

11

(11)

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 785 OF 1996  
Cuttack, this the 9th day of March, 2000

Gagan Bihari Prusty ..... Applicant

Vrs.

Union of India and others ..... Respondents

FOR INSTRUCTIONS

1. Whether it be referred to the Reporters or not? Yes
2. Whether it be circulated to all the Benches of the Central Administrative Tribunal or not? No

Somnath Som  
(SOMNATH SOM)  
VICE-CHAIRMAN  
1.3.2000

12

12

CENTRAL ADMINISTRATIVE TRIBUNAL,  
CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 785 OF 1996  
Cuttack, this the 9th day of March, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN

.....

Gagan Bihari Prusty, son of Dinabandhu Prusty, aged about 41 years, village Kotakana, P.O.-Raghunathpur, District-Jagatsinghpur, working as Casual Driver under Cuttack Paradeep Rail Link Project under Inspector of Works (Construction), S.E.Railway, Raghunathpur, District-Jagatsinghpur ..... Applicant

Advocates for applicant -M/s B.B.Patnaik  
S.K.Dey  
B.Behera

Vrs.

1. Union of India, represented by General Manager, South Eastern Railway, Garden Reach Road, Calcutta-43.
2. Senior Divisional Railway Manager, S.E.Railway, Khurda Road, District-Khurda.
3. Chief Administrative Officer (Construction), South Eastern Railway, Chandrasekharpur, Bhubaneswar, District-Khurda.
4. Senior Project Manager (Construction), South Eastern Railway, Chandrasekharpur, Bhubaneswar, District-Khurda.
5. Deputy Chief Project Manager (Construction), S.E.Railway, Chandrasekharpur, Bhubaneswar.
6. Inspector of Works (Construction), South Eastern Railway, Cuttack Paradeep Rail Link Project, At-Raghunathpur, District-Cuttack.
7. Chairman, Railway Recruitment Board, A-84 Kharvel Nagar, Bhubaneswar, District-Khurda....Respondents

Advocates for respondents - M/s R.C.Rath

O R D E R

SOMNATH SOM, VICE-CHAIRMAN

In this Application under Section 19 of Administrative Tribunals Act, 1985, the petitioner has

prayed for a direction to the respondents to consider the case of the applicant for the post of Casual Driver or any other similar post while making recruitment for Railway Projects.

2. The case of the applicant is that he had served under the Railway administration as a Casual Truck Driver from 24.3.1972 to 23.2.1973 for eleven months and seven days continuously without any break in the unit of Cuttack Paradeep Rail Link Project under Inspector of Works (Construction), S.E. Railway, Raghunathpur. After that Project was complete, the applicant was retrenched from service due to non-availability of post. A certificate issued by Inspector of Works (Construction), Raghunathpur, about the applicant's engagement is at Annexure-1. The applicant has stated that in spite of his repeated persuasion and request to accommodate him in service as a retrenched employee, no consideration has been shown to him. He was assured that his case would be considered but without any result. In 1995 a number of posts of Drivers under Railway Administration remained vacant and the applicant filed a representation on 21.6.1995 for considering his case taking into account his previous experience, but no action was taken on his representation. His further representations dated 20.10.1995, 17.9.1996 and 23.9.1996 enclosed to the O.A. also did not yield any result. The applicant has stated that in pursuance of the direction given by the Hon'ble Supreme Court, the Ministry of Railways in their notification, dated 2.3.1987, directed that project labour who have worked before 1.1.1981 and who were retrenched due to want of further work, may be considered for engagement under the scheme

J. J. M.

circulated in letters dated 11.9.1986 and 16.3.1987. It is further stated that the Railway administration has issued circular dated 22.5.1972 (Annexure-3) in which it was provided that till the retrenched employees are adjusted, fresh casual labourers should not be engaged. It is further stated that respondent no.2 has issued a notice dated 28.5.1996 (Annexure-4) for engagement of casual labourers from open market. A list of retrenched casual labourers has also been prepared, but the applicant's case is not being considered. In view of the above facts, the applicant has come up in this petition with the prayer referred to earlier.

3. Chairman, Railway Recruitment Board (respondent no.7) has filed counter stating that there is no Truck with the Railway Recruitment Board and there is no necessity of a Truck Driver. It is further stated that no post of Driver is vacant in the Railway Recruitment Board and they have also not issued any advertisement for filling up of the post of Driver. It is stated that the Railway Recruitment Board should not have been made a party in this case.

