

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

ORIGINAL APPLICATION NO:603/2000

Date of Decision: 26/10/2002

Shri Yunus Dadamiya Mujawar

Applicant

Shri R.D.Decharia

Advocate for the
Applