

Central Administrative Tribunal Lucknow Bench Lucknow

Original Application No.74/2006

Lucknow this the ^{3rd} day of December, 2008

HON'BLE MR. M. KANTHAIAH, MEMBER (J)
HON'BLE DR. A. K. MISHRA MEMBER (A)

Rajendra Kumar Dwivedi, aged about 47 years, son of Shri Satya Narain Dwivedi, resident of Village Hashnapur, Pos Argupur, District Unnao.

Applicant.

By Advocate Sri S. P. Singh.

Versus

1. Union of India through its Secretary, Ministry of Railways, Government of India, New Delhi.
2. Chairman, Railway Board, New Delhi.
3. The General Manager, Northern Railway, Baroda House, New Delhi.
4. Divisional Personnel Officer, Division, Lucknow.
5. Assistant Personnel Officer, D.R.M. Officer, Northern Railway, Hazratganj, Lucknow.
6. Station Superintendent, Northern Railway, Charbagh, Lucknow.
7. Chief Parcel Supervisor, Northern Railway, Lucknow.

Respondents.

By Advocate Sri Arvind Kumar.

Order

By Hon'ble Dr. A. K. Mishra, Member (A):

This application has been made for a direction to the respondents to appoint the applicant on a post of Porter or any other Group D post after



- 2 -

relaxing the age bar and for any other direction that may be deemed to be just and proper in the circumstances of the case.

2. According to the submission of the applicant, he was engaged as a substitute porter/casual labour in Northern Railway after proper medical examination on 29.12.1976. In the seniority list of Casual Labour and Substitute Porters published on 31.12.1984, he was shown at Serial No. 169. He had received Call Letter dated 8.5.87 directing him to appear for a screening test for regular appointment against Class IV post. He received a similar Call Letter on 23.7.90, but unfortunately he was not placed in the panel of successful candidates as there were sufficient number of senior candidates in the panel to be appointed against the available vacancy and the turn of the applicant did not come. Further, a number of candidates mentioned at Paragraph 4.2 of the O.A. who were junior to him as per the original seniority list have been subsequently appointed and he made a representation on 19.10.1992 before the competent authority for consideration of his case also. When there was no response, he filed Original Application No. 618/1992 (L) -Bhai Lal and Others versus Union of India and Others and this Tribunal directed the respondents on 21.11.92 to allow the applicants to work in their establishment in case such work is available and if candidates junior to him in order of seniority have been engaged by them. But there was no compliance of this direction of this Tribunal. The Respondent No. 4 issued a circular on 21.5.2003 inviting applicants from Casual Labour/Substitute Porters for the purpose of regularization. Again, there was an advertisement on 25.5.2005 for recruitment to the post of Porter, Gangman etc. The applicant submitted representation on 27.7.2005 which has not yet been considered even though

4

he had worked for 1305 working days in the Northern Railway. He had cited the judgments of Hon'ble Apex Court in support of his contention for regular appointment in view of his work as Substitute Porters/Casual Labour for a long time.

3. The applicant has filed the Medical Certificate of the Railway dated 21.3.85 (Annexure-1) which states that he was earlier examined on 29.12.1976 by the ADMO and that his length of service was 7 years and 11 months as on the date of this certificate. He has also filed copies of muster rolls, Identity Card issued on 18.4.93 which indicate that he was working as on that date as a substitute porter. He has also furnished a copy of the seniority list dated 31.12.84 (Annexure 4) to indicate that his name finds place at Serial No. 169. Moreover, copies of call letters issued to him on 27.5.87 and then subsequently on 23. 7. 90 have also been enclosed to substantiate his claim that he was working on continuous basis for a very long time except for minor interruptions.


4. The respondents have taken the plea that the applicant had never worked for 120 days on a continuous basis as to get benefit of an employee who is granted temporary status. According to his own admission, he did not qualify in the screening test held in 1990. He has not worked after 1990 and the identity card dated 28.4.1993 is a forged document. Since, the applicant has not claimed that he has worked after 1993 his name does not find place in the current Live Register maintained for the casual labour who are currently working with the Northern Railway. Neither did he get the temporary status nor was he working as a casual labour for a very long time. Therefore, he has no claim to be considered either for grant of

-4-

temporary status or for being considered for regularization on any permanent Group D basis. Therefore, his case has not been considered.

5. The respondents have also challenged the maintainability of this application which according to them is barred by limitation. Further they have stated that Master Circular 20 dated 29.1.91 issued by the Railway Board states that "....if a substitute who was earlier discharged from service on completion of work or on return of person against whose post he/she was engaged as substitute has not been booked again in the succeeding calendar years his/her name should be struck off from the register...." On the basis of this circular, the name of the applicant has been struck off from the register, as he was not discharging any duty since 1990.

6. In reply, the applicant has denied the allegations of having submitted forged documents. According to him the respondents have not done any verification as per their own submissions and it does not lie with them to level a serious allegation of forgery without proper verification of the documents available with them. As regards limitation, the applicant claims that he had applied with reference to advertisement dated 25.10.2005 inviting applications for appointment on group D post. His representation has not been considered so far. The application has been filed well within the period of limitation. It is not first time that he has made this O.A.. Earlier also in the year 1993, he had filed O.A. NO. 624/93 where a direction was given on the 18th day of August 2000, but no heed has been given by the respondents to the direction of this Tribunal.




7. He has cited the judgment of Hon'ble Supreme Court in Gaziabad Development Authority and Others versus Sri Vikram Chaudhary and Others AIR 1995 SC 2325 to the effect that he should not have been discharged from his duty without reference to his over all seniority. The principle of first come last go should have been adopted. Further, the decision of Hon'ble Allahabad High Court in Union of India & Another Versus Central Administrative Tribunal Allahaad, 2007 (3) SCC, 1701(All) (DB) has been cited to the effect that the Hon'ble High court had given a direction for keeping the names of the casual labour on the live register in order of their seniority based on the number of days of work performed even though, they had been discharged long time ago. Similarly, the decision of the Hon'ble Supreme Court in Dakshin Railway Employees Union V. General Manager, Southern Railway and others, reported in AIR 1987 Supreme Court 1153 has been cited in support of his contention that casual labor, although not on the current rolls of the Railways, but who have completed 360 days of continuous employment earlier in project work would be entitled to the temporary status. The eligibility criteria will be 120 days for those working in regular establishment.


8. In view of the fact that the representation of the applicant at Annexure 12 is still pending for consideration, the purpose would be served if a direction is given to the respondents No. 3 and 4 to consider the representation and the submissions made in this O.A. by instituting a proper verification of the documents and also by passing a reasoned order as regards his claim for grant of temporary status in accordance with the extant rules.



9. The respondents are accordingly directed to verify the documents submitted by the applicant in support of his contention of long engagement as casual labour and consider his representation for compliance of the order in O.A. 624/93, conferment of temporary status and ultimate regularization in accordance with rules and the law laid down by the Hon'ble Supreme Court within a period of three months from the date of submission of a copy of this order. The applicant is directed to submit again a copy of his representation and a copy of this O.A. for consideration of respondents No. 3 and 4.

10. The application is disposed of with the above directions.


(Dr. A. K. Mishra)
Member (A)


(M. Kanthaiah)
Member (J)
03-12-2008

v.