4. The Railway authorities in their counter have stated that the Tribunal has no jurisdiction to entertain a grievance which arose prior to 1.11.1983, i.e., in 1972-73. This was the period of casual employment as stated by the applicant on the basis of which he is seeking employment. It is stated that the relevant records of 1972-73 are not available to verify the authenticity of the certificate at Annexure-1. It is stated that the period of preservation of records like casual service records is 10 years whereas the applicant has come up after twenty years. It is also stated that the

S.S.M.

5

15

applicant has prayed for consideration of his case for casual employment. But there is no requirement of casual labour in the construction organisation and therefore the question of consideration of the case of the applicant does not arise. The respondents have also denied the averment of the applicant that he was at any time given the hope that he would be provided with service. It is further stated that there is no requirement of any casual labour in the projects under the respondents and there is no scope for considering the applicant's case. On the above grounds, the respondents have opposed the prayer of the applicant.

5. I have heard Shri B.B.Patnaik, the learned counsel for the petitioner and Shri R.Ch.Rath, the learned counsel for the respondents and have also perused the records. The learned counsel for the petitioner has submitted the circulars of the Railway Board regarding maintenance of Live Casual Register and these have also been taken note of. The learned counsel for the petitioner has relied on the following decisions:

- J.S. Sum.
- (i) U.P.Bijli Karmachari Sangh v. U.P.State Electricity Board, AIR 1990 SC 2139;
  - (ii) Union of India v. D.K.Saxena, AIR 1995 SC 1565;
  - (iii) National Federation of Railway Porters v. Union of India, AIR 1995 SC 1617;



(iv)

Ghaziabad Development Authority v. Shri  
Vikram Choudhury, AIR 1995 SC 2325.

The learned counsel for the respondents has relied on the decision of the Hon'ble Supreme Court in the case of Ratan Chandra Samanta v. Union of India, AIR 1993 SC 2276. These decisions have also been perused.

6. It has been submitted by the learned counsel for the petitioner that the applicant had worked as Casual Truck Driver for little over eleven months in Cuttack-Paradeep Rail Link Project and on completion of the project he was retrenched in 1973. The respondents have pointed out that according to the departmental instructions, the records relating to casual labourers are preserved for ten years and after passage of more than 20 years it is not possible to verify if the applicant did work as Casual Truck Driver in Cuttack-Paradeep Rail Link Project and if the certificate at Annexure-1 is a genuine one. Even accepting for argument sake the contention of the petitioner that he had worked as a Casual Truck Driver and was retrenched in 1973, the fact of the matter is that he has come up after passage of more than two decades. It is submitted by the learned counsel for the petitioner that the cause of action has arisen on the Railways issuing the notification, dated 28.5.1996, at Annexure-4 regarding engagement of fresh faces as casual labourers in Engineering Department of Khurda Road Division. This notification does provide that retrenched casual labourers can also apply and submit copy of previous casual labour card in support of their claim of being retrenched as casual labourers. The applicant has made no averment that

S. Som

he had applied in response to the notice at Annexure-4. He has, on the other hand, submitted in paragraph 11 of the O.a. that it is the duty of the Railways to contact such retrenched casual labourers and thereafter absorb them. As the petitioner has not applied in response to the notice at Annexure-4, he cannot claim that he should be absorbed as a casual labourer.

7. The second contention of the learned counsel for the petitioner is that according to the Railway Board's instructions a Live Casual Register is to be maintained showing the names of all retrenched Casual Labourers and before recruiting fresh faces their cases are to be considered. The Railways have submitted before the Hon'ble Supreme Court that it would be difficult for them to consider the cases of retrenched casual labourers coming up from time to time seeking fresh engagement as retrenched Casual Labourers. The Hon'ble Supreme Court have indicated that all such casual labourers must apply by a certain date. The applicant has not stated that he has applied for inclusion of his name in the Live Casual Register. From the circulars of the Railway Board filed by the learned counsel for the applicant it is clear that the last date for receipt of such applications was 31.3.1987. All the representations filed by the applicant along with his OA are of the year 1995 onwards. From this it is clear that he has not applied for inclusion of his name in the Live Casual Register or for his re-engagement as a retrenched casual labourer prior to 31.3.1987. The Hon'ble Supreme Court in the case of Ratan Chandra Samanta (supra), while dealing with case of delay in casual

labourers approaching Court, have observed as follows:

"6. Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognized both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioners that they may be permitted to produce their identity cards, etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979."

In this case the applicant has approached the Tribunal more than two decades after his alleged retrenchment.

8. In view of the above discussion, I hold that the applicant has not been able to make out a case for the relief claimed by him. The Original Application is therefore held to be without any merit and is rejected. No costs.

*Somnath Som*  
(SOMNATH SOM)  
VICE-CHAIRMAN 2000