Central Administrative Tribunal Lucknow Bench Lucknow

C.C.P. 65/2007 In O.A. 469/88,

This, the 14th day of July,2009

Hon'ble Ms. Sadhna Srivastava, Member (Judicial)

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

1. Ram Khilawan, aged about adult, s/o Late Shri Simiran, addess Village-Godia Ka Purwa, Rudauli, Barabanki.
2. Sharda, aged about adult, S/o Shri Barmha, address Village-Mathura Ka Purwa, Post-Pure Kamgar, Rudauli, Barabanki.
3. Nokhai, aged about adult, S/o Late Shri Datte, address Village-Kola Barai, Post-Sohawal, Faizabad.
4. Jagdish, aged about adult, S/o Late Shri Bhagwan Deen, address Village-Gujaran Purwa, Rudauli, Barabanki.

Applicants

By Advocate: None

VERSUS

1. Shri Prakash, the General Manager, Northern Railway, Baroda House, New Delhi.
2. Shri Chahte Ram,the Divisional Railway Manager, Northern Railway, Lucknow.

Respondents.

By Advocate : Sri B.B. Tripathi for Sri M.K. Singh.

ORDER

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

This contempt petition has been filed against Sri Prakash, General Manager , Northern Railway, Baroda House, New Delhi and Sri Chahte Ram, Divisional Railway Manager, Northern Railway, Lucknow on the allegation that the directions of this Tribunal in O.A. No. 469/88 on 20.4.1993 have not been complied with so far.

2. The directions were as follows:-

"Accordingly, the respondents are directed to enter the names of the applicants in the casual labour live register and consider their cases for reappointment and regularization etc. as the case may be whenever their turn comes. In cases, their juniors have been considered for regularization or still they are working the applicant's case shall be considered for reappointment or regularization as and when their turn comes".

3. It is the case of the applicants that on supplying a copy of the judgment along with representation for initiating steps to comply with the directions of the Tribunal, they were informed that their names had been entered in the Casual Labour Live Register and on availability of vacancies, their cases for regularization would be considered; further that affidavits from them were obtained about their dates of birth, permanent addresses and educational qualifications. Besides steps were being taken for verification of the number of days of their engagements as casual labour but they were advised to wait till occurrence of vacancies.

4. It is alleged that 240 posts were filled up during September to November, 2006 by outsiders, who were not on the roll of Northern Railway Division. It is the contention of the applicant that their cases should have been considered for regularization as per direction of this Tribunal once vacancies were available in 2006. Instead of implementing the directions of the Tribunal , these posts were filled up by outsiders . Hence, it is alleged that the respondents have committed contempt of court.

5. The respondents have argued that this contempt petition is barred by limitation as it has been filed long after passing of the direction of the court on 12.5.2000. Further, it is stated that the Railway Board had approved sanction of 223 Group 'D' posts for Lucknow Division on 20.12.2002 and the proposal for recruitment was initiated on 15.1.2003. In that event, the cause of action could be considered to have arisen on 15.1.2003, but this contempt petition has been filed on 6.11.2007 after a delay of 4 years 9 months and 21 days, if calculated from 2003 , when the requisition for recruitment was issued. The delay was 6 years 5 months and 24 days, if calculated from the date when the judgment was passed on 12.5.2000.

6. The respondents have submitted that the contempt petition should have been filed within one year of the order of the Court/ Tribunal and cited the decision of ***Jugraj Arora Vs. S. Laxmi Narain reported at 2000 (1) SLJ , CAT, Jodhpur Vol. 96 page 220*** and ***Ms. Jayshree B. Rana Vs. Union of India and others reported at 2001(3) SLJ CAT, 41*** in support of their contention.

7. It has been stated by the respondents that the names of applicants were taken on to the Live Register in compliance with the directions of this Tribunal and on availability of vacancies in Lucknow Division, all the concerned authorities were asked to submit the original records of the ex-casual labouers/substitutes to verify their number of working days and other particulars. On scrutiny of the records of the applicants, it was noticed that they were over-aged. The respondents have furnished the dates of birth of the applicants at Annexure CR-5, which indicate that they were over- aged by the time their cases were being considered for regularization . In terms of Railway Board's letter No. 19 dated 28.2.2001 making a reference to P.S. No. 12190/2001, the maximum age limit for general category candidates is 40 years and for candidates of SC/ST category it is 45 years and for candidates of OBC category it is 43 years. As per the statement furnished, all the candidates were beyond the maximum permissible age allowed for regular appointment in Railway service.

8. The applicants in their Rejoinder Reply have submitted that they were not over-aged at the time of filing of Original Application, but became over-aged due to delay involved in considering their cases for regularization, over which they had no control. They have maintained that the contempt petition was filed in time only after the matter came to their notice about appointment of outsiders.

9. It is seen that the directions of this Tribunal were;i) to enter the names of the applicants in Live Register; ii) to consider their cases for re-engagement (re-appointment) and iii) to regularize their appointment as and when their turn came. When admittedly the respondents had not taken any steps to engage the applicants even within one year of passing of the order of the Tribunal, there was a cause for initiating contempt proceedings, which they failed to do. In the absence of non-engagement of the applicants , the question of implementing the other steps like conferment of temporary status and regularization did not arise.

10. It is an admitted fact that no steps were taken by the applicants within one year of one year after January, 2003 when the respondents initiated steps to recruit outsiders. Therefore, there is substance in the contention that the contempt petition for initiation of the contempt

proceedings has been filed long after expiry of one year of limitation period which is provided in Section 20 of the Contempt of Court Act, 1971. This Tribunal derives the power to initiate contempt proceedings under Section 17 of the Administrative Tribunal Act, which makes a reference to the Contempt of Court Act, 1971 and states that the provisions of Contempt of Court Act will govern in all matters relating to contempt proceedings. Section 20 of the Contempt of Court Act which is relevant for our purpose is extracted below:-

> "20. Limitation for actions for contempt.- No court shall initiate any proceedings for contempt, either on its own motion or otherwise, after the expiry of a period of one year from the date on which the contempt is alleged to have been committed."

11. In the case of Pallav Sheth Vs. Custodian and others (2001) 7 SCC 549, it has been held that particular period of one year would commence from the date on which the commission of contempt came to the knowledge where that had been concealed by fraud or dishonest conduct of the contemnor. The applicant has not complied with the above requirement. Therefore, limitation would start w.e.f. 15.1.2003 when the proposal for recruitment through Railway Board was issued and thereafter when the process of selection was continuing through Railway Recruitment Board. There is neither any allegation nor it is possible to believe that the process of recruitment of Group 'D' took place in a secretive manner or that the contemnor prevented it from coming into the knowledge of the applicant. The process of recruitment was initiated in 2003, completed in 2006, and the instant CCP was filed in 2007. In the circumstances, we find that this application suffers form delay and laches and as such is barred by limitation. Accordingly, the Contempt Petition is dismissed and notices are discharged.

14/07/09

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

(Ms. Sadhna Srivastava)
Member (J)

HLS/-