CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

O. As.No. 211, 212 & 192 of — 2003
M.As No. 112,113 and 99 of 2003 in above OAs

This the 4th day of February, 2005.

Raj Kumar S/o Shri Ram Chandra Aged 42 years,
Ex. Casual Labour at Sadulpur Railway Station,
North West Railway, Bikaner Division, Sadulpur,
R/o C/o Shri Surja Ram, retired Traffic Inspector,
Ward No. 12, Behind Mohta collee, Sadulpur.
...Applicant in OA No. 211

Mangtu Ram S/o Shri Sanwal Ram aged 41 years,
Ex. Casual Labour at Sadulpur Railway Station,
North West Railway,Bikaner Division, Sadulpur
R/o C/o Shri Surja Ram, retired Traffic Inspector,
Ward No. 12, Behind Mohta College, Sadulpur.
...Applicant in OA No. 212

Narendra Kumar S/o Shri Surja Ram, aged 41 years,
R/o Sadulpur C/o Shri Surja Ram Retired Traffic Inspector,
Ward No. 12, Behind Mohta College, Sadulpur, Ex.Casual Labour
North West Railway, Sadulpur.
...Applicant in OA No. 192

(By Mr. Y.K. Sharma, Advocate, for applicants)

Versus

1. Union of India through
the General Manager, North West Railway,
Head Quarter, Jaipur.

2. Divisional Railway Manager,
North West Railway, Bikaner Division,Bikaner.

3. Divisional Personnel Officer,
North West Railway, Bikaner Division, Bikaner.

...Respondents in OAs.

(By Mr. Akhil Gupta, Advocate brief holder for Mr. Vinay Jain, Advocate in O. A. No. 211 / 2003,
by Mr. N.K. Khandelwal, Advocate, in O.A. no. 212/2003 and
by Mr. B.L. Bishnoi, Advocate, in O.A. No. 192/2003, for the respondents.)

ORDER
[BY THE COURT]

O.A. No. 211/2003 along with M.A. 112/2003, O.A. No. 212/2003 along with M.A. 113/2003 and O.A. No. 192/2003 along with M.A. No. 99/2003, have been preferred by applicants Raj Kumar, Mangtu Ram and Narendra Kumar respectively against common respondent Union of India represented through the General Manager, North West Railway, Headquarter, Jaipur. O.As have been filed on 23.9.2003, 23.9.2003 and the third one on 9.9.2003. All these, admittedly, are not against any specific order, but are based on facts which are contained in some representation made on 25.7.2002 in all the three cases. It would be appropriate to mention what exactly this representation is, a copy of the same being available in each O.A. record. All that it says to the Divisional Personnel Officer of North West Railway at Bikaner is, that the applicants have worked for 120 days continuously on some job at Gogameri and Sadulpur Railway Stations of North Western Railway and thus acquired temporary status. But, that despite such work having been done some time in the year preceding 1987 and even after applying for getting their names entered in the Live Register, nothing has been done, but some juniors to the applicants have been given jobs and thus the prayer is that their names be entered in the Live Register and they be regularized as per seniority.

2. As all the three applications relate to similar relief and are based on similar facts, they are being disposed of by a common order.

3. The learned counsel for the applicants Sh. Y.K. Sharma and the learned counsel for respondents, have been heard.

4. The story of the applicants runs some what like this. They were engaged as Hot Weather Watermen at Gogameri Station between August 1979 to September 1979 and thereafter, between July 1985 to September 1986 for different spells of period. All of them have enclosed their Casual Labour Card showing the details of working period and marked as Annex. A/2. In March 1974, some Instruction was issued by the General Manager about treatment of Casual Labour who had put in four months of continuous employment and which further directs the authorities to bring such labour for payment of authorised pay scale and further that the January 1985 instructions regarding grant of regular scale of pay to Casual Labour engaged as Hot Weather Watermen. It is contended that all this makes their case eligible for consideration of grant of entry in the Live Register and further absorption as per seniority in Group 'D" post.

5. The prayer portion contained in paragraph 8 runs as follows :-

> "(A) That this Tribunal may kindly be pleased to direct the respondents to place the name of the applicants if not already done, in the Live Casual Labour Register for the year 1987.
>
> (B) That the Respondents may further be directed to disclose seniority position of the applicants in the Live Casual Register, Screen and absorb the applicants in regular 'D' posts with all consequential benefits."

6. Detailed reply has been filed by the respondents, the main contents of which are as follows :-

> (A) That the O.A. filed by the applicants is not liable to be entertained in view of the fact that the same has been filed with a great un-explained delay of about more than 15 years. It is pertinent to note here that in between 1986 up-to approaching this Tribunal i.e. in the year 2003, the applicants have never represented before the respondent administration at any point of time. The applicants even did not care to produce any material to prove that they approached the administration in between the period running from 1986 to 2003 before approaching the Tribunal.

