

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

Original Application No. 352 of 2008

Reserved on 11.4.2014

Pronounced on 25th April, 2014

Hon'ble Ms. Jayati Chandra, Member-A

1. Israj, aged about 41 years, S/o Sri Madari, R/o Village Terwa, Post Baghauli, District Hardoi.
 2. Babu Lal, aged about 44 years, S/o Sri Hazari, R/o Village Paharpur, Post Office, Baghauli, District Hardoi.
-Applicants

By Advocate : Sri Praveen Kumar

Versus.

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
 2. The D.R.M., N.R., Moradabad.
 3. The Assistant Engineer, Northern Railway, Hardoi.
-Respondents.

By Advocate : Sri S. Verma.

ORDER

The applicants have filed this O.A. under Section 19 of Administrative Tribunals Act, 1985 seeking following relief(s):-

- (a) *to quash the impugned order as contained in Annexure no. A-1 to this O.A.*
- (b) *to regularize the services of the applicants in view of the empanelment after screening with all consequential benefits.*
- (c) *to accord seniority and consequential benefit at par with Sri Ram Kumar who was also empanelled alongwith the applicants in the list dated 24.10.1990.*
- (d)
- (e)

2. The applicants stated that they were working as Casual labours under Inspector of Works, Hardoi. A list of 71 casual labours were prepared on 1.3.1987 in which applicants appeared at sl. Nos. 8 and 15 respectively. They were called to appear before screening committee on 10.3.1987 for the purpose of regularizing of the services of eligible casual labours. The applicants were not

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screened on 27.3.1987. However, the respondents drew up a panel and persons placed at sl. Nos. 4, 9, 10, 20, 27, 40, 48, 55 and 58 in the list have been given appointment, although these persons were much junior to the applicants.

3. The applicants alongwith others filed O.A. no. 17 of 1988, which was disposed of by order dated 23.2.1989 directing the respondents to give one more opportunity to the applicants for holding their screening test. The applicants were called for screening as a result of which a second panel was formed on 24.10.1990 (Annexure-4). It was stated in the list that these candidates were found suitable for regularization. The applicants also filed Contempt Petition no. 8 of 1989 for alleged non-compliance of the judgment and order of this Tribunal. The respondents/contemnors had given an undertaking that they will be given appointment to the applicants. However, despite internal correspondence with regard to identifying the suitable vacancies, they were not given any appointment, although they alongwith five others had been screened and empanelled on 24.10.1990. One Sri Ram Kumar, placed at sl. No.2 in the panel dated 24.10.1990 and Dalke Singh placed at sl. No.7 of the aforesaid list were given employment. The life of the panel is still operative and will remain operative until last man of the panel is absorbed/ regularized.

4. Further, the respondents issued an order dated 20.4.2000 (Annexure-7) by which their seniority were re-fixed at 60 and 110 respectively. This is wrong as original list of 1.3.1987 had included the names of only 71 persons, out of which 64 persons were screened and the panel was declared on 10.3.1987 and rest seven in the panel of 24.10.1990. The order dated 20.4.2000 shows that illegal inclusion of many others who were not in the zone of consideration in the earlier list.

5. The applicants filed O.A. no. 638 of 2001 against the order dated 20.4.2000. The said O.A. came to be disposed of vide judgment and order dated 1.8.2005 (Annexure-8) by which respondents were directed to consider the claim of the applicants for appointment as per their undisputed seniority in accordance with rules and existing vacancies available with the department in the Division to which the applicants belong within a period of

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three months from the date of passing of the order. As the aforesaid directions were not carried out within the stipulated period of time, the applicants filed Contempt Petition No. 44 of 2006, but the Contempt petition was dismissed on the statement of the respondents that the Writ Petition no. 379 of 2006 is under consideration. The said Writ petition was dismissed vide judgment and order dated 30.3.2006. While dismissing the Writ petition, the Hon'ble High Court observed that the right of the respondents (applicants in this O.A.) for consideration cannot be jeopardized because of inaction on the part of the petitioner (respondents in this O.A.) (Annexure-9). Thereafter, the respondents issued impugned order dated 23.5.2006 by which the claim of the applicants has been rejected. The applicant, thereafter, sought certain information necessary for filing this O.A. The information was received by letter dated 13/16.11.2007, thereafter, this O.A. has been filed without loss of time.

