

CENTRAL ADMINISTRATIVE TRIBUNAL,

CUTTACK BENCH, CUTTACK.



ORIGINAL APPLICATION NO. 55 OF 1998

Cuttack, this the 25th day of July, 2000

Nar Singh

....

Applicant

Vrs.

Divisional Railway Manager, S.E.Railway 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.*

→
(G.NARASIMHAM)
MEMBER(JUDICIAL)

Sumnath Som.
(SUMNATH SOM)
VICE-CHAIRMAN
25.7.2000

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CUTTACK BENCH, CUTTACK.

ORIGINAL APPLICATION NO. 55 OF 1998
Cuttack, this the 25th day of July, 2000

CORAM:

HON'BLE SHRI SOMNATH SOM, VICE-CHAIRMAN
AND
HON'BLE SHRI G.NARASIMHAM, MEMBER(JUDICIAL)

.....
Nar Singh, s/o late Lachhaya,
Village Dinabandhupur,
P.O-Kuhudi, P.S-Tangi, Dist.Khurda...Applicant

Advocates for applicant - M/s D.R.
Patnaik
M.K.Khuntia

Vrs.

1. Divisional Railway Manager, South Eastern Railway,
Khurda Road Division, At/PO-Jatni, Khurda Road,
Dist.Khurda.
2. Senior Divisional Engineer (Co-ordination),
South Eastern Railway,
Khurda, At/PO-Jatni,
Khurda Road, Dist.Khurda.
3. Senior Divisional Personnel Officer, South Eastern
Railway, Khurda, At/PO-Jatni, Dist.Khurda

..... Respondents

Advocate for respondents -Mr.Ashok
Mohanty

O R D E R
SOMNATH SOM, VICE-CHAIRMAN

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In this application the petitioner has
prayed for quashing clauses (e) and (f) of the notice
dated 28.5.1996 at Annexure-2. The second prayer is
for a direction to the respondents to communicate the
result of the representation which was submitted by the
applicant in 1993 for engagement as casual labourer
against 255 vacancies and the third prayer is for a
direction to the respondents to engage the applicant as
casual labourer on priority basis for the year 1997-98.

2. The petitioner's case is that he had worked as casual labourer under the Railway administration for a number of days from 6.9.1968 to 23.4.1972 in support of which he has enclosed experience certificate issued by Permanent Way Inspector, Balugaon. He has stated that in response to an advertisement dated 28.5.1996 (Annexure-2) he applied for engagement as a casual labourer in Engineering Department against 907 vacancies. He has stated that under the law a retrenched casual labourer has a right to be given preference over fresh faces. He has also stated that under the instructions a seniority list of casual labourers is to be prepared and the list has to be exhausted by giving engagement to casual labourers. He has further stated that he received no intimation about his application filed in response to the notice dated 28.5.1996. In this notification it has been mentioned that the period of engagement is for 119 days or upto 31.12.1996 whichever is earlier. In clause (e) of the notice dated 28.5.1996 it has been mentioned that the age requirement is between 18 and 33 years relaxable for 5 years for SC and ST and three years for OBC and in clause (f) it has been mentioned that the minimum qualification is Class V pass. The applicant has stated that because of these two conditions the retrenched casual labourers will not be considered. He has also stated that in 1993 he had applied for engagement but had not received any intimation. He has further stated that he understands that already 319 persons have been given appointment in order dated 9/10.5.1997 without any public notice and

without any interview. He has stated that appointment of 319 casual labourers is illegal and in the above context he has come up with the prayers referred to earlier.

3. The respondents in their counter have stated that the applicant was engaged as Khalasi in Doubling Wing of Railway from 6.9.1968 to 23.4.1972 under PWI (Doubling), Jagannathpur, Bhusandpur and thereafter he was discharged due to reduction of work and final settlement, compensation and one month's notice pay were paid to him. It is stated that the notice dated 28.5.1996 was issued for engagement of 907 casual labourers for monsoon patrolling work for a short period of 119 days. The sanction was later on reduced to 812. After completion of selection 611 candidates were empanelled and the panel was published on 10.10.1996 but the applicant's name did not find place in the panel. It is also stated that the applicant did not approach the Railway administration before 31.3.1987 and therefore his name was not included in the Live Casual Register which has in the meantime been exhausted completely. In view of this, the respondents have gone in for public notice dated 28.5.1996. They have stated that stipulations with regard to age and educational qualification are not violative of the principles of natural justice. It is also stated that a similar issue has already been decided by the Tribunal in a common judgment dated 25.1.1999 in a batch of 15 cases in OA Nos. 439/96 and other OAs. It is stated that the applicant not having

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approached the Railway administration prior to 31.3.1987 his name was not included in the Live Casual Register and therefore he was not considered.

