

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH

O.A. No. 1345 of 1997

Present : Hon'ble Mr. Justice S.N. Mallick, Vice-Chairman
Hon'ble Mr. B.P. Singh, Administrative Member

CHEPU MAHATO & ORS.

-vs-

UNION OF INDIA & ORS.

NAME OF THE APPLICANTS -

1. CHEPU MAHATO,

Son of Muluk Chand Mahato of Village -
Baradas, P.O. Urma, District : Purulia.

2. Bishwa Nath Gope,

Son of Nonda Gope of Village -Lupangdi,
P.O. Srimeth, District : Purulia.

3. Rashik Majhi,

Son of Shyam Majhi of Village- Baradahs,
P.O. Urma, District : Purulia.

4. Bahadur Majhi,

Son of Ram Majhi of Village- Kasi,
District : Purulia.

5. Sripati Mahato,
Son of Gosto Mahato,
Village- Saldihi, District
Purulia.

6. Lalu Majhi,
Son of Tenakcha Majhi,
Village- Balarampur, District
Purulia.

7. Haruku Mahato,
Son of Buchan Mahato of Village-
Sakaldi, District : Purulia.

8. Haku Mahato,
Son of Milan Mahato of Village
Barada, District : Purulia.

9. Bhakat Mahato,
Son of late Alnad Mahato of
Village- Stsds, Bist. Purulia.

10. Nil Kumar Mahato,
Son of late Nemai Mahato of
Village- Bara Urma, District
Purulia.

11. Ahamabati Mahato, Bhumi
Son of Hatu Mahato, Vill-Barada,
Purulia.

12. Bhadu Mahato,

Son of Muluk Chand Mahato of
Village- Urma, District Purulia.

13. Katu Saha,

Son of Shanai Saha of Village-
Bhalka, P.O.Urma, District Purulia.

14. Birbal Mahato,

Son of Chatu Mahato of Vill-Hukra,
District : Purulia.

15. Madhan Mahato,

Son of rishna Mahato of Village-Ukra,
District : Purulia.

16. Sati Mahato,

Son of Bababat, Vill- Bhakika,
District : Purulia.

17. Lalmohan Mahato,

Son of Rabi Mahato, Vill-Ukra,
District : Purulia.

18. Kali Pada Mahato,

Son of Chetu Mahato, Vill- Urma,
District : Purulia.

✓ 19. Mohan Mahato,
Son of Birka Mahato, Village
Sridhi, P.O. Kamtaashi,
District : Purulia.

20. Bokadapa,
Son of Kundal of Village-Pushpurtul,
District : Purulia.

21. Ananda Mahata,
Son of Bhanu Mahata, Village
Bhaliku, District -Purulia.

22. Prafu Mahato,
Son of Kake Mahato,
Village- Junu, District
Purulia.

23. Haran Mahato,
Son of Mahanadi Mahato,
District : Purulia.

24. Birdi Majhi,
Son of Bahatul Majhi,
District - Purulia.

25. Sital Majhi,
Son of Lakhan Majhi,
Village- Guri,
District : Purulia.

✓ 26. Sripati Saha, Mahato
Son of Gosta Saha, Vill-
District : Purulia.

27. Nanda Majhi,
Son of Bhadu Majhi,
District : Purulia.

28. Lusu Majhi,
Son of Bhudu Majhi,
District : Purulia.

29. Fatu Mahato,
Son of Sheimanto Mahato,
District Purulia.

30. Kahura Mahato,
Son of Gahiram Mahato,
District : Purulia.

31. Ratan Bhumij,
Son of Bhalu Bhumij, P.O. Baraukma,
P.S. Balarampur, Purulia.

At All the above applicants worked as Casual
Labour Under P.H.L. S.E. Rly Area.

....Applicants.

- 6 -

V E R S U S

1. Union of India,
Service through the Secretary,
Ministry of Railway,
New Delhi. 110 001.

2. The General Manager,
South Eastern Railway,
Garden Reach,
Calcutta. 700 043.

3. The Divisional Railway
Manager, South Eastern Railway,
District : Purulia.

4. Permanent Way Inspector,
Bhojudin, District : Purulia.

5. Permanent Way Inspector,
Adra, P.O. Adra,
District : Purulia.

6. The Chief Engineer,
Construction, S/E. Railway,
Garden Reach, Calcutta. 700 043.

7. Assistant Project Manager
Construction, P.O. Ranchi,
Bihar.

8. Assistant Project Manager
Construction, Bokaro Steel City,
P.O. Bokaro, Dist. Bokaro Steel City.

9. Assistant Project Manager,
(Construction)
Adra Division, P.O. Adra,
District : Purulia.

10. Inspector of Works,
Adra, P.O. Adra,
District : Purulia.

..... Respondents.

