

(RESERVED)

**CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD**

ALLAHABAD this the 19/1 day of January, 2010

Present:

**HON'BLE MR. A. K. GAUR, MEMBER-J
HON'BLE MR. D.C. LAKHA, MEMBER-A**

ORIGINAL APPLICATION NO. 500 OF 2007

Bhaiya Lal aged about 45 years S/o Ballu R/o 172, Isaitola, Jhansi.

.....Applicant.

VERSUS

1. Union of India through the General Manager, North Central Railway, Allahabad.
2. The Divisional Railway Manager North Central Raiway, Jhansi.

.....Respondents

Present for the Applicant:

Sri S. M. Ali

Present for the Respondents:

Sri A.K. Pandey

ORDER

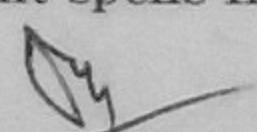
(DELIVERED BY HON'BLE MR. D.C. LAKHA A.M.)

Through this O.A. the applicant has sought for following main relief/s:-

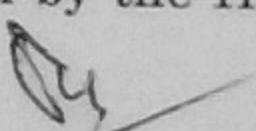
“(i). to issue a writ order or direction in the nature of mandamus thereby commanding the respondent to consider the petitioner for screening/absorption in group 'D' Class-IV post as per circular of Railway Board for which a time bound direction is fervently prayed

(ii). To issue any other suitable writ order or direction in favour of the humble petitioner as may be deem fit and proper in the facts and circumstances of the case.”

2. The facts of the case as stated in O.A. are that the applicant was engaged as casual Khalasi for different spells from 1986 to 1990. The total



period comes to 286 days. He was issued a casual labour card bearing the number 102266 (Annexure-1). The applicant's name is borne on the casual labour live register page no. 53 at serial No. 103. The policy decision was taken by the Ministry of Railways New Delhi in the year 2001 for absorption of ex-casual labour as per seniority for the period for which he has worked. The policy was issued under the Railway Board circular dated 28.02.2001 (Annexure - A-4). The DRM Jhansi issued a notification dated 30.08.2001, without disclosing the policy decision of Railway board about absorption of ex-casual labour and wrongly stated that this is neither employment notice nor for any re-engagement/absorption. This exercise is only being done for collecting the number of ex-casual labours'. This notification called for the bio data about ex-casual labours through last depot incharge after verifying the working period within 30 days i.e. 30.08.2001 to 30.09.2001. The applicant also submitted bio-data on prescribed format through last depot incharge (S.S.E. works Jhansi) on 24.09.2001, which was received in D.R.M. office on 01.10.2001 (Annexure-6), his name is shown at Sl. No. 11. The Railway Board issued another circular dated 14.12.2001 granting relaxation in upper age limit, educational qualification and minimum service condition (120 days) (A-7). The screening process started in 2003 but the respondents did not call the applicant inspite of the fact that he was fulfilling all the eligibility criteria of working days, and age etc.. The cut of date will be counted from the date of issuing Railway Board circular dated 28.02.2001. It is also averred by the applicant that the limitation period for filing the O.A. should not be reckoned or considered in cases where the casual labours are borne on the live casual labour register because in such cases there is a continuous cause of action. It has also been held as such by the Hon'ble C.A.T. Bench, New



Delhi (1993 (24) ATC page 474). The applicant has been putting up representations to the authorities for considering him for screening/regularization as per rules. The copies of the representations submitted are annexed as A-8 / compilation-II. But no action has been taken on his representations. He submits that in view of the Railway Board/Govt. of India policy the applicant/petitioner is entitled for absorption because he has fulfilled the conditions for the same.

