

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PATNA BENCH, PATNA.

O.A. No 406 of 2006

Date of order : 07. 01. 2013

C O R A M

Hon'ble Mr. Naresh Gupta, Member [A]

Hon'ble Mrs. Bidisha Banerjee, Member [J]

1. Mahatam Prasad, S/o Lakshman Prasad, Ex Casual Labour, PWI / BG, Con/Chapra under XEN/Con Chapra, R/o Village / P.O. Lasamipur, District - Deoria.

.....Applicant.

By Advocate : Shri S. Pandey

Vs.

1. The Union of India through the General Manager, N.E. Railway, Gorakhpur [U.P].
2. The Chief Administrative Officer [B.G.- Con], N.E. Railway, Gorakhpur [U.P].
3. The Divisional Railway Manager, N.E. Railway, Varanasi

.....Respondents.

By Advocate : Shri R.N. Choudhary.

O R D E R

Naresh Gupta, M[A] - This OA has been filed by one Mahatam Prasad seeking a direction to the respondents to

- (1) re-engage, screen, absorb and regularize the services of the applicant against Group 'D' post in any Department,
- (2) reinstate the applicant in service in the post/grade he was holding prior to his being dispensed from service,
- (3) allow the seniority of the applicant over his juniors and fresh faces from the date the juniors/ freshers were engaged/ regularized, with all consequential benefits,
- (4) for any other order(s) as deemed fit in the interest of justice, and
- (5) for award of cost of the case.

The case of the applicant is as follows:

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2. The applicant who belongs to ST category was inducted into the Railways as casual labour Khalasi on 25.07.1980 under PWI/BG. Con. Chapra (copy of working certificate marked as Annexure A/6). On completion of 120/240/360 days of continuous service, he is said to have acquired Temporary Status as on 01.04.1981 but his services were dispensed with verbally without assigning any reason or issue of show cause notice or giving retirement benefits under Section 25F of the ID Act, 1947. As the applicant was working at Chapra within the jurisdiction of DRM, Varanasi, he was to be considered for re-engagement/ absorption in Varanasi Railway Division under the DRM, Varanasi as provided for in para 5 of Railway Board's order dated 11.09.1986 (copy not marked as Annexure A/3 but indicated that it would be produced at the time of hearing; later it has been furnished by the learned counsel for respondents), and accordingly he submitted repeated representations to the DRM, Varanasi, the last representation being of 21.08.2005 (Annexure A/2), but to no avail.

3. It is stated that many fresh faces were recruited from open market as well as by screening of the casual labour to make up the shortfall in SC/ST quota but the applicant was not considered for re-engagement and regular absorption in Group 'D' post and he was discriminated though similarly situated candidates were screened and regularized and even fresh faces were appointed directly. A copy of the fresh panel of SC/ST candidates by direct recruitment, approved by DRM, Varanasi on 23.08.1996, 08.10.1996 for SC and 23.08.1996 and 08.10.1996 for ST and absorbed against regular Group 'D' posts has been marked as Annexure A/4 series. Similarly, a copy of the fresh faces appointed as Group 'D' Substitutes has been marked as Annexure A/5. The applicant has been representing in the matter right from the time he was terminated by verbal order and he was assured that he would be considered on vacancies becoming available in Group 'D' posts but only fresh faces were recruited overlooking the claim of the applicant.

4. It is contended that the Hon'ble Supreme Court in the case of *UOI vs. Basant Lal & Ors.*, reported in 1992 ATC (20) SC 280 has held that casual labour with TS are to be absorbed over entire Indian Railways wherever post was available and their services were not to be dispensed with. The applicant has cited also a number of other decisions of the Courts including that of the Hon'ble Supreme Court in the case of *Indrapal Yadav & Ors. vs. UOI* and Railway Rules in support of his case.

