

**CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH
LUCKNOW**

Original Application No. 481 of 2011

Order Reserved on 1.2.2016.

Order Pronounced on 05/2/16

HON'BLE MR. NAVNEET KUMAR MEMBER (J)

Bharat Kumar Sharma, aged about adult, son of Shri Hriday Nariain Sharma, resident of -554/61 A Pawanpuri, Ggli, No. 11, Alambagh, Lucknow.

Applicant

By Advocate Sri Praveen Kumar

Versus

1. Union of India through the General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Lucknow
3. Station Superintendent, Northern Railway, Charbagh, Lucknow.

Respondents

By Advocate Sri B. B. Tripathi.

ORDER

By Hon'ble Mr. Navneet Kumar, Member (J)

The present Original Application is preferred by the applicant under Section 19 of the AT Act, 1985 with the following relief(s):-

1. *To quash the impugned order dated 7.1.2011 communicated through order dated 10.1.2011 Annexure No. A-1 to this O.A. with all consequential benefits.*
2. *To consider the case of the appointment on Group D post while extending the benefits as have been granted to Shri Kamlesh Kumar, Shir Shiv Bihari and Shir D. K. Saxena and other applicants of O.A No. 227 of 1988 Ram Tej Versus Union of India with all consequential benefits.*
3. *Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed."*

2. The brief facts of the case are that the applicant was initially engaged as Substitute Porter under the respondent No. 3 and he continued to work till 1978. The applicant also indicated that in 1988, a list is prepared in which the name of the applicant find place at serial No. 1466 and his working days have been indicated as 1092 days. The respondents preferred an O.A. before this Tribunal vide O.A. No. 227/1988 and in the said O.A, the Tribunal directed the

respondents to give priority and preference in the matter of appointing substitute porters or casual labours over those who were allowed subsequent to their termination and also directed that their cases for regularization will also be considered along with similarly placed persons keeping in view that some persons have already been regularized. These orders were passed by the Tribunal on 22.6.1992.

3. Apart from this when several juniors to the applicant and other similarly situated persons were regularized, the applicant again approached this Tribunal by filing another O.A. No. 235 of 2007, which was disposed of with a direction to the respondents to decide the pending representation of the applicant and the respondents rejected the claim of the applicant vide order dated 7.1.2011 in which it is indicated that as per the PS No.10486 as well as PS No. 12329 a substitute/casual Labour can be absorbed in a regular group D up to 40 years for general category which can be relaxed up to 45 years for SC/ST and upto 43 years for OBC. Since the applicant has already crossed the prescribed aged limit, as such the competent authority regretted the claim of the applicant and passed the orders accordingly.

4. Hence the applicant preferred the present O.A. the learned counsel for the applicant has also categorically indicated that the other similarly situated persons were given the benefit and their services and were regularized. As such, the respondents have adopted the pick and choose policy rhyme or reason, the claim of the applicant is not considered.

5. On behalf of the respondents, reply is filed and through reply, it is indicated that as per the own averments of the applicant, he continued to work till 1978 and since then, the applicant is not been engaged. The earlier O.A. preferred by the applicant vide O.A. No. 235/2007, this Tribunal directed for disposal of the representation of the applicant and accordingly, the respondents taken a decision on the applicant's representation and rejected the claim. It is indicated by the respondents that the impugned orders are passed in accordance with law and there is no illegality in the same. The learned counsel for the respondents also taken shelter of the instructions as contained in Master Circular No. 48 and has indicated that all those who have been

discharged from service prior to 1.1.1981 had to submit their claim up to 31.3.1987 for placing their names in the supplementary live casual labour register after due verification. As the applicant did not submit any claim within the stipulated period, whereas, one Shri D. K. Sharma applicant of O.A. No. 270 of 2001. The respondents have again taken a reference of PS No. 10486 and 12329 and has indicated that a substitute/casual labour can be absorbed in a regular Group D service upto 40 years for general category which can be relaxed up to 45 years for SC/ST and up to 43 years for OBC. It is also indicated by the respondents that since the applicant has already crossed the prescribed age limit for absorption, accordingly his claim for absorption was regretted by the respondents. Not only this, it is also argued by the respondents that in O.A. No. 235/2007, the age of the applicant is shown as 47 years and as on date, if the same is calculated then the applicant is 55 years of age.

6. On behalf of the applicant, rejoinder is filed and through rejoinder, mostly the averments made in the O.A. are reiterated and the contents of the counter reply are denied.

7. Heard the learned counsel for the parties and perused the record.

8. The applicant was initially engaged as Substitute Porter and worked till 1978. It is indicated by the applicant that the work of the applicant was satisfactory to the entire satisfaction of the higher authorities. After a period of about 10 years, the respondents prepared a list in which the name of the applicant find place at serial No. 1466 and his working days have been indicted as 1092 days.

9. The applicant along with others preferred O.A. before this Tribunal vide O.A. No. 227 of 1988 in which the Tribunal directed the respondents to give priority and preference in the matter of appointing substitute porters or casual labours over those who were allowed subsequent to their termination. Their cases for regularization will also be considered along with similarly placed persons keeping in view that some persons have already been regularized.

10. The bare perusal of the aforesaid order shows that this orders were passed on 22.6.1992 and the name of the applicant find place at serial No. 179

in the array of the parties. Despite order of the Tribunal, the respondents have not taken any decision and when similarly situated persons were given the benefit of regularization, the applicant approached this Tribunal again by filing another O.A. 235 of 2007 in which this Tribunal on 24.1.2008 directed the respondents to consider and decide the representation of the applicant and in pursuance thereof, the respondents have passed the impugned orders indicating therein that as per instructions contained in Master Circular No. 48 all those who have been discharged from service prior to 1.1.1981 had to submit their claim upto 31.3.1987 for placing their names in the Supplementary Live Casual Labour Register but after due verification, it is found that the applicant did not submit his claim within a stipulated time whereas, another similarly situated person namely Shri D. K. Saxena applicant of O.A. No. 270/2001 submitted the option and was born on the Live Casual Labour Register prior to 31.3.1987 and his screening was also done in 1990 and as a result thereof, he was engaged in compliance of judgement in O.A. No. 270/2001.

