

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

R.A.91/97 in

O.A.NO. 123/92
T.A.NO.

DATE OF DECISION 07.1.98

Vyas Pravinkumar Varujlal **Petitioner**

Mr.M.M.Xavier Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent

Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V.Radhakrishnan : Member(A)

The Hon'ble Mr. T.N.Bhat : Member (J)

JUDGMENT

- 1, Whether Reporters of Local papers may be allowed to see the Judgment ?
- 2, To be referred to the Reporter or not ?
- 3, Whether their Lordships wish to see the fair copy of the Judgment ?
- 4, Whether it needs to be circulated to other Benches of the Tribunal ?

: 2 :

Vyas Pravinkumar Varujlal,
Near Primary Health Centre,
Damnagar, Amreli Dist.

: Applicant

(Advocate: Mr.M.M.Xavier)

Versus

1. The Union of India,
Owning and Representing
Wester Railway,
Through Its General Manager,
Churchgate, Bombay.
2. The Chairman,
Railway Board,
Rail Bhavan,
Sansad Marg,
New Delhi.
3. The Divisonal Railway Manager,
Western Railway,
Bhavnagar Division,
Bhavnagar Para.
4. Permanent Way Inspector,
Kunkavav Junction,
Western Railway,
Bhavnagar Division,

: Respondents

(Decision by Circulation)

O R D E R

RA/91/97

in

O.A.123/92

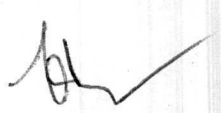
Date 07.1.98:

Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

This Review Application does not bring out any error apparent on the face of the record of our judgment dated 21.10.97 in O.A.123/92. Hence, we see no reason to review the said judgment. Accordingly, the Review Application is rejected.


(T.N.Bhat)

Member(J)


(V.Radhakrishnan)

Member(A)

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH, AHMEDABAD

Application No. _____

RA/91/92

Transfer Application No. _____

CERTIFICATE

Certified that no further action is required to be taken
and the case is fit for consignment to the Record Room (Decided).

Date:- 19/01

Signature of the Dealing
Assistant

Countersign:-

Section Officer

29/1/98

I N D E X - S H E E T

CAUSE TITLE RA/91/97 in CR/123/92

NAME OF THE PARTIES Yes. Pravin Kumar V.

4-0-2-2-~

[illegible]

✓ 1. Judgment / Order by

(i) Hon'ble Mr. V. Radhakrishnan and

(ii) Hon'ble Mr. T. N. Bhat

✓ 2. Both the aforesaid Members are functioning in this Tribunal.

✓ 2. Hence to be placed before the said Members i.e.

Hon'ble Mr. V. Radhakrishnan

Hon'ble Mr. T. N. Bhat

3. Hon'ble Mr. _____ still belongs to Local Bench but Hon'ble Mr. _____ is now a Member/V.C. of _____ Bench.

3. Hence may be sent for consideration by circulation to the said Members i.e. Hon'ble Mr. _____ and

Hon'ble Mr. _____

4. Both the aforesaid Hon'ble Members have ceased to be Members of the Tribunal.

4. Hence to be placed before Hon'ble V.C. for constituting a Bench of any two Members of this Bench.

5. Hon'ble Mr. _____ has ceased to be Member of Tribunal but Hon'ble Mr. _____

_____ is available in this Bench.

5. Hence may be placed before Hon'ble V.C. for constituting a Bench of Hon'ble Mr. _____

_____ who is available in this Bench and of any other Member of this Bench for preliminary hearing.

6. Both the aforesaid Members are now Members of other Benches namely _____ and _____ Benches.

6. May be placed before Hon'ble V.C. for sending the R.A. to both the Members for consideration by circulation. If one of the Members is of the view that the petition merits a hearing, reference may be made by Hon'ble V.C. to the Hon'ble Chairman seeking orders of the Hon'ble Chairman.

7. The case is not covered by any of the above contingencies.

7. Therefore, orders of the Hon'ble Chairman are required to be obtained by Hon'ble Chairman.

[Signature]
05/12/97

[Signature]
5/12/97
S.O. (7)

[Signature]
D.R. (7)
881247

Submitted :

On scrutiny of R.A., it is found that:

① Copy not served on the other side.

② Ann. not marked in R.A.

Notification is placed below for signature.

for
05/12/97

for
21/12/97
S.O. (I)

D.R. (I)

R/sub.

obj. have been complied with. If approved,
R.A. will be registered and placed before the
Hon. Bench for orders.

for
23/12/97

for
24/12/97
S.O. (I)

D.R. (I)
(on leave)

Hon. Member (A)

Hon. member (I).

