

Central Administrative Tribunal
Mumbai Bench: Mumbai

OA No.664/99

Mumbai this the 15th day of June, 2001.

Hon'ble Mr. Shanker Raju, Member (Judicial)

Shri Prakash Shantaram Pahurkar,
R/o Pawan Nagar, New Town,
Ward No.14, AT & PO Badnera,
Distt. Amravati Pin-444 701 (M.S.) -Applicant

(By Advocate Shri R.D. Deharia)

-Versus-

1. Union of India through
the General Manager, C.Rly,
Mumbai C.S.T. Pin-400 001.
2. The Divisional Railway Manager,
Divisional Office, C. Rly,
Bhusawal Dist. Jalgaon (M.S.)
Pin 425 201.
3. Asstt. Engineer (E), C. Rly,
Akola (M.S.) Pin.
4. Sh. Bashir Ahmed SK. Gaffar,
Gangman Unit No.14,
Sr. Section Engineer (P.Way)
C. Rly Badnera Dist. Amravati
(M.S.).
5. Sh. Haribhai Mesaji,
Gangman Unit No.10,
Sr. Section Engineer (R.Way)
C. Rly, Murtizapur Dist. Amravati (M.S.)
6. Sh. Balakdas Uttam,
Khalasi, Senior Section,
Engineer (Works), C. Rly,
Murtizapur Dist. Amravati (M.S.)
7. Shri Abdul Alim Baxumilya,
Gangman Unit No.10,
Senior Section Engineer (P. Way),
C. Rly, Murtizapur,
Dist. Amravati (M.S.).

-Respondents

(By Advocate Shri P.G. Zare)

O R D E R

Mr. Shanker Raju, Member (J):-

The applicant in this OA has assailed an order of the Railway Board dated 26.10.98 as well as letter issued to him 3.6.99 and has sought regularisation as Group 'D' from the date of his junior and be subjected to screening etc.

2. The applicant was engaged as a daily rated casual labour on 19.6.89 after being approved by the Divisional Enginer (E) Bhusawal Division. It is stated that after putting in 149 days service as casual labour, his name was included in the live casual labour regier by the Chief Inspector of Works, Central Railway, Murtizapur. The applicant has become qualified to be considered for monthly rated casual labour after being completed 120 days and belonging to SC community. It is contended that on 4.1.90 59 juniors were engaged at Goregaon Bridge work and the applicant was marked absent and his services have been dispensed with. The applicant has relied upon Railway Board's letter dated 9.10.98 where the casual labour whose name appears in the supplementary live register will be considered for regularisation if they had rendered service after 1.1.81 though the letter is effective from 9.10.98 but the benefit is accorded to those who have been re-engaged prior to 1.1.81. The applicant contends that he was denied his legitiate right as he was engaged on 16.6.89.

If this letter is operated upon the applicant would not be considered for regularisation as such he assails this letter. He contends that he has made representation for calling him for screening for absorption to Group 'D'. He has also submitted his application on 1.6.99 for filling up the class IV Group 'D' staff post and contends that his name was apparently missing and removed from the live register. It is contended that as his name had been in the live casual labour register, he could have been called for the screening and further considered for regularisation. It is also contended that before removing his name from the live register no show cause notice was issued to him. The applicant alleges discrimination in violation of Articles 14 and 16 of the Constitution of India. The applicant contends that the Assistant Engineer, Akola vide his letter dated 26.5.99 sent a letter sending a list of casual labour eligible for screening but it did not contain the name of the applicant. The applicant came to know that his name has been arbitrarily removed from the list. The applicant has filed OA-111/95 for reinstatement but was rejected by this Court on the ground of limitation and it is contended that as the matter has not been gone into on merits the same would not be a res judicata. It is contended that the OA has not been barred by limitation as the cause of action had arisen on 22.12.98 when the applicant represented in reference to the Railway Board's letter dated 9.10.98. The applicant has also assailed dispensation of his services in the CGIT which

is still pending. It is contended that though the name of the applicant figured in the live casual labour register but the same was not removed as no show cause notice was served upon him. The applicant has also placed reliance on a Full Bench decision of this Tribunal in Mahabir Singh v. Union of India, reported in 2000 (3) ATJ 1, to contend that in case of disengagement of service the respondents are bound to give a show cause notice to the casual labour before his name is removed from the live casual labour register. The learned counsel for the applicant has also placed reliance on Railway Board's letter dated 28.2.2001 to contend that in case of SC/ST the instructions contained in letter dated 25.7.91 would continue to be applicable and as such the applicant is within the age limit and is entitled for age relaxation, as the respondents have for their arbitrary action have not considered him for screening and further regularisation. The applicant has assailed that Respondents 4-7 were screened and regularised by putting their name in the live casual labour register and placing reliance on para 179 (xiii) (a), (b) and (c) of IREM Volume I. It is contended that workmen joining service before attaining the age of 28 may be allowed relaxation of minimum age prescribed for Group 'D' posts to the extent of their total service, which may be either continuous or broken and for regularisation of substitute casual labour rendered 120 days in open line, their names should be recorded strictly in order on their taking up casual appointment

at the initial stage and were to be given preference. The applicant contended that he belongs to SC community and was engaged on 9.6.88 at the age of 30 years and was below the age limit of 33 years. It is contended that 60 labours were asked to report at Manmad on being discharged on 29.11.89 but on reporting on 1.12.89 they were returned back on the pretext that there was no vacancy. The applicant was not allowed to resume duty. Subsequently it was known that all other 59 labours were re-employed at Murtizapur. The applicant had made a representation immediately thereafter but the same was not considered. It is contended that respondents 4-7 have been regularised on 4.8.97 but the name of the applicant had not been included in the live register. It is contended that the applicant was having no proper notice of employment of 59 casual labours as the same was not notified on the notice board. The live register was improperly maintained at divisional level. It is contended that there is no requirement for maintaining the live register at divisional headquarter. Placing reliance on Railway Board's letter dated 23.2.90 and particularly para 2.4 it is contended that one copy of the live register should be lodged at the divisional office and one at depot level in view of Board's letter dated 8.12.98. It is lastly contended that the decision of respondents for not including the name of the applicant is discriminatory and arbitrary.

3. The respondents rebutted the contentions of the applicant and stated that the Railway Board's letter dated 26.10.98 relates to the casual labours who are discharged prior to 1.1.81 and not re-engaged thereafter. The applicant who had never worked as casual labour prior to 1.1.81 and had worked only from 19.6.89 to 29.11.89 with breaks and without completion of 120 days continuous period would not be applicable to him. Taking strict exception to the plea of res-judicata it is contended that the applicant once had come in the earlier OA-111/95 for re-instatement which was dismissed. Thereafter the applicant filed a Review Application No.17/95 which was also rejected on 25.9.95. The plea of the applicant is barred by constructive res judicata as he has not taken the issue of scrutiny and regularisation in that OA. It is also contended that the applicant has not come with clean hands and has suppressed the material fact of his reference pending in the CGIT/13 of 1995 on 6.4.95, which he has not disclosed in this present OA. The respondents have further took resort to limitation by stating that the applicant despite being directed had not reported at Goregaon and was marked as left, as he has not accepted the offer by going to XEN office at Manmad, as such the relief claimed in this OA w.e.f. 1989 is highly belated and is contrary to Section 21 of the Administrative Tribunals Act of 1985. It is also contended that the applicant has not completed 120 days continuous service as authorised absence period of the applicant disrupts

the continuity. The entry in live casual labour register at Murtizapur is not acceptable as the live register is only maintained at the divisional level at Bhusawal. The Railway Board's letter dated 9.10.98 will have no application in the case of the applicant as it applies to the casual labours discharged prior to 1.1.81. As the applicant had break in service and could not compete 120 days and had not reported to Goregaon the name of 4 other daily rated casual labours who reported for work has been considered for regularisation and this will not amount to any hostile discrimination in violative of Articles 14 and 16 of the Constitution of India. As the applicant failed to complete 120 days continuous service he is not entitled for screening and giving DRCL status as he voluntarily failed to report for work at Goregaon. The application of the applicant for bringing his name in the live register is rightly rejected and also his further request for engagement. It is contended that the applicant has become over-aged as his case was scrutinised on 11.2.2000 as his name firstly not appeared in the live register and secondly over-aged on 4.4.99 and above 30 years. It is lastly contended that opportunity for absorption was not availed by the applicant hence the name is removed and he is not entitled for any fresh notice as it is incumpriment upon the DRCL and to enquire upon the job position and no intimation can be given or reply can be made with letters.

4. I have carefully considered the rival contentions and heard the learned counsel for the parties. The case of the applicant is liable to be dismissed on the ground that it is barred by res-judicata. The applicant whose services have been dispensed with in the year 1989 had failed to report for work at Central Railway Bridge at Goregaon. The applicant in OA-111/95 had assailed the order of dispensation of his service and had sought relief of re-instatement and accord him continuity of work w.e.f. 1.4.90. In the year 1994 when the OA was filed he was very much aware that his name existed in the live casual labour register and could have assailed the action of the respondents by not bringing him in live register and according his benefit of re-engagement and regularisation and also according him temporary status on the basis that he has completed 120 days of service. The applicant has chosen not to raise those grievances and sought relief before this Court in OA-111/95. The Tribunal rejected the relief of the applicant vide order dated 10.7.95 on the ground of delay on the basis that the cause of action had arisen in the year 1989 and the order has been passed only in the year 1995. The applicant cannot be allowed to raise his grievance in a piece meal and this OA would be barred by the doctrine of res judicata as well as constructive res judicata. Having failed to raise the grievance in OA-111/95 he is estopped from claiming the same by way

of filing of this OA. The review application filed by the applicant was also rejected by the Tribunal on 25.9.95.

5. The case of the applicant is also hopelessly barred by limitation. The applicant is assailing an action of the respondents of not according him work and bringing his name in the live register by virtue of his having worked for more than 120 days. The cause of action had arisen to the applicant in the year 1989 and this OA has been filed under the guise of the Railway Board's letter dated 1998 is hopelessly barred by limitation as well as under the provisions of Section 21 of the Administrative Tribunals Act, 1985. The resort of the applicant to take benefit of the Full Bench decision in Mahabir Singh's case (supra) on the ground that in case of abandonment his name cannot be removed from live casual labour register unless show cause notice is given would be of no avail to him, as in the said judgment (supra) it has been held that the right to a casual labour is accrued the moment his services are discharged and the law of limitation would have application in his case and the cause of action is not a continuous one. As such, having failed to raise the grievance within the stipulated limitation period as prescribed under Section 21 of the Administrative Tribunals Act of 1985 after 1989 the applicant's case is hit by limitation and in

this view I am fortified by the ratio of the Apex Court in the case of S.S. Rathore v. State of M.P., reported in AIR 1990 SC 10.

6. The case of the applicant is also likely to fail on the ground that simultaneously with this OA he has filed a reference application before the Central Govt. Industrial Tribunal, Bombay, being reference No.CGIT/13 on 6.4.95 and made certain amendments in it on 21.5.97. The applicant has suppressed this factual position and his claiming relief on the same basis. In para 7 of the O.A. he has not given any details of the cases filed and rather suppressed the fact of CGIT reference, which was pending at the time of filing of the present OA.

7. On merits also the claim of the applicant is likely to be rejected as the applicant himself voluntarily not reported to Manmad for absorption along with 59 other daily rated casual labours. The applicant himself abandoned his services and was rightly marked absence. The Railway Board's letter dated 9.10.98 does not suffer from any infirmity and is applicable to casual labour who were discharged prior to 1.1.81 for want of work and this would not apply to the applicant as the claim period is 9.6.89 to 29.11.90.

8. The claim of the applicant regarding discrimination vis-a-vis respondents 4-7 is concerned, the other respondents have been rightly figured in the live

register. The applicant has no claim for inclusion in the live register or supplementary register as he was not entitled for engagement, screening and regularisation as he himself abandoned his right by not reporting to Borgaon Bridge as directed by the respondents.

9. The claim of the applicant was rightly rejected as he was age-barred as his date of birth on 4.4.99 was beyond what has been prescribed for Group 'D' category as being of 38 years of age. The circular issued in 2000 would have no application over the case of the applicant. As regards the live register is concerned, the same is under the rules is required to be made at divisional headquarter at Bhusawal and is not to be maintained at other units and the same would not be considered for their purposes. The name the applicant once removed from the waiting, is not eligible to be any fresh notice. There is another aspect which defeats the claim of the applicant as he failed to complete the requisite 120 days of continuous service. The applicant during the period 20.9.89 to 29.11.89 has not worked for 120 days continuously as during this period he had been absent for a number of days without any lawful permissible breaks on medical grounds and in terms of the Master Circular para 8, 2 (a) to 2 (g) as no interruption of break except on the medical authorised absence is allowed or taken for the continuity of

service, the applicant cannot claim that he has completed 120 days continuous leave for acquiring temporary status.

10. Having regard to the above discussion and the reasons record, I find no merit in the OA, which is accordingly dismissed, but without any order as to costs.

S. Raju
(Shanker Raju)

Member (J)

CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH: MUMBAI

RP No.47/2001 in
OA No.664/1999

Mumbai this the 5th day of September, 2001.

HON'BLE SHRI SHANKER RAJU, MEMBER(J)

Shri Prakash S. Pahurkar Review Petitioner

-Versus-

Union of India & Others Respondents

ORDER (BY CIRCULATION)

By Shri Shanker Raju, Hon'ble Member(J):

The present Review Petition (R.P.) is filed, seeking review of order dated 15.6.2001 passed in OA No.664/1999. I have perused the order dated 15.6.2001. I do not find any error apparent on the face of the record or discovery of new material which was not with the applicant despite due diligence at the time of final hearing. By way of this R.P. the review petitioner seeks to re-argue the case, which is not permissible. The present R.P. is not maintainable as per the provisions of Section 22 (3) (f) of the Administrative Tribunals Act, 1985 readwith Order 47, Rule (1) of CPC and also in view of the ratio laid down by the Hon'ble Apex Court in K. Ajit Babu & Others v. Union of India & Others, JT 1997 (7) SC 24. The R.P. is accordingly dismissed, in circulation.

(Shanker Raju)
Member(J)

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order/judgement despatched
to Applicant/Respondent(s)
on 23/7/09

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