

**CENTRAL ADMINISTRATIVE TRIBUNAL,
LUCKNOW BENCH,
LUCKNOW.**

Original Application No. 343 of 2008

Reserved on 1.2.2013

Pronounced on 8/2/2013

Hon'ble Mr. D.C. Lakha, Member-A

Jung Bahadur, aged about 49 years, S/o Sri Kandhari Lal, R/o Village Niayamatpur, Post Mustafabad, Thana Jarwal, District Bahraich

.....Applicant

By Advocate : Sri A. Moin

Versus.

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Hazratganj, Lucknow.

.....Respondents.

By Advocate : Sri B.B. Tripathi

ORDER

Under challenge in this O.A. is the order of the respondents dated 24.4.2008 passed in compliance of judgment and order dated 31.1.2008 in Writ Petition No. 17 (S/B) of 2005 by Hon'ble High Court, Lucknow Bench, Lucknow directing the respondents to consider the case of the applicant for regularization of his services. The impugned order has been conveyed to the applicant by letter dated 24.4.2008 from the office of DRM, Lucknow.

2. The applicant in this O.A. has prayed for quashing of the order dated 24.4.2008 (Annexure A-1) and also sought for directions to the respondents to regularize the services of the applicant within a specified period of time and to pay cost of this Application.

3. The brief matrix of the case is that the applicant having been engaged as Casual Labour on 16.10.1979, rendered

↑ 

service for 5640 days upto 31.12.2003 with technical breaks. The cumulative certificates of working are filed as Annexure no. A-2. He was issued Casual Labour Card (Annexure A-3). Undisputedly, the name of the applicant appears at sl. No. 64 in the list of such Casual Labour employees. Suddenly, the services of the applicant were terminated in the year 1987 leading to filing O.A. no. 6971 of 1987 by the applicant against termination order and the same was decided on 13.5.1992 allowing the O.A. The Tribunal directed the respondents to re-deploy the applicants (including applicant of this O.A.) and also to consider for regularization (Annexure A-5). The applicant was re-engaged, but no efforts were taken for his regularization. Thereafter, suddenly the services of the applicant were dispensed with w.e.f. 24.4.2004 leading to filing another O.A. 182 of 2004 inter-alia praying for regularization of his services as well as praying for allowing the applicants (including the applicant) for being assigned the duties and for payment of regular salary to them.

4. In the meantime, the respondent no.2 circulated a list dated 31.3.2004 containing the names of 179 persons who had been found suitable for screening and were sought to be posted against regular vacancies and in that list, some juniors to the applicant were included as a result of which the applicant prayed for before this Tribunal that his name be also included in the said post for posting. The respondents in their Reply stated that the applicant had forged his Casual Labour Card and as such he could not be regularized. This allegation was denied by the applicant in his Reply stating that there was no occasion for committing any forgery because he had already worked since 1979 i.e. last about 25 years. The aforesaid O.A. was dismissed by this Tribunal on the ground that the applicant had committed forgery in the Casual Labour Card, but did not consider that all entries made in the Card were forged because the working days of the applicant were certified by various authorities under whom the applicant was working. Being aggrieved by the order of this Tribunal, the applicant filed Writ petition no. 17 (S/B) of 2005, which was finally disposed of vide judgment and order dated 30.1.2008 modifying the order



of the Tribunal dated 23.11.2004 with a direction to the respondents to consider the case of the applicant for regularization in accordance with law (Annexure A-7). Pursuant to this direction, impugned order has been passed by the respondents.

5. It has also been averred in the O.A. that no attention has been given to the working certificates issued by various responsible officers of Railway administration and it is apparent that the impugned order has been passed without application of mind taking in view the relevant facts of the case. It is pertinent to mention here that the respondents themselves had given a copy of Casual Labour Card as authenticated by them indicating the date of first engagement as 16.10.1979 and showed his working upto 31.7.1987. Once the railway authorities themselves had verified the working days of the applicant right from 16.10.1979 and the certificates had been issued by the responsible officers for a period of about 29 years, (with technical breaks) regularization of his services cannot be denied solely on the ground that his Casual Labour Card was found to be fake. It is not sustainable at all. The applicant has secured vested right for regularization particularly in view of the fact that many of his juniors have already been regularized in service, but he has been denied this benefit and thereby the respondents have violated Article 14 & 16 of Constitution of India.

6. The respondents have contested this case by filing Counter Affidavit in which the main plea taken by the respondents is that the applicant has not come with clean hands. The earlier O.A no. 218 of 2004, which was filed by the applicant, was dismissed by this Tribunal on 23.11.2004 wherein the authenticity and genuineness of the documents submitted by the applicant were thoroughly examined by the screening committee and were also perused by this Tribunal and the same were re-considered and reexamined by the respondent no.2 and it was found that despite clear mention in the notification dated 19.12.2003 that if the date of birth, caste certificate and number of working days being found false, candidature of such candidates would be rejected and the same