6. The respondents by their Counter Reply denied the averments of the applicant. They have initially taken preliminary objection regarding limitation of this O.A. being time barred. The applicant is claiming seniority with all consequential benefits at par Sri Ram Kumar, who was included in the list dated 24.10.1990 and this O.A. has been filed after a lapse of 18 years even if was to take cognizance of various intervention by means of legal activities, as detailed in the O.A., the impugned order has been passed on 23.5.2006; whereas the present O.A. has been filed after lapse of more than two years in the year 2008. The applicant cannot take shelter of time lost in obtaining the information under Right to Information Act, as there is no provision for stretching limitation as provided in Section 21 of Administrative Tribunals Act, 1985 to include time taken for obtaining information under Right to Information Act, 2005.

7. Coming to the merits of the case, the respondents have stated that the list dated 1.3.1987 was drawn up for the purpose of screening and was not a seniority list. It did not contain the number of working days. Therefore, the applicants cannot claim the shelter of the same. Further, the applicants were screened in compliance of direction of this Tribunal in O.A. No. 638/2001

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dated 1.8.2005. Although the applicants had absented themselves from the 1st screening deliberately, with the result they were screened at the second time and list of seven persons was issued on 24.10.1990. It was made clear in the list itself that the persons mentioned in the list although found fit in the screening placed in the provisional panel and are subject to clearance of remarks mentioned against their names and passing of prescribed medical examination, remarks against seven persons including the applicant stated that they had subject to verification of number of working days. It was made clear in the body of the letter that the panel is provisional and they will be absorbed "when their seniors are duly screened and absorbed as per seniority as and when vacancies arise."

8. The applicant has filed Rejoinder Reply reiterating the averments made in the O.A. and denying the averments of the respondents made in the Counter Reply.

9. I have heard the learned counsel for the parties and have perused the pleadings on record.

10. The point of limitation as pleaded by the respondents is taken first. It is seen that the applicant has been agitating his grievance since long for regularization of his case. In the interest of justice, the plea of limitation raised by the learned counsel for the respondents is rejected and O.A. is being decided on merits.


11. Coming to merits of the case, it is seen that the list dated 1.3.1987 contained names of 71 persons including those of the applicants. However, no-where in the list it is certified that this is the seniority list of casual Labours working in a particular division of the Railways. It appears that by this letter the named persons are required to get certain formalities completed in preparation for possible future regularization exercise. Therefore, no reliance can be placed in the matter of seniority. The applicant has, thereafter, placed reliance on the list issued by order dated 24.10.1990. Once again, it is seen that it does not state anywhere in the letter that this is seniority list. Infact if this is a conditional order wherein persons named in the panel would have to undergo the medically examine and verification of number of working days. The list itself

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is declared to be provisional. This list also does not state that this is exhaustive list of persons who may be working as a casual labour till the date of conducting of screening examination. Infact, it appears to be a screening test conducted in compliance of the directions of this Tribunal in which the candidates mentioned at sl. Nos. 1 to 6 would be absorbed when their seniors are duly screened and absorbed as per seniority and as and when the vacancy arises the case of the applicants would be considered. The applicants have not challenged this letter, which means that they have accepted the fact of there being certain senior persons, who have not yet been screened. Having thus accepted the other senior persons who have not been screened, they could not now turn around and to take the plea that the said list is indicative of their seniority position.

12. Coming to seek parity with Sri Ram Kumar placed at sl. No. 2, they have not produced any seniority list, which proved that any or both of them are senior to said Sri Ram Kumar and any person junior to them has been absorbed, nor have they impleaded Sri Ram Kumar as a party in the O.A. as having superseded them wrongly.

13. In view of the discussion made hereinabove, the applicants have failed to make out any case for interference of this Tribunal. The O.A. is accordingly dismissed. No costs.



(Ms. Jayati Chandra)
Member-A

Girish/-