Filed by Mr. Xavier M. V.
Learned Advocate for Petitioners
with second set of copies
copies copy served/not served to
opposite side

18/03/97 Dy. Registrar C.A. 123
Ahmedabad Bench

18/03/97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

Review Application No. 91 /1997 in

O.A. No. 123 /1992

Vyas Pravinchadra Vrajlal

Village Dmnagar (Dist. Amreli)APPLICANT

V E R S U S

The Union of India, Western Railway

& others

..... RESPONDENTS

I N D E X

| Sr. No. | Annexure Number | Details of Documents | No. of pages |
|---------|-----------------|---|--------------|
| 1. | -- | Revised Application | 1 to 9 |
| 2. | 'A' | Copy of Judgment dated 21-10-97 | 10 to 14 |
| 3. | A-1 | Copy of O.A. 434/94 Harji Shamji | 15 to 26 |
| 4. | A/2 | Copy of letter dated 20-11-92 issued by General Manager. | 27 |

Bhavnagar

at. 2 -12 - 1997

Xavier M. V.
Signature of Advocate for Applicant

Received
31/2/97
Xavier M. V.
Copy to be
forwarded to
Shri. B. V. M. M.
a week
before
23-12-97

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, AHMEDABAD BENCH

Review Application No. 91 / 1997 in

O.A. No. 123 / 1992

Vyas Pravinchadra Vrajlal

Village :- Damnagar District- Anreli .. APPLICANT.

V E R S U S

The Union of India, Western Railway

& others including the Chairman

Railway Board.

..... RESPONDENTS

The applicant above named pray to submit as under :-

1. That the O.A. filed by the applicant has been decided on 21-10-1997 ^{Annexure A' file} that being aggrieved by judgement and order and there being reasons for filing Review application, as is stated below, the present Review Application has been filed.
2. The applicant submits that the present O.A. was filed on 21.2.1992 substantively praying that the respondents be directed to prepare and notify a list of casual labours, as per rules and engage them against the vacancies. It has specifically been clarified that non preparation and finalisation of live Register as Provided in the rule has caused injustice. In para 4.2. of the application it is averred that the respondents are under legal obligation to enter the names of all the Casual Labours in the register as shown in Annexure A/8. It was made clear that although various circulars were issued from time to time (Annexure A/2 to A/6) the respondent have failed to prepare the same. It is sufficient to say in this contention that the averment made in ^{Annexure A/8} ~~this~~

in application para 4.4 that the respondents have not maintained Live Register have remained uncontroverted through-out including in the written statement. In totality it has been proved that no Live Register as required has ever been prepared by the respondents although provided in para 6.2 of Rule 2001 of I.R.E.M. (latest Edition) and para a 16 of the Master Circular No. 48 issued by the Railway Board.

- (3) The Respondents have filed the written statement and in their para 10 they have admitted that they have ~~xxxxxx~~ prepared list of Casual Labourers only of those who have worked prior to 1-1-81, Admittedly in greye disregards of the Board's order. That unfortunately the respondents have prepared and notified a list of Casual labours whose initial date of engagement is prior to 1.1.81 only. The list known as supplementary ~~live~~ ~~xx~~ Live Register was notified on 3-1-94 finalised on 27-4-84 and the respondents have issued orders re-engaging Casual Labourers borne on the list only. These orders of re-engagement were issued from 1994 till 1996. The respondents although contended that Live Register existed" no orders of re-engagement in favour of those borne/eligible to be borne on the Live Register were issued. That ~~xxxxxx~~ perusing list 27-4-94 it is observed that Casual Labourer whose date of initial engagement was in year 1961 was sought to be re-engage in the year 1994. It is thus clear that the respondents had prepared no list of Casual Labourer of eligible for being placed in Live Register nor supplementary Live Register until the year 1994 .
- Thus apparently the cause of action in favour of

the applicant has arisen only in the year 1994 and in absence of the list he could not claim any right for re-engagement. Infact the respondent have averred that there was a total ban on re-engagement of Casual Labourers. It is also an admitted fact that the supplementary live - Register was for the first time prepared and notified in the year 1994. In reply to the written statement the applicant had filed an affidavit on 19-8-1992, and have clarified that he was not only recruited on 31-7-87. but was once again re-engaged on 21-9-82. The applicant has also relied on a letter 20-11-1992^{Annexure A/2} issued by the General Manager, copy of which is produced herewith for ready reference, whereby the General Manager has specifically directed the office of the Divisional Railway Manager that he should obtain post-facto approval in favour of those who were engaged subsequent to the cut-off -date 14-7-81. Thus apart from the fact that the action of the respondents is contrary to the provisions laid down in the Master Circular nothing prevented the DRM-BVP to obtain Past-facto sanction as required.

4. That for the reason that the applicant was over-looked in the matter of re-engagement in terms of para 16(e) of Master Circular No. 43 and due to nonavailability of a ^{Annexure A/2} Live Register the applicant prayed for interim relief from the available Administrative Member. The Hon'ble Member were please to pass interim order on 27-11-1996 directing the respondents to examine the case of the applicant in Merits. The respondents however passed order dated 15-4-1997 and held that the applicants were not eligible for being placed on the list. The reasons given are totally contrary to the provision laid down by the Railway Board as contained in the Master Circular

Perusing the speaking order dated 15-4-1997 it is observed that the ward 'Fresh FACES ' have not been correctly interpreted. The para 3 of the Master Circular is clear on the subject . The reliance on the instructions of the General Manager is shown in Para 4 (ii) of the speaking order is also not as per the instructions of the Railway Board. The ground for register shown para 4 (iii) is contrary to para 16, sub Para (d) of the Railway Board Master Circular where in it is provided that all casual labourers excepting those specifically enumerated are eligible to be borne on the Live-Register.

