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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

O.A. NO

51/89

199 (L)

T.A. NO

Date of Decision 26-8-92

Binda Basad

PETITIONER.

Shri S. P. Sinha

Advocate for the Petitioner(S)

V E R S U S

The Union of India & others

RESPONDENT.

Shri A. Bhargava

Advocate for the RESPONDENT(S)

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The Hon'ble. Mr. Justice U. C. Srivastava - V.C.

The Hon'ble. Mr. K. G. Bhatnagar - A.M.

1. Whether Reporter of local papers may be allowed to see the Judgment? ✓
2. To be referred to the reporter or not? ✓
3. Whether their Lordships wish to see the fair copy of the Judgment? ✓
4. Whether to be circulated to other benches? ✓

Vice-Chairman/Member

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THE CENTRAL ADMINISTRATIVE TRIBUNAL-LUCKNOW BENCH, LUCKNOW

O.A. 51 of 1989.

Binda Prasad..... Applicant.

Versus

The Union of India & others..... Respondents.

Hon'ble Mr. Justice U.C.Srivastava- V.C.
Hon'ble Mr. K. Obayya -A.M.

(By Hon'ble Mr. Justice U.C.Srivastava-V.C.)

This is a belated application alongwith the application of condonation of delay. The applicant has prayed that he may be given appointment in Class IVth service and be paid salary from the date, his Juniors has been appointed in Class IV service.

2. Learned counsel for the respondents again stated that he may be allowed to file the counter affidavit. Years have passed, but no counter affidavit has been filed. He stated that parawise comments have been received and on the basis of the parawise comments, the counter affidavit has to be drafted and after due signatures of the officer concerned, to be filed. There is no question of filing Counter Affidavit and have accepted the subsequent prayer and request made by the learned counsel that the parawise comments may be taken as part of this argument including factual position and we accepted it.

3. The applicant's father was working as Driver Grade 'B' in Loco Shed, Northern Railway Alambag Lucknow. He retired from service in the month of July, 1973. On the request of the applicant's father the applicant was appointed as Casual Labour in the year 1977 for a short period and thereafter opportunities to work as such were given to him as per his allegation.

4. As directions were issued by the Railways for

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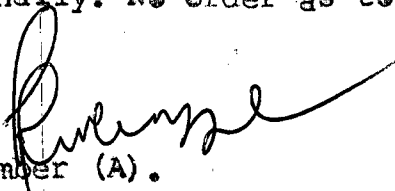
for decasualization of Casual Labourers on open line and a ban was imposed for fresh casual labours. According to the applicant, notwithstanding a ban opportunity was given to him to work afresh and he ~~was~~ worked as such for more than 120 days in the year 1980 and as such he became entitled for fixation of his pay in revised scale. After fixation of pay in the scale i.e. 196 to 232 the applicant was ^{engaged} as substitute and due salary as such upto the month of June, 1981 ^{was paid} in support of which he has filed document indicating that every month in the year some such amount was paid to him. Applicant also applied for a privilege pass which was also granted. Subsequently the applicant was informed that due to availability of the post, he cannot be employed and substitute will be appointed only after proper screening of the candidates. He learnt later on that screening took place and one Devi Prasad who was junior to him was appointed in Class IV service in July, 1987. After learning the same he filed a representation and when no reply was received, he filed fresh representation. Where-after he filed this application. The explanation for delay is acceptable and the delay is condoned.

4. According to the respondents, it has been said that ^{during} the ban ^{no appointment could be made} was ~~engaged~~ except with the personal approval of D.R.M. which was ^{revised} in the year 1981 and in that year total ban was imposed. In the Loco-shed in the year 1979 to 1981 big fraud was detected in as much as 2000 persons got their names fraudulently enrolled against the strength of 1500 staff and received wages fraudulently. When this matter came to the notice to the vigilance branch, all the Casual Labours were discharged and the applicant was not given any temporary

status. Though according to the respondents, he did not work in the shed which is obviously not correct. Regarding pass it has been stated that no specification of such fraud finds place in the said comments. Genuine casual labour/ substitutes were engaged to work against the day to day casuality. The facts as stated by the respondents make it clear that because of fraud, all the casual labour or the substitutes' services were put to an end ^{top} and later on arrangement fortaking them back after verification was made.

5. If that was so, the case of the applicant should also have been considered as all 2000 persons would not have committed fraud. If 500 or more persons become Casual labour because of the fraud committed ^{which} could not have been committed by the Casual Labour but it must have been committed by the Railway Staff or those who made the appointments, all the persons are not to suffer. In case the applicant should have also been given an opportunity to prove that in case ^{he} the applicant also got ~~xxx~~ an appointment ^{by} way of fraud, he should have been given an opportunity to prove ^{the same} ~~otherwise~~ that was not done. It has not been said specifically that any fraud was committed by the applicant also in getting the job. If the applicant himself has not committed the fraud, his case may also be considered, if persons who were working as substitute like him have been taken back in service, the respondents should consider the case of the applicant within three months associating him with the same and ^{not} in case it is found that he has/committed any fraud and similarly placed other persons have been given temporary appointment/ temporary adhoc and as temporary

as Casual appointment, the applicant may also be given the same. The application shall stand disposed of finally. No order as to the costs.


Member (A).


Vice Chairman.

Dt: August 26, 1992.

(DPS)