

CENTRAL ADMINISTRATIVE TRIBUNAL: LUCKNOW BENCH

LUCKNOW

Original Application No. 133 of 1992.

Lucknow this the 06th day of June 1997.

HON'BLE MR. D.C. VERMA, MEMBER(J.)

Guru Prasad S/o late Sumai
Casual labour under Chief Telecommunication
Inspector Charbagh, Lucknow.
C/o Sri A.C. Misra R/o House no.5, Manas Nagar,
Lucknow.

Applicant

Versus

1. The Union of India-through
The General Manager, Northern Railway,
Head Quarters Office, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern
Railway, Hazratganj, Lucknow.
3. The Chief Telecommunication Inspector, Northern
Railway, Charbagh, Lucknow.

..Respondents

For the applicant: Sri V.D. Shukla, Advocate

For the respondents: Sri S. Verma, Advocate

ORDER

By this O.A. the applicant has prayed for direction to respondent no.2 i.e. The D.R.M., Northern Railway, Lucknow to consider the applicant for appointment as Khalasi after finding him suitable and after interpolating the applicant's name in the panel of Khalasi above his juniors. The applicant has also claimed back wages and other allowances from the date of regular appointment of his next junior. Besides this, *> claimed* vide para 8(c) of the O.A. the relief was that

the applicant be deemed to have been granted status of temporary staff from 18.8.76 on his completion of 180 days continuous service. This relief i.e. 8(c) has, however, not been pressed by the learned counsel at the time of his argument.

2. The respondents have denied the claim of the applicant. They have also not received any representation from the applicant. It is also denied that the applicant was ever engaged as casual labour with the respondents. In the alternative the respondents have raised the plea of limitation.

3. Heard the learned counsel for the parties and perused the documents on record. As per the O.A., the applicant worked continuously from 19.2.76 to 11.1.77 for a total period of 326 days without any break. The applicant was not granted temporary status though he had worked for more than 180 days. As per the O.A. the applicant had worked till 11.1.77 only. It has been urged by the learned counsel for the applicant that though vide notice dated 10.7.85 details of casual labours/substitute, who had worked prior to 1.6.76 for 120 days or more, was prepared by respondent no.3 but name of the applicant was not included therein. The applicant was, therefore, though eligible, was not called for the post of Khalasi by the Screening Committee, Juniors to the applicant were called and selected. According to the applicant, it was in January 1991 that the applicant could know from one Asharfi Lal, who was junior to the applicant, about the non-selection of the applicant and about selection of juniors by the Screening Committee. The panel was prepared on 23.2.87(annexure-1 to the O.A.). On being informed by Asharfi Lal, the applicant filed the present O.A. in 1992. } ✓

4. The respondents have submitted that engagement of the applicant as casual labour by the respondent is not admitted. In the alternative it has been submitted by the learned counsel for the respondents that the O.A. is barred by time. In support of his contention, the learned counsel has pointed out that the applicant, as per his own showing, worked only till 11.1.77. If any body junior to the applicant was allowed to continue to work after the year 1977, the applicant had a grievance at that time to come to court. The applicant failed to avail that opportunity. It has been further submitted that as per the O.A., screening was done in the year 1985 and name of the applicant was not included in the panel prepared in the year 1987. Therefore, if the applicant had actually worked and had any real grievance, he would have petitioned after the panel list was announced. As the applicant failed to move, the authority/court to redress his grievance, it has been submitted, the present O.A. is barred by limitation.

5. In support of his contention the learned counsel for the respondents has placed reliance on the decision of the apex court in the case of Central Bank of India versus S. Satyam reported in 1996 A.I.R. SCW page 3138. The said case was under the Industrial Disputes Act, but while dealing with the claim of the applicant, the apex court found that "All the retrenched workmen involved in the present case were employed for short period between 1974 to 1976. It was only in 1982 that a writ petition was filed by them to claim this benefit. The other persons employed in the industry during the intervening period of several years have not been impleaded. Third party interest have arisen during the interregnum. These third parties are also workmen employed in the

industry during the intervening period of several years. Grant of relief to the writ petitioners (respondents therein) may result in displacement of those other workmen who had not been impleaded in these proceedings, ^{if} _{as} the respondents have any claim for re-employment. The laches leading to the long detail after which the writ petition was filed in 1982, is sufficient to dis-entitle them to the grant of any relief in the writ petition....."

