

Reserved

**CENTRAL ADMINISTRATIVE TRIBUNAL,
ALAHABAD BENCH, ALAHABAD**

Allahabad, this the 4th day of **April**, 2012

Present :

Hon'ble Mr. D.C. Lakha, Member-A

Original Application No.951/2007

1. Tirsu Ram S/o Shri Sohan, R/o Village: Hakarpur, Post: Badlapur, P.S. Badlapur, Tehsil: Shahganj, District: Jaunpur.
2. Ram Manorath S/o Shri Ram Sunder, R/o Village: Bhaluai, P.O. & P.S. – Badlapur, Tehsil: Shahganj, District: Jaunpur.

.....Applicants.

By Advocate – Shri Satish Mandhyan

V E R S U S

1. Union of India, through General Manager, North Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, North Railway, Lucknow.
3. Sr. Divisional Engineer, North Railway, Lucknow.

.....Respondents.

By Advocate : Shri P. Mathur

(Reserved on 03.02.2012)

O R D E R

Through this OA the following relief(s) are sought :-

"(i) *To issue a writ, order or direction in the nature of commanding the respondents to regularise the services of the applicants as casual labours in the Engineering Branch according to their seniority strictly as per Live Casual Labour Register,*

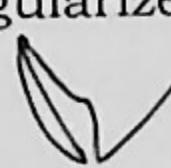
(ii) *to issue such other and further order or direction which this Hon'ble Tribunal may deem fit and proper in the nature and circumstances of the present case,*

(iii) *Award cost of the petition to the applicants."*



2. The applicant No.1 was initially engaged as casual Gangman with casual labour Card No.145266 and had been working for intermittent period from 14.12.1977 to 14.12.1979 for 583 days. Thereafter, he was re-engaged on 15.6.1981 and continued till 14.9.1982 working for 635 days according to the report of PWI, Shree Krishna Nagar dated 22.5.1988. The reports about the working are available at Annexure-1 and 2.

3. The applicant No.II was also engaged as Gangman Khalasi under PWI, Shree Krishna Nagar, District Sultanpur till 12.12.1977 and continued working for different spells upto 14.1.1980. Total number of days as stated in the OA comes to 5746 (it appears to be wrong calculation). He was re-engaged on 01.01.1984 for a total number of 263 days. The total number of days given in para 4.3 is 837. It seems that the number of days stated in the first spell as 5746 is wrong. If the number of days of the second spell i.e. 263 is right and the total number of days as 837 is also right then the number of days stated to be 5746 should be 574 only. Since both the applicants were entitled to the temporary status having worked for more than 120 days deserve to be regularized. Their names are placed in the Live Casual Labour Register. As has been held by the Hon'ble Supreme Court and in various orders of C.A.T. the casual labour who have worked for more than 120 days continuously in a year, may be regularized and on that basis the applicants are claiming regularization. The respondents had started the exercise in 1990 in order to regularise the casual labours and at that point of time the name of the applicant was also considered and he was assured that he would be regularized shortly but no final result



came in favour of applicant No.II. The working sheet as per regularization process of 1990 is annexed at Annexure-5 of the OA. As per this list the name of the applicant No.II is at Sl. No.3. It is alleged in the OA that only by adopting pick and choose policy some other casual labours were regularized ignoring the applicants. The respondent No.2 issued general letter dated 21.5.2003 requiring the Ex. casual labours to send the forms duly filled for regularization. Copy of this letter is at Annexure-6. Earlier, the respondents also took up such exercise in 1986, 1987, 1993 and 1996. Later, on 5.4.2004, the respondents again started screening of the casual labours who were registered in the Casual Labour Live Register, but none of the applicants have been called to appear before the Screening Committee. The policy of pick and choose was adopted. A number of juniors to the applicants are already working, the names of the few such persons are given below :-

1. Shri Jagannath S/o Ghasitey – working under PWI/Juhi Kanpur.
2. Shri Sheo Prasad S/o Shri Ghanshyam – working under PWI, Ghatampur.
3. Shri Brij Gopal S/o Shri Maheshwari Deen – working under PWI, Ghatampur.
4. Shri Shakur Khan S/o Shri Munier Khan – working under PWI/Juhi, Kanpur.

This kind of illegality is being perpetuated by filling up the posts of Gangman Khalasi in a separate list and that too from their juniors. The applicants are still unemployed and have become over age for any other job in the open market. Copy of the order of C.A.T. Allahabad Bench dated 10.2.2006 passed in OA No.505/05 is annexed on which the reliance has been placed in favour of the claim of the applicants.