5. The respondents in their reply (WS) have submitted that the OA was time barred as the cause of action arose in 1980-81, that is about 32 years ago, and the

applicant could not take a plea of recurring cause of action. The applicant had filed record of his service as casual labour of 1980-81 (Annexure A/6) and contended that he had been dispensed with verbally by PWI/BG/Cons. A perusal of the record indicated that the applicant was working in Construction Organisation whose Head Office is CAO/Con/BG, Gorakhpur. The seniority, screening, engagement were being done by the Construction Organisation/ Gorakhpur. Open Line Casual Labour was dealt with Department/ Unit wise by the DRM/NER/Varanasi Office. As the records pertain to 1980-81 (32 years old), these could not be verified at this distance of time by the Divisional Office and the SPO/Con/BG Gorakhpur had been informed to file a detailed reply in the case. The applicant had not filed any documentary evidence in regard to his being declared medically fit or conferment of TS. The applicant did not fulfil the condition for grant of benefit under Section 25-F of ID Act, 1947. The averment that as he was working at Chapra within the jurisdiction of DRM, Varanasi, he was to be considered for re-engagement/ absorption in Varanasi Railway Division under the DRM, Varanasi was not correct. The applicant was working in BG/Construction Organisation and, therefore, Varanasi Division was not concerned though Chapra is situated within Varanasi Division. The seniority of the Open Line Casual Labour is maintained by the Division Office. The engagement of fresh faces was done in Electrical Department which is a separate unit. The recruitment of SC/ST was done under a crash programme at the relevant point of time after calling of names through Employment Office and following the said procedure. No assurance was given by the Divisional Office for re-engagement of the applicant. The claim of the applicant was an after thought. Inasmuch as the applicant is said to have worked in BG/Construction, the Divisional Office, Varanasi was not concerned.

6. In his rejoinder, the applicant has submitted in accordance with the letter of Railway Board dated 11.09.1986, the screening, absorption and regularization is done by the Division for the employees working in Construction Organisation within the geographical boundaries of a Division irrespective of whether the works are executed by a Division or by Construction Organisation and there is no separate list for Project Casual Labour. There was no limitation and it was a recurring cause of action as held and reported in 2002 (2) ATJ 607, Cuttack, *Prafulla Sahu vs. UOI & Ors.* The applicant had worked continuously for more than 180 days and was governed by Section 25F of the ID Act, 1947. He ought to have been given priority over others recruited from the open market.

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7. The applicant has filed a MA bearing No. 362 of 2006 seeking condonation of delay in filing the OA in the interest of substantial justice citing the decisions of the Hon'ble Supreme Court in (1) *Madras Port Trust vs. Himanshu International*, 1979 (4) SCC 176, (2) *Apangashu Mohan Loch vs. State of Tripura*, 2004 (1) SCC 119, (3) *S.M. Munavali vs. State of Karnataka*, 2002 (10) SCC 264 and (4) *State of Bihar vs. Kameshwar Pd. Singh & Ors.*, 2001 (1) SLJ 76, while also submitting that in case of casual labour/ substitutes, there is a recurring cause of action as held by the Principal Bench in the case of *Ram Swaroop vs. UOI & Others*, 2005 (3) ATJ 33.

8. In his supplementary application, the applicant has submitted that after his engagement on 25.07.1980 as casual labour Khalasi Group 'D', he continuously worked for 510 days, that is up to 16.12.1981, without any break, and thus he acquired TS on completion of 120/180/240 days of continuous service as per the Rule in IREM Vol II and held by the Hon'ble Supreme Court in *Inderpal Yadav & Ors. vs. UOI & Ors.* and was entitled by virtue of TS to all rights and privileges admissible to a temporary servant and services of such an employee cannot be dispensed without proper notice/ compensation and without following the pre-conditions of valid retrenchment. The name of the applicant was borne in the Casual Labour Live Register having worked on or after 01.04.1981. The casual labour borne on the Casual Labour Live Register have, as held by the Principal Bench of CAT in the case of *Hukum Singh vs. UOI & Ors.*, 24 ATC 747 (Annexure A/1 of supplementary application), and similarly re-engagement and regularization, as held by the Patna Bench of the Tribunal in *Sheo Charan Pandit & 64 Others* in OA No. 525 of 2002 vide order dated 20.05.2003 relying on *Sunil Jayant Raikar vs. Secretary, Ministry of Defence*, 2003 (3) SLJ 401 (Annexure A/3 series) is, a continuing/ recurring cause of action. Limitation could be condoned on the basis of the decision of the Hon'ble Supreme Court in 1998 (1) SLJ SC 54, *K.C. Sharma vs. UOI* (Annexure A/2 of supplementary application). Further, the Principal Bench in the case of *Ram Swaroop vs. UOI & Others*, 2005 (3) ATJ 33 had held that a casual labour discharging duties after 01.01.1981 (Annexure A/4 of supplementary application) has a right to be continued in LCLR (Live Casual Labour Register) and further to be considered for re-engagement.

