

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

ORIGINAL APPLICATION NO. : 573/2000

Date of Decision : 5th April 2002

A.A.Shinde

Applicant

None

Advocate for the
Applicant.

VERSUS

Union of India & Ors.

Respondents

Shri S.C.Dhawan

Advocate for the
Respondents

CORAM :

The Hon'ble Shri S.L.Jain, Member (J)

- (i) To be referred to the reporter or not ?
- (ii) Whether it needs to be circulated to other Benches of the Tribunal ?
- (iii) Library

No

S.L.JAIN
(S.L.JAIN)
MEMBER (J)

mrj.

CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH, MUMBAI

OA.NO.573/2000

Dated this the 5th day of April 2002.

CORAM : Hon'ble Shri S.L.Jain, Member (J)

Anil Ambadas Shinde,
Bhosare (Shinde Wasti),
Taluka : Mahda, Dist.Solapur.

...Applicant

None for the Applicant

vs.

1. Union of India
through The General Manager,
Central Railway, C.S.T.,
Mumbai.
2. The Divisional Railway Manager,
Central Railway, Solapur.
3. The Inspector of Works,
Central Railway, Kurdwadi.
4. The Permanent Way Inspector,
Central Railway, Miraj.

...Respondents

By Advocate Shri S.C.Dhawan

O R D E R

{Per : Shri S.L.Jain, Member (J)}

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for the direction to the respondents to consider the applicant on any suitable post just ahead and above the next immediate junior to the applicant appointing on temporary casual labour post or regularisation. In the alternative the direction sought is to employ the applicant on the very first vacancy of casual labour arising under the respondents with a direction for regularisation on a specific date as the Tribunal deems fit.

S.L.Jain

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2. The applicant claims that he was appointed as casual labour under I.O.W. Kurdwadi (Respondent No.3) in the year 1980 and 1981 for around 120 days and 90 days respectively. Casual Labour Card was issued by I.O.W. Kurdwadi. In the year 1985 (Respondent No.3) vide its letter dated 21.1.1985 directed the applicant along with others to the Respondent No.4 for appointment, knowing that work sanction under the respondent No.4 was available. The applicant reported to Respondent No.4, worked and there for 8 days. Thereafter, the Respondent No.4 turned back all including the applicant to the Respondent No.3 to get their respective L.T.I.No. of their Service Cards for casual labour, which was omitted to be marked by the Respondent No.3. The applicant though worked for 8 days but Respondent No.4 has issued Work Certificate only for 3 days i.e. from 2.2.1985 to 4.2.1985. The applicant requested the Respondent No.3 to give their respective L.T.I.Numbers. The Respondent No.3 failed to give the same for the reason that the relevant register was not traceable and requested the Respondent No.4 to employ the applicant and others. But even after reporting of the applicant, the Respondent No.4 refused to reappoint the applicant on the vacant work sanctioned post. The applicant approached Respondent No.2 with his grievance and also brought to his notice that Respondent No.4 has confiscated the Casual Labour Card but Respondent No.2 has not taken any steps so far regarding the confiscated of Casual Labour Card. The applicant approached Respondent No.2 who in turn by word of mouth pacified the

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applicant that he should report the depot in July, 1999 who has the applicant's Casual Labour records and the Respondent No.2 shall send a list of the casual labours so far employed under him and eligible to be considered/appointed as permanent to the Respondent No.4. The applicant has to fill a form which would be given to Respondent No.3 which shall be verified by Respondent No.4 and then submitted to Respondent No.2. The applicant in view of the above direction from the Respondent No.2 reported to Respondent No.4 who has refused to hear the applicant or give the form. Ultimately, after a complaint to Respondent No.2 on 19.7.1999, the Respondent No.4 had supplied the form which was filled by the applicant on the same day. The Respondent No.2 has published a list of Casual labours, copy of the same was sent to Respondent No.4 wherein at No.165 the applicant's name appeared with some other persons who were either made permanent and retired subsequently. When the forms were submitted by the applicant, Respondent No.4 refused to accept the same. Hence, this OA. for the above said reliefs.

3. The respondents have submitted the reply stating that the Tribunal has no jurisdiction to entertain the application as the applicant has alternative remedy available before the Industrial Tribunal, application is not maintainable for the reason that applicant has nowhere stated as to under which Recruitment Rules he is eligible to be appointed, no cause of action is disclosed and barred by limitation. The respondents have specifically

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denied all the facts narrated by the applicant except that the applicant has procured Annexure 'A-2' in 1989 which certifies that he has worked w.e.f. 2.2.1985 to 4.2.1985. Hence, prayed for dismissal of the OA. along with costs.

4. On perusal of Annexure-'A-1' which is a casual labour card, the date of birth of the of the applicant is shown as 1.6.1966. On the said basis, the learned counsel for the respondents argued that in the year 1980 when the applicant claims that he has worked for 120 days, his age was hardly 14 years. As such, there cannot be any occasion to appoint such person.

5. The applicant claims that the casual labour card has been confiscated by Respondent No.3 in the year 1985. The applicant has nowhere stated that he has kept a Zerox of the same with him before the card was confiscated.

6. The respondents have also defended the case on the ground that the age for regularisation in case of general category is 28 years while in case of SC/ST 33 years. The applicant on calculation appears to be more than the age prescribed in view of Railway Board's letter dated 12.9.1997 (Ex-'R-1')as he applicant is more than 28 years, as such he is not entitled to regularisation even if all the facts alleged by the applicant are true, though, in fact, they are not true one.

7. The respondents have also stated that the name of the applicant does not find place in the list of casual labour as stated by the applicant. The applicant has failed to place on record the list to establish the fact that the name of the applicant was recorded as casual labour and continued to be so till the date of issue of the said list.

8. It is further stated that the Railway Board by their letter dated 4.12.1998 provided that the minimum educational qualification for the casual labour for regularisation is 8th class pass. On perusal of the pleadings, I do not find the educational qualification of the applicant at all.

9. It is very easy to plead the facts but it is not the pleading which is sufficient to establish the case but by the preponderance of evidence, it is to be established by the applicant. Exhibit-'A-2' is the only document which is said to have been issued by the Railway authorities by which the applicant has worked for 3 days w.e.f. 2.2.1985 to 4.2.1985.

10. The applicant claims that after 1980 till 1985 and even thereafter he was presenting himself to Respondent Nos.2 and 3 for securing the work but was provided to the applicant which is denied by the respondents along with the non receipt of any complaint.

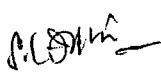
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11. What is being established is only 3 days working period of the applicant with Respondent No.3. No provision to consider the case of the applicant either for temporary status or regularisation with this established fact.

12. The matter was heard when applicant's counsel was not available and the respondents' counsel argued the case. Thereafter, Misc. Petition was filed by the applicant's counsel for taking written arguments on record without serving a copy on the respondents' counsel. When the case was reserved for orders, such application does not lie. The said application be kept in 'C' file.

13. In the result, OA. deserves to be dismissed and is dismissed accordingly with no order as to costs.


(S.L.JAIN)
MEMBER (J)

mrj.