4. We have heard Shri D.R.Patnaik, the learned counsel for the petitioner and Shri Ashok Mohanty, the learned Senior Panel Counsel (Railways) for the respondents. The learned counsel for the petitioner submitted that this matter is covered by the order of the Tribunal dated 25.1.1999 in a batch of fifteen cases and the applicant seeks similar order in this case.

5. We have gone through the records of OA No.439 of 1996 and the batch of cases and the order dated 25.1.1999 of the Tribunal disposing of the batch of 15 cases. The different prayers made by the applicant are discussed below. The first prayer of the applicant is that the age and educational qualification mentioned in the notice dated 28.5.1996 should be quashed. In the notice upper age limit has been mentioned as 33 years relaxable for five years for SC and ST and three years for OBC. The applicant has not mentioned in his OA if he belongs to SC, ST or OBC. Therefore, it is taken that in his case the upper age limit of 33 years will apply. In paragraph 6 of their counter filed in OA No.439 of 1996 the Railway authorities have mentioned that due to strenuous nature of the job physical fitness is a necessary criterion and that is why the age limit has been fixed. But so far as the retrenched casual labourers are concerned, it has been decided to give weightage of one year for

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each completed year of service as casual labourer to be added to the upper age limit of 33 years. In view of this, it is clear that the Railway authorities themselves have relaxed the age limit for retrenched casual labourers in the manner indicated above. In the order dated 25.1.1999 in the earlier batch of cases the Tribunal have held that the approach of the Railways with regard to age relaxation for the retrenched casual labourers in the manner indicated above is reasonable and beyond this courts and tribunals should not relax the age qualification more so when in a series of cases referred to in the order dated 25.1.1999 it has been laid down by the Hon'ble Supreme Court that it is not for the Courts and Tribunals to consider the relevance of qualification prescribed for the different posts. In view of this, the prayer of the applicant for quashing the age qualification is rejected taking into account the fact that the Railways themselves have relaxed the age qualification for retrenched casual labourers in the manner indicated earlier.

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6. As regards educational qualification in paragraph 10 of the order dated 25.1.1999 we have held that in case of retrenched casual labourers the minimum educational qualification should be the same which was in force when they were initially engaged as casual workers. The applicant in his petition has not mentioned as to what his educational qualification is as against the minimum requirement of Class V pass mentioned in the notice dated 28.5.1996. As we have

already decided the minimum educational qualification in respect of casual workers vis-a-vis the notice dated 28.5.1996 should be the same which was in force when they were initially engaged. In view of our above finding and observation, the prayer of the applicant for quashing the educational qualification mentioned in clause (f) of the notice dated 28.5.1996 is also rejected.

7. The petitioner has mentioned that he made an application in 1993 for engagement as casual worker. Besides making this bland assertion he has not given any document or mentioned anything in support of his having applied in 1993. In any case as discussed in paragraph 6 of our order dated 25.1.1999 the Hon'ble Supreme Court in Dakshin Railway Employees Union, Trivandrum Division v. General Manager, South Eastern Railway and others, AIR 1987 SC 1153, have directed that all persons who desired to claim the benefit of the scheme brought into force by the Railways for re-engagement of casual workers and who have been retrenched before 1.1.1981 should submit their claims before the Railways administration before 31.3.1987.

JJom. There is no averment in the OA that the petitioner had approached the Railway authorities before 31.3.1987. No doubt the retrenched casual workers are to be given preference as against fresh faces. But no employer can be directed to engage such persons who have on their own admission come up after two decades of their last engagement as in the case of the petitioner before us. In view of the above and also in view of the fact that

the petitioner has not given any evidence in support of his having applied in 1993 the prayer for a direction to the respondents to intimate the petitioner about the fate of his application made in 1993 is rejected. In any case the petitioner has stated that he had applied in 1993 in respect of 255 vacancies of casual labourers. In our order dated 25.1.1999 it has been noted that the Railways have pointed out that there was no sanction for 255 posts and therefore, no further action was taken in pursuance of the vacancy notice issued in 1993. This completely answers this prayer of the applicant and the prayer is accordingly rejected.

8. As regards the applicant's last prayer that he should be considered for engagement as casual labourer for 1997-98 there is no material before us that the Railways are intending to engage retrenched casual labourers or fresh faces in 1997-98. This period is also long over. The notice at Annexure-2 is only for seasonal engagement during monsoon patrolling. In view of this, it is not possible to give any direction to the Railway authorities to consider the case of the applicant for engagement in 1997-98 which is already over.

9. In the result, the Original Application is disposed of in terms of the observations above. No costs.

(G.NARASIMHAM)

MEMBER(JUDICIAL)

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(SOMNATH SOM)
25.7.2000
VICE-CHAIRMAN