

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA

R.A. No. 25/1999

(Arising out of OA- 583/96)

Date of order: 10.07.2002

Nagendra S/o Gopal, resident of Village-
Purainia, P.S.-Sikarpur, District-West
Champaran and 16 others.

- By advocate Shri M.P. Dixit.....

Applicants

-Versus-

Union of India &Ors.

.....

Respondents

C O R A M

HON'BLE MRS. SHYAMA DOGRA

MEMBER(JUDICIAL)

O R D E R

(Dictated in Court)

By Mrs. Shyama Dogra, Member(J):-

This review application has been filed by the applicants for review of the order dated 20.04.1999 passed in OA No. 583/96 by a Single Bench.

2. The learned counsel for the petitioners were heard on 11.10.2001 and notices were ordered to be issued to the respondents and the case was listed for hearing on 19.12.2001. In view of this, notices were issued to the respondents on with diary no. 2041 to 2045(P). 28.11.2001. However, nobody has put appearance on behalf of the respondents till today. Even acknowledgement due has not been received back.

3. It appears from the record of the case filed that the case has been adjourned from time to time and Bench had to be constituted afresh after retirement of the Hon'ble

Presiding Officer twice, consuming lot of time of the Court time and again. The learned counsel for the applicant has prayed that since nobody is turning up on behalf of the respondents and the applicants are out of job and their juniors are still working causing great hardship to the applicants. In such a situation, he has referred to the proviso-2 of Order-5 Rule-19(A) CPC. The said proviso has been inserted in the Civil Procedure Code with an object of preventing delay in the services of the summons and frustrate attempt to avoid service. Since the matter is lingering on for the last seven months and the Court has to constitute Bench time and again, in view of this, in the interest of justice, to decide this review application in the absence of pleadings of the respondents, who have not bothered to come to the Court and to revert the contentions of the applicants made in the review application, therefore, they are to be treated as true.

4. After going through the provisions of the proviso of Order 5 Rule 19(A) CPC, I am of the opinion that that since the acknowledgement due have not been received back within a period of 30 days ~~is~~ from the date of issue of the summons, therefore, declaration ^{is} made that since the acknowledgement due either having been lost or mislead and have not been received back by the Court within 30 days from the date of issue of summons, the respondents are deemed to be served.

5. The applicants have challenged the order dated 20.04.1999 on the ground that certain reliefs, materials, facts, documents and citations available on the record have not been taken into consideration and in spite of the admission of the respondents regarding the seniority of the applicants and the fact that their juniors have been re-engaged and regularised, the Hon'ble Single Bench has not passed orders in the light of the facts put before the Bench that similar orders were passed by the Principal Bench to the similarly situated persons who were working in the same Railway Division and were juniors to the applicants. A copy of the order under challenge has been annexed as Annexure A-1 with this review application.

6. I have gone through the contentions of the review applicants and the judgement under challenge. I have also gone through the relevant contentions of the OA particularly Annexure A-3 at page 117 in the OA which is an order passed by the Principal Bench in OA No. 2939/92 decided on 16.08.1993. The applicants have also mentioned in their original application No. 583/96 that their case was similar to the case of the applicants who had preferred OA No. 2939/92 decided by the Principal Bench. Therefore, they prayed for orders to the same effect being passed by the Principal Bench in the said OA.

7. The plea of the applicants in this regard has been rejected by the Single Bench on the ground that no ratio was decided in the said case so as to apply the same in the

instant case and, furthermore, when some persons, ranking senior to the applicants, were already awaiting re-engagement as per their respective turn, the Single Bench did not feel inclined to grant any relief to the applicants excepting to insist upon the respondents to devise a suitable means so as to absorb the applicants on their respective turn in the seniority list at the earliest possible so that they may not feel discontented over some of the juniors having been already engaged. In para-3 of the said judgement under challenge, it has been mentioned that the respondents have admitted this fact that some candidates who were junior to the applicants have been re-engaged by the respondents. The same fact has been admitted in para 2 of the written statement filed in OA 583/96, wherein it is also stated that those junior casual labourers have been re-engaged in the same Division where the applicants were working.

8. In response to this, the Hon'ble Single Bench has held that those juniors have been re-engaged in view of the order passed by the Principal Bench in OA- 2939/92 and since no ratio was decided in that case, therefore, the applicants were not extended the said benefits while passing the said judgement.

9. It is a admitted fact that casual labourers in the Railways, whose services were terminated were re-engaged in pursuance of orders passed by the Hon'ble Supreme Court in Indrapal Yadav's case, wherein the Railway respondents were directed to frame some schemes to re-engage and

regularise the services of the casual labourers who have completed 240 days in each calendar year and they were to be regularised in phased manner and strictly on the principles of "First Come, Last go" and after preparing their seniority list division wise. In terms of this decision of the Hon'ble Supreme Court, the Courts have been passing various orders for re-engagement and regularisation of the services of the casual labourers from time to time and such benefits have been extended to all the similarly situated persons.

10. Undoubtedly, though there is no ratio decided in the case put before the Principal Bench in OA 2939/92, but the same has been decided on the ground that the applicants before the Principal Bench were similarly situated with the persons in OA 2614/92 decided on 16.07.1990. In the said OA, the respondents were directed to offer fresh employment to the petitioners within the Division in which they were working as casual labour without payment of back wages.

11. The main ground of challenge by the applicants before the Principal Bench was that those applicants who were working as casual worker in the North Eastern Railway and had acquired temporary status, their services were terminated without following the procedures laid down under the provisions of Section- 25 of Industrial Disputes Act, 1947. Similarly, in the original application of 583/96 the judgement of which is under challenge, the applicants have pleaded in Para 4.4 that while their services were terminated, the respondents

had not resorted to the provisions ^{of} Section 25(F) of the Industrial Disputes Act, 1947 and also not followed the principle of "First come, Last go". He has also taken me ^{through} ^{of discrimination} the same case laws on the point that since the applicants are similarly situated persons and seniors to the persons who were re-engaged in pursuance of the orders of the Principal Bench, it would cause discrimination to the applicants in case they were not re-engaged and regularised on the same analogy. Moreover, the respondents have not complied with the orders passed by the Hon'ble Single Bench in OA 583/96, wherein it was insisted upon them to absorb the applicants on the respective turns in the seniority list at the earliest possible though the period of more than 3 years have been elapsed after passing of such judgement.

12. In view of the overall aspects of the case and materials placed on record, I am of the opinion that that the case is fit for review of the said order and it would be in the interest of justice to review the judgement passed in OA 583/96 dated 20.04.1999 and the said order is modified accordingly to the following effect:-

- (i) The respondents are directed to re-engage the applicants in the job to which they were working in the Division at the time of their termination and thereafter, regularise their services after verifying the factual position ^{the} from relevant records and they be placed at par with the juniors who were re-engaged by virtue of orders

of the Principal Bench in OA 2939/92 decided on 16.08.1993.


(ii) The respondents are directed to comply with this order in letter and spirit within a period of two months from the date of receipt of a copy of this order which is to be sent through registered A.D. by the Registry. "

13. The above observation at para 12(i) and 12(ii) be made part and parcel of the earlier judgement by the Single Bench and be read after para-7(i.e. as para 8 and 9) of the said judgement and the same be modified accordingly by adding the above para.

14. The learned counsel for the applicant is also directed to send one copy of the order to the respondents at the earliest possible for strict compliance of the order.

With these observations, this RA is disposed of with no order as to costs.

SRK/


(SHYAMA DOGRA) 10.7.2002.
MEMBER (J)