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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A. NO. 484 of 1998

Y. Challayya & Ors. ... Applicants.  
Vrs.  
Union of India & Others. ... Respondents.

O.A. No. 24 OF 1999

K. Eswar Rao and another. ... Applicants  
Vrs.  
Union of India & Others. ... Respondents.

DATE OF DECISION: 31.12.2002

( 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? *Yes*

*31/12/2002*  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

*B.N. SOM*  
VICE-CHAIRMAN

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CENTRAL ADMINISTRATIVE TRIBUNAL  
CUTTACK BENCH: CUTTACK.

O.A.No. 484 of 1998

O.A.No. 24 of 1999

Cuttack, this the 31<sup>st</sup> day of December 2002

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C O R A M :-

THE HONOURABLE MR. B. N. SOM, VICE-CHAIRMAN

AND

THE HONOURABLE MR. MANORANJAN MOHANTY, MEMBER (JUDL.).

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\* O.A. NO. 484 of 1998.

1. Y. Challayya, S/o. Appalanaidu, Akkiredipalem, Pendurty Mandalam, visakhapatnam.
2. P. Chinnababu, S/o. Ramana, Rly. Q.No. 1-4, Marripalem, visakhapatnam.
3. K.P. Ydiraju, S/o. Durgalu, R.R. Venkatapuram Post, Pendurty Mandalam, Chintala Agraharam, visakhapatnam.
4. Dukka Ramu, S/o. Narayana, Rly Q.No. 75/B, Marripalem, visakhapatnam.
5. P. Jagga Rao, S/o. Ramunaidu, R.R. Venkatapuram Post, Pendurty Mandalam, Chintala Agraharam, visakhapatnam-29.
6. B. Mahalakshmi, S/o. Tata, Pedagadi Village, Pendurty Mandalam, visakhapatnam-531 173.
7. K. Demudu, S/o. Simhadri, Pedagadi Village, Pendurty Mandalam, visakhapatnam.
8. P. Sri Ramulu, S/o. Bandayya, R.R. Venkatapuram post, Pendurty Mandalam, visakhapatnam-530 029.

9. P.Simhachalam, S/o. Somulu, R.R. Venkatapuram, Pendurty Mandalam, Visakhapatnam.
10. B. Adinarayana, S/o. B. Narayanappadu, F. C. I., Colony, Dr. No. 38-34-58, Marripalem, Visakhapatnam-530018.
11. P. Pydiraju, S/o. Pollipilly, R.R. Venkatapuram, Pendurty Mandalam, Chintala Agraharam, Visakhapatnam.

.... APPLICANTS.

-VERSUS-

1. Union of India represented by General Manager, South Eastern Railway, Calcutta.
2. Divisional Railway Manager, South Eastern Railway, Waltair, Visakhapatnam-4.
3. Chief Administrative Officer (C), S. E. Railway, Chandrasekharpur, Bhubaneswar.
4. Chief Engineer (Con.), S. E. Railway, Visakhapatnam-4.

.... RESPONDENTS.

By the Advocate : M/s. B.S.H. Rao,  
A. Kanungo,  
S.R. Mishra,  
B. Ray,  
R. Nayak,  
Advocates.

By the Respondents : Mr. Ashok Mohanty,  
Senior Counsel (Railways).

O.A. NO. 24 of 1999.

1. K. Eswara Rao, Aged about 36 years,  
Son of Rama Murthy, C/o. V. V. Krishna Murthy,  
Gr. No. S&C/19 B, Railway Construction Colony,  
Rayagada.
2. K. Veera Swamy, Aged about 37 years,  
S/o. Krukulu, Thumilapally, Kottavalasa  
Vizianagaram.

.... APPLICANTS.

By the Advocate : M/s. B.S.H. Rao, A. Kanungo, S.R. Mishra,  
B. Ray, Advocates.

-VERSUS-

1. Union of India represented by General Manager, S. E. Railway, Calcutta.
2. Divisional Railway Manager, S. E. Railway, Waltair, Visakhapatnam-4.
3. Chief Administrative Officer (C), S. E. Railway, Chandrasekharpur, Bhubaneswar.
4. Chief Engineer (Con.) South Eastern Railway, Visakhapatnam-530 004.

.... RESPONDENTS.

By legal practitioner: Mr. Ashok Mohanty,  
Senior Counsel (Railways).

and

Mr. B. K. Bal,  
Additional Standing Counsel  
(Railways).