- (5) In the speaking order the respondents relied on Supreme Court's Judgement which are not identical and clearly distinguishable as is ~~is~~ elaborated/explained herein after. That the applicant has already filed rejoinder and has negated the contention of the respondents made in the speaking order. The applicant also relied on letter dated 25-6-1984 to show that there existed many vacancies and recruitment infact was permitted There is no reference of re-engaging casual labourer whose initial date of engagement is prior to 1-1-81 only. That in absence of the list it was not possible for the applicant to know his seniority position and prefer any claim before any court of law.

- (6) 2- The respondents thereafter sought ^{to} file ~~an~~ M. A. ~~intending~~ to produce speaking order dated 15-4-1997 to which objection have already been filed by the applicant. That unfortunately this Hon'ble Tribunal failed to hear the arguments in the contentions made in the M.A.. The respondents, in their speaking order, having relied on the judgement of the Supreme Court in Writ Petition (Civil) No. 71 of 1997 etc and also the orders passed

by the Supreme Court on 30, August, 1996, in the matter of Harji Shamji, the applicant had sought to forward argument so as to show that the judgement relied upon are distictguashable but since M.A. was not taken up for hearing the applicant was denied the opportunity. Thus the Hon'ble Tribunal have subst^{ent}entially erred in not permitting the applicant to show that the judgement of the Supreme Court can not have any bearing in the facts of the present case. The applicant submits that the applicant of the above said matters before the Supreme Court *related* to " Project Casual Labourers" unlike the present applicant who is an open line casual labourers There is distinct and separte instruction in ^{either} respect. That as can be seen from copy of O.A. No. 434/94 ^{Annexure A} filed by Shri Harji Shamji and the full text of the judgement in Writ petition (Civil) 71 of 1997 ~~that~~ there was a delay and no fresh cause of action had arisen in them cases. The applicant of O.A. 434/94 had also filed an application seeking condonation of delay on the ground that his prayer relates to letter wherein the DRM-Rajkot had given opportunity to Ex-casual labourers vide letter dated 20.4.1987. In the case of the present applicant there is not only continuous cause of action, in not notifying list of Live Register open line, but a fresh cause of action had arisen in the year 1994, thus the judgement are clearly distictguishable. The O.A. was admitted inspite of the ground taken-up by the respondents as to its being time-barred, at the time of hearing.

- (7) That consequent to the speaking order the applicant had already filed M.A. seeking amendment, so as to

challenge the impugned speaking order dated 15-4-1997. The M.A. for amendment was allowed on 3-9-87 and necessary amendment was carried out on 3-9-1987. The Hon'ble Tribunal thereafter heard the O.A. Partly and thereafter it was again fixed on 24-9-1997, as is evident from M.A. 746 of 1997 filed by the respondents. That by the said M.A. the respondents had sought to produced the General Manager's letters dated 22-4-96, 12/15-9-1996, DRM-BVP's letter dated 30-9-1996 and the judgement dated ~~30~~ 30-9-96 and the judgement dated 30-8-1996 passed by the Hon'ble Supreme ~~Tribunal~~ Court. This judgement is now relied upon by the Tribunal in their order dated 21-10-1997. The copy of the said M.A. was supplied to the applicant in the course of final hearing on 24-9-97, thus the applicant had no opportunity to controvert the same. In the nut-shell although the said judgement was relied by the respondents in the 2 M.As. filed by them. The applicant had no opportunity to controvert as both the M.As. were not taken up for hearing at all and the objection filed were not taken into account.

(8) The tribunal have now passed judgement on 21-10-1997 and have dismissed the O.A. The documents produced by the respondents in the M.A. 746/97 are of Vital importance in deciding the present O.A. These documents speaks of preparation of the list and re-engagement of Ex-Casual labourers. The applicant had no knowledge of this circular letter nor there is anything to show that this has widely been circulated or individual notice has been sent as is required.

(9) The Hon'ble Tribunal has already ~~passed~~ ^{ruled} in not distinct-gushing the provisions in respects of Project Casual

Casual labours and open line Casual labourer. The contention in judgement to the effect that the supreme Court had passed order "By which the direction of the Tribunal for placing the applicant's name in live register was quashed. The applicant of that O.A. 434/ 1994 had made no prayer to place him on the live register as can be seen from the copy of O.A. filed by Shri Harji Shamji. He had infact prayed that he should be placed on the seniority list prepared in accordance with the Scheme in terms of Railway Board's letter dated 11-8-1986 which refers to project Casual labour unlike the applicant who is an open line casual labour and is eligible for being placed on the live register. None of the applicant whose cases have been decided by the Supreme Court were similarly situated.