9. Heard the learned counsel for the applicant and the respondents on 01.11.2012 and perused the entire record. The learned counsel for the respondents has filed a copy of the RBE No. 167/86 dated 11.09.1986 containing the modification in the scheme regarding treating the casual labour as having Temporary Status

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following the judgment/ order of the Hon'ble Supreme Court in the case of *Inder Pal Yadav & Ors. vs. UOI & Ors.*

10. At the outset, it would be worthwhile to give a background of the decision cited by the applicant in the case of *Inder Pal Yadav* by referring to the case of *Union of India & Ors vs K. G. Radhakrishna Panickar & Ors* on 28 April, 1998 from which portions are extracted below.

In sub-para (a) of Para 2501 of the Indian Railway Establishment Manual [hereinafter referred to as 'the Manual'], as it stood at the relevant time, the expression 'Casual Labour' was defined in these terms :- " Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour."

In sub-para (b) of Para 2501 of the Manual casual labour was divided into three categories, namely, (i) staff paid from contingencies except those retained for more than six months continuously, known as Open Casual Labour; (ii) labour on projects, irrespective of duration, known as Project Casual Labour; and (iii) seasonal labour who are sanctioned for specific works of less than six months duration. Persons falling in category (i) who continued to do the same work or other work of the same type for more than six months without a break were to be treated as temporary after the expiry of the period of six months of continuous employment. The said period of six months was subsequently reduced to 120 days. Since the period of service of such casual labour, after their attaining temporary status on completion of 120 days of continuous service, was not counted as qualifying service for pensionary benefits and there was a demand for counting of that period of service for that purpose, the Railway Board, by order dated October 14, 1980, took the following decision :- As a result of representations from the recognised labour unions and certain other quarters, the Ministry of Railways had been considering the demand that the period of service in the case of casual labour (i.e. other than casual labour employed on projects) after their attainment of temporary status on completion of 120 days continuous service, should be counted as qualifying service for pensionary benefits if the same is followed by their absorption in service as regular railway employees. The matter has been considered in detail in consultation with the Ministry of Home Affairs (Dept. of Personnel and Administrative Reforms) and the Ministry of Finance. Keeping in view the fact that the aforesaid category of employees on their containment of temporary status in practice enjoy more privileges as admissible to temporary employees such as they are paid in regular scales of pay and also earn increments, contribute to P.F. etc., the Ministry of Railways have decided, with the approval of the President, that the benefit of such service rendered by them as temporary employees, before they are regularly appointed should be conceded to them as provided in the Ministry of Finance O.M. No. F12 (1) - EV/768 dated 14th May, 1968 (copy enclosed for ready reference). The concession of counting half of the above service as qualifying for pensionary benefits, as per the O.M. of 14th May, 1968 would be made applicable to casual labour on the railways who have attained temporary status. The weightage for the past service would be limited from 1.1.1961 in terms of conditions of the O.M. ibid. Past cases of retirements before the date of this letter will not be reopened.

2. Daily rated casual labour or labour employed on projects will not however, be brought under the purview of the aforesaid orders."

Project Casual Labour were left out from the ambit of this order because there was no provision for grant of temporary status to project Casual Labour. Project Casual labour had grievance that, though very large in number, they had no security of service and no protection whatsoever. The said grievance of the project Casual labour was raised before this Court in Writ Petitions Nos. 147, 320-69, 459, 4335 of 1985 etc. filed under Article 32 of the Constitution. During the pendency of the said writ petitions before this Court, the Railway Ministry framed a scheme making provision for grant of temporary status to project Casual Labour on completion of 360 days of continuous service. The said scheme provided as follows:- "1.1 As a result of such deliberations, the

Ministry of Railways have now decided in principle that casual labour employed on projects (also known as 'project casual labour') may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

a) These orders will cover:

(1) Casual labour on projects who are in service as on 1.1.87; and

(2) Casual labour on projects who, though not in service on 1.1.84, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows).

b) The decision should be implemented in phases according to the schedule given below.

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By the judgment dated April 18, 1995 in *Inder Pal Yadav & Ors. etc. v. Union of India & Ors. etc.*, 1985 (3) SCR 837, this Court approved the said scheme but modified the date 1.1.1984 in para 5.1 (a) (i) to **1.1.1981** and as a result there was consequent re-scheduling in absorption from that date onwards. The Court, while accepting the scheme with the modification gave direction that it must be implemented by re-casting the stages consistent with the change in the date as directed. As per the aforesaid scheme temporary status was conferred on Project Casual labour with effect from the dates specified therein and on the basis of such temporary status they were also extended the benefit of the order dated October 14, 1980 and the temporary service after attaining the temporary status was counted for pension and other retiral benefits.

