

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 13th day of Nov., 1996

O.A. No. 64 of 1992

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C. VERMA, MEMBER(AJ)

1. Kamlesh Kumar aged about 31 years, son of Sri Baij Nath, resident of village Alapur, Post Badel, District Barabanki.
2. Deep Kumar, aged about 31 years, son of Sri Shri Ram, resident of 293/107 Purana Haiderganj, opposite Khala bazar Thana, Lucknow.
3. Naushad Ali, aged about 31 years, son of Sri Lallan, resident of L.D. 121 B Roze Road, Alambagh, Lucknow.
4. Pyare Lal aged about 31 years, son of late Lochan resident of Sheikh Sadi Mohalla, Kakori, Lucknow.
5. Laxmi Kant aged about 31 years, son of late Shakti Prasad, resident of 287, Bashiratganj, Lucknow.

Applicants.

By Advocate Shri L.P. Shukla.

versus

1. Union of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. Senior Divisional Mechanical Engineer, Northern Railway, Hazratganj, Lucknow.
3. Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.

Respondents.

By Advocate Shri D.R. Singh

O R D E R

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicants have

prayed for directions to the respondents to absorb and regularise them on the posts of Loco Cleaners/Khalasis and other categories in Loco Maintenance and Running Sheds Lucknow Division.

2. The respondents have contested the claim and pleadings have been exchanged between the two sides and the same have been perused by us. We have also taken note of the rival contentions of the learned counsel made during the course of hearing. According ^{to} the averments in the O.A these applicants, 5 in number have worked for a total number of days ranging from 316 in the case of applicant No. 5 to 615 in the case of applicants 1 and 3 between April 79 to 3.10.81 joining on different dates during the said period. They also worked in different capacities such as the applicant No. 1 was a Running Room Bearer, applicant No. 2 is Store Khalasi, applicant No. 3 was a Fitter Khalasi, the applicant No. 4 was Cinder Khalasi and applicant No. 5 was Store Khalasi. It is alleged that they were not allowed to work abruptly from 4.10.91 without notice or assigning reasons. It is further stated that having acquired temporary status after putting in 121 working days they were issued identity card, special duty pass, family pass, P.T.O. etc. It is stated that despite several representations the applicants were not considered for purposes of screening in terms of D.R.M.'s letter dated 12.2.1988. Among the grounds advanced is that persons with lesser number of working days have been screened and placed on the panel for regularisation by notice dated 30.8.1991. Another

ground mentioned is that the respondents recruited fresh candidates with no working days on class IV while the applicants were excluded. Violation of Articles 14 and 16 of the Constitution of India on account of the above has been alleged.

3. During the course of arguments the learned counsel for the applicant cited the judgments of this Bench dated 23rd October, 92 and 22nd February, 1993 in O.As 174/90 and 379/90(L) which deals with similar matter.

4. In the counter reply, a plea of limitation has been raised and it has been mentioned that the cause of action for the applicants arose in the year 1981 while the petition before the ~~xxx~~ Tribunal has been filed in 1992. Another contention advanced by the respondents is that a game of big fraud was played and a large number of persons got their names enrolled fraudulently with the conspiracies of some office staff and as soon as the case was taken up by the Vigilance branch of the Headquarters office, all casual labourers working at that time were dis-continued by the order of the then Senior Divisional Officer Lucknow since 3.10.81 and the appointments have been restricted to G.M. only. It is further stated that the record of casual labourers is preserved only for three years and there is no record to verify the contents of para 4.2 of the application (which relates to the number of working days etc. put in by the applicant). The learned counsel for the respondents laid special emphasis on the fact that the applicants were engaged without prior approval of any competent authority as also the

inordinate delay in preferring the claim by the applicants resulting in its being barred by time.

5. As regards delay, in their rejoinder the applicants have explained that when they noticed omission of their names in the panel for absorption issued vide notice dated 30.8.91, they made a representation dated 5.9.91 and only when no decision was taken on the representation, they approached this Tribunal. We find force in this argument and therefore, the plea of limitation by the respondents cannot be accepted.

6. In regard to the absence of approval by the competent authority, the applicant No. 2, in his Supplementary pleadings filed on 30.9.96 has mentioned the names of three persons at serial Nos. 136, 140 and 141 in the panel of 30th August, 1991 and alleged that they are junior to the applicant No. 1 and also that serial No. 141 is junior to applicants 2, 3, 4 and 5. Copy of this Supplementary pleadings was furnished to the learned counsel for the respondents on the same date but there has been no rebuttal of these assertions by the respondents either through any written pleadings or during the course of arguments. There is also no statement on their behalf to the effect that the appointments of these persons had the approval of the competent authority. The arguments of the applicants alleging discrimination therefore has force. Of course in the Counter Affidavit, in para 4(2) the respondents have stated that Annexure 1 which is a photostat copy of the chart showing working days of casual labour who has worked in Loco Shed Lucknow, is not genuine and it is a fake paper

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in our view prepared fraudulently. The fact however, does remain that they have not produced any alternative ~~genuine~~ office record to rebut the same. There is also no specific averment that the present applicants were included among those who perpetrated the fraud or they were associated with any enquiry in the matter. There is also no mention anywhere about the outcome of the investigation into the alleged fraudulent engagement of casual labours.

7. In view of the above circumstances, we find no reason to deny the present applicants a somewhat similar to the one relief given by this Bench in the case of Prabhakar Singh (O. A. 379/90(L) decided on 22.2.93) the operative portion of which is reproduced below:

"If anybody has committed a fraud, the applicant is not responsible for the same and the applicant cannot be thrown out of the service in this manner. In view of the fact that the applicant was not associated with any enquiry, the respondents are directed to consider the claim of the applicant for re-appointment as casual labour. In case any junior person to the applicant is retained and regularised, the case of the applicant shall also be considered for retention and regularisation. As the applicant has not committed any fraud there is no reason as to why he cannot be given re-engagement or re-appointment as the case may be. Let this be done within a period of three months from the date of communication of this order."

V, K

8. To sum up, in view of the particular facts and circumstances of the case, we dispose of this application with the directions to the respondents to consider the claim of the applicants for re-engagement and also for regularisation. For this purpose the applicants may approach the concerned authorities with the relevant papers within a period of one month from the date of communication of this judgment. The respondents shall, thereafter, after associating the applicants in the light of our observations examine the claims of the applicants and take a decision within a period of three months from the date of communication of this order.

9. The O.A. stands disposed of in the above terms. No order as to costs.


MEMBER(J)


MEMBER(A)

Lucknow; Dated: 13.11.96

Shakeel/