

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

Original Application No. 168 of 2008

Reserved on 10.11.2017

Pronounced on 02.01.2018

Hon'ble Mr. Justice V.C. Gupta, Member-J

1. Rajesh Kumar Tripathi, S/o Sri Ganga Prasad Tripathi, R/o 1063 Civil Lines (Near ITI) Gonda.
2. Ravi Shanker Tripathi, S/o Sri Ganga Prasad Tripathi, R/o 1063 Civil Lines (Near ITI) Gonda.
3. Gopesh Kumar Shukla, S/o Sri Krishna Kishore Shukla, R/o T-1/2 Ganga Bairaj Colony, Kanpur.
4. Raghvendra Pratap Singh, S/o late Ram Pal Singh, R/o 905 Civil Lines, Gonda.
5. Satyavrat Singh, S/o Sri Jagdish Singh, R/o Village & Post Birahmatpur, District Gonda.
6. Mohd. Afzal, S/o Sri Hobib Ullah, R/o New Colony Indira Nagar, P.O. Babhani Kanoongo, District Gonda.
7. Shiv Kumar, S/o late Mohan Lal, R/o Malviya Nagar, P.O. Bankata District Gonda.
8. Devendra Kumar Jaiswal, S/o Sri Paljhan Jaiswal, R/o Mohalla Dadua Bazar, Makarhi Ganj, Gonda.
9. Manoj Kumar Singh, S/o Sri Hemant Kumar Singh, R/o Village Narainpur, Post & District Sultanpur.
10. Diwakar Singh, S/o Sri Krishna Krishna Kumar Singh, R/o Ram Nagar (Old Cooperative Bank), District Barabanki.
11. Vasudeo Prasad, S/o Sri Bhagwati Prasad.
12. Anawar Ahmad, S/o Sri Jamil Ahmad, R/o Village Buddhi Purwa Dhanepur, District Gonda.
13. Krishna Ji Tiwari, S/o Sri Mahadeo Prasad, R/o Mohalla Subhash Nagar (Near Bharat Milap Chauraha), District Gonda.
14. Shamshad Ali, S/o Sri Zafar Ali, R/o Moh. Mahraniganj, Ghosiana, P.O. Dadua Bazar Bara Gaon, District Gonda.
15. Ramji Tiwari, S/o Mahadeo Prasad Tiwari, R/o Subhash Nagar (Near Bharat Milap Chauraha), District Gonda.
16. Shyamendra Pratap Singh, S/o Late Ram Pal Singh, R/o 905 Civil Lines, Gonda.

.....Applicants

By Advocate : None

Versus.



1. General Manager, North Eastern Railways, Gorakhpur.
2. Divisional Railway Manager (Personnel), N.E. Railway, Lucknow.
3. Senior Divisional Personal Officer, Lucknow.
4. Senior Station Superintendent, N.E. Railway, Gonda.

.....Respondents.

By Advocate : Sri Rajendra Singh

ORDER

This O.A. has been filed by the applicants claiming following relief(s):-

- (a) *issue a direction or direction thereby directing the respondents to consider the case of the applicant for inclusion of there names into the tentative eligibility/seniority list dated 5.8.2003 (Annexure No. A--) at appropriate place on the basis of their verified number of working days and finalize the same and also grant them all consequential benefits accrued there from.*
- (b) *issue any other order or direction as this Hon'ble Tribunal may deem fit and proper circumstances of the case.*
- (c) *allow this application with costs."*

2. Brief facts giving rise to this Original Application are that the applicants' claim is that they were initially engaged on casual basis with the respondents and worked from time to time. They had worked for considerable period of time. The details of educational qualification and number of working days from the date of initial appointment is given in para 4.1 of the O.A. Table is reproduced here-in-below:-

Sl. No.	Name	Qualification	Initial engagement	No. of working days
1.	Rajesh Kumar Tripathi, S/o Ganga Prasad Tripathi	High School	1.7.991	305
2.	Ravi Shanker Tripathi, S/o Sri Ganga Prasad	High School	16.6.1987	316
3.	Gopesh Kumar Shukla, S/o Sri Krishna Kishore	8 th Passed	1.11.1992	329

(Sd/-)