- (10) It is the case of the applicant that the Hon'ble Tribunal ought to have given an opportunity to the applicant to explain the contents of letter dated 22-4-1996 sought to be relied by the respondents. although the documents were available with the Tribunal. The contents of the said letter are not inkeeping with the provision contained in Board's letter according to sub-para (d) of para 16 of the Master Circular, all the casual labourers excepting those specifically mentioned therein are required to be borne on the line register. That otherwise also there is a document which is now come to the knowledge of the applicant upon which he would like to rely for seeking prayer for his re-engagement and there is a sound case for grant in a review.

it is now clear from the contents of letter dated 22-4-1996 that the office of the General Manager had issued direction to placed the applicant and similarly situated other CAsual labourer out of consideration for re-engagement which is totally contrary to the provisons contained in para 16 of the Board's Circular which not only provides that they should be placed on the live register but that they should be given preference over the Causal labourers who are placed on the supllimentary Live R^gister. Thus there is a strong case for granting a review and if no review is granted there is likely to be violation of Constitutional Provision and grave injustice would be caused.

- (11) The applicant had filed the O.A. seeking direction that a list (Live R^gister) be maintained. Prepared and finalised. That refering to the document produced by respondent in M.A. 746/97 no such list as Provided in the Master Circular is required to be produced. that absence of such direction would amount to vetting the instructions of the General Manager and would amount into failure of constitutional provision.

In the light of the above submission the applicant prays that the present R.A. may be allowed and O.A, be judgement be reviewed so a to grant the relief prayed for by the applicant in the interest of justice.

Bhavnagar

Date 12 - 12 - 1997.

Chuzi Wapi f Nil Gorenai

Signature of the applicant.

A F F I D A V I T

I, Vyas Pravinkumar son of Vyas Vrajlal, aged
35 Years, Occupation - Nil. Residing at Village :
Dannagar do hereby solemnly affirm on oath and state
that the contents of this Review Application are true
and correct and that I have not suppressed ~~and~~ ~~xxxx~~
~~xxxxxxxxxx~~ any material facts.

This affidavit is filed on this 2nd day
of December 1997 at Bhavnagar.

Bhavnagar

અવિર મ. માસ્કરેનહાસ

Date: 2-12-1997

(Vyas Pravinchandra Vrajlal)
Signature of the applicant.

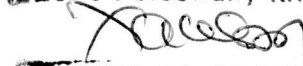
Contents of the affidavit were truly
and audibly read over and translated
in to Gujarati language known to the
deponent and he seem to have
understood the same.



XAVIR M. MASCARENHAS
B.A. LL.B. Advocate

Solemnly affirmed before me
by Vyas Pravinkumar Vrajlal
who is identified by Shree

..... Advocate
who is Personally known to me



XAVIR M. MASCARENHAS
B.A. LL.B. Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD BENCH

10

O.A.NO. 123/92 with MA/398/97
T.A.NO. MA/412/97
MA/746/97

DATE OF DECISION 21.10.97

Vyas Pravinkumar Varujlal Petitioner

Mr. M. M. Xavier Advocate for the Petitioner [s]

Versus

Union of India & Ors. Respondent

Mr. R. M. Vin Advocate for the Respondent [s]

CORAM

The Hon'ble Mr. V. Radhakrishnan

: Member (A)

The Hon'ble Mr. T. N. Bhat

: Member (J)

Vyas Pravinkumar Varujlal,
Near Primary Health Centre,
Dannagar, Amreli Dist.

: Applicant

(Advocate: Mr.M.M.Xavier)

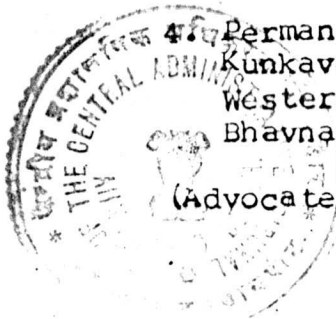
Versus

1. The Union of India
Owning & Representing
Western Railway,
Through its General Manager,
Churchgate, Bombay.
2. The Chairman, Railway Board,
Rail Bhavan, Sansad Marg,
New Delhi.
3. The Divisional Railway,
Manager, Western Railway,
Bhavnagar Division,
Bhavnagar Para.

4. Permanent Way Inspector,
Kunkavav Junction,
Western Railway,
Bhavnagar Division.

: Respondents

(Advocate: Mr.R.M.Vin)



JUDGMENT

O.A.123/92 with MA/398/97, MA/412/97
& MA/746/97

Date: 21.10.97

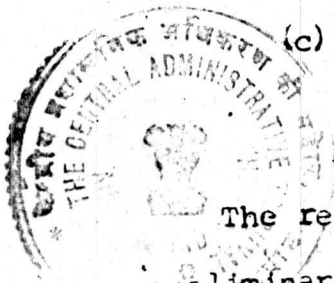
Per: Hon'ble Mr.V.Radhakrishnan : Member(A)

Heard Mr.M.M.Xavier and Mr.R.M.Vin, the learned
counsels for the applicant and the respondents
respectively.