3. On notice the Counter reply has been filed on behalf of the official Respondents. At the out set the preliminary objection is raised about the delay in filing this O.A.. It is the contention of the Respondents that the O.A. is highly time barred in view of the section 21 of the Administrative Tribunal Act 1985. The cause of action accrued in the years 2001 when the applicant allegedly submitted his application form, but thereafter he did not bother to collect any information. As a matter of fact the applicant kept on sleeping for long period of 6 years. The period of one year is allowed to file the O.A. under Section 21. It is also stated in the Counter Reply by quoting the ruling of Hon'ble Supreme Court in *Ramesh Chandra Sharma Vs. Udhamp Singh Kamal as reported in 2000 (1) ATJ 178* that in such cases which are filed beyond the period of limitation, the question of limitation should be decided at the admission stage itself. The Full Bench, Principal Bench, New Delhi in its judgment in the case of *Mahabir and others Vs. Union of India and Ors decided on 10.05.2000 reported in 1997-2001 ATJ page 99* has settled law of limitation in respect of casual labour also which squarely covers the present matter. It is pertinent to mention here that in the light of judgments mentioned above the O.A. No. 539 of 2001, *Surendra Kumar Vs. Union of India* has been dismissed by this Hon'ble Tribunal vide

their detailed judgment dated 05.05.2003. The copy of the judgment is marked as Annexure CA-1.

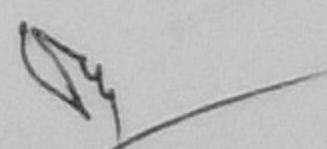
4. In the Counter Reply it is also stated that since 1990 the applicant was not in service. The Hon'ble Apex Court in the judgment passed in *UOI & Ors. Vs. Mukesh Shrivastava and Ors. (1997) II SCC 554 and Ram Chnader and Ors. Vs. Addl. District Magistrate Ors, (1998) I SCC 183* held that person who is not in service cannot claim relief for regularizing, he may claim only for quashing of the order of retrenchment but cannot claim relief of regularization. Hon'ble High Court has also dismissed the writ petition 45739/2006 *Rajendra Singh & Ors. Vs. Union of India & Ors.* vide judgment dated 31.08.2006. The photo copy is annexure CA-2. As such the present O.A. is not tenable and deserved to be dismissed.

5. In the Rejoinder Affidavit filed on behalf of the applicant the emphasis is given on the fact that this O.A. cannot be said to be time barred in view of the Railway Board Circular dated 28.02.2001 (A-3 of the O.A.) the subject matter of this is "*absorption in the Railway of Ex-casual labour borne on the live /supplementary casual labour register*" The Ex-casual labours will first be considered for absorption as per their turn according to seniority based on total number of working days. In view of this Circular the D.R.M. Jhansi called bio-data from the Ex-casual labour and the process for screening was started in 2003 and finally appointments were given in 2006 and 2007. and, therefore, the cause of action is continuous and the O.A. cannot be said time barred in view of section 21 of Administrative Tribunal Act 1985, as held in *Hukum Singh Vs. U.O.I and Ors. ATC 1993 (2) – page 747*. Now fresh cause of action has arisen in 2007



because the respondents have notified all the vacancies in December, 2007 through employment notice number No. 1/07 from the open market without exhausting the casual labour live register.

6. In view of the averment and statements made in O.A., contention raised in Counter Affidavit and Rejoinder Affidavit, we have perused the file in detail and heard the learned counsels for both parties. They have also made their written submission along with the copies of the judgment of various courts submitted in their favour. In support of his O.A. learned counsel for the applicant, after repeating facts about the working days and other details of applicant being on the live casual register, has emphatically argued that the purpose and intention inherent in Railway Board circular dated 20.02.2001 and 28.02.2001 for absorption of ex-casual labour is solely to consider the case of every such person who is eligible. The applicant submitted his bio data in time as per the notification of DRM Jhansi dated 30.08.2001. The process of screening was undertaken in 2003-04. He put up the representation again dated 31.05.2003, 25.08.2006 and 23.04.2007 which were duly received by the respondents. When no action was taken on his representation he had to file the present O.A. On the point of limitation it is contended by learned counsel for the applicant that the notices were issued on 16.05.2007 by this Hon'ble Tribunal after full satisfaction on the point of limitation and the question of limitation should be treated as settled from that date. He has also placed reliance on the decision in Hukum Singh's case decided by the Principal Bench Central Administrative Tribunal, New Delhi. It has been held in this case that Non-engagement of casual labour borne on the Live Register is a continuous cause of action. The Hon'ble Central Administrative Tribunal Allahabad