11. Thus, as a result of the judgment/ order in *Inder Pal Yadav & Ors. etc. vs. Union of India & Ors. etc.*, 1985 (3) SCR 837, the scheme formulated by the Railways for casual labour on projects who were in service as on January 1, 1984, was modified by the Hon'ble Supreme Court to 1.1. 1981. With this modification and consequent rescheduling in absorption from that date onward, the scheme framed by Railway Ministry was accepted and a direction was given by the Court that it must be implemented by re-casting the stages consistent with the change in the date. It was also indicated that the scientific and equitable way of implementing the scheme is to prepare, a list of project casual labour with reference to each Division of each Railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, the Court was considerably influenced by the statutory recognition of the principle of last come first go or, to reverse it, first come last go, as enunciated in Section 25G of the Industrial Disputes Act, 1947.

12. It is seen from the copy of the Record of Service of Casual Labour in respect of the applicant marked as Annexure A/6 that he had worked from 25.07.1980 to 31.12.1980 and from 01.01.1981 to 15.12.1981, that is, totally a period of 503 days. It is not known whether he was conferred TS under the scheme following the judgment of the Hon'ble Supreme Court in the case of *Inder Pal Yadav* and his name kept in the LCLR (Live Casual Labour Register). The applicant has not filed any copy

order/ document in this regard. As the applicant was working in Construction Organisation, the Head Office of which is CAO/Con/BG, Gorakhpur and screening, engagement etc. were being done by the Construction Organisation/ Gorakhpur and the reply (WS) in this OA has been filed by only the Varanasi Division, NE Railway (Divl. Personnel Officer) and further that the period relates to as early as in 1980-81, the factual position in this regard could not be ascertained.

13. This brings us to the more formidable barrier of limitation in this case. Even assuming that delay is condoned in the interest of justice as sought by the applicant in the MA citing certain decisions, the availability of records at this distance of time for verification of the claim of the applicant would be a question mark. The Principal Bench of the Tribunal, in *Hukum Singh vs. UOI & Ors.*, 24 ATC 747 (Annexure A/1 of supplementary application), had taken a view that non-engagement of a casual worker would be in the nature of a continuing cause of action on the basis that the process of engagement of casual labourers borne on the Live Casual Live Register was a continuous one. Similarly, the Patna Bench of the Tribunal in *Sheo Charan Pandit & 64 Others* in OA No. 525 of 2002 vide order dated 20.05.2003 relying on *Sunil Jayant Raikar vs. Secretary, Ministry of Defence*, 2003 (3) SLJ 401 (Annexure A/3 series) had held that re-engagement and regularization was a continuing/recurring cause of action. These decisions would have relevance if the names of those casual labour engaged earlier but later disengaged for want of work were entered in the LCLR to enable them to be re-engaged, as and when the need arose, and further the claim was made within a reasonable period of time. OA has been filed after 25 years of disengagement though representations can be said to have been filed from time to time. The so called representations cannot be said to have justified the claim as per the law of limitation. In *Karnataka Power Corporation Limited through its CMD & Thangappan and Anr.*, reported in (2006) 4 SCC 322, the Honourable Supreme Court held that mere making of representations cannot justify the claim. In *RAMACHANDRAN Vs. STATE OF KERALA AND ANOTHER* reported in J. 189, it has been held by Hon'ble Supreme Court that the law of limitation may not harshly affect a particular party but it has to be applied with all its rigour as the statute so prescribes and the Courts have no power to extend the period of limitation on equitable grounds.

14. Having regard to the facts and circumstances of the case, without going into the debate in regard to whether the OA is hit by limitation, it is considered that the Divisional Railway Manager, N.E. Railway, Varanasi ought to look into

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ance of the applicant, verifies the available records in consultation with the
/Con/BG Gorakhpur and examines whether the applicant could be re-engaged,
subject to eligibility and need, in accordance with law [specifically in accordance with
RBE No. 167/86 dated 11.09.1986] and communicates his findings/ decision to the
applicant as early as possible. No time-limit is set in this case in view of the fact that
considerable interval of time has elapsed and records, if available, will have to be

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B. Banerjee
[Bidisha Banerjee] M[J]

Naresh G -
[Naresh Gupta] M[A]

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