (Telecommunication) North Central Railway-Jhansi.

..... Respondents

By Advocate: Shri Saumitra Singh.

ORDER(DELIVERED BY:- HON'BLE MR. D.C. LAKHA, MEMBER-A

This application has been instituted for the following relief(s):-

"(i) to issue a writ order or direction in the nature of mandamus thereby commanding the respondent to consider the petitioner for screening/absorption in Group 'D' Class-IV post for which a time bound direction is fervently prayed."

2. Brief facts, as stated in the O.A. are that the applicant who belongs to OBC category and his date of birth is 20.5.1960 (38 years in 2001) was engaged as Casual labour, has completed 284 days of working from 23.5.1979 to 31.7.1989 under Senior Section Engineer (Tele) Jhansi as mentioned in Casual Labour Card No.153656 (Annexure-A-1) and claims to be borne in casual labour live register (Annexure-A-4). As per Railway Board, New Dehi circulars dated 28.2.2001 and 20.9.2001 on the issue of absorption of Ex- labourers, it has been provided that those borne in live and Supplementary casual labour/ live registers with upto the




age of 40 years for General, 43 years for O.B.C. and 45 years for SC/ST, having completed minimum 120 continuous days or in broken period are eligible and the educational qualification of 8th pass has been relaxed. Circular dated 28.2.2001 is at Annexure A-2. Bio-data were invited from the Ex-Casual labours through last depot incharge after full verification from the record, last date being 30.9.2001. The applicant in response to notification dated 30.8.2001 issued by respondent No.2 submitted his Bio-data through Depot In-charge which was received in the DRM office on 01.10.2001, but the applicant was not called for screening even after eligibility conditions having been fulfilled by the applicant and after sending various representations/reminders. Relying on the decision of **Hukam Singh vs. Union of India reported in (1993) 24, ATC** the applicant has stated that the casual labourers who are borne on live registers have continuous cause of action for absorption, and therefore, the O.A. is within time as per Section 21 of the A.T. Act. The representations made from time to time have not yielded any result. The application for condonation of delay filed by the applicant deserves to be allowed.

3. On notice, Counter reply has been filed by the respondents in which firstly, they have raised preliminary objection regarding the O.A. being highly time barred. It is submitted that the respondent No. 2 issued notification dated 30.8.2001 calling Bio data from Ex casual labours whose names were still figuring in the casual labour live register/supplementary register, last date being 30.9.2001. Suitable candidates, as nominated for screening by the committee of officers constituted for the purpose were considered for regularization, the applicant kept on sleeping over the matter continuously for a long period of six years and woke up only in the year 2007 and thus the claim of the applicant is highly time barred as he filed the O.A. in the year 2007. In support of this contention the respondents relied on the following decisions :

- "1. O.A. No. 539/2001 *Surendra Kumar vs. UOI* (CAT Allahabad dt. 05.05.2003)
2. O.A. No. 106/2005 *Uma Shankar vs. UOI & Others* (CAT Allahabad dt 31st March, 2005)
3. *Mahabir and Ors. Vs. Union of India and others* [2000(3) ATJ (Full Bench-P.B. New Delhi).
4. *Ramesh Chand Sharma Vs. Udham Singh Kamal and Others*- 2000 SCC (L&S) 53

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5. O.A. No. 1297/2005 Rajendra Singh vs. UOI & Others (CAT Allahabad dt 23rd May, 2006)."

4. The respondents further have submitted that applicant has not produced his caste certificate, nor caste is mentioned in casual labour card (Annexure -A-1 to the OA), therefore in the absence of caste certificate, the applicant is not entitled to get age relaxation provided for backward candidates. It has also been submitted that applicant had completed 40 years of his age prior to cut off date i.e. 30.09.2001 as his date birth is 20.05.1960. For the reasons as explained here in above, applicant was over age on cut off date and could not be screened as per Railway Board's letter dated 25.07.91, 28.02.01 and 20.09.2001 (Annexure-CA-3, 4 & 5). It is further submitted that the number of working days is not the only criterion for appointment as Group D.