For applicants : Mr. B.R. Das, counsel
Mr. A. Biswas, counsel

For respondents : Mr. P. Chatterjee, counsel

Heard on : 01.09.199

Order on : 07 -09-1999

O R D E R

S.N. Mallick, VC

O R D E R

S.N.Mallick, VC

In this O.A., 31 applicants have prayed for the following principal relief :-

"8(b). An appropriate order directing the respondents concerned to absorb the applicants as on permanent basis and/or at least as casual basis since all the applicants are entitled and eligible for re-engagement on the basis of length of service rendered prior to 1.1.81 and are further entitled to screening and/or verification for the purpose of empanelment in accordance with the statutes and in accordance with the Railway Board's circular issued from time to time forthwith."

2. It is the case of the petitioners that they were engaged as casual labours by the respondent authorities in the years 1969, 1970, 1971, 1972 and 1965 under the Permanent Way Inspector, Bhojudih, S.E. Railway & Permanent Way Inspector, Adra, S.E. Railway and they worked there continuously for more than 210-240 days without any break and their services were terminated subsequently (vide para-4 of the application). It has been urged in the O.A. that as per Railway Board's circular, a list of panel should have been prepared in respect of the applicants in accordance with their seniority and their absorption in regular post should have been made on the basis of the said panel taking into account that they had worked continuously for more than 240 days.
3. In para-4(d) of the application, it is again reiterated that they were appointed in the years 1969, 1970, 1971, 1972, 1973 onwards but were ultimately retrenched. It is their grievance that since their retrenchment, the respondent authorities have not given them any intimation regarding any vacancy and/or their appointment. It is further stated that ultimately in November, 1993, they came to know that several employees were engaged by the authorities concerned, who were retrenched after the applicants and were junior to them considering the length of service. As per order dt. 16.5.91 issued by the Sr. Personnel Officer, Sealdah, it has been provided that those casual labours, who had worked prior to 1.1.81 would be

screened for their verification with necessary documents such as Casual Labour Card, Initial Identity Card issued by PW-I/IOW, if any, School Certificate or other authentic documents in support of their age, caste etc. for the purpose of absorbing them against the permanent vacancies(vide Annexure-C). The petitioners state that although they have discharged their duties for more than 300 days(vide para-4(m) in the year 1967-68 onward, they have not been absorbed as yet. On the other hand, their juniors have been given appointment as per order dt.24.2.92(vide Annexure-D).

4. The petitioners have referred to a judgment passed by an earlier Bench of this Tribunal in O.A.No.813/88 dt.15.11.90(vide Annexure-E), which was filed by similarly circumstanced casual workers for their regularisation in Group-D post under the railway authorities. The said O.A. was disposed of with the following direction :-

" The respondents are directed to consider the genuineness of the claims of the applicants and process them accordingly and if their claims are proved to be genuine they will empanel them for further engagement taking into view their length of service and applying the principle of law laid down in the decision of the Hon'ble Supreme Court in the case of Inder Pal Yadav vs. Union of India & Others, reported in (1985) 2 SCC 640."

5. The petitioners thereafter submitted a number of representations to the respondent authorities for their absorption to which there was no response. Hence, the instant O.A.

6. The matter has been taken up for final disposal today. Although several adjournments have been granted to the respondent authorities for filing a reply, they have not filed any reply. However, Mr.P.Chatterjee, Lt.Counsel appearing for the respondents has submitted that the instant application is barred by limitation and that in view of the settled position of law and extant rules in this regard, the petitioners are not entitled to any relief.

7. Mr. Chatterjee has referred to a decision of the Supreme Court, reported in AIR 1993 SC 2276 (Ratan Chandra Samanta & Ors. v. Union of India & Ors.), which is applicable to the present case in view of the similar facts and circumstances. The relevant part of the aforesaid judgment is quoted below and we are of the view that in the light of the aforesaid judgment, the instant OA should be disposed of :-

" Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognised both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned Counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979. "

8. We have already referred to different paragraphs of the OA, which do not show that the petitioners are not sure in which year they were engaged as casual workers. Sometime they say, they were engaged in 1969, 1970, 1971, 1972 and 1965 and that they have completed more than 240 days of continuous work. In another place, they say that they were appointed in 1969, 1970, 1971, 1972 and 1973 and

they have worked for more than 300 days in the year 1967-68 onwards. They have not disclosed the year/years of their dis-engagement.

