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CENTRAL ADMINISTRATIVE TRIBUNAL

O. A. No. 245/2008
Jodhpur, this the 26th Day of July, 2010

CORAM :
Hon'ble Dr. K.B.Suresh, Member (Judicial)

Deepa Ram S/o Shri Tulcha Ramji, aged about 52 years, Ex. Casual Labour, Resident of Village Hnsasar Post Office, Golesar Tehsil Ratangarh, District Churu (Raj).

Applicant

[By Advocate : Mr. Hemant Jain, for Applicant]
-Versus-

- 1- Union of India through the General Manager, North Western Railway, Jaipur.
- 2- The Divisional Personnel Officer, North-Western Railway, Bikaner.

Respondents

(By Advocate :Mr. Manoj Bhandari, for Respondents]

: O R D E R : (Oral)
[BY THE COURT]

The applicant would assail his non-inclusion in the Live Casual Labour Register, on the basis that from 16th June, 1973, he worked for 137 days under the respondents. But, without giving him a notice, the respondents have discharged his services. Apparently, in 1985, he seems to be in receipt of a Casual Labour Card. He would say that it is indicative of the fact that he had served the Railways for 120 days or more.

- 2- On an earlier occasion, this Tribunal in OA No. 224/2007 had considered the case of the applicant and without issuing any notice, on 17th September, 2007 directed the respondents, to pass a speaking order after considering applicant's representation within a



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period of two months. Based on that, as the respondents did not pass a speaking order within the allotted time, a Contempt Petition No. 15/2008 was filed but, at the time when the Contempt Petition was taken-up for consideration, the respondents have passed the impugned order and there-upon the CP was closed on 3rd September, 2008. Thereafter, the applicant had filed this O.A.

3- The impugned order Annex. A/1 dated 12th May, 2008, speaks that the Permanent Way Inspector, Ratangarh, District Churu, on 25th June, 1985, had issued him a Casual Labour Card and all eligible were asked to submit an application for registration in the Live Casual Labour Register, in terms of the Railway Board's Circular dated 4th March, 1987 and the last date fixed was 31st of March, 1987. Apparently, it was clearly stated that the applications received after the last date will not be entertained. The applicant seems to have missed the opportunity.

4- The case of the respondents seems to be that in between 1987 to 2007, when apparently, for first time, the applicant had raised this issue and there is a gap of more than 20 years. They would also say that even though he had made an allegation that his juniors were posted and taken in the employment and he had been discriminated against, the respondents pointed-out that he had not cared to give the names of his juniors nor could inform any other details relating to their employment. They would also say that in view of the judgement of Apex Court in Writ Petition (Civil) Nos. 71/92 & 222/93 in the case

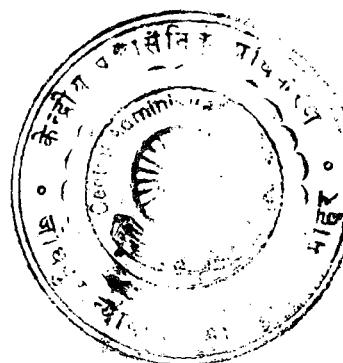
of Ratan Chandra Sammanta & Ors. and Sanat Pakhira & Ors.

VS. UOI. the time barred claim of the applicant cannot be considered. The Railways would also say in their reply that they are unable to place any reliance on Annex. A/3 certificate, as, it appears to be a false document. It does not contain the date and official stamp and they doubted the validity of such document as Sh. Uma Ram, Ex. Mate, who is not a competent person to issue such a certificate in favour of another person and the certificate could only be issued by the Incharge or Senior Subordinate of a particular gang i.e. Chief Permanent Way Inspector or the Permanent Way Inspector, thus Annex. A/3 cannot be acted upon. On the basis of these evidence, they would say that the applicant has never worked as a Casual Labour at Ratangarh or any other Station on Bikaner Division after his engagement on 16th June, 1973 and his working period has not been verified from the Office record of Permanent Way Inspector, Ratangarh, and, therefore, the question of grant of temporary status or CPC scale does not arise at all.

But, the applicant, on the other hand, would file a rejoinder and would say that the service record must be available with the respondents and the burden is upon them to disclose the material particulars thereof. He would also say that it may be so that Uma Ram, Gangman, who had issued Annex. A/3 had may have worked at earlier point of time at Ratangarh as Mate, but that does not mean that the period or time which he has given so definitely, is wrong. He calls upon the respondents to produce the record to contradict Annex. A/3. The applicant would also say that having given a Casual Labour Card it is the duty of the respondents to make a fresh offer to the

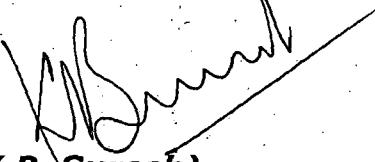
applicant and unless it is refused by the applicant, a burden is cast upon them to provide him employment instead of making bald allegations, the respondent-department has failed to substantiate their pleadings by placing any evidence. He would take shelter behind the order passed by this Tribunal in OA No.224/2007 on 17th September, 2009 and would say that having invited the judicial interdiction, it is open to the respondents to challenge it if they think that the matter requires re-consideration as he would say that the impugned order is passed without application of mind and in a cursory manner and without considering the relevant record and, therefore, prays for quashment of the same. The Tribunal, had passed the order in 2009 only after considering each aspect of the matter and now they could not be allowed to turn around and say that the OA is barred by delay. But, it is pointed-out that the sound of the Tribunal's order is suggestive of consideration and not re-consideration.

5- I am also guided by an another judgement of the Hon'ble Supreme Court in the case of ***Union of India and Ors. Vs. M. K. Sarkar***, reported in 2010 (2) SCC 59, which canvases a view that the issue of limitation or delay and laches should be considered with reference to the original cause of action and not with reference to the date on which an order is passed in compliance with a court's direction. It also directed that a Court or Tribunal, before directing "consideration" of a claim or representation should examine whether the claim or representation is with reference to a "live" issue or whether it is with reference to a "dead" or "stale" issue. If it is with



reference to a "dead" or "stale" issue or dispute, the court/tribunal should put an end to the matter and should not direct consideration or reconsideration.

6- The applicant would allege discrimination against him which is violative of Articles 14, 16 and 21 of the Constitution of India but, apparently, the discrimination is not evident either from the pleadings or from the documentation. If any junior, had been appointed in contradiction to him, it should have been specifically brought-out and the burden thereof lies on the applicant and the respondents cannot be faulted for not having the record / documents of two decades earlier. If a last date has been mentioned for entering his name in the Casual Labour Live Register, it can be presumed that he would not have been in the employment at that time that he never knew about it. The mere possession of a Casual Labour Card of 1985, will not be of any help as held by the Hon'ble Supreme Court. Therefore, the Original Application lacks merit, it is hereby dismissed. No order as to costs.


(Dr. K.B. Suresh)
Judi. Member

दिनांक 17/11/55 के अनुसार
प्रतीक्षित दे दिनांक 11/11/66
को भाग-II का ॥ नव लिख गए ।

अनुभाव अधिकारी
केन्द्रीय प्रशासनिक अधिकारण
जोधपुर न्यायपीठ, जोधपुर