

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 516/2000

Date of Decision: 30.04.2004

N.B. Khatib.

Applicants

Shri R.D. Deharia. Advocate for applicant

Versus

Union of India & Ors.

Respondents

Shri S.C. Dhawan

Advocate for respondents 1 & 2

CORAM: HON'BLE SHRI MUZAFFAR HUSAIN MEMBER (J)

1. To be referred to the reporter or not?^
2. Whether it needs to be circulated to other Benches of the Tribunal?^
3. Library. ✓


(MUZAFFAR HUSAIN)
MEMBER (J)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.516/2000

THIS THE 30th DAY OF APRIL, 2004

CORAM: HON'BLE SHRI MUZAFFAR HUSAIN. MEMBER (J)

Nayumoddin Badruddin Khatib,
Age 43 years, Ex-casual labour,
C.S.I.(C) Solapur Division,
Central Railway.

... Applicant

By Advocate Shri R.D. Deharia.

Versus

1. Union of India through
The General Manager,
Central Railway,
CST, Mumbai-400 001.
2. The Divisional Railway manager,
Divisional Office,
Central Railway, Solapur-413 001.
3. Shri Anil Audumber Kamble,
Age --- yrs. Gangman,
C/o Assistant Engineer (B.G.)
Central Railway, Kurudwadi PO,
Kurudwadi Dist, Solapur.
4. Shri Rajkumar Sharnappa Jamadar,
Age -- years, Gangman,
C/o Assistant Engineer,
Central Railway, AT & PO,
Shahabad Dist Gulbarga, Karnataka.
5. Shri Anil Ramchandra Kapure,
Age 41 years, At Dudhni
Railway Station, PO Dudhni,
Tal. Akkalkot, Dist. Solapur.
6. Shri Fatru Patel Rukum Patel,
Age -- years, Gangman,
C/o Assistant Engineer,
Central Railway,
At & PO Shahabad, dist. Gulbarga,
Karnataka.
7. Shri Mohd. Rafique Gafoor Shaikh,
Age -- years, Gangman,
C/o Assistant Engineer,
Central Railway,
AT & PO Ahmednagar. ... Respondents.

By Advocate Shri S.C.Dhawan for R1 & 2.



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O R D E R

The applicant is seeking regularisation of his services as casual labour. He has sought the following relief:

"The applicant prays that it may be declared that:

- i) The name of the applicant do exist in the casual labour live register and will have to be interpolated in the divisional Live Register as per rules with all consequential benefits to the applicant.
- ii) Since probably a mistake has taken place in regard to interpolation at divisional level it may be ordered that necessary correction be carried with the name of the applicant in the appropriate place with all consequential benefits.
- iii) Without prejudice to prayer (i) and (ii) above, the respondents may be directed to re-engage / screen / regularise the service in Group 'D' service, the applicant forthwith.
- iv) The respondents be directed to pay all costs of the application.
- v) Pass any other orders or writ or direction which this Honourable Tribunal may deem fit and proper under circumstances of the case."

2. The case of the applicant is that he was initially engaged as casual labour with effect from 03.02.1978 under the control of Inspector of Works (M), Shahabad, Permanent Way Inspector Kurudwadi, Chief Signal Inspector, Solapur in different spells. He continued to work as casual labour as and when required for a total period of 828 days as under:

03.02.78 to 31.05.78	- 118 days IOW SDB
18.03.79 to 10.06.79	- 105 days IOW SDB
15.02.80 to 31.05.80	- 106 days "
02.02.81 to 31.05.81	- 149 days "

...3.