	Shukla			
4.	Raghvendra Pratap Singh, S/o Late Ram Pal Singh	High School	1.7.1982	328
5.	Satyarat S/o Sri Jagdish Singh	High School	1.4.1987	606
6.	Mohd. Afzal, S/o Sri Hobib Ullah	8 th Passed	1.1.1982	410
7.	Shiv Kumar, S/o Late Mohan Lal	8 th Passed	1.1.1981	475
8.	Devendra Kumar Jaiswal, S/o Sri Paljhan Jaiswal	8 th Passed	1.1.1981	310
9.	Manoj Kumar Singh, S/o Hemant Kumar Singh	High School	1.5.1997	367
10.	Diwakar Singh, S/o Krishna Krishna Kumar Singh	High School	1.9.1998	273
11.	Vasudeo Prasad, S/o Sri Bhagwati Prasad	High School	1.6.1987	370
12.	Anawar Ahmad, S/o Sri Jamil Ahmad	High School	1.5.1992	313
13.	Krishna Ji Tiwari, S/o Sri Mahadeo Prasad	8 th Passed	1.7.1980	325
14.	Shamsad Ali, S/o Sri Zafar Ali	8 th Passed	1.10.1980	235
15.	Ramji Tiwari, S/o Mahadeo Prasad Tiwari	High School	1.7.1991	370
16.	Shyamendra Pratap Singh, S/o late Ram Pal Singh	Intermediate	1.1.1985	350

It was contended that a tentative seniority list of 528 substitutes workers was prepared on the basis of total working days, but due to arbitrary and unfair attitude of the respondents, the name of the applicants were not found in the seniority list, though from sl. Nos. 387 onwards persons having lesser number of working days to the applicants were placed. Even the persons who did not work for a single day have also been placed at sl. Nos. 520 to 528, a copy of which is as Annexure no.2 to the O.A. The applicants, thereafter, aggrieved by the action, made representation to the respondent no.2 by moving separate applications for placement of their names in the seniority list. The representations were forwarded to the respondent no.3. The



respondent no.2 issued final seniority list without considering the applications of the applicants. This was list of 295 candidates and published order dated 19.12.2003 on the basis of tentative seniority list dated 5.8.2003 for considering the cases for the purposes of regularization against class IV post. The names of the applicants did not find place in this list, though their names were available in the list operating in the year 1991. The screening was conducted for selection on 22/23.10.1991, but the applicants were not considered in that process. It was contended that some of the employees namely S/Sri Shamsad Ali, Jitendra Kumar and Vasudeo made an application to the DRM Sanstha, Lucknow, who issued a letter dated 9.12.1991 directing the authorities concerned that the applicants had informed that their names were in the seniority list, but no work was being taken from them. A direction was issued by the DRM Sanstha, Lucknow to take work as substitute in accordance with rules.

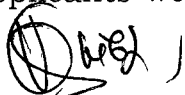
3. When the request of the applicants was not acceded to, some of the applicants filed O.A. No. 267 of 2004 Satyavrat Singh and others Vs. Union of India & Others with a prayer to enter their names in the tentative seniority list of 5.8.2003 at appropriate places. The O.A. was disposed of vide judgment and order dated 2.7.2004 issuing certain directions to the respondents, a copy of which is annexed as Annexure no.6. The operative portion of the order is extracted here-in-below:-

"The eligibility list for screening circulated vide order dated 5.8.2003 (Annexure-1) includes the names of person who have zero working days claimed and zero verified days as well. It has not been disputed that if the applicants are not entitled to be considered for screening or for that matter even for becoming eligible for screening purpose under the extant rules, they cannot be considered. However, finding that the eligibility list for screening includes persons who have got zero verified working days and the applicants have made representation (copy annexed to the O.A.) it is found expedient that the representations of the applicants is seen and decided by a reasoned order in accordance with the existing rules and departmental instructions. The applicants should also be informed the decision in this record."

(Signature)

4. It is necessary to mention here that this O.A. was filed by the 10 applicants namely S/Sri Satyavrat Singh, Shamendra Pratap Singh, Durgesh Kumar, Vasudeo, Radhey Shyam, Rajesh Kumar Tripathi, Ravi Shanker Tripathi, Diwakar, Shiv Kumar and Mohd Afzal applicant nos. 1 to 10 respectively. Out of these 10, Durgesh Kumar and Radhey Shyam was not applicant in this O.A. However, applicant no.3 Gopal Kumar Shukla, applicant no.4 Raghvendra Pratap Singh, applicant no.8 Devendra Kumar Jaiswal, applicant no.9 -Manoj Kumar Singh, applicant no. 12 - Anwar Ahmad and applicant no.14 Krishna Ji Tiwari were not party to the O.A. no. 267 of 2004 decided on 2.7.2004. After disposal of O.A., applicants of the present O.A. made a representation again on 8.9.2004 to Opposite party no.2 by registered post for not complying with the directions issued by this Tribunal in O.A. no. 267 of 2004, a copy of which was also furnished to the respondent no.3. Copy of representation is annexed as Annexure no.1 to the O.A. Thereafter, the respondent no.3 considered the case of the applicants of O.A. no. 267 of 2004 and passed two different orders dated 29.9.2004 and 8.10.2004 rejecting the claim of the applicants. The orders are annexed as Annexure nos. 8 & 9 to the O.A. respectively.

