

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH**

Original Application No.216/2007
This the 20th day of December 2007

HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

Hari Bhajan, aged about 52 years, Son of Sri Ram Lakhan Tiwari,
Resident of Village-Manguli, Post-Mangauli, District-Sultanpur.

...Applicant.

By Advocate: Shri Raj Singh.

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow.
3. Permanent Way Inspector (P.W.I) (Now Redesignated as Sr. Section Engineer, Line_, Engineering Department, Northern Railway, Pratapgarh.

By Advocate: Shri Praveen Kumar for Shri M.K. Singh.

ORDER

BY HON'BLE MR. M. KANTHAIAH, MEMBER JUDICIAL.

The applicant has filed this OA with a prayer to issue direction to the respondents for his reinstatement with all consequential benefits and also to grant temporary status and regularization and seniority to him from the date when other similar situated persons have been granted temporary status and regularization.

2. The respondents have filed Counter Affidavit opposing the claim of the applicant stating that the claim of the applicant is not at all maintainable.
3. The applicant has not filed any Rejoinder Affidavit.
4. Heard both sides.
5. The point for consideration is whether the applicant is entitled for the relief as prayed for.
6. The admitted facts of the case are that the applicant was engaged on casual basis as Khalasi/ helper during the year 1976-77. In the year 1979, there was a Criminal Case Registered against the applicant in R.C. No.21/1979 which was investigated by CBI and latter on filed a charge sheet on 30.5.1980 before the Special Judicial Magistrate-Pollution/CBI, Lucknow in Criminal Case No.1/1991 against 16 employees including the applicant with an allegation of criminal conspiracy and misappropriation /utilization of Railway funds for their personal use Under Section 120-B, 420, 468 of IPC. After the trial, this applicant was convicted and Annexure-A-3 is the copy of judgment dated 25.02.2004. Against the conviction, the applicant filed an appeal before the Additional Session Judge/Special Judge, SC & ST (Prevention of Atrocities) Act, Lucknow in Criminal Appeal No.16/2004 and after hearing the matter, it was allowed and thus set aside the judgment of conviction against the applicant. Annexure-4 is the copy of judgment in Criminal Appeal No.16/2004 dated 6.3.2006. Thereafter, the applicant sent a representation (Annexure-5) dated 18.4.2007 requesting the respondents authorities for his reinstatement in service on the ground that he has been acquitted from all the

charges leveled against him by CBI. Thereafter the applicant has filed this present OA.

7. It is the case of the applicant that on 20.8.1977 while he was on the site of working, the Respondent No.3 informed him that an investigation / enquiry was going against the officers and employees and thus not allowed him to work and as such he was disengaged from the work of casual worker since then. In view of the acquittal in such Criminal case filed by CBI, he is entitled for reinstatement and also further claims for conferring temporary status and further regularization with seniority from the date when some of his colleges Ram Dev and others have been regularized. Thus the applicant claimed not only the relief of reinstatement the post of Khalasi/ helper on casual basis and also for regularization after conferring temporary statue from the date when his colleague workers have been regularized into service. But the respondents have filed their Counter Affidavit stating that there is no explanation from the applicant for the period from 20.8.1977 to 1979 for almost 2 years in respect of his work as casual Labour and also there is no record to show that he was disengaged from the working due to filing of FIR or on account of investigation by CBI Police or on account of conviction. It is also their contention that worker who did not work for 2 years and remained absent, his name would be removed from the Casual Labour Register and whatever service rendered by him does not give any help in regularization. They also further contended that the alleged dispute of the applicant is for the year 1977 whereas, he filed this OA in the year 2007 which is for about 30 years and there was no representation from the applicant during this 30 years period and his alleged

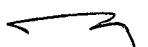
representation (Annexure-5) dated 18.4.2007 has been sent only for the purposes of this OA and thus, the claim is barred by limitation.

