

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH LUCKNOW

Order Reserved on 24.01.2017
This, the **10th day of February, 2017**

Original Application No. 96 of 2009

HON'BLE MR. JUSTICE VISHNU CHANDRA GUPTA, MEMBER (I)

Desh Raj
Aged about 44 years,
Son of Late Shri Doolam,
Resident of Village
Angangarh Jamunwa
P.O. Chmrauli,
District Unnao(U.P.)

Applicant.

By Advocate Sri S.P. Singh

Versus

1. Union of India through
The Secretary Railway Board,
Rail Bhawan, New Delhi.
2. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
3. The Divisional/Additional Divisional
Railway Manager, Northern Railway,
Lucknow.
4. The Assistant Divisional Engineer-II, N.
Railway Lucknow.
5. The Section Engineer (P. Way) Northern
Railway, Unnao(U.P.)

Respondents.

By Advocate: Sri B.B. Tripathi

ORDER

1. By means of this O.A., the applicant Desh Raj claiming the following relief(s):-

"(1) To quash the impugned order dated /01/2008 contained as (Annexure No.A-1) to this O.A. with all consequential benefits, as it is totally wrong, false, misleading and against the orders of Railway Board and also violation of provisions of Article 14 and 16 of the Constitution of India.

(2) To engage the applicant as casual labour with temporary status forthwith and regularise his services within three months, as already directed by this Hon'ble Court vide orders and judgment dated 24.9.2004 in O.A. No. 465 of 1997 with all consequential benefits. The Respondent No. 3, (competent authority has also agreed to implement the judgement vide orders at Annexure No. A-8 and A-9 to this O.A.

(3) To allow the applicant wages from 21.10.1989 with interest the date when 3372 casual labour Gangman were empanelled and their services regularised as shown in para No. 4-3 and para 4-23 to 4-27 as more than 500 casual labours Gangman etc. are most juniors to the applicant. They are working and drawing salary etc. from 21.10.1989 and so on.

(4) To allow the applicant seniority from 21.10.89 the date when his immediate junior was regularised and allowed seniority etc.

(5) To allow the applicant pay, T.A. and other Allowances for waiting for orders from 11.9.2007 to 21.1.2008 i.e. 133 days with Respondent No. 4 and 5 as the kept the applicant waiting for orders, when reported for duty along with DRM letter dated 10.9.2007 and violated the orders of this Hon'ble Tribunal duly agreed and approval by respondent No. 3.

(6) Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.

(7) Cost of present O.A and also previous O.A. No. 465 of 1997 may kindly be allowed."

2. The brief facts for deciding this petition are that the applicant was engaged as Casual Labour under Section Engineer, N. Railway, Unnao on 20th January, 1973. He worked as per Casual Labour Card for 139 days. The details of work done by him is as follows:-

20.01.1973 to 26.03.1973	36 days	Gangman.
03.02.1978 to 04.3.1987	30 days	Gangman
05.08.1978 to 14.04.1978	31 days	Gangman
14.6.1978 to 28.6.1978	15 days	Gangman
16.11.1978 to 14.12.1978	27 days	Gangman

Since then he is out of job. He claimed that he acquired temporary status by lapse of 120 days of work as casual labour in view of PS No. 7850 for Railway Board letter No. E(NG) 11-77/CL/46 dated 8-6/1981. In 1989, a screening test was conducted of the applicant along with other casual labourers, but he was not reengaged/absorbed. Thereafter he filed an O.A. 465/1997 which was decided on 24th September, 2004. The relevant portion of the judgment reads as under:

"Be that as it may, O.A. stands disposed of with the direction to the respondents that in the event, name of applicant exists in the LCLR, working period of the applicant shall be verified and he shall be considered for engagement and further regularization in accordance with rules within a period of three months from the date of receipt of copy of this order. No costs."

3. When the aforesaid order was not complied with by the respondents, the contempt petition was also filed having CCP No. 68/2005 but the same was decided on 1.12.2008 with an observation that the order of 2004 referred

hereinabove has been complied with. The relevant portion of the judgment para 9,10 are extracted herein below:

"9. Admittedly, this Tribunal, has not given any finding in the O.A. in respect of the entitlement or regularization of the applicant but given direction to the respondents to verify the working period of the applicant and he shall be considered for engagement and further regularization in accordance with rules within a period of three months from the date of receipt of copy of this order in such circumstances, it is not open to the applicant to agitate that there was admission of the respondents that the applicant worked more than 120 days and he is entitled for regularization at this stage.

10. From the reading of compliance report dated 7.1.2008(Ann. CA-1), it is clear that the authorities have complied with the direction of the Tribunal and, if the applicant is still aggrieved, he is at liberty to file fresh O.A. as such, there is no act of contempt on the part of respondent and thus CCP is liable for dismissal.

In the result, CCP is dismissed. Notice discharged."