The applicant in this case had worked as casual
labour with the respondent from 31.7.81 to 20.1.1983 in
different spells for a total period of 279 days and
finally he disengaged on 20.1.1983. He has filed this
application on 5.3.92.

The applicant has approached this Tribunal praying for the following reliefs:-

- (a) Your lordships be pleased to hold that the action of the respondents in not maintaining/preparing/finalising a live register/seniority list of the casual labourers/substitutes for the purpose of their engagement/reengagement/regulation etc. is in violation of the mandatory provision of Establishment Rules, circulars, I.D. Acts, in violation of principles of first come first serve, discriminatory, prejudicial, malafides, malicious, contrary to the policy decision and illegal. And to further directs the respondents to prepare and maintain a live register and engage the applicant and other casual labourers strictly in accordance with the seniority therein and to consider them for regular absorption and all consequential benefits.
- (b) Your lordships be pleased to hold that the order dated 15.4.1997 is illegal and void.
- (c) Your lordships be pleased to grant any other relief/s that may be considered to be just and proper in the circumstances of the case."



The respondents in their reply have taken a preliminary objection that though the applicant left his service on 20.1.83, he has not been taken any action to establish his claim and he has come to this Tribunal only on 5.3.1992. Hence, the O.A. is time barred and liable to be rejected on that ground only. We may first examine the contention of the respondents without enter into the merits of the case. There is no doubt that the applicant left his service on 20.1.83 and he has filed this O.A. on 5.3.92 i.e. after a lapse of more than 9 years. We do not find any possible reason for delay in

filing the O.A. after so many years except mentioning that the applicant was approaching the respondents personally at periodic interval and he was told that he will be engaged in due course after the ban on recruitment is lifted. However, there is no evidence on record to show that the applicant was pursuing his case for redressal. The Hon'ble Supreme Court in Civil Appeal Nos. 11547 to 11550 of 1996 was passed the following order by which the direction of the Tribunal for placing the applicant's name in the Live Register was quashed, which reads as follows:-

"These appeals have been filed on behalf of Union of India and Ors. for setting aside an order passed by the Central Administrative Tribunal directing the appellants to include the name of the petitioners-respondents in the Register of ex-casual employees. It appears from the records that such respondents had worked as casual employees but had left job in the years 1971 and 1974. Respondent No.1 ceased to be casual employee on 12.10.1984. We are not able to appreciate as to how the Tribunal could have passed such an order. Accordingly, the appeals are allowed. The impugned order is set aside. No costs."

The Hon'ble Supreme Court has also taken a similar view in SLP(Civil) Nos. 10469-10470/96 decided on 3.3.1997.

In view of the above orders of the Hon'ble Supreme Court we have no alternative to dismiss the above mentioned OA on grounds of delay and laches

(14)

: 5 :

without entering into the merits of the case.

However, we make it clear that there is no bar for the applicants to apply and to be considered for the post of casual labour to the Railways in case the respondents decide/have decided already to take the casual labourers who had already put in service in the Railways in the past as a matter of policy before going in for fresh direct recruitment. Accordingly, the O.A. is disposed of. No order as to costs.

Since the O.A. itself is disposed of, MAs. do not survive.

Sd/-
(T.N. Bhat)
Member (J)

Sd/-
(V. Radhakrishnan)
Member (A)

तैयार करनेवाला
Prepared by: 29/10/97
जिला जज
Compared by: 29/10/97
जिला जज
True Copy

(1)
(1)
Central Administrative Tribunal
अहमदाबाद बेंच,
Ahmedabad Bench

This Annexure is the
True Copy of the Original Document

Xavier M. Mascarenhas
(Advocate)

Before Central Administrative Tribunal
AHMEDABAD.

MISC. APPLICATION NO.: /1994.

IN

ORIGINAL APPLICATION NO: 434 /1994.

Harji Shamji,
Aged about 33 Yrs.,
Occ: Unemployed, on Casual labour
Add: Vill. BODIGHODI,
PO: PADDEHARI,
Distt: RAJKOT

:: APPLICANT

Versus

- (1) Union of India
Owing & Representing
Western Railway,
Through: General Manager,
Western Railway, Churchgate,
BOMBAY : 400 020.
- (2) Dy. Chief Engineer (Const.),
Western Railway, 2nd Floor,
BG Railway Station Building,
Railwaypura,
AHMEDABAD : 380 002.
- (3) Divisional Railway Manager,
Western Railway, Kothi Compound,
Rajkot : 360 001.

:: RESPONDENTS.