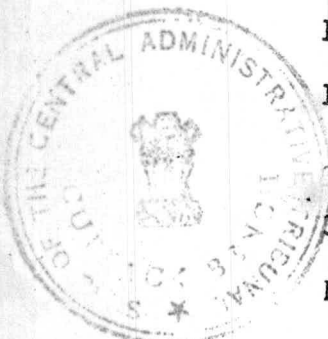
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ORDER

MR. B. N. SOM, VICE-CHAIRMAN :-

Though both the Original Applications (O.A. No. 484 of 1998 and O.A. No. 24 of 1999) were heard separately one after the other, since common question of facts and law are involved in both these cases, for the sake of convenience this common order is passed.

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2. This Original Application has been filed by a group of eleven applicants (in OA No.484 of 1998) and two applicants (in OA No.24 of 1999) who had worked as casual Labourers in the South Eastern Railway (Construction) Organisation of Civil Engineering Department within the geographical jurisdiction of Visakhapatnam assailing the Divisional Railway Manager (P), South Eastern Railway Waltair's Circular No. WPT/5/Casual Labour dated 19.8.1997 inviting applications from post-1981 casual labourers for enrolment of their names in the live casual labour register. The facts of the case are as follows.



3. The case of the Applicants is that they had put in service ranging from 15 days to 116 days during the year 1981 (Annexure-A/1). Their services were discontinued for want of work. They alleged that though they were presenting themselves, after disengagement for their reengagement, while fresh faces were appointed in construction division, they were not offered any appointment/engagement. Their names were not included in the seniority list in terms of the guidelines issued by Railway Board's let

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letter dated 11-09-1986(Estt.Sl.No.197/86) although they had worked as project casual Labourers in post-1981 period.By not including their names in the seniority list of project casual labourers, they were denied the opportunity of getting any subsequent engagement in the project work. They further alleged that the Waltair division failed to prepare <sup>the</sup> ~~combined~~ seniority list of casual labourers in accordance with para 5.2.3. of Establishment Serial No. 187/86.The authorities <sup>had</sup> ~~were~~ also violated the instructions contained in Railway Ministry's letter NO. E/NG/II/84/CL A 41 dated 02-03-1987 by not engaging them in Project work. However,after great pursuasion by the Applicants through South Eastern Railway Men's Congress,a recognised Trade Union, the CAO(C)/VSKP (Respondent No.2) prepared two lists; one containing 1182 names and another containing 115 names and the names of the Applicants find place in the list of 1182.Inspite of that,Respondent No.2 had not prepared the list of post 81 project casual labourers as per the Estt.Sl.No.187/86.On the other hand , had renegeged post-81 casual labourers in Civil Engineering Department having less number of days of work than the Applicants. It is further averred that in gross violation of the instructions contained in Estt.Sl.No.187/86 and without exhausting the post-81 casual labourers, Respondent No.3 had recruited 208 fresh faces in Civil engineering Department


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from open market to work as Casual Gangmen from 18.9.1996 to 31-10-1996. They further alleged that Respondent No.2 had issued a Circular NO.WPT/5/Casual Labour dated 19.8.1997 inviting applications by Registered post to be received on or before 5-9-1997 or to be dropped personally in the Box provided in the Sr.DPO's Office/Visakhapatnam before 5-9-1997 from post-81 Project Casual Labourers for enrolment of their names in the live casual register with all documentary proof. Their objection is that submission of application by Registered post was prescribed only in respect of pre-81 casual labourers by Estt.Sl.No.187/86. They also averred that their names had already been enrolled in the Live Casual Register prepared by a Committee consisting of three officers of the Construction Organisation, after verification of the Muster Rolls and hence no further enrolment is required as notified in the notification dated 19.8.1997 (Annexure-A/12). Aggrieved by the action of the Respondent No.2 who had been continuously resorting to recruit fresh faces from open market without exhausting the post-81 casual labourers' list, they have filed this Original Application praying for the following reliefs;

- (a) direction be issued to the Respondents to prepared a combined seniority list of project casual labourers of Construction organisation and Open Line as on 1.4.1985 within the geographical jurisdiction of Waltair Division
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in terms of Estt.Sl.No.187/86 and to re-engage/appoint the Applicants basing on the said combined seniority list of Civil Engineering Department of Waltair Division;

- (b) to set-aside/quash para-2 of DRM(P)/Waltair's letter No.WPY/942/Policy/C.L. dated 16.6.1995 (Annexure-A/3) being contrary to the Railway Board's instruction contained in Estt.Sl.No. 187/86 (Annexure-A/2) and 308/87(Annexure-A/4);
- (c) for a direction to the Respondent No.3, the CAO(Construction) for re-engagement of the Applicants in the existing and future vacancies under his jurisdiction;
- (d) to direct the Respondents to re-engage the applicants in the vacancies existing at Koraput and Laxmipur in preference to the fresh candidates being proposed to be recruited from open market as notified under Annexure-A/15.