6. Besides above, in the case of Secretary to Government of India & Others versus Shivram Mahdu Gaikwad reported in 1995 SCC (L & S) page 1148 the respondent Shivram Madhu Gaikwad was employed as a daily wager. His last appointment was 24.3.86. He reported for work till 22.9.86 and thereafter he did not turn up for work altogether and was discharged from service w.e.f. 7.10.86. Gaikwad filed O.A. before the Bombay Bench of the Tribunal in the year 1990. Without considering the question of limitation, the Bombay Bench of the Tribunal had allowed the O.A. and directed the reinstatement in service with full back wages. On appeal by Government of India, the apex court held that the O.A. was clearly barred by limitation.

7. From the facts of the present O.A. it is found that even if the case of the applicant is accepted for argument sake that the applicant was engaged as a casual labour by the respondents, his claim is clearly barred by limitation. Initially the cause of action had arisen to the applicant in the year 1977 then in the year 1985 and lastly in the year 1987 but the applicant at no time filed any claim petition in any court of law to redress his grievance.

8. The learned counsel for the applicant has, during the course of arguments, produced a

casual labour card to show that the applicant was actually engaged by the respondents, copy of which is already on record as annexure no.2. On its basis the learned counsel for the applicant has submitted that the applicant was actually engaged by the respondents and the applicant had worked for more than 180 days continuous service and therefore, he should have been granted temporary status as per the Railway Board's Circular. The respondents have by their para-4 of the counter reply submitted that the casual labour card (annexure no.2) is fake/forged for the reasons that all the entries from serial no.1 to 28 of the said document have been made in the same date and it does not bear the signature of the Officer, who had taken work from the applicant. It is also seen that in Casual Labour Card produced by the learned counsel for the applicant one continuous entry is from Sl.no.1 beginning from 27.1.66 till Sl.no.23 ending on 14.8.78. The next entry is from 15.9.88 to 11.3.89. All these entries appears to be made on one day. Though in the O.A. the applicant has claimed to have worked only upto 11.1.77 but in the Casual Labour Card produced by the learned counsel for the applicant, the applicant is shown to have worked upto 11.3.89, whereas in the photo copy(annexure no.2 filed with the O.A.) the entries/are only upto 14.8.78. Copy of the entry from 15.9.88 to 11.3.89 though made on the same page as of 14.7.78, are not on the photo copy filed by the applicant with his O.A. If the photo copy of the page, containing entry of 14.8.78 was taken, why the entry from 15.9.88 to 11.3.89 has not come though on the same page.. This is a big question(?) mark. Either the entry '15.9.88 to 11.3.89' was not there when the photo copy was prepared or the was same/made subsequently, or for some ulterior motive this entry was concealed for being photo copied.

The case of the respondents, that the Casual Labour Card, produced on behalf of the applicant, is not genuine and fake, is not without basis.

9. Learned counsel for the respondents has also drawn my attention towards the Railway Board's circular no.E(NG)II/78/CI./2 dated 25.4.86 whereby where a casual labour was discharged prior to 1.1.81 and has not been re-engaged thereafter for any reason, his name will continue to stand deleted from the Casual Labour Register. On the other hand learned counsel for the applicant has placed reliance on the decision of the apex court in the case of Inder Pal Yadav & Others versus Union of India & Others etc. decided on 18.4.85. Benefit of this judgment could not be made available to the applicant as it has not been found established that the applicant was engaged as Casual Labour with the respondents.

10. In view of the above discussions, the O. A. has no merit and is dismissed. Cost on parties.


MEMBER (J.)

Dated: Lucknow: June 6, 1997.

Narendra/