would involve debarring the candidate from screening test. Since the applicant committed forgery in the Casual Labour Card, copy of which is annexed with the O.A., during screening test in 2003-04, he was rightly refused for regularization by the respondents. It is admitted in the Counter Affidavit that after dismissal of earlier O.A., the applicant alongwith other aggrieved persons, filed Writ petition no. 17 (S/B) of 2005 before Hon'ble High Court at Lucknow Bench, which was disposed of vide judgment and order dated 30.1.2008 with the direction to the respondent nos. 1 & 2 to consider the case of the petitioner no.2 (i.e. applicant in this O.A.) for regularization of his services in accordance with law, within a period of 3 months from the date of receipt of a certified copy of the order. Annexure A-1 i.e. impugned order in this O.A. is an order passed in compliance of the directions of Hon'ble High Court. It has also been submitted in the Counter Affidavit that the candidates, allegedly to be junior to the applicant, have been examined and found suitable on the basis of genuine and authentic certificates required for regularization; whereas the claim of the applicant has been rightly rejected because of the forged Casual Labour Card filed by the applicant; hence the impugned order is legally valid.

7. Rejoinder Reply has been filed by the applicant denying the averments in the Counter Affidavit and reiterating the pleas taken in the O.A. It has been specifically emphasized that the Csual Lbour Crd annexed with the O.A. is the same, which has been provided by the respondents themselves under Right to Information Act, 2005 and as such the question of same being forged, cannot be accepted.

8. The respondents have also filed Supplementary Counter Affidavit to which Supplementary Rejoinder Reply has been filed by the applicant in which both the sides have reiterated their statement and counter statement about working period of the applicant, number of working days, certificate of working and Casual Labour Card etc.

9. I have heard the learned counsel for the parties at length and also perused the O.A., Counter Affidavit, Supplementary

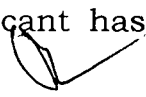


Counter Affidavit, Rejoinder and Supplementary Rejoinder alongwith written arguments filed on behalf of respondents.

10. Learned counsel for the applicant, in support of the averments in the O.A, Rejoinder Reply and Supplementary Rejoinder Reply, has argued that the alleged Casual Labour Card, which according to the respondents is sought to be forged and fake, has been issued by the respondents themselves. There was no occasion for the applicant to forge this document, a copy of which was supplied by the respondents themselves. Learned counsel has also submitted that the working of the applicant has also been admittedly admitted by the respondents except with little deficiency in number of days, but in no case number of days falls short of minimum required number for being eligible for regularization. The applicant has put in about 29 years of service as Casual Labour with technical breaks and he was eligible for being regularized, but the respondents have denied the same by passing the impugned order. On behalf of the applicant, learned counsel has placed reliance on the judgment and order of Hon'ble Supreme Court in **Civil Appeal No. 6529 of 2008 in re. Union of India & Others Vs. S.J. Benedict**. The learned counsel has argued that the question of authenticity of the service cards issued from the office of the respondents has been settled. Learned counsel has also produced a copy of this judgment of Hon'ble Supreme Court. The learned counsel has especially drawn my attention to the observation of Hon'ble Supreme Court in the aforesaid judgment on the Casual Labour Card and its authenticity indicated as below:

".....Coming to the question of eligibility of the applicant for grant of temporary status, the photocopy of the Casual Labour Card produced by the applicant, A-4 is a photo copy obtained by him from the office of the 3rd respondent. Therefore, the respondents cannot have any suspicion about the genuineness of the casual labour card as the card was with the third respondent. This plea therefore has no merit."

11. Learned counsel for the respondents in support of Counter Affidavit, Supplementary Counter Affidavit and also Written arguments has contended that the copy of Casual Labour Card produced by the applicant has been compared



with the copy available with the respondents and the same has not been found as true copy of the original one. More-over, copies produced by the applicant certifying the number of days do not bear the stamp of the officer concerned issuing the same, so this certificate of working is not reliable. The applicant has not come with clean hands. Since the applicant had appeared in the screening test with forged Casual Labour Card, his result was not declared, as a consequence thereof, he was not called for medical examination as well. The other candidates, alleged to be junior to the applicant, have been examined and regularized on the basis of genuine and authentic certificates, so there is no violation of Article 14 & 16 of Constitution of India while passing the impugned order.

12. Having given thoughtful consideration to the pleadings of the parties and their arguments, I have reached a conclusion that the Casual Labour Card, in question, was admittedly issued by the office of the respondents and hence in view of judgment of Hon'ble Supreme Court in the case of S.L. Benedict (supra) the same cannot be denied as unacceptable or illegal or forged by the applicant. The working days of the applicant is not denied by the respondents except with minor deficiencies in number of days, which, however, does not preclude the applicant for being regularized because number of days having been put by the applicant as agreed to by the respondents exceeds the minimum number of days for being eligible for regularization.

13. In view of the above narration of facts and analysis, I hold that the impugned order dated 24.4.2008 passed by the respondents is not sustainable in the eyes of law, hence the same is set-aside and quashed. The respondents are directed to give an opportunity to the applicant to appear in the screening, test being eligible candidate in the screening for regularization whenever the same is held next by the respondents. O.A. is accordingly allowed. No order as to costs.


(D.C. Lakha)
Member(A)

Girish/-