APPLICATION FOR CONDONATION OF DELAY

The applicant respectfully begs to submit as under :-

- 1) That the applicant has filed the present petition for the relief to interpolate his name in the seniority list prepared after the scheme in terms of Railway Bd's letter No.E(NG)II/84/CL/41 dated 11-9-1986. The applicant submits that no such seniority list is ever published or placed on the Notice Board. The applicant though has been enquiry orally and submitted written representations he is not informed about his number in the said seniority

The applicant submits that he is entitled to be placed on the seniority list in accordance with the scheme as well as in accordance with the judgement of hon'ble Supreme Court of India in case of Indrapal Yadav Vs. Union of India reported in 1985 (2) SLJ P.58./Thus the applicant has just and sufficient reasons for Condonation of Delay.

2) In the circumstances of the case, it is prayed that in the interest of justice, delay in filing this petition may please be condoned and the petition may please be allowed.

Rajkot.
Ahmedabad.

(APPLICANT)

Date :- 6/6/94

VERIFICATION

I, Shri Harji Shamji, aged about 33 years, Occ: Unemployed, resident of Vill. Bodighodi, Distt.: Rajkot, do hereby verify that the contents of para 1 and 2 stated in the Misc. Application above are true to my personal knowledge and that I have not suppressed any material fact.

Rajkot/
Ahmedabad.

(APPLICANT)

Dated 6/6/1994

This Annexure is the
True Copy of Original Document
Xavier M. Mascarenhas
Xavier M. Mascarenhas
(Advocate)

(17)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD.

MISC. APPLICATION NO. /1994.

IN

ORIGINAL APPLICATION NO: 434/1994.

Harji Shamji,
Aged about ____ Yrs.,
Occ: Unemployed, Ex Casual Labour
Add: Vill. BODIGHODI,
PO: PADDHARI.
DIST: RAJKOT

:: APPLICANT

Versus

Union of India & 02 Others.

:: RESPONDENTS.

AFFIDAVIT

I, Shri Harji Shamji, aged about 33 Yrs.,
Occ: Unemployed, resident of : Vill. Bodaghodi,
PO : Paddhari, Distt: Rajkot, do hereby solemnly
affirm that whatever is stated above in the Misc.
Application is true and correct according to my
information and belief.

I state the above on oath.

Rajkot/

Ahmedabad 25/5/94

(DEPONENT)

Identified by :-

(R.S.Verma)
Advocate.

This Annexure
True Copy of the Original Document

Ali Contar
Xavier M. Mascarenhas
(Advocate)

(18)

BEFORE CENTRAL ADMINISTRATIVE TRIBUNAL
AHMEDABAD.
ORIGINAL APPLICATION NO. 434 /1994.

Harji Shamji,
of Vill: Bodighodi,
PO: Paddhari,
Distt: Rajkot.

:: APPLICANT

Versus

Union of India & 02 Ors.

:: Respondants.

" I N D E X "

| Sr.No. | Details of documents relied upon | Page No. |
|--------|---|----------|
| 01 | APPLICATION | 01 - 08 |
| 02 | <u>A/1</u> : Zerox copy of Service Card issued by P.W.I.(C), Rajkot. | 09 to 12 |
| 03 | <u>A/2</u> : Zerox copy of letter No.E(NG)II/84/CL/41 dtd.11.9.1986 issued by Dy. Director Establishment (N), Railway Board, New Delhi. | 14 to 17 |
| 04 | <u>A/3</u> : Zerox copy of Policy Circular No. EP.391/2/Vol. VI dated 20.4.1987 issued by Divisional Railway Manager(E), Rajkot. | 16 to 21 |
| 05 | <u>A/4</u> : Zerox copy of judgement in OA No.217 of 1994 decided on 05.4.1994 by hon'ble C.A.T.Ahmedabad. | 22 to 24 |

Rajkot/
Ahmedabad.

(APPLICANT)

Dated : 6/6/96

For use of Tribunal's Office

Date of Filing.

or

Date of Receipt by post

Registration No.

Signature
for Registrar.

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BEFORE CENTRAL ADMINISTRATION TRIBUNAL
AHMEDABAD.

ORIGINAL APPLICATION NO: /1994.

Harji Shamji
Aged about 33 Yrs.,
Occ: Unemployed, Ex Casual labour
Add: Vill.: BODIGEODI,
PO : PADDHARI,
Distt.:RAJKOT.

:: APPLICANT

Versus

(1) Union of India
Owning & Representing
Western Railway,
Through : General Manager,
Western Railway, Churchgate,
BOMBAY ; 400 020.

(2) Dy. Chief Engineer (Const.),
Western Railway, 2nd Floor,
BG Railway Station Building,
Railwaypura,
AHMEDABAD : 380 002.

(3) Divisional Railway Manager,
Western Railway, Kothi Compound,
RAJKOT : 360 001.

:: RESPONDENTS.

DETAILS OF APPLICATION -

1. Particulars of the order against
Which the Application is made :

This petition is for directions to the respondents to interpolate the name of the applicant in the seniority list prepared by the respondents in accordance with the scheme framed by the Railway Board in terms of letter No.E(NC)II/84/CL/41 dtd. 11.9.1986 and absorb him accordingly with consequential benefits.