4. An order dated 7.1.2008 has been annexed with compliance report by the respondents in the contempt petition. The same order is impugned in this O.A. which reads as under:-

" उत्तर रेलवे

NORTHERN RAILWAY

अपठनीय सहायक मण्डल अभियन्ता(द्वितीय) लखनऊ

देशराज पुत्र डूलम

सहायक मण्डल अभियन्ता

ग्राम - अनमनगढ़-जमुनवा

द्वितीय उ०रे० लखनऊ

पो०- बमरौली

दि०- /01/08

जिला - उन्नाव

विषय: कनटेम्पट केस न०- 68/2005 तथा कोर्ट केस न०-465/97 के अनुपालन के सम्बन्ध में।

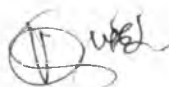
माननीय न्यायालय के आदेश के अनुपालन में आपको सूचित किया जाता है कि आपने लगातार 120 दिन पूरे नहीं किये हैं। अतः आपको रेल सेवा में नहीं लिया जा सकता।

प्रतिलिपि:

1. डी.आर.एम./लीगल सेल/लखनऊ सहायक मण्डल अभियन्ता
2. वरि० मण्डल अभियन्ता (पंचम)/लखनऊ (द्वितीय)
3. खण्ड अभियन्ता/रेल पथ / उ०रे०/उन्नाव उ०रे० लखनऊ

5. The claim of absorption in the railway services has been declined on the ground that he had not completed 120 days.

6. The reply has been filed by the respondents claiming therein that initially the applicant was engaged as casual labour in 1973 and he worked only 36 days. Thereafter, he was again engaged in 1978 and worked till 14th December, 1978 with broken period. Since then, he was never engaged. It was pleaded that as per Railway board circular dated 22nd November, 1984, a casual labour after discharge from service of completion of work or in absence of any further more productive work had not worked on Railway again in preceding two complete calendar years, the name of such casual labour shall be struck off from the Casual Labour



Register. The casual labour Register ought to have been updated yearly. As the applicant worked for less than 120 days in 1978, so in the light of the aforesaid board circular letter, he cannot be granted benefit of temporary status nor he could be inducted or regularised in the Railway service.

7. Rejoinder affidavit has been filed reiterating the allegations made in the O.A. and further stated that broken period shall also be counted and cannot be ignored. He relied upon in the same Railway Board Circular which has been issued for entitlement and privileges admissible to the casual labour having PS no. 7850 of dated 8.6.981. In rejoinder affidavit, much emphasis has been given that earlier order passed by this Tribunal were decided to be complied with by the respondents but later on, it has not been wilfully complied.

8. I have heard the learned counsel for the parties and perused the record.

9. On the basis of pleadings, two questions are necessary to be decided:

(i) Whether the applicant would be entitled to get temporary status in the light of work done by him as mentioned herein above?

(ii) Whether the work done in 1973 and worked done in 1978 could be clubbed together for granting the benefit of temporary status and for purpose of absorption /regularization of the applicant in the Railway service?

10. Both the issues relate to different Railway Board Circulars hence, it would be necessary to look into those circulars and has been relied upon by the parties. The Railway Board Circular relied upon by the applicant dated 8.6.1981 is extracted herein below:

“Entitlements and privileges admissible to Casual Labour.

Casual labour are not eligible for entitlement and privileges other than these statutorily admissible under the various Acts, such as Minimum Wage Act, Workmen's Compensation Railway Board from time to time

Breaks in Service

The following cases of absence will not be considered as breaks in service for the purpose of determining 120 days continuous employment:-

(a) the period of absence of a workman who is under medical treatment in connection with injury sustained on duty covered by provisions under the workmen's compensation Act.

(b) Authorised absence not exceeding 20 days including 3 days unauthorised absence for personal reasons. Absence of half a day should be reckoned as half a day only. In the case of female casual labour a period of absence of 4 weeks (in

addition to 20 days authorised absence) may be allowed for maternity purposes.

(c) On completion of works or for non-availability of further productive work when casual labour on daily wages or in regular scale of pay or 1/30th of the minimum of the scale of pay or Allowance is discontinued and employed later when work is available such gaps in service will not count as breaks in service for the purpose of reckoning of continuous service of 120 days or 180 days as the case may be.

(d) Non performance of work on days of –under the Hours of employment Regulations or under the Minimum Wages (Central) Rules, 1950 and on days on which the establishment employing the labour remains closed does not constitute a break nor will it be counted against the limit of twenty days referred to in above. The terms “authorised absence” for this purpose covers permission granted by the supervisory official, in change to be away from work for the period specified.

Notice of Termination of service:

Except where notice is necessary under any statutory obligation no notice is required for termination of service of the casual labour. Their services will be deemed to have been terminated when they absent themselves or on the close of the day.

