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**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
JODHPUR BENCH, JODHPUR**

ORIGINAL APPLICATION NO. 272 OF 2005  
Date of decision: This the 25<sup>th</sup> day of May 2006

**CORAM:**  
**HON'BLE MR. J.K. KAUSHIK, JUDICIAL MEMBER**

Radha Kishan Tiwari S/o Shri Avadh Raj Tiwari, aged about 43 years, resident of – Street No. 8, Rampura Basti, Bikaner (Raj.), at present working / employed on the post of Khallasi, Casual Labour, under I.O.W. (Works), North-West Railway, Lalgarh, Bikaner (Raj.).

.....Applicant

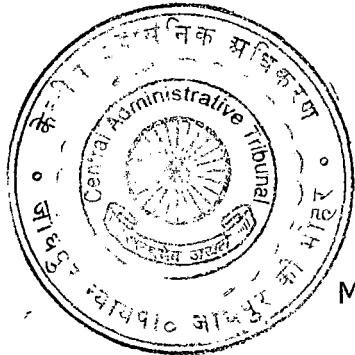
Mr. Y K Sharma, Advocate, for applicant.

Vs.

1. Union of India through General Manager, North-West Railway, Jaipur (Raj.).
2. The Divisional Engineer, North-West Railway, Bikaner Division, Bikaner (Raj.).
3. The Assistant Engineer, North-West Railway, Bikaner Division, Bikaner (Raj.).
4. The Assistant Personnel Officer, North-West Railway, Bikaner Division, Bikaner (Raj.).
5. The Senior Section Engineer [I.O.W. (Work)], North-West Railway, Lalgarh, Bikaner (Raj.).

.....Respondents.

Mr. N K Khandelwal, Advocate, for the respondents.



**ORDER**

Shri Radha Kishan Tiwari has filed this Original Application under Section 19 of the Administrative Tribunals Act 1985 and prayed for a mandate to the respondents to regularise the services of the applicant from the date his next junior was regularised with all consequential benefits.

2. With the consent of learned counsel for both the parties, this case was taken up for final disposal at the stage of admission since a very short controversy is involved. I have accordingly heard the

*[Signature]*

arguments advanced at the bar and have carefully perused the pleadings as well as records of this case.

3. The brief facts as delineated from the pleadings of the applicant, are that the applicant was initially engaged as casual labour on dated 1.8.81 in the office of PWI Rai Bareily where he worked upto 14.12.81. He was employed at Phagwara during the period from 17.9.1984 to 16.2.1985 and paid in graded scale of pay. He was taken by one Shri Harbans Singh AEN to Bikaner and directed to work under IOW Lalgarh where he joined on dated 1.5.85. He was subjected to termination without complying the provisions of ID Act. He challenged the same before ALC Jaipur, which culminated into a settlement and he was reinstated with continuity in service amongst other things.

4. It has been further averred that the applicant for the first time was subjected to screening test in the year 1992 but his result was not declared. He was again subjected to screening test on 21.8.98 but his result was again withheld. He moved a representation to the competent authority through proper channel but of no avail. In yet another screening test, his name was forwarded by his officer in-charge, but the respondents did not find it convenient even to call him for the same. The action on the part of respondents has been challenged on diverse grounds mentioned in para 5 and its sub-paras and the same shall be dealt with in the later part of this order.

5. The respondents have contested the case and have filed an exhaustive reply to the OA. It has been asserted that applicant did not work at Rai Bareily and his engagement as casual labour was de hors of the rules in as much as the senior subordinates were not competent

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to engage fresh casual labour after 3.1.81. In emergent situations, one could be engaged as casual labour only after approval of the General Manager and no such approval was obtained in this case. There is no provision for transfer of a casual labour and re-engagement of the applicant w.e.f. 10.5.1986 was also ab initio wrong. The applicant was not found fit for the screening since his initial engagement was bad in law. The settlement of ALC is of no avail. The grounds enunciated in OA have been generally refuted and denied. The same is followed by a short rejoinder to counter the defence version.

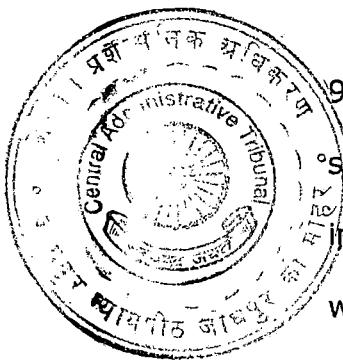
6. The learned counsel for both the parties have reiterated the facts and grounds enumerated in their respective pleadings as noticed above. The learned counsel for the applicant has made me to traverse through the letter dated 18.6.86 (A/4) and contended that the details of his working have been clearly spelt out therein, leaving no room for any doubt. He has submitted that annexure R/2 is an afterthought exercise and was procured by the respondents for some oblique motive. He has endeavoured hard to demonstrate that the applicant has by now served for over 25 years of service but is kept under Damocles' Sward. The applicant has never been informed about any irregularity in his engagement. It is only through the reply to this OA, he has come to know about the alleged irregularity. The official who engaged him had retired from service in the year 1987 itself and also subsequently expired. The applicant obviously believed that his engagement as casual labour was in order. There has been no fault on his part and he has sincerely been discharging his duties ever since his initial engagement in service. He was also granted the due benefits admissible to a temporary status holder. He is being made a scapegoat just to camouflage someone else.