.....2.....

2. Jurisdiction of the Tribunal -

The applicant declares that the subject matter of the order against which he wants redressal is within the jurisdiction of the Tribunal.

3. Limitation -

The applicant submits that there is a delay in filing this petition. The applicant has ~~failed~~ filed a separate application for Condonation of delay in filing this petition.

4. Facts of the Case -

The applicant begs to submit the short facts of the case as under :-

- i) That the applicant was originally engaged as a casual labour Male Beldar in the Viramgam - Okha - Porbandar conversion project of Western Railway, on 06.8.1979 under the Permanent way Inspector.(Const.). Western Railway, Rajkot. he was allowed to work continuously upto 12.10.1984, thereafter the services of the applicant were dispensed with without any written order and without serving notices or retrenchment compensation and without following the rules under the Industrial Disputes Act. Copy of the service Card issued by P.W.I.(C), Rajkot is annexed herewith as Annexure A/1.
- ii) The applicant submits that his services were brought to an end abruptly without following the relevant provisions in the Industrial Disputes Act.

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According to the rules employer i.e. respondents were expected to prepare a list of all the workmen in the particular category from retrenchment is contemplated arranged according to the seniority of their service in that category and cause a copy thereof to be posted a Notice Board in a conspicuous place in the premises of the Industrial Establishment at least seven days before the actual date of retirement. The applicant submits that in his case neither the seniority list was prepared including the applicant's name nor the same was exhibited before his services were terminated. The applicant submits that he was not given any written order nor retrenchment compensation. In absence of this, it is a matter of not permitting him to discharge his duties in legal manner and hence in the eyes of law he continuous to be in the employment of the respondents.

(ii) The applicant further submits and relies upon the Scheme formulated by the Railway Board and circulated to all General Managers, All India Railways by Deputy Director Establishment (N), Railway Board, New Delhi vide his No.E(NG)II/84/CL/41 dated 11.9.1986 under the directions of Supreme Court of India in Writ petitions No. 147, 320-69, 454, 4335-4434 of 1983 etc. in case Shri Indrapal Yadav Vs. Union of India, Copy of the said circular dated 11.9.1986 is annexed herewith as Annexure A/2.

.....4....

iv) The applicant submits that his case is covered under the judgement and circular quoted above and his name should have been placed on the seniority list prepared as per para 3"5.1" of the above circular dated 11.9.1986. The applicant also submits that the above benefits are to be extended to him since he has already completed the prescribed period of 360 days continuous employment during 06.8.1979 to 09.11.1981 under P.W.I.(C), Rajkot, he is required to be treated as an old face and he should be given preference for engagement by the respondents. However, this was not done. The applicant was originally engaged on 06.9.1979, scores of people engaged subsequent to this date are continued in the Railway by this respondents. Hence not engaging the applicants is against the rules on the subject and violation of section 25-G of I.D.Act.

v) The applicant submits that in view of the fact that he had worked, his name was required to be included in the live Casual Labour Register. The applicant also rely upon the policy circular issued by Divisional Railway Manager(E), Rajkot vide his No.EP.891/2/Vol.VI dated 20.4.1987 reproducing the Railway Board's letter No.E(MG)II-78/CL/2 dated 04.3.1987 whereby the opportunity was required to be given to the concerned persons.

But the applicant was never given any personal information about such representation to be given to him, though the address of the applicant and casual labourers is available with the respondents, which is obtained at the time of recruitment of the casual labourers. This is ~~also~~ even mandatory in view of the section 25-H of I.D. Act and the rules in this connection.

vi) The applicant though direct does not rely upon such Industrial rules, but this can be the principles in such matters where the applicant is required to be informed individually. The applicant was out of services and he is not expected to come on every day to see the notice of the Railway department which are always existed in the office. Even on enquiry the applicant is informed that no such notice was ever pasted on the notice board. The circulars were kept only in the files and have not been notified properly. Though the Railway Board have been making welfare decision, at the lower level they are not implemented and acted upon, honestly and sincerely. The applicant is thus left out from considering his case for no fault of his part. The applicant produced herewith ~~any~~ copy of the said circular dated 20.4.1987 issued by DRM (E), Rajkot, copy of which he has obtained recently from Union office which annexed herewith as Annexure A/3.

vii) The applicant submits that he has put in one year's continuous services in the last preceeding year from 28.3.1983 to 12.10.1984, therefore his services could not have been terminated without following the mendatory provisions and pre-conditions of Section 25-F of I.D.Act. Therefore the action of the respondents in terminating the services of the applicant is clearly void, ab-initio, without jurisdiction and against the principles of natural justice, since the termination is without due process of rules and law of the Land. The applicant also approached to the officers of respondent's department to permit him to discharge his duties against this oral termination, and also submitted representations but he has not allowed to discharge his duties.

viii) The applicant also submitted and rely upon the decision of this hon'ble Tribunal in an identical case Shri Ramesh Dhanji Vs. Union of India in OA No. 217 of 1994 decided on 05.4.1994, copy of the judgement is annexed herewith as Annexure A/4.