8. The applicants contention is that Circular dated 8.6.1981 issued by the Railway Board says that whose casual laborers have completed 120 days continuous / broken service, should be granted temporary status and relied on Annexure-A-2 stating that some of his colleagues who were working on the post of Khalasi/ Helper on casual basis subsequently regularized in pursuance of such circular. But the applicant has not filed any of the documents to substantiate that such of casual laborers worked alongwith him during the year 1978-77 and basing on such working days, they have been regularized by the respondent authorities. Though, the applicant relied on Annexure-A-2 but the same is not the Circular dated 8.6.1981 and the same is not helpful to substantiate his contention for regularization of the service of causal laborers , who completed 120 days during the year 1976-77.

9. Annexure-2 is the copy of Circular issued by the Railway Board dated 30.6.1992 with MC No.48 E (NG) II/91/CL/Master Circular/157 dated 30.06.1992. Further, according to the case of the applicant itself, he was not working as casual labour since 20.8.1977, which also go to show that for about 4 years prior to issuance of Circular dated 8.6.1981, he was not working with the respondent authorities and when there was such discontinuation of service, it is not at ail possible to continue his name in any of the casual labour register maintained by the authorities. In such circumstances, the said claim of the applicants for any of his relief is not with the purview of respondents authorities.

10. It is also the case of the applicant that he was disengaged from working as casual labour since 20.8.1977 at the instance of Respondent No.3, who informed him about investigation of case by CBI against some of railway offices and casual laborers. Admittedly, the FIR bearing No.RC-21/79 was issued by the CBI and the evidence given by investigation officer PW-7 also goes to show that he issued such FIR on 17.11.1979. Thus, the judgment of Trail Court and also Appellate Court covered und Annexure-3 and Annexure-4 are not going to show that there was any case registered by the CBI during the year 1977 or in the year 1978, to believe the version of the applicant that there was investigation and as such he was disengaged from service on 20.8.1977. These circumstances also clearly go to show that there is no connection between the filing of Criminal case by CBI against railway officers and casual laborers in connection with RC-21 / 1979 and with the date of 20.8.1977 on which the applicant says that he was disengaged from service as casual labour from the work spot.

11. When it is the case of the applicant that he was disengaged from service on 20.08.1977 because of investigation for Criminal case by CBI Police , it is his duty to establish that on the date he was disengaged, there was pendency of a criminal case by the CBI Police and also to show commencement of any investigation. But the applicant has not placed any such material and as such his contention that he was disengaged from service because of pending investigation by CBI Police is not at all convincing and thus on such ground the applicant cannot seek any relief from the respondents.



12. Admittedly, the claim of the applicant is relating to the period prior to August, 1977 and he filed this OA on 31.05.2007, which is almost 30 years period. The applicant was acquitted by allowing his Criminal Appeal on 6.3.2006 and thereafter he filed the present OA on 31.5.2007. He also says that before filing OA he also made representation to the respondents authorities covered under Annexure-5 dated 18.4.2007, which is also after more than one year after his acquittal. It also clearly shows that the applicant not made any claim or representation immediately after his acquittal on 6.3.2003.

13. It is not the case of the applicant that his name was entered in the Live Casual Labour Register and he was disengaged by the respondents on the ground of investigation of any criminal case against him by the CBI, Police. Similarly, even after filing of Criminal case against him he never made any representation to the respondents authorities stating that his service was discontinued or he was disengaged from the post of casual labour because of the pendency of criminal case against him. The applicant also not filed any of the documents to show that Ram Dev, Ram Sajivan, Shyam Lai & Hari Raj Yadav worked alongwith him on the post of Khalasi/ helper on casual basis during the year 1976-77 were subsequently regularized on such material. Without placing of any of such relevant material, his claim for reinstatements after a lapse of 30 years on the ground of criminal case against him was ended in acquittal and as such he is entitled for reinstatement with consequential service benefits and conferring temporary status and also basing on such continuous service of temporary status regularization of his service is not at all

maintainable. It is also to be noticed that no record will be available in the respondents office after a lapse of 30 year within any pending claim of any persons.

14. In view of the above circumstances, there are no merits in the claim of the applicant either for reinstatement or for granting of temporary status and further regularization of his services as claimed by the applicant and as such the OA is liable to be dismissed.

In the result, OA is dismissed. No costs.


(M. KANTHAIAH)
MEMBER (J)

20.12.07

/amit/