

I/HO  
J/15

**Central Administrative Tribunal  
Jodhpur Bench, Jodhpur**

O. A No. 79/2003 and M.A.No. 54/2004 (In OA 79/03)  
Date of Decision : This the 09<sup>th</sup> day of November. 2004.

**Hon'ble Mr. G.R. Patwardhan, Administrative Member**

Shaitan Singh S/o Shri Sohan Singh  
Aged 36 years, resident of C/o Lal Singh  
T-193, Mandal Rail Aavas, Jodhpur, lastly  
employed as Farrash.

.....Applicant.

[By Mr. Hemant Shrimali, Advocate, for applicant]

1. Union of India through General Manager  
North West Railway, Jaipur District Jaipur.
2. Assistant Executive Engineer (A.E.N.)  
North West Railway, Jaisalmer District Jaisalmer.
3. Divisional Railway Manager (D.R.M.) North West  
Railway, District Jodhpur.

.....Respondents.

[By Mr. Salil Trivedi, Advocate, for respondents]

**ORDER  
(By the Court)**



O.A. 79/03 has been filed by Shaitan Singh against the Union of India through the General Manager, North West Railway, Jaipur, Assistant Executive Engineer, North West Railway, Jaisalmer and the Divisional Railway Manager, North West Railway, Jodhpur. In para 1 of the application, it is admitted that the application is not against any order that is under challenge but, is preferred with regard to a direction that the applicant would like this Tribunal to issue to the respondents for providing him an appointment – by way of an interim relief it is prayed that during the pendency, respondents should be directed to allow the applicant to continue on the post of Farrash as he was continuing prior to 10<sup>th</sup> January, 2000 and be paid salary of the post. Some

S/he

of the facts now may be noted in chronological order to appreciate the case of the applicant.

(a) The applicant served with the respondent department from some month in 1971 to some month in 1973 for a total period of 526 days.

(b) The applicant made a representation in December 1999 and thereafter, in March 2003 vide Annexs. A/1 and A/2 addressed to the Assistant Engineer, Jaisalmer.

(c) To the representation of December 2003, North Western Railway (as it then was ) informs the applicant on 24<sup>th</sup> December, 1999 that since his name does not find place in the Live Register, his application cannot be considered for further action (Annex.A/3).

2. The applicant feels aggrieved by this communication at Annex. A/3 and maintains that others are being appointed against the available vacancies and he has a better right to be considered on the ground that he has already rendered service of about 500 days and if the Live Register does not show his name, it is not his fault.

3. Reply has been filed on behalf of respondents where the following are emphasized :-

(a) The application is barred by limitation as the cause of action arose some time in 1973 but the OA has been filed after thirty years.

(b) The applicant is not very clear about the dates when he served the Railways and has not even mentioned the place and the authority under whom he rendered such service.



112  
4/17

(c) In O.A. No. 332 of 1998 – Bishna Ram Versus Union of India, this Tribunal dealt with a similar situation and through its order of 16th March, 2001, came to the conclusion that the prayers were time barred.

(d) In any case, the representation of the applicant was replied to on 24<sup>th</sup> December, 1999 and as his name did not find place in the Live Register of Casual Labours, there was no scope for him to file OA and it is a settled proposition of law that once a representation has been decided by the competent authority, similar representations made thereafter cannot be taken in help for condonation of delay.

4. During the course of arguments, the learned counsel for the applicant insisted that if at all the Live Register is produced then it would reveal that applicant's name is very much there and the respondents should be directed to produce the same as the entire claim is based on the same. He also insisted that the application is not barred by limitation as he has been making repeated representations to secure his right of being considered for a regular appointment.

5. Admittedly, the applicant has not been very forthright about the period during which he was employed. In paragraph 4 of his applications only the years 1971 and 1973 are mentioned – there is no mention of the date or the month or even the authority or the place where he served the respondents. The only annexures that he has been able to enclose with the O.A. are the two representations which do not indicate any date and a reply to that at Annex. A/3, already mentioned. However, in the additional affidavit, applicant says that he worked from 6.5.1971 to 14.5.1973 under the Permanent Works Inspector (PWI), Phalodi and that a temporary labour service card was issued to him which was lost and towards which a Station diary entry was made on



SPR

27.12.1993 in the Police Station, Pratap Nagar, Jodhpur. However, it needs to be noted that the two representations referred to above at Annexs. A/1 and A/2 do not indicate that the applicant had a card. There is no mention of the efforts made to get another card as admittedly in the Station diary entry the applicant mentions that he is working in Railways on daily wages.

6. There is another interesting aspect of the matter and it is reflected in the order dated 1.8.2003 when the then Hon'ble Member (Administrative) observed that if the narration of the facts in the OA is taken as correct then the age of the applicant in 1971 when he started working with the respondents should be only four years and this cannot be accepted. The applicant has however filed an affidavit thereafter and submitted that his date of birth is 14.5.1953 and thus fit for Government employment in 1971. However, this again makes him ineligible on 6.5.1971, he being short of eight days for attaining majority age of 18 years.

7. There are two issues that need to be decided. The first is if this application filed on 1.4.2003 can be entertained after nearly 30 years and second – if the applicant has been able to prove that he was actually engaged as a Casual Labour and is entitled for relief by way of appointment again as Casual Labour or otherwise.



In so far as the first issue is concerned, what is not clear is, how after 1973 and definitely before the Central Administrative Tribunal came into being, the applicant decided to keep quite or even if he agitated the matter in different forums including the respondents, whether he was given any response. This is an issue which is not satisfactorily explained either by the pleadings or by the arguments.

Even if, it is held for a moment that the period between 1973 to 2003 is covered by way of attempts of the applicant to secure justice and it is a continuing cause, he has not been able to explain how even after receipt of the communication dated

S/o

24.12.1999, enclosed as Annex.A/3 when his prayer for consideration for appointment was rejected, he decided to keep quiet for full three years and came up only in April 2003 to this Tribunal.

8. It is also found from an order of this Tribunal of 16.3.2001 in O.A. No. 332/98 of Bisna Ram Vs. General Manager, Northern Railway, and Divisional Railway Manager, Jodhpur that in nearly similar situations, the prayer for condonation of delay was not agreed to and consequently the O.A. was dismissed. In the instant case in M.A. No. 54/2004 filed on 18.5.2004 (much after the OA was preferred in April 2003), all that is said is that the name of the applicant did exist in the Live Register and respondents be directed to supply or place all the relevant documents, representations, circulars, lists and supplementary live register before the Tribunal so that proper adjudication of the matter is ensured.

9. A reply to the M.A. is also on record from the respondents whereby, the contention of the applicant has been branded as mis-leading and false. It is insisted by the respondents that even the affidavit refers to some third party to infer applicant's name being on the Live Register.

10. The stand of the applicant that he was born on 14.5.1953 and got engaged on 6.5.1971 cannot be prima facie accepted. - he was admittedly less than eighteen years of age. His failure to indicate date of birth and date of engagement in the O.A., inability to explain delay of thirty years in filing the claim and lastly insistence for production of documents without pinpointing those which he wants to rely does not inspire confidence. The application is without merit and is rejected. No costs.



— G.R. —

[G.R.Patwardhan]  
Administrative Member

Jrm

Reportable performance Review  
10/11/04

10/11/04  
10/11/04  
10/11/04

10/11/04  
10/11/04  
10/11/04

copy Review  
10/11/04  
10/11/04  
10/11/04