9. Annexure 'A' is a copy of the purported letter of appointment for casual labour given to Sri Chepu, the applicant No.1, which is dated 25.9.69. His age has been recorded there as 25 years. He was appointed there from 25.9.69 to 23.11.69. There is nothing to show that he was given further appointment thereafter as a casual labour. Similarly, there is one appointment letter(vide Annexure-Ax) in respect of Mohan, the applicant No.19 as casual labour, which is dated 24.5.71. Here his age was given as 24 years and his appointment was effective from 24.5.71 to 28.6.71. There is also an appointment letter bearing no date in favour of Sri Lathra, who is not an applicant in this case. His appointment is also from 24.2.74 to 23.3.74. There is also an appointment letter in favour of Sri Buchan dated 24.5.71, who is not an applicant in this case. Another appointment letter has been filed as per Annexure-A in favour of Sri Lakan, who is also not an applicant in this case. There is an appointment letter in favour of one Sri Ahamabati, the applicant No.11 dt.2.3.71. Here his age is given as 24 years. His appointment is from 2.3.71 to 23.5.71. There is another appointment letter dt.24.5.71 in respect of one Sripati, the applicant No.26 from 24.5.71 to 23.6.71. There is a certificate in favour of one Sri Hori dt.7.2.85 by P.W.Inspector, S.E. Railway, Chandil stating that he has worked during the period from 1970 to 21.2.1972 with break. The said Hori is applicant No.23. There is one such appointment letter dt.24.3.73 in favour of one Sri Velal, who is not a party to this case. There is another appointment letter in favour of one Sri Mohan, son of Bhaka, who is not, however, a party to this application. There is another appointment letter in the name of Sri Bhandu, s/o Mulukchand dt.24.5.71, who is applicant No.12 in this case. His appointment is from 24.5.71 to 23.6.71. So, it appears that in respect of only applicant Nos.1, 11, 12, 19 and 26,

there are appointment letters dated 25.9.69, 2.3.71, 24.5.71, 24.5.71 and 24.5.71 respectively and in respect of applicant No.23, there is a certificate.

10. Be that as it may, from the above documents, it appears that the aforesaid five applicants never worked as casual workers for more than 240 days continuously as claimed by them. There is nothing to show that they were given any further appointment thereafter. From the above appointment letters, it has to be presumed that the petitioner No.1 did not continue beyond 23.11.69 after his appointment on 23.9.69. Similarly, the applicant No.11 did not also work beyond 23.5.71 on the basis of his appointment letter dated 2.3.71. From the appointment letter dt.24.5.71 of applicant No.12, it appears that he did not work beyond 23.6.71. From the appointment letter of Sri Mohan, it appears that he did not work beyond 23.6.71. The applicant No.23 also, even if his certificate is taken on the face value did not work for more than 240 days and the applicant No.26 i.e. Sripati, as his appointment letter shows, worked from 24.5.71 to 23.6.71.

11. Under such circumstances, there is hardly any material to substantiate the case of the petitioners that they had worked continuously under the respondent authorities for more than 240 days during the years 1969, 1970, 1971, 1972 or 1973. Furthermore, the petitioner Nos. 1, 11, 12, 19 and 26 have come to enforce their right only by filing this O.A. on 27.11.97. Their dis-engagement years are 1969- & 1971. Regarding the other applicants, there is no material on record to justify their claim. Taking the years of dis-engagement for the above mentioned applicants being Nos.1, 11, 12, 19 and 26 as 1969 & 1971, as the case may be, the application is wholly barred by limitation. It has been held by the Apex Court in the aforesaid judgment that a Court is not to be approached for sake of roving enquiry leaving scope for manoeuvring. The Apex Court has also held that delay itself deprives a person of his remedy available in law.

12. Mr. Chatterjee, I d. Counsel appearing for the respondents, has referred to the Railway Board's orderz on Establishment dated 2.3.1987 incorporated in Bahri Brothers Railway Board's Orders on Establishment - 1987 - Vol.I, page-47. It has been provided there that the case of such persons, who had worked as Project Casual Labour before 1.1.81 and/^{who} were discharged for want of further work or due to completion of work and who would submit written representation with adequate documentary proof in this regard so as to reach the concerned Railway Divisional Office on or before 31.3.1987, will be considered for the purpose of giving appointment. There is nothing on record to show that the present applicants or any one of them filed any such representation to the Divisional Railway Manager concerned within the date fixed.

13. Mr. B. R. Das, I d. Counsel appearing for the petitioners has referred to a decision of an earlier Bench of this Tribunal dt.15.11.90 in O.A. 813/88, which we have already referred to and has submitted that similar direction may be issued in favour of the present petitioners upon the respondents.

14. We do not find any force in such submission because of inordinate delay on the part of the applicants. They have not filed any representation as per Railway Board's order dt.2.3.87 as noted above. Furthermore, there is nothing on record to show that the applicant Nos.1, 11, 12, 19 and 26 had workedly continuously for more than 240 days before their dis-engagement. Regarding the other applicants, there is nothing on record. Furthermore, from their own documents, it appears that the aforesaid applicants being Nos.1, 12, 13, 19 and 26 are now more than 50 years in age. In our view, it would be unreasonable to direct the respondent authorities to consider the cases of the applicants at this stage for their regularisation in Group-D post, which in every possibility will be counter productive.