4. Shri B.S.H.Rao, learned Counsel for the Applicants in his oral submission, while emphasizing the averments made in this Original Application, by filing a datechart cum chronology of events, drawn our attention to the injustice done to the applicants. He submitted that while Railway Board issued guidelines as to how to prepare the pre-81 Project

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Casual Labourers' list directed that their engagement to be done only after exhausting the post-81 casual labourers' list. Respondents 2 and 3 have done nothing to adhere to the above guidelines of the Railway Board. The CAO(Construction) had only engaged 30 post-81 casual labourers as per seniority in Construction Organisation to meet their immediate requirement. He also cited examples of how Casual Labourers having less number of days of service had been re-engaged by the Respondents and how on 23-8-1995 as also on 18.9.1996 they had re-engaged 180 pre-81 casual labourers from Open market and 208 fresh faces as casual labourers on daily rates of pay from open market respectively but no worthwhile action was taken to regularise the service of the Applicants who were otherwise eligible in all respects <sup>and</sup> even though their names had also been recommended by the CAO(Construction), Visakhapatnam. He also referred to the appointment of about 423 fresh faces, for filling up of the vacancies in Koraput, Laxmipur and Rayagada and in referring to this, it was submitted by learned counsel for the Applicants that at that time also the cases of the Applicants were not taken into consideration. There were, according to him, cases of patent injustice and hence this Tribunal <sup>should</sup> ~~to~~ render justice.

5. Respondents in their counter have not only denied the allegations of the Applicants but also have stated that the Application deserves to be dismissed on two grounds;

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one, due to lack of jurisdiction of this Tribunal to entertain this Original Application, and, the other is limitation. They have stated that all the Applicants being residing at Visakhapatnam, in the State of Andhra Pradesh, which is outside the territorial jurisdiction of this Tribunal, this application should not be entertained. Further, the letter under challenge in this Original Application having been issued by the South Eastern Railway, Waltair division in Andhra Pradesh, on both the counts, the matter is outside the geographical jurisdiction of this Tribunal. Regarding the limitation it has been averred by the Respondents that this application is grossly barred by time as the cause of action, if any, arose way back in the year 1986-87 and not in 1998 when this Original Application was filed.

6. In the rejoinder, the Applicants have answered that the Original Application was filed on 16-09-1998 and this Tribunal had issued notice after being satisfied. The Respondents also remained silent for four years and therefore, it was not correct on their part to come out with the plea of lack of jurisdiction of this Tribunal and to seek dismissal of this Original Application. They, therefore, felt that the Respondents are estopped from taking this plea of jurisdiction after a lapse of four years.

further, they pointed out that one of the prayers of the Applicants is for a direction to the Respondent No.3 i.e. C.A.O(Construction), Bhubaneswar and his jurisdiction covers all construction works under CPM/VSKP, Sambalpur Division at Khurda Road Division, <sup>the</sup> the plea of jurisdiction raised by the Respondents is not tenable. In support of the plea of jurisdiction, it has further been averred by the Applicants that they have impugned the notification of DRM(P), Waltair dated 19-7-1997 which was issued calling for applications from the post-81 Casual Labourers of Construction Organisation for filling up of the vacancies in Gr.D Gangmen in Koraput-Rayagada new BG Line. The Applicants belong to construction organisation which has constructed this line and therefore, this Original Application is within the jurisdiction of this Tribunal as there is a part cause of action as per Rule 6(2) of CAT Rules, 1987. Regarding limitation it has been averred by the Applicants that since they have challenged the impugned notification dated 19-8-1997 in this Original Application, it can not be said that this application has been filed beyond the period of limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985.

7. We have given our best thought to the matter both with regard to jurisdiction of this Tribunal as also to the question of limitation. After examining the rule position,

provided in the CAT Rules, 1987 and in view of the facts of this case, we are inclined to agree with the Applicants that they did not commit any error in filing this Original Application before this Tribunal. Regarding the question of limitation we also agree with the Applicants that this Original Application was filed well within the time schedule prescribed in section 21 of the Administrative Tribunals Act, 1985. Having taken care of the preliminary objections of the Respondents, we proceed to deal with the other objections advanced by the Respondents.

8. The Respondents have drawn our notice to the judgment of the Hon'ble High Court of Gujarat reported in AIR 1999(1) page-267 and the decision of the Jabalpur Bench of the Tribunal. While agreeing with the ratio of these two decisions and holding the same view, we proceed to discuss the matter on merit and dispose of it leaving no possibility of further litigation on the same grounds.