4. On notice, the respondents have contested the case by filing the short counter reply raising preliminary objection of limitation. It is alleged in the short counter that the claim of the applicant is highly time barred. The claim is not entertainable by the Hon'ble Tribunal being barred by law of limitation under Section 21 Sub Section 2(a) of the Administrative Tribunals Act, 1985. In support, following decisions by the Hon'ble Supreme Court, High Court and Tribunal have been relied upon in the short counter reply, which is as under :-

- a. **1987 (3) ATC, 427 Shu Kumar Dey Vs. UOI.**
- b. **1987 (5) ATC, 521 R.L. Buxy Vs. Ministry of Defence.**
- c. **1990 SCC (L&S) 50 SS Rathore Vs. State of U.P.**
- d. **1995 SCC (L&S) 278 High Court of MP Vs. Mahesh Prakash.**
- e. **AIR 1991 SC 1219 State of Punjab Vs. Gurudeo Singh.**
- f. **1994 SCC (L&S) 182 Ratan Chand Samanta Vs. UOI.**
- g. **1992 (21) ATC 675 Bhoop Singh Vs. UOI.**

5. In view of Full Bench Decision of C.A.T. as reported in **2000 (3) ATJ, 1 in the matter of Mahabir Prasad and another Vs. UOI**, it was held that the Railway Board circular dated 25.4.1981 which provides for placement of names of causal labours on the Live Casual Register do not give a continuous cause of action. In another judgment of Hon'ble Delhi High Court in the matter of **Jagdish Prasad Vs. UOI as reported in ESC 2002 (Vol-3) page 576**, it has been held that merely placement of the name in Live Casual Labour Register will not give any good ground for claiming any relief after inordinate delay in the matter. As per Section 21 of the A.T. Act, one can agitate his claim within one year from the date of occurrence of the cause of action. But in the present case, the applicants have submitted the OA after expiry of about 18 years and the same is not acceptable in view of the provision of Section 21. It is well settled



principle of law that one who sleeps over his right forfeits the same. Hence this OA, without being taken up on merit should be dismissed only on the ground of delay and laches. Delay in this matter has not at all been explained. It is also well settled principle of law that repeated representations do not keep the matter alive and it does explain the case being maintainable on the basis of continuous cause of action. As per master circular 20 (44) and Railway Board direction dated 22.11.1984, the name of casual labour who has not worked in the Railways in preceding two completed calendar years should be struck off from the casual labour register. In terms of Item No.120 Appendix IX of Indian Railway Accounts Code Volume-1, the muster rolls/labour pay sheets are required to be reserved for the period of five years only. In the instant case, the period of working of the applicants being more than 5 years old, the said record has been weeded out and accordingly cannot be verified in terms of Northern Railway PS No.9191 and 9195. Casual labour who had been discharged on completion of work and for want of further productive work were required to submit written representations with adequate documentary proof of their previous working period before 31.3.1987 for the purpose of inclusion of their names in Live Casual Labour Register. The applicants of this OA did not avail of this opportunity. The respondents have also placed reliance on the judgment of Hon'ble Supreme Court in the matter of Secretary, State of Karnataka & others Vs. Uma Devi & others in which, interalia, it has been held that "merely because or temporary employee or a causal wage worker is continued for a time beyond the term of his appointment, he would not be entitled to be absorbed in regular service or made permanent merely on the strength of such



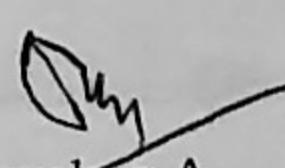
continuance if the original appointment was not made by following due process of selection as envisaged by the relevant rules."

6. A short rejoinder affidavit in reply to the short counter reply of the respondents has also been filed on behalf of the applicants. It is reiterated in the short rejoinder affidavit that case of the applicants is based on their seniority strictly as per Casual Labour Live Register in the Engineering Branch of the respondents. They are seeking regularization only on the same yardstick on the basis of which similarly situated employees juniors to the applicants have been regularized by the pick and choose policy. It is also contended that the delay occurred in the process may be condoned by the Hon'ble Court under benevolent jurisdiction because the applicants have been pursuing the matter with the respondents and that is why the delay has occurred. About the judgments relied upon in the short counter reply it has been stated in the short rejoinder affidavit that the same will be replied at the time of hearing.

7. I have heard learned counsel for both the parties and have perused their pleadings. Learned counsel for the applicant has reiterated that the applicants have been ignored while other juniors to the applicants have been absorbed by the respondents. On the point of delay reliance has been placed on the order of the Tribunal of Allahabad Bench (Annexure-7) decided on 10.2.2006 in OA No.505 of 2005. Learned counsel for the respondents has argued that the OA is highly time barred and all the points raised about the limitation in the short counter reply have been reiterated.

8. I have given thoughtful consideration to the pleadings of the parties and their arguments at the time of hearing. The basic point

at this juncture in this matter to be decided is the issue of limitation as has been raised by way of preliminary objection on behalf of the respondents by filing short counter reply. I have gone through various citations quoted in the short counter reply as well as the short rejoinder affidavit filed by the applicants on the point of limitation. After hearing both the counsels and taking in view various points raised on the point of delay and laches by both the parties, I am inclined to appreciate the rationale in the short counter reply of the respondents the long delay of about 18 years has not been properly explained in favour of the OA to be decided on merit. In view of the various citations referred to in the short counter reply the delay has not been explained in filing this OA. So in view of judgment of Hon'ble Supermen Court in the case of **Ramesh Chand Sharma Vs. Udhamp Singh Kamal and others (2000 SCC (L&S) 53** also the application beyond limitation cannot be considered on merit and series of representations for seeking the relief does not make any cause of action as continuous one in view of the judgment of Hon'ble Supreme Court also in the case of **Karnataka Power Corp. Ltd. Through Chairman and Managing Director and another Vs. K. Thangappan and another reported in 2006 SCC (L&S) 791**. Accordingly, the OA is dismissed only on the ground of delay and laches.


Member-A

RKM/