7. Per contra, the learned counsel for the respondents with equal vehemence has submitted that applicant's initial engagement itself was illegal and de hors of the rules in as much no fresh face was to be engaged as casual labour after the cut off date of 3.1.81 except after prior approval of the General Manager. The applicant did not work at Rai Bareily. He could not have been transferred as per rules. The department is investigating into the episode in as much as Late Harbans Singh AEN was not competent to engage him as casual labour. His screening test could not be finalised since his very engagement was de hors of the rules. He has cited the decision of Apex Court in case of **Mahendra L Jain and Ors Vs. Indore Development Authority and Ors** AIR 2005 SC 1252, in support of his contentions.

8. I have considered the rival contentions raised on behalf of both the parties. As far as the factual aspect of the case is concerned, the applicant was admittedly engaged as a casual labour after the cut off date of 3.1.81; his working period may be as per Annexure A/4 or he might have not worked at Bareily as per Annexure R/2. Therefore, the dispute relating his working period is not material for resolving the controversy involved in this case. The Railway Board Circular (R/1) indicates that no fresh face was to be engaged/reengaged as casual labour without prior approval of the General Manager after 3.1.81. The applicant was subjected to screening test for absorption against regular establishment in the year 1992 but his result has not been declared. He was subjected to such screening in 1998 also but with the same fate. Number of his juniors have been screened and absorbed against group D posts in as much as the result of recent

screen test i.e. letter dated 13.5.2004 (A/11) indicates that all the casual labours screened therein were engaged in the year 2000 and subsequent thereto. It also true that the applicant has never been informed regarding any defect/irregularity in his engagement as casual labour and he has come to know it only through the reply to the instant OA. He has been granted temporary status and allowed to enjoy all the right and privileges as admissible to a temporary railway servant except that only half of his service would count for pensionary benefits after absorption in regular establishment. It also not the defence of respondents that the applicant has any connivance with the official who engaged his as casual labour. There is no mention of any inquiry or investigation regarding such engagement, in the reply of the respondents.



9. It is little surprising that the respondents have kept pin drop silence for such a long time. Specific instructions have been envisaged in PS dated 3.5.98 (R/1) for taking action against the erring official as well the conniving individual in as much as even the individual concerned could be removed from service if such connivance is proved. But no such action has been considered expedient. Temporary status followed by regular scale of pay was also granted without any objection. As per Para 2001(i) of IREM Vol-II 1990 Edn, the regular scale of pay is to be granted to the TS casual labours after preliminary verification by the Assistant Officer and finding fit of the individual in medical examination. There is always a presumption in favour of administration that it exercises powers in good faith and for public benefit. The burden is on the individual to produce sufficient material to suggest of the mala fides of the concerned authority and it

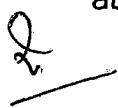
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is not easy to discharge the same. It does not sound well from the side of respondents that their own action was palpably wrong.

10. If there were any irregularity in engaging the applicant as fresh casual labour, for fault on his part, matter could have been taken up for ex-post facto sanction by the competent authority. Such action would have been inevitable since there has been consistent requirement of casual labour and even such engagements have been done in the year 2003. The shield of Non-approval by the General Manager seems to be an afterthought plea or else the reply conceals more than what it reveals. The respondents, being a model employer, cannot be expected to play with the fundamental rights of their employees which are enshrined under Articles 14 and 21 of the Constitution. They are, therefore, now estopped from taking such plea so as to obstruct release of the due rights and privileges otherwise admissible the applicant. I am unable to persuade myself that the action/inaction of the respondents can be countenanced on any count.

11. The decision in case of **Mahendra L. Jain** supra, relied upon by the learned counsel for the respondents, was rendered in different factual background. In that case, the appellant was appointed against a post without notifying of vacancies to employment exchange or making advertisement and claimed regularization and equal pay for equal work. In the instant case, the facts are dissimilar in as much as it is not a case of regularisation in strict sense but it is a case of absorption against regular establishment. There are specific rules for the same and one is required to undergo a screening test before such absorption. A decision is an authority for what it decides and not for



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what could be inferred from the conclusion. In this view of matter, the said authority does not support the defence of the respondents.

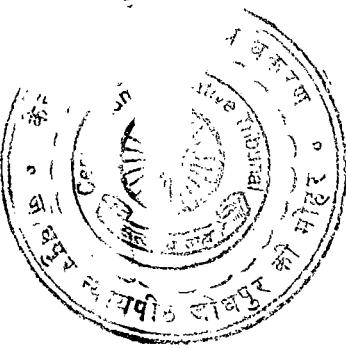
12. In view of the aforesaid discussions, the Original Application is disposed of in the following terms:-

"(i) The respondents are directed to declare the result in respect of applicant of the screening test held in pursuance with letter dated 09.11.1992 (Annexure A/7) and if otherwise found fit, his name be interpolated in the selection panel thereof.

(ii) The applicant shall be entitled to all consequential benefits including absorption against regular establishment with effect from the date candidate next below him in the merit has been so absorbed but the actual monetary effect shall be only from the date of filing of this O.A. i.e. 09.09.2005.

(iii) The respondents may obtain the approval for engagement of the applicant as fresh faces casual labour, if not already obtained.

(iv) This order shall be implemented within a period of three months from today. No costs."

  
J. K. KAUSHIK  
JUDICIAL MEMBER

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Part ~~II~~ & III destroyed  
in my presence on 01/6/06  
under the supervision of  
section officer (I) as per  
order dated 01/6/06  
section officer (Record)

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