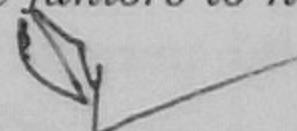


Bench allowed the identical case in O.A. 506 in 2007 Ramesh Kumar Vs. Union of India & Ors. dated 01.05.2008. The ratio in this judgment is "if persons like the applicant, whose names borne on the said register and is complaining that he has been ignored in the matter of re- engagement, it is difficult to say that the O.A. is time barred." In another case of Sheik Zahiruddin filed O.A. No. 1198 of 2007 Central Administrative Tribunal, Allahabad has held "the grounds taken by the respondents that the case is time barred cannot be sustained. The delay, if any, in filing the O.A. is liable to be condoned." The learned counsel for the applicant has also placed reliance on the judgment of Hon'ble High court of Judicature at Allahabad passed in Civil Misc. Writ Petition No. 36707 of 2008 in Union of India & Another Vs. Central Administrative Tribunal & Another. This is a Division Bench judgment delivered by Hon'ble Mr. Justice Sunil Ambwani. J. and Hon'ble Mr. Justice Raj Mani Chauhan. J.. The certified copy of this judgment is submitted alongwith written submission. In order to appreciate spirit of the judgment its worthy of being quoted. It states as under:-

"An interesting question is raised as to whether the respondents had continuing cause of action to file Original Application in Central Administrative Tribunal and the interpretation of Section 21 of the Administrative Tribunal Act 1985 providing for limitation clause to the claim made by the petitioner.

Ordinarily regularization is claimed by a person, who is still serving as casual labour or daily wager or in any other capacity as the case may be. The Railway Board, however, issued circulars for consideration of absorption of all those casual labours, who were discharged after 1.1.1981 and to include their names in the "Live Casual Labour Register". There is no dispute that the respondent's name was entered in the lie casual labour register upto the year 2001 and even, thereafter. He last worked upto 1983.

In the year 2001 the petitioner invited applications for absorption of all those persons, whose names are included in the "Live Casual Labour Register". It is contended that the respondent applied and was screened behind his back. He had no knowledge that his candidature has been rejected. It is when juniors to him were called



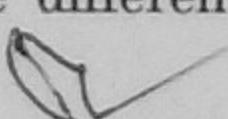
for medical examination in the year 2006-07 he approached the Tribunal.

The Tribunal has found that the inclusion of the name of the respondents in the "Live Casual Labour Register" and thereafter his consideration and rejection without informing him gave him continuing cause of action and has directed for his consideration for absorption in accordance with law. The petitioner-Union of India has relied upon Full Bench judgment of the Central Administrative Tribunal in Mababir & Ors. Vs. Union of India & Ors. Dated 10.05.2000 in which it was held that the inclusion of the name in the "Live Casual Labour Register" will not give a continuing cause of action to the employee for absorption. The Union of India has also relied upon Full Bench of the Delhi High Court in Jagdish Prasad Vs. Union of India & Ors., 2002 (3) ESC (Del.) 576, in which it was held that the maintenance of 'Live Casual Labour Register' does not give a continuing cause of action to the person, who have approached the Tribunal.

The question that calls for consideration in this case is, whether continuation of the name of the person in 'Live Casual Labour Register' and inviting applications for consideration from him and similarly situate persons for absorption, and that failure to inform him for medical examination will give the petitioner a continuing cause of action in 2007 to file claim petition in the Central Administrative Tribunal?

In the meantime, we direct as an interim measure that the Petitioner will consider the respondent for absorption/regularization in terms of the judgments of the Tribunal."