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(B) That Hon'ble the Supreme Court of India in the Judgement passed in Writ Petition (Civil) No. 71/92 and Writ Petition (Civil) 223/93 decided on 13.5.1993, has held that delay itself deprives a person of his remedy available in law.

(c) That the applicants have never made any representation dated 25.7.2002 and no such representation was ever received by the respondents in such circumstances, the O.As filed by the applicants are not maintainable.

(d) That in reply to para 4.2 and 4.3, it is submitted that the applicants have submitted photo copy of the alleged Casual Labour Card, which cannot be a valid piece of evidence and which cannot be verified at this stage i.e. after a period of 17 to 24 years. As a matter of fact, it would be verified at this stage that whether the applicants have worked at Gogameri Station as Hot Weather Watermen because after a gap of about 24 years, it is impossible to verify the claim of the applicants.

(e) That it is not believable that the Circular Annex. A/7 was issued on 9.11.1987 and just after three days, the Station Master, Gogameri has sent the name of the

applicants on 12.11.1987. The contentions raised by the applicants in this para are not believable and, therefore, the same are liable to be rejected.

(f) That the contentions of paras 4.13 and 4.14 of O.As are not admitted being baseless and frivolous as the applicants have never represented before the respondents at any point of time in writing and, therefore, in view of the Hon'ble Supreme Court's Judgement (Annex.R/1), applicants are not entitled to get any relief from this Tribunal.

7. In all the M.As that have been filed, prayer has been made to condone the delay in preferring the M.A. on the ground that non-inclusion of the names of the applicants in the Live Casual Register, gives a continuing cause of action and it was their right to have their name included by virtue of having rendered particular amount of service under the respondents. It has also been indicated that Hon'ble the Delhi High Court in C.W.P. No. 5071/99 – Shish Pal Singh and Ors. Vs. UOI and Ors. reported in 2000 (1) ATJ 153, held that the cause of action is a continuous one and it cannot be lightly brushed aside. A reply to M.A. has also been filed in all the cases with the sole objection that Delhi High Court ruling cited by the learned counsel for applicants, has no bearing in view of the law laid down by Hon'ble the

Supreme Court. Learned counsel for respondents has brought to our notice an order of this Bench dated 16.3.2001 passed in a batch of O.As beginning with No. 332/1998 where all the O.As along with one M.A. was disposed of on the ground of delay and latches. Paragraphs 10 of this order makes it clear that M.A. for condonation of delay was filed only in one case and it was very vague. There was no prayer for condonation of delay in any of the other O.As and, therefore, all the O.As were dismissed. Compared to that 'we find the present MAs are slightly different'. It is also found from the order quoted by the respondents that the claim of employment made by the applicants in those batch of cases were verified by the respondents and a clear-cut chart furnished to show the period of engagement and dis-engagement. It also appears that the respondents came-up with their arguments on specific points with respect to the nature of employment under gone by the applicants and which ranged from year 1974 in some cases. In the instant case, we find that the employment claimed to be under the respondents is beginning year 1979 and ending 1986. In the cases quoted by the respondents, there is a specific averment that they could verify the service details of the applicants therein. In the instant case there is no mention about the authenticity or efforts made to verify the claim except the statement that it is an old case. M.As for condonation of delay are therefore allowed.

8. What appears apparent on the face of record is that the respondents had no opportunity to verify the claims of engagement made by the applicants and have only stated that the matter is very old. In the reply to O.A. No. 192 of 2003 – Narendra Kumar Vs. UOI and others, in the opening paragraph, they say that 'it would not be a proper exercise to direct opposite parties to verify the correctness of the statement made by the petitioners."

9. Considering that the respondents had no opportunity to verify the claim made by the applicants and that the matter concerns labourers who are alleged to have worked on daily wages, in the interest of justice, it would be appropriate if the respondents are given an opportunity to consider the contents of the O.As. as a representation and pass a speaking order on the same within 90 days of the receipt of a copy of this order and communicate the same within next 30 days to applicants. This would allow them to verify the claims and documents annexed to the O.A. It goes without saying that the applicants, if so advised, may agitate the matter again. Applications disposed of accordingly. No costs.

Sd/-
(G.R.PATWARDHAN)
MEMBER (A)

jrm

CERTIFIED TRUE COPY
Dated 10/02/2005
अनुभाग अधिकारी (न्याय.)
Section Officer (Judl.)
केन्द्रीय प्रशासनिक अधिकरण
Central Administrative Tribunal
जोधपुर न्यायपीठ, जोधपुर
Jodhpur Bench, Jodhpur.