54. The respondents have denied receipt of application of the applicant in response to notification dt. 30.8.2001 and stated that his name is also not shown in live/ Supplementary live casual register. It is also stated that the applicant never made any effort to approach the concerned office against notification dated 30.8.2001 through any representation in black and white and thus he has not exhausted the departmental remedies available to him. The O.A. lacks merit and is liable to be dismissed.

6. Rejoinder Affidavit has also been filed on behalf of the applicant, in which, the points in his favour are reiterated and the allegations made in the Counter reply have been denied. It is further submitted that the applicant belongs to Ansari community (O.B.C.) and his date of birth is 20.5.1960 and he is within the age limit prescribed for consideration as per Railway Board circular 29.9.2001 being O.B.C. candidate.

78. Pleadings of the parties are perused alongwith other documents and heard both the parties' counsel. Learned counsel for the applicant in support of the averments in the OA has stated that applicant completed 284 days as per casual labour card in different spells from 23.5.1979 to 31.7.1989 and as per Railway Board's circulars dated 28.2.2001 and 20.9.2001 he fulfilled the conditions laid

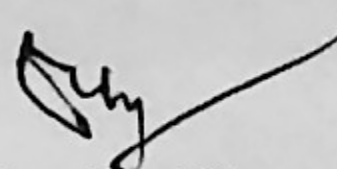


down for absorption. He has also contended that the claim of the applicant is not affected in view of Railway Board's Circular dated 17.1.2003 and also the decision of the Tribunal (Principal Bench, supra) the OA is certainly within time as per Section 21 of the A.T. Act, 1985. The name of the applicant is borne on the record of the Casual Labour Live Register as shown at page 03 of the OA. In view of the notification issued for screening/absorption bio-data of the applicant was sent through Depot Incharge after full verification and the same was received in D.R.M. Office on 1.10.2001 but the applicant was not called for screening even after he was fulfilling all the eligibility conditions. Thereafter, the applicant moved representations but his case was still not considered. Learned counsel for the respondents has raised preliminary objection about the delay in the matter stating that the notification was issued on 30.8.2001, the last date being 30.9.2001 and the process of regularization was complete, and suitable candidates were screened and regularized. Thereafter, the applicant's claim in filing this OA is highly time barred, and no justification has been given. In support various orders of C.A.T., Allahabad Bench have been relied upon in this context as referred to above. It is also contended by the respondents' counsel that the name of the applicant was not borne on the Live/Supplementary Live Casual Register.

7. I have given thoughtful consideration to the contention of both the counsels and have also perused the record. The plea of the respondents that the OA is time barred appears to be neutralized in view of the Railway Board's instructions dated 17.1.2003 which lays down the provision that till all the Live /Supplementary Casual Labour Register is exhausted, no open market recruitment shall take place. But this is not the case of the applicant that the respondents are going to make open market recruitment. Even if the case of the applicant is treated as still cognizable, his claim being based on continuous cause action, the argument raised on behalf of the respondents that the proof of the applicant being a candidate of OBC (Ansari)



category is not valid and that no age relaxation can be given to the applicant on that ground, cannot be ignored. The learned counsel for the applicant has argued that, as the fact about the applicant being O.B.C. category is mentioned in the Casual Labour Card, the photo copy of which is annexed as Annexure A-1 to the O.A. The photo copy of this card is not at all legible. So, merely reading this photo copy, conclusion cannot be drawn. If the applicant wanted to take the benefit of age relaxation for being a candidate of OBC, he should have annexed the valid caste certificate to that effect alongwith this Original application which he has not done. Certainly, no age relaxation can be allowed in the case of the applicant and that makes him ineligible for being over age. In such a situation it is not legally reasonable for the Tribunal to direct the respondents to consider the case of the applicant for regularization. The O.A. lacks merit and is liable to be dismissed. Accordingly, the O.A. is dismissed. No costs.


Member (A)

s.a.