Casual labour should not be deliberately disengaged with a view to causing an artificial break in their service. Where casual labour have to be terminated due to non-availability of work for them the unit for their retrenchment will be that of an Inspector. Casual labour diverted from one unit to another will rank junior most in the new unit. On projects, the Executive Engineer will be the unit for retrenchment.

Entitlements and privileges admissible to casual labour who are treated as temporary after the completion of 120 days continuous service-

(a) Casual labour given temporary status are eligible for all the entitlements and privileges admissible to temporary railway servants as laid down in Chapter XXIII of the Indian Railways Establishment Manual. The entitlements and privileges admissible to such labour also include the benefits of the Discipline and Appeal rules. Their service, prior to the date of completion of 120 days continuous service will not however count for any purpose like reckoning of retirement benefits, seniority etc., such casual labour will also be allowed to carry forward the leave at their credit to the new post on absorption in regular service.

(b) Such casual labour who acquire temporary status, will not however, be brought on the permanent establishment unless they are selected through regular selection Board for Class IV posts. They will have a prior claim over others to permanent recruitment and they will be considered for regular employment without having to go through employment exchanges.”

11. Railway Board Circular relied upon by the respondents of dated 22.11.1984 is extracted herein below:

“GOVERNMENT OF INDIA (BHARAT SARKAR)
MINISTRY OF RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

No. E(NG)II/78/CL/2 dated 22-11-1984

Subject :- Screening/empanelment of casual labour and substitutes maintenance of Casual Labour registers.

Reference this Ministry's letter of even number, dated 21.02.1984 on the above subject. The Ministry of Railways have had occasion to review the existing instructions and procedures regarding engagement of casual labour. Instructions regulating the engagement of casual labour and providing for control over the total casual work force were issued in this Ministry's letter No. E(NG)II/84/CL/43, dated 07.06.1984.

2. The Ministry of Railways have now decided that if a casual labourer who was earlier discharged from service on completion of work or for want of further productive work, has not worked on the Railways again in the proceeding two complete calendar years, his name should be struck off the casual labour register. The Ministry have observed in this connection that in the matter of re-engagement of an casual labour the Railway Administration will, no doubt, keep in view the relevant provisions of Industrial Disputes Act, 1947 and the Rules framed there under and the practice of displaying on the notice Board if fresh employment for discharged casual labour is available.

3. The casual labour register should be reviewed and updated annually, preferably during the first quarter of the year. The register so maintained should be scrutinised by Sr. Gazetted Officer preferably, both at the beginning and the close of the year and in any case at least once annually after the review has taken place. The reviewing Gazetted Officer shall sign the register in taken of scrutiny.

4. It may be clarified that as per extent orders, if a casual labour retrenched on completion of work does not accept the offer made or turn out for work when offer is made to him on availability of fresh work, he loses the benefit of the previous spell of employment as casual labour. In this connection, attention is invited to the clarification given in para 2 of this Ministry's letter No. E(NG)II-30/CL/25, dated 02.04.1981. These orders should be strictly enforced."

12. It is not in dispute that the applicant worked for 36 days in 1973 and for 103 days in 1978. In view of the Railway Board Circular if a casual labour worked continuously for 120 days, he would be entitled to get temporary status as is evident from the Railway Board Circular dated 8.6.1981. A perusal of the same circular also reveals that broken period which can be ignored has also been mentioned under the heading "break in service".

13. It is not denied that unless the temporary status is granted to a casual labour, he will not be entitled for other privileges of railway employee.

14. In view of the circular of Railway Board dated 22.11.1984, it is crystal clear that casual labourer discharged from service on completion of work or for want of further productive work has not worked in Railways again in the preceding two complete calendar years, his name should be struck off from the Casual Labour Register. The Casual


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Labour Register thus, required annual updating. Admittedly, in this case, the applicant after worked in 1973 for 36 days but had not worked till 02.02.1978 .This period is more than 2 years therefore, he would not be entitled for benefit of 136 days of engagement because he worked in 1973 could not be clubbed with engagement of applicant for 103 days in the year 1978 in view of circular dated 08.06.1981.

15. It is important to note that the question whether order passed in OA No.465 of 1997 has been complied with or not, had been explained in the contempt petition as well as while deciding the M.P.No.1876 of 2010 vide order dated 19.11.2010 by this Tribunal therefore, no advantage of this argument advanced by the counsel for the applicant can be extended wherein it has been contended that order was earlier decided to be complied with by superior authority but later on not complied by the respondents junior in rank.

16. As the applicant has not completed 120 working days, therefore, no illegality has been committed by the respondents in passing the impugned order. Moreover, as per Casual Labour Card of the applicant filed by the applicant himself, the date of birth of the applicant is 20 January, 1955. It makes it clear that now the applicant is more than 60 years of age.

17. Accordingly, the O.A. sans merit and is dismissed. No costs.


15/12/2017
(Justice V. C. Gupta)
Member (J)