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O.A.NO. 594 of 1995Order No. 22, dated .3.2000

In this disposed of matter the respondents have filed MA No. 530 of 1997 praying for modification of the order dated 29.9.1995 disposing of the OA. In the OA the petitioner had prayed for a direction to the Divisional Personnel Officer, S.E.Railway, Khurda Road (respondent no.2 in the OA) to give casual works/hot weather/hamal khalasi engagement to the applicant. This OA along with OAs 591, 592, 593, and 595 of 1995 were disposed of on the date of admission on 29.9.1995 without requiring the respondents to file counter. The Tribunal noted that the applicants submit that they were engaged for casual work during the years 1985 and 1986 and they like to be considered for similar engagement in future whenever work is available. The Tribunal disposed of the Original Applications including this one at the admission stage with a direction that the applicants be suitably engaged whenever work is available. In the MA the respondents have stated that after receipt of the order dated 29.9.1995 a Personnel Inspector was directed to enquire into the matter regarding genuineness of the engagement of the applicant. The Personnel Inspector stated in his report that the applicant had been utilised as a casual hamal under Station Superintendent, Khurda Road, for a period of three months only ranging from 14.6.1985 to 13.9.1985 and thereafter he has not come up for any other work. The total number of working days of the applicant in this OA under the Railways is for 92 days only. The respondents have further stated in the MA that the

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applicant has never turned up for work after 13.9.1985 and he has straightaway filed the OA on 27.9.1995. Even after filing of the Application he has never turned up for any work. The respondents have stated that casual engagements are provided to casual labourers who turn up for work when work is required/available and they were never engaged by sending intimation to them. As the applicant has never approached for any work at the belated stage after lapse of ten years his case does not deserve any consideration. It is also stated that preference for past work can be counted if a person has worked for more than four months. Moreover, upper age limit for engagement of casual workers is 28 years and on that ground also engagement cannot be provided to the applicant. In view of this, the respondents have prayed that the order dated 29.9.1995 may be modified and appropriate orders passed in this case.

2. The applicant in his counter has stated that the petition for modification of the order dated 29.9.1995 is not maintainable. Even though the respondents have sought for modification of the order dated 29.9.1995, in effect they are seeking review of the order. The MA has been filed on 29.9.1997 to modify the order dated 29.9.1995, i.e., after two years. Therefore the Misc. Application is barred by limitation and should not be entertained. It is further stated that the Tribunal have only directed consideration of the case of the applicant for engaging him as a casual labourer when work is available. This order was passed by the Tribunal with the observation that the

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applicant was working as a casual worker during 1985 and 1986. This fact has not been controverted by the respondents in his MA and therefore the respondents would not be prejudiced if the order dated 29.9.1995 is not modified.

3. We have heard the learned counsel for both sides and have also perused the records. It is no doubt true that the original order dated 29.9.1995 was passed at the admission stage without affording an opportunity to the respondents to file their reply. But the Tribunal has merely ordered for consideration of the applicant's case for re-engagement as a casual worker when such work is available. Such consideration will naturally be in accordance with the existing rules and procedure. In any case it is clear that the respondents in this MA are seeking review of the order dated 29.9.1995. The order cannot be reviewed through a Misc.Application. In view of this, it is held that the MA is not maintainable and hence is rejected.

(G.NARASIMHAM)

MEMBER (JUDICIAL)

SOMNATH SOM

VICE-CHAIRMAN

AN/PS

Copies of order
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the court for
borders

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