7. The Railway Board issued circular number E(NG) 11/91/RR-1/21 dated 17.01.2003 in which it was provided that before resorting to open market recruitment it should be ensured that such recruitment should be resorted only after exhausting the possibility of absorption of ex-casual labour on live registers and supplementary live register. General Managers are competent to fill up the Backlog of prescribed intake, which could not be filled up due to other reason from Aug 2000. It is opined by learned counsel for the applicant that in view of this circular also the O.A. cannot be treated as time barred. About the judgments cited by the respondent the learned counsel for the applicant has contended that those judgments are not applicable in the present case because different other points have been



decided in these judgments. For e.g. in Ramesh Chandra Sharma Vs. Udhamp Singh Kamal (SC) the matter of promotion was involved. In Mahabir and Ors. (Full bench CAT) the issue of placement of name on the casual labour register was involved because the applicant's name did not figure on the casual labour register. Similarly in Yogendra Vs. U.O.I & Ors. Applicant's name did not figure in the live register. Similarly in Ram Swaroop Vs. Union of India & Ors. the applicant did not figure in the live register. In the end it is vehemently submitted on behalf of the applicant that he fulfills all the conditions for absorption in Group 'D' post as provided by R.B.O dated 28.02.2001 & 20.01.2001 as well as notification dated 30.08.2001. Therefore, his claim for the relief is tenable.

6. The learned counsel for the Respondents has, with all vehemence, argued that the O.A. is time barred in view of the different judgments rendered by Hon'ble Supreme Court. He has referred to the following judgments on the points of limitation.

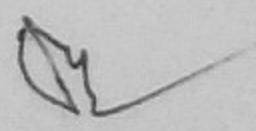
- (1). Ramesh Chandra Sharma Vs. Udhamp Singh Kamal : 2000 (1) ATJ 178
- (2). 2003 (12) SCC 270 : E. Parmasivan and others Vs. Union of India and others.
 - (i). AIR 1980 SC 1894 : Gian Singh Mann Vs. High Court of Punjab and Harayana and other.
 - (ii). 2007 (2) Scale 325 : Shiv Das Vs. Union of India and others.
 - (iii). 1998 (2) SCC 523 : B.S. Baweja Vs. State of Punjab and others.
 - (iv). 1993 (Supplementary IV) SCC 67 : R.C. Samant Vs. Union of India and others.
 - (v). 2002 (10) SCC 583 : State of Orissa Vs. Chandra Shekhar.
 - (vi). AIR 1990 SC 10 : S.S. Rathore Vs. Union of India and others.
- (3). Yogendra Vs. Union of India and Ors.



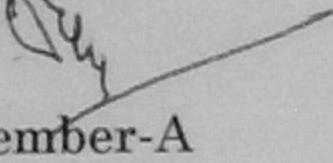
8.A It is further contented on behalf of the Respondents that application could not be put up before the competent Authority because it was not properly routed through the Depot incharge. The application never approached at the time of screening.

9. We have given our thoughtful consideration to the averments, contentions and perused documents filed by both the parties. This is a case of Ex-casual labour whose name was borne on the Live Casual Labour Register. In view of the facts of the case the applicant submitted the application for screening/absorption in time. He had fulfilled all the conditions for being considered for screening. In more than one judgments of different Courts including the Principal Bench and other Benches of Central Administrative Tribunal it has been held that in cases of casual labour and Ex-Casual labour whose name is borne on live Casual Labour register/Ex-Casual Labour Register the cause of action is continuous and the claim for consideration for reengagement or regularization/absorption is tenable. So the objection about the O.A. being time barred is not sustainable. It is amply clear that the case of the applicant deserves to be considered by the competent authority in view of the representations pending and in view of the Railway Board's orders referred to above by the learned counsel for the applicant. The judgments on which the respondents have placed reliance are not applicable in this O.A. as the facts and issues decided in those judgments are different from that of this O.A..

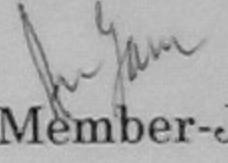
10. In view of the above observations we find that the O.A. deserves to be accepted. It is, therefore, allowed. The respondents/competent Authority is directed to consider the case of the applicant for screening and



absorption, if the claim of other similarly placed persons has been considered, by passing a reasoned and speaking order within a period of 2 months from the date of receipt of the copy of this order. No Costs.



Member-A



Member-J

/Dev/