9. The Respondents in their counter have disputed that any of the functionaries of the South Eastern Railway less Respondent Nos. 2 and 3 have violated any of the guidelines/instructions as contained in Estt. Sl. No. 187/86. The fact of the matter is that the CAO/Visakhapatnam submitted a list of 1182 post-81 casual labour list and 115 names of WRE casual labour on 3-1-1991 without disclosing the basis of their engagement, reasons of retrenchment and why

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the said list could not be sent earlier and as to whether the above engagements <sup>had</sup> the approval of the General Manager. It is not in dispute that by virtue of an order issued in the year 1990 initial engagement of the Casual Labourers in any project was banned without obtaining prior approval of the General Manager. It is because of these reasons, after receipt of the lists from CAO, Waltair, the matter was discussed with the General Manager, South Eastern Railway, Calcutta. After discussions at length, the General Manager agreed that the case of those casual labourers who were engaged in construction organisation without prior approval of General Manager w.e.f. the date after 1.1.1981 but prior to 27.12.1989 <sup>would</sup> ~~will~~ be called for from all divisions for necessary examination and post-facto approval of the General Manager. This decision was also communicated by the CPO(Admn.), Garden Reach, Kolkata through his letter dated 19.1.1995 to all concerned including CAO(P), Bhubaneswar. A Committee of five officers was set-up by the General Manager, South Eastern Railway, Kolkata on 23.9.96. The Committee decided that a screening Committee consisting of ~~one~~ APO from Open line and another APO from S&C should jointly scrutinise the list submitted by the construction organisation in a format approved for this purpose for screening of the individuals and for verification of the authenticity of their

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engagement etc. It has also been pointed out by the Respondents that in order to give wide publicity about the decision of the authorities to screen all individuals, whose names appeared in these two lists for the purpose of re-engagement in the department, a public notification was issued on 19.8.1997 asking all the Project Casual Labours to be present before the screening Committee and to establish their genuineness. Such step was taken as these labourers were appointed after 1.1.1981 without prior approval of the General Manager. As a result of the screening, out of 1182 only 31 candidates were proved genuine post-81 retrenched project casual labour and accordingly, their cases were sent for <sup>ex-</sup>post facto approval of the General Manager. Finally all the 31 names were approved by the General Manager and they were given appointment in the Construction Organisation. Applicants in the rejoinder have not been able to refute the main point of the Respondents that the Applicants did not come within the category of casual labourers to be screened in terms of Estt. Sl. No. 187/86. We also find that the General Manager, South Eastern Railway in order to bring to an end the hue and cry of the Casual Labourers, set up a Committee for verifying the authenticity of their engagements with reference to the records such as muster-sheet, paid voucher, LTI to be tallied with the present man,

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authority of engagement etc. After taking all the names from these two lists numbering over 1200, the Committee after putting all of them through the elaborate and rigorous <sup>Selection procedure</sup> found only 31 candidates to be genuine. Applicants have not been able to answer as to why then they could not come through the screening committee. In other words, had they worked as they had claimed, for those periods, they should have been able to prove their credentials before the Screening Committee and obtain their recommendations. It is also to be noted here that each and every individual in these two lists were called upon to appear before the Screening Committee which held its meeting on 28.10.1997 and 29.10.1997 but only 93 (ex-casual labourers) appeared before the screening committee. It has also been stated by the Respondents that they had got the L.T.I. of each and every individuals examined by the finger print specialist to ensure total correctness of the selection process leaving no room for doubt. Since the Applicants did not appear in the Screening test or failed in the test, as the case may be, they definitely cannot claim success in this Application. Moreover, the exercise undertaken by the General Manager, South Eastern Railway, was in all respect fair and transparent. If the Applicants had not been able to pass the test, nobody else could be held responsible for that but they themselves. In view of the above facts and circumstances

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of the matter, we find no merit in this Original Application and the same is dismissed.

10. In the result, therefore this Original Application No. 484/1998 is dismissed. No costs.

11. Since the same facts and law involved in O.A.No. 24/1999 applying the principles and in view of the discussions made above, it is not required to discuss the matter in detail and hence we hold that O.A.No. 24/1999 has also no merit and the same is dismissed. No costs.

A copy of this order be kept in O.A.No. 24/99.



*21/12/2002*  
(MANORANJAN MOHANTY)  
MEMBER (JUDICIAL)

*B.N. Som*  
(B.N. SOM)  
VICE-CHAIRMAN

KNM/CM.