5. Grounds for relief with legal provisions -

- (A) Applicant has right to be placed on the seniority list under the rules of the Respondents department.
- (B) Applicant can not be denied with the benefits available to him in consequential to his name being interpolated in the seniority list.

6. Details of Remedies Exhausted -

The applicants submits that he has no remedy available as per the statutory rules of the respondent's department except approaching this hon'ble Tribunal for the redressal of his grievances.

7. Matter not previously filed or pending with any other Court ;

The applicant further declares that he had not previously filed any application, any writ petition or suit regarding the matter in respect of which this application has been made before any Court or any other authority or any other Bench of the Tribunal nor any such application, writ petition or suit is pending before any of them.

8. Relief/s Sought For -

- (A) Respondents may ~~plea~~ please be directed to interpolate the name of applicant in the seniority list prepared in accordance with Scheme in terms of Rly. Board's letter No.E(NG)II/84/CL/41 dtd. 11.9.1986 and grant the employment to the applicant with all consequential benefits including regularisation etc. on basis of his number in the said seniority list and that the respondents may advise the applicant his number in the said seniority list.
- (B) Any other better relief/s as this hon'ble Tribunal deem just and proper looking to the facts and circumstances of the matter may please be awarded to the applicant.
- (C) Cost of the petition may kindly be awarded to the applicant.

9. Interim order if any prayed for -

..... Nil.....

10. In the event of application being sent by Registered post, it may be stated whether the applicant desires to have oral hearing at the admission stage and if so, he shall attach a self addressed post card or Inland letter at which intimation regarding the date of hearing could be sent to him.

" NOT APPLICABLE "

11. Particulars of postal orders filed -
in respect of the application Fee -

- i) Number of Postal Order(s) ;
- ii) Name of issuing Post Office ;
- iii) Date of issue of Postal Orders ;
- iv) Post office at which payable ;

12. List of Enclosures -

- 1. Indian Postal Orders as per para-11 above.
- 2. Vakalatnama.
- 3. Document from Annexure A/1 to A/4.

Rajkot/
Ahmedabad.

(APPLICANT)

VERIFICATION

I, Shri Harji Shamji, aged about 33 yrs.,
Occ: Unemployed, resident of: Vill. Bodighodi,
Distt: Rajkot, do hereby verify that the contents
of para 1 to 3 and 6 to 12 stated above are true
to my personal knowledge and para 4 and 5 are believed
to be true on legal advice and that I have not
suppressed any material fact.

Rajkot/
Ahmedabad.
Dated:-
Through :-

This Annexure is the
True Copy of the Original Document

(B.B.GOGIA).

Xavier M. Mascarenhas (APPLICANT)
(Advocate)

(27)

WESTERN RAILWAY

Headquarter Office,
Churchgate, Bombay.

No. F/3615/1/Misc(L).

Date : 20-11-1992.

DRM - BVP.

Sub : Operation of Live Register -
Casual Labour - BVP Division.

The above issue has been taken at Headquarter under PNM item No.62/92 by WRMS and 103/91 by WREU. In this connection, the following action may be taken, based on the discussions in the meeting held on 12/13-11-92 and 2/3-9-92.

1. It is understood that staff who were engaged prior to 1-1-81 and who were on the rolls on 1-1-81 have not been included in the Live Register. The updating of the Live Register for such staff as per extant instructions has no relevance with regard to Live register concerning casual labour staff, who were discharged before 1-1-81 and were given one time chance to apply before 31-3-87 as per Supreme Court's judgement. If this has not been done earlier, this may be done now, after verifying the authenticity of the casual labour records.
2. Staff who have been engaged after 14-7-81 are not being regularised stating that CM's approval is not available. Proposal for obtaining post-facto approval of such staff may please be sent to HQ at an early alongwith the action proposed/taken against the defaulting staff/supervisors for engaging such staff.
3. It has been brought out that no. of C/Labour staff who have been recruited between 1-1-81 and 14-7-81 are not being put on the Live Register. Before 14-7-81, the powers were with divisions and as such if any C/Labour staff, who has been engaged prior to 14-7-81 will be treated as an old face.
4. There are no of cases of underage casual staff, who are not being considered. Normally underage engagement was not permissible and in case some cases are available on the division, as per extant instructions, the services prior to attaining the age of 18 years will be treated as 'NIL'. The list of such staff may be compiled and sent to HQ for consideration of approval.

Action as per above directions may be taken early.

Sd/- for General Manager(E)

C/- SPG(Union) for information with ref. to i) WREN PNM Item No.103/91 and ii) WRMS PNM Item No. 062/92.

This Annexure is the
True Copy of the Original Document.

Xavier M. Mascarenhas
(Advocate)