11. While deciding the O.A. No. 235/2007, this Tribunal directed the respondents to take note of the earlier judgment passed in O.A. No. 270/2001 and in the impugned order, the respondents have taken note of aforesaid judgment. The copy of the judgment passed in O.A. No. 270 of 2001 is neither filed by the applicant nor by the respondents. Apart from this, the applicant has also not indicated that as per the Master Circular No. 48, the applicant has submitted his claim up to 31.3.1987 since the applicant was discharged from service prior to 1.1.1981.

12. Apart from this the respondents have taken cognizance of PS No. 10486 and 12329 and has indicated that a substitute/casual labour can be absorbed in a regular Group D service upto 40 years for general category which can be relaxed up to 45 years for SC/ST and up to 43 years for OBC and since the applicant has already crossed the prescribed age limit for absorption, as such, he cannot be considered for absorption. The bare perusal of the aforesaid circulars, which are in respect to the absorption in the Railway of Ex-casual labour borne on the Live/supplementary Live Casual Labour Registers in which the age relaxation upto the upper age limit of 40 years in the case of general

candidates, 43 years in the case of OBC and 45 years in the case of SC/ST candidates. The same is reiterated in the subsequent circular. Apart from this, the applicant in his entire original application as well as in the rejoinder reply has not taken a plea that as per Master Circular No. 48 as indicated in the impugned order, the applicant has ever submitted his claim up to 31.3.1987 for placing his name in the Supplementary Live casual Labour Register.

13. In the case of **Post Master General Kolkota and others Vs. Tutu Das** reported in **2007(5) SCC 317**, the Hon'ble Apex Court has been pleased to observe as under:-

"18. There are two distinctive features in the present case, which are:-

(i) Equality is a positive concept. Therefore, it cannot be invoked where any illegality has been committed or where no legal right is established.

(ii) According to the appellant the respondent having completed 240 days, does not fulfil the requisite criteria. A disputed question of fact has been raised. The High Court did not come to a positive finding that she had worked for more than 240 days in a year.

19. Even otherwise this Court is bound by the Constitution Bench decision. Attention of the High Court unfortunately was not drawn to a large number of recent decisions which had been rendered by this Court.

20. The statement of law contained in para 53 of *Uma Devi (supra)* cannot also be invoked in this case. The question has been considered by this Court in a large number of decisions. We would, however, refer to only a few of them.

21. In *Punjab Water Supply and Sewerage Board v Ranjodh Singh & Ors [2006 (13) SCALE 426]* referring to paragraphs 15, 16 and 53 of *Uma Devi (supra)*, this Court;

"17. A combined reading of the aforementioned paragraphs would clearly indicate that what the Constitution Bench had in mind in directing regularisation was in relation to such appointments, which were irregular in nature and not illegal ones.

18. Distinction between irregularity and illegality is explicit. It has been so pointed out in *National Fertilizers Ltd. & Ors. vs. Somvir Singh [(2006) 5 SCC 493]* in the following terms:

"23. The contention of the learned counsel appearing on behalf of the respondents that the appointments were irregular and not illegal, cannot be accepted for more than one reason. They were

appointed only on the basis of their applications. The Recruitment Rules were not followed. Even the Selection Committee had not been properly constituted. In view of the ban on employment, no recruitment was permissible in law. The reservation policy adopted by the appellant had not been maintained. Even cases of minorities had not been given due consideration.

24. The Constitution Bench thought of directing regularisation of the services only of those employees whose appointments were irregular as explained in *State of Mysore v S.V. Narayanappa, R.N. Nanjundappa v T. Thimmiah and B.N.Nagarajan v State of Karnataka* wherein this court observed: [Umadevi (3) case 1, SCC p. 24, para 16]

"16. In *B.N. Nagarajan v. State of Karnataka* this Court clearly held that the words 'regular' or 'regularisation' do not connote permanence and cannot be construed so as to convey an idea of the nature of tenure of appointments. They are terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to methodology followed in making the appointments."

25. Judged by the standards laid down by this Court in the aforementioned decisions, the appointments of the respondents are illegal. They do not, thus, have any legal right to continue in service."

{See also *State of Madhya Pradesh & Ors. vs. Yogesh Chandra Dubey & Ors.* [(2006) 8 SCC 67] and *State of M.P. & Ors. vs. Lalit Kumar Verma* [2006 (12) SCALE 642].}

22. The same principle has been reiterated recently in *Punjab State Warehousing Corp., Chandigarh v Manmohan Singh & Anr.* [2007 (3) SCALE 401].

23. For the reasons aforementioned, the impugned judgment cannot be sustained It is set aside accordingly. The appeal is allowed. In the facts and circumstances of this case, however, there shall be no order as to costs."

14 The complete reading of both the circulars as well as pleadings available on record shows that neither the applicant has taken a ground that he has submitted any claim in terms of master circular No. 48, therefore, the PS No. 10486 and 12329 are applicable in the present case.

15. Considering the observations made by the Hon'ble Apex Court as well as on the basis of the facts of the case, I am not inclined to interfere in the present O.A. Accordingly, the O.A. is dismissed. No order as to costs.

Navneet Kumar
(Navneet Kumar)
Member (J)

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