

CENTRAL ADMINISTRATIVE TRIBUNAL

CALCUTTA BENCH

No. OA 1043 of 96

Present ; Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman

Hon'ble Mr. S. Dasgupta, Administrative Member

AMAR SHEET & ORS.

VS

UNION OF INDIA & ORS.

For the applicants : Mr. S.R. Kar, counsel

For the respondents : Mr. P.K. Arora, counsel

Heard on : 5.3.98

Order on : 5.3.98

O R D E R

S. Dasgupta, A.M.

We have the 1d. counsel for both the parties at the admission stage and perused the pleadings on record.

2. Three applicants have joined in filing this OA under Section 19 of the A.T. Act, 1985 seeking a direction upon the respondents to consider their case for re-engagement in the event of engaging or re-engaging casual labour who are junior to them. They have also sought setting aside of appointment of Respondents No. 8, 9, 10 & 11 who are allegedly junior to one or the other of the applicants.

3. The applicants admittedly had worked for less than 120 days as casual workers in the Railways. They had earlier joined certain other applicants in OA 573 of 92 seeking inter alia regularisation on Group 'D' posts. The Tribunal did not entertain the said application in respect of the present applicants in view of the fact that admittedly they had worked for less than 120 days. They were, however, given liberty to file a separate application. The applicants thereafter filed another OA 1234 of 92 and the same was also dismissed on the ground that not having worked for 120 days they could not be considered for empanelled list of casual labours. The Review Application against the same order was also subsequently dismissed.

4. The 1d. counsel for the respondents raised the question of maintainability of the present application in view of the previous order passed. We have carefully considered his submission. We have seen that the earlier applications were dismissed since the relief prayed for in those applications was for regularisation of Group 'D' posts and the Tribunal considered such a relief could not be granted as 120 days were not completed. The present application is basically for re-engagement in <sup>preference</sup> ~~pursuance~~ to the juniors. We are therefore of the view that the present application is not barred by resjudicata or constructive resjudicata. No doubt the applicants have worked as far back as in 1976-77, However, as there is no denial of the allegation made by the applicants that some juniors have been appointed as casual labour <sup>as</sup> infact in para III of the reply it appears that at least 2 persons who were junior to the applicants by the virtue of the number of days worked were appointed as casual labour. The 1d. counsel for the respondents pointed out in course of submission such appointment was made in pursuance to the order in OA 449 of 88. Even that be so, we are of the view that Tribunal's order did not stipulate that the persons should be given appointment in preference to their seniors. Since admittedly certain juniors have been appointed, the cause of action of the applicants is a continuing one as has been held by several Benches of the Tribunal.

5. In view of the foregoing we direct the respondents to consider re-engagement of the applicants as and when casual labours are ~~except~~ appointed by the Railways. The number of days worked by them already shall be taken into account for the purpose of fixation of their seniority for eventual consideration for regularisation. The OA stands disposed of accordingly at the admission stage itself. No order as to costs.