07.10.81 to 22.12.81	- 077 days "
03.05.82 to 28.07.82	- 087 days "
08.10.82 to 18.11.82	- 035 days PWI KVV
19.03.88 to 18.04.88	- 031 days CSI SUR
19.04.88 to 27.04.88	- 009 days "
24.05.88 to 21.06.88	- 029 days "
11.10.88 to 07.01.89	- 082 days "
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Total	828 days
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The respondents had called the applicant for screening on 05.12.1991 and 18.12.1991 but he could not appear in the screening as he was seriously ill and bed written and was suffering from jaundice. The Railway Board vide letter dated 09.10.1998 has directed the respondents that the vacancies in different departments on a division/unit maybe filled by screening casual labours borne on the live register and after exhausting them by screening those borne on the supplementary live register of the division/units. The applicant submitted his application though Senior Section Engineer Signal, (Const) Central Railway, Solapur. The casual labours, who were junior to the applicant and having less casual service were called for screening on 21.12.1999 by Respondent No.2 but the respondents failed and neglected the claim of the applicant and did not consider his case. The impugned action to regularise the casual service in Group-D category of all his juniors by over-looking his claim is arbitrary and discriminatory and thus illegal, hence this OA.

2. The respondents have resisted the claim of the applicant by filing written statement. They have stated

that the application is barred by limitation. They have also stated that the applicant was appointed as casual labour some time in March, 1988 under Chief Signal Inspector, Solapur on the basis of casual labour card produced by him showing that he had earlier worked under Inspector of Works, Shahabad in February, 1978 and thereafter in broken spells. At the time of his engagement in March 1988 the veracity of entries of said casual labour cards were not verified. The applicant worked for a period of 40 days from 19.3.88 to 27.4.88. Thereafter the applicant was engaged on 24.5.88 to 21.6.88 for a period of 29 days and then from 11.10.88 to 07.01.89 by Chief Signal Inspector, Solapur. The entries in the said casual labour card from February 1978 for having worked under Inspector of Works, Shahabad and thereafter under Permanent Way Inspector, Kurduwadi in October, 1982 are all bogus and the applicant had produced the bogus card to gain engagement with the respondents in 1988. There was a ban for recruitment of fresh casual labours in view of the judgment of Hon'ble Supreme Court in the case of Inderpal yadav and that is the reason for producing the said card bearing the bogus and false entries. Without realising the fact of bogus card, the applicant who had worked with Chief Signal Inspector, Solapur for a total period of 151 days in broken spells, was called for screening on 03.8.1990 along with the casual labours / substitutes working or had worked in Signal and

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Telecommunication department of Solapur division. The panel was prepared for the 48 assessed vacancies. However, the applicant's name did not appear in the said panel as the applicant had put in only 151 days of casual service and the last man kept on the panel was having total aggregate service of 1070 days. The applicant had worked during the period from 03.02.1978 to 18.11.1982 either with Inspector of Works, Shahabad or with Permanent Way Inspector, Kurduwadi in broken spells as stated in his application. The entries made in the casual labour card are *prima facie* bogus and appear to have been made at one sitting in order to create evidence that the applicant had worked prior to 1981 to get employment in 1988. They have further stated that the applicant was called for screening on 16.3.1992 vide Annexure R1 for regularisation, but he did not turn up for screening. They have also stated that Railway Board vide its letter dated 12.9.1997 provide the maximum age of casual labour at the time of regularisation who had put in more than 120 days or less than three years of service, should be 27 years in case of general candidates and 33 years in case of SC/ST candidates. The applicant on the date of screening was already over aged. It has also been stated that the screening was conducted for 29 posts, as a result of which 18 eligible candidates were kept on panel. The applicant was found over aged, hence he was not fulfilling the minimum criteria as laid down by the



Railway Board. The applicant has therefore, no cause of action and the application is liable to be dismissed.

3. The applicant has also filed rejoinder.

4. I have heard learned counsel for the parties and perused the material placed on record.

5. Learned counsel for the applicant contended that in response to notification dated 30.6.1999 issued by respondent, the application of the applicant was forwarded by his immediate superior after verifying the particulars of casual labour service and as such he is entitled for screening and regularisation in Group-D category. But the applicant was not considered, the respondents have failed and neglected the claim of the applicant for regularisation. Therefore, impugned order is arbitrary and discriminatory. Learned counsel for the respondents on the other hand had contended that the applicant who had worked with Chief Signal Inspector for a total period of 151 days in broken spells was called for screening on 03.8.1990 along with other casual labours, but his name did not appear in the said panel as the applicant had put in only 151 days of casual service and the last man kept on the panel was having total service of 1070 days. He has also contended that the period from 03.02.1978 to 18.11.1982 stated by the applicant is based on the bogus entries and he has not



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worked for that period. He has also contended that at the time of submitting the application on 30.6.99, the applicant was over aged. Screening was done on 21.8.1999 and the casual labour who had given their particulars and who were fulfilling the minimum eligibility criteria after screening, 18 eligible candidates were found suitable and kept on panel for regularisation in Group-D category. Therefore, applicant has no cause of action.

6. The short question for consideration is that whether the applicant who was a casual labour is entitled for regularisation of his service in Railways or not. According to the applicant he has worked for a period of 828 days and claims to be entitled for screening. The respondents have denied the total period of 828 days but accepted that he has worked from 19.3.88 to 07.01.89 for 151 days and rest of the period, the respondents have stated that it is based on bogus entries in the card. The main ground which has been taken by the respondents is that at the time of screening he was not fulfilling eligibility criteria and he was over aged. Learned counsel has also referred para 179 sub rule (xiii) (b) of IREM Vol. III revised edition 1989, which reads as under:

"Substitutes, casual and temporary workmen who acquire temporary status as a result of having worked on other than projects from more than 120 days and for 360 days on projects or other casual labour with more than 120 days or 360

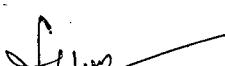
...8.



days service, as the case may be should be considered for regular employment without having to go through Employment Exchanges. Such of the workmen as join service before attaining the age of 25 years may be allowed relaxation of maximum age limit prescribed for Group "D" posts to the extent of their total service, which may be either continuous or broken periods."

Learned counsel has also cited Railway Board letter No.87/97 wherein he has referred to Railway Board letter No.E(NG)/94/RR-1129 dated 12.9.1997 and 15.7.1994 (Annexure R2) and letter No. E(W)98ED2-9 dated 4.12.98 (Annexure R3). Perusal of these letters referred above indicates maximum age limit for the casual labour was 27 years at the relevant time and minimum qualification prescribed was 8th standard. According to applicant, in the verification of OA as on 20.7.2000 his age was 43 years. In Leaving Certificate (A5) submitted by the applicant, the date of birth has been mentioned as 12.6.1957. Therefore, it appears that at the time of applying for regularisation as on 30.6.1999 the applicant was 42 years of age although he was 8th standard pass. Learned counsel for the applicant relying upon para 2006 of the IREM argued that since the applicant has been enrolled within the prescribed age limit relaxation of upper age limit should be automatic in terms of para 2006 (iii) of IREM which reads as under.

"As long as it is established that a casual labour has been enrolled within the prescribed age limit, relaxation in upper age limit at the time of actual absorption should be automatic and guided by this factor. In old cases where the age limit was not observed relaxation of



age should be considered sympathetically. The DRMs may exercise such powers to grant relaxation in age limit."

The cumulative effect of para 179 sub rule 13 (b) and para 2006 (iii) of IREC is that the relaxation in upper age limit will be considered automatically if the casual labour had worked for more than 120 days and he will be allowed relaxation of age limit to the extent of total service which be either continuous or broken period. Even if the total service of the applicant as casual labour, which according to him is 828 is considered strictly, the applicant cannot get the relaxation of more than that period, which comes to 2 years 58 days. According to rules applicant is *prima facie* over aged for regularisation as such and therefore, he was not within the eligibility criteria and therefore, his non-placement of the panel does not give any cause of action to him.

7. Learned counsel for the applicant has also contended that as per extent rule/orders on the subject, the respondents are required to maintain casual labour live register as per Railway Board letter No. E(NG)II-78/CL/2 dated 08.12.88. The respondents have violated the rule framed by the Railway Ministry. Learned counsel has placed reliance on the decision of Principal Bench in the case of Mahabir & Ors. Vs. Union of India & Ors. 2000 (3) ATJ 01 wherein it has been held that authorities are bound to give show cause notice to a casual labour in case of absence/abandonment



from service before his name is struck off from the live casual labour register. Learned counsel has further contended that applicant's name shall exist in casual labour live register maintained by respondents because his application was forwarded by Senior Section Engineer, Regional (Const) Central Railway, Solapur by his letter dated 30.6.99 and also the applicant was advised to appear for screening on 10.02.1992 as stated by respondents in their written statement.

8. Learned counsel for the respondents on the ~~land~~ other has contended that he worked as casual labour only from 19.3.88 to 27.4.88, 24.5.88 to 21.6.88 and from 11.10.88 to 07.01.89 for a total period of 151 days. However, the veracity of the entries from 03.02.78 to 18.11.82 were not verified and these entries are *prima facie* bogus and appears to have made at one sitting in order to create evidence that the applicant had worked prior to 1981 to get employment in 1988. There is nothing on record that the applicant's name was entered in the casual labour live register maintained in the division according to Railway Board circular dated 08.12.1988. So far as the letter of Senior Section Engineer, Regional (Construction) Central Railway, Solapur dated 30.6.99 is concerned, it does not speak about existence of the name of applicant in casual labour live register. It simply shows that his application was forwarded to DRM (P) along with other



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applications and his name appeared at Sl. No.40 of the list. According to the averment made by the applicant, he has not worked after 07.01.89. Learned counsel for respondents have vehemently argued that OA is barred by limitation. he has relied upon the decision of CAT in Mahabir & Ors Vs. Union of India & Ors. (supra), in para 10 thereof, it has been held as under:

"Therefore, it proceeds to hold that the aforesaid circular does not give a continuous cause of action in favour of casual labour to be placed on the live casual labour register and of being offered employment as and when the same becomes available."

In para 11 the Tribunal further held as under:

"The cause of action for asserting the said right arises on 01.01.1982 when the casual labour is discharged. This is amply clear from the aforesaid recital to be found in the circular. Circular no doubt casts an obligation on the part of the administration to maintain the registers continuously. That, however, does not mean that the same confers a continuing right on the part of the casual labour to be placed on the register in the first instance. if the right which has accrued in his favour on 01.01.1982 is denied to him, he has to take recourse to approach this Tribunal within the time prescribed by Section 21 of the Administrative Tribunals Act, 1985. He cannot wait for time immemorial and approach the Tribunal at leisure and, at his whim and fancies, may be years later and assert his right of being placed on the register."

9. Learned counsel has also placed reliance on the Full Bench decision of Hon'ble Delhi High Court in Jagdish Prasad Vs. Union of India & Ors. held as under:

"Keeping name on Live Register of Casual Labour creates no continuous cause of action"

Jhunjhunwala

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10. It is an admitted and undisputed fact that the applicant worked with the respondents only upto 07.01.1989 he was called for screening on 05.12.1991 and 18.12.1991 but he could not appear. Again he was called by respondents letter dated 30.01.1992 (Annexure R1) but he did not attend the screening. This letter bears the signature of applicant below "noted". Now he alleges that it is not his signature, as such it was sent for verification by Experts, but the Experts did not express any definite opinion. In the absence of any conclusive proof applicant's contention cannot be accepted contrary to the version of the respondents that he was called for screening, but the applicant did not attend. There is no evidence on record that the applicant's name exists on live register. Since after 07.01.1989 he made no effort to know whether his name exists on casual labour live register or not. The applicant did not take any steps to enforce his claim before Railway nor he produced ^{any material} to satisfy this Tribunal that his name was initially entered in live register for casual labour, but subsequently omitted. Delay itself deprives the person of remedy available in law. In absence of any fresh cause of action the person who has not availed his remedy by lapse of time, loses his right as well. From the date of retrenchment 07.01.1989 to the date of filing of this OA on 20.7.2000, it is assumed to be correct that period of more 11 years has expired and keeping name on live register of casual labour creates



no continuous cause of action as held in Jagdish Prasad case (supra). Thus, it appears that the delay and inaction on the applicant himself deprives him of remedy available in law.

11. In the circumstances, the OA being barred by limitation delay and latches is liable to be dismissed. Same is dismissed accordingly. No costs.

Muzaffar Husain
(MUZAFFAR HUSAIN)
MEMBER (J)

Gajan