5. Perusal of the orders reveal that order dated 29.9.2004 was related to Satyavrat Singh applicant to the O.A no. 267 of 2004 and order dated 8.10.2004 related to remaining applicants of O.A. no. 267 of 2004. Perusal of these orders further reveal that the candidates who were screened for regularization have completed 2750 working days (general category candidates) and 2854 working days by OBC candidate. It was further revealed that no application with verified days was received of the applicants in pursuance of the letter dated 20.1.2003. It was further mentioned in these order that even on the basis of details of working days given in the Court, they are having less number of working days for considering their claim for regular appointment. It was further mentioned that the applicants were not working and their names



were not in the present live register as they are out of work for the last two years and as such their names could not find place in the seniority list.

6. After passing these orders, the applicants then again made representations on 11.1.2005, 10.3.2006, 7.6.2006 to the Opposite party no.2, but no action has been taken. Consequently, the present O.A. has been filed.

7. Reply has been filed by the respondents and has taken a preliminary objection that the case is time barred. After considering this preliminary issue, this Tribunal decided the O.A. on 14.7.2008 dismissing the same as barred by time. This order was challenged in Writ petition No. 1530 (SB) of 2010 and Hon'ble High Court vide order dated 17.11.2014 set-aside the order of this Tribunal dated 14.7.2008 and directed the Tribunal to consider the case on merits.

8. Thereafter, regular Counter Affidavit has been filed wherein the orders passed on 29.9.2004 and 8.10.2004 were supported. It was further contended that the orders dated 8.10.2004 and 29.9.2004 were not challenged. Therefore, no relief could be granted to the applicant. It was further contended that the applicants are not enrolled in the live register, hence their cases were not considered. It was further contended that it is not the case of the applicants that they are continuously working and this fact has not been denied by them and that they were not working for the last more than two years from the date of last screening held in the year 2003. It was further contended that the date of initial appointments given by applicants in the O.A. are different which has been given in para 7 of Writ petition filed by the applicants. It shows that the averments made in this O.A. are fictitious and based on imagination and not on actual happening. It was further contended that there is no designation of 'DRM Sanstha' and as such they disown the authenticity of the letter



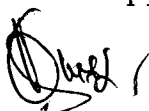
dated 9.12.1991 and on these basis it was contended that this O.A. is liable to be dismissed.

9. During the pendency of this O.A., an amendment application was moved on 19.9.2017 to add the relief for setting-aside the order dated 19.9.2014 and for considering the cases of the applicants for regularization. However, order dated 8.10.2004 was not sought to be challenged. The amendment application was dismissed as not pressed vide order dated 2.11.2017.


10. Thereafter, none appeared on behalf of the applicant. Hence matter is going to be decided under Rule 15 of CAT (Procedure) Rules, 1987 on the basis of material available on record and pleadings of the parties and after hearing the counsel for the respondents.

11. It is not the case of the applicants that they are continuously working from their initial appointment till the date of presentation of representation or till the date of presentation of the O.A. having O.A. no. 267 of 2004. It is also not the case of the applicants that their names were available in live register kept by the authorities. It is specific case of the applicants that after issue of tentative seniority list of 508 candidates final seniority list was issued for 295 candidates. The names of the applicants were not found place in both the seniority list. They made representation and their representations were rejected vide orders dated 29.4.2004 and 8.10.2004. Once the claim of applicants has been rejected by the authorities, there appears no reason to make a representation with a request to pass a order contrary to the order passed earlier. No such rule has been placed on record where the applicants have been permitted to make further representation. Unless the orders dated 29.9.2004 and 8.10.2004 are set-aside no relief as claimed by the applicants could be granted.

12. Hence, in view of the above, this Tribunal is of the view that on merits, the claim of the applicants is not tenable and is liable



to be dismissed and is accordingly dismissed. There shall be no order as to costs.


02/11/2018
(Justice V.C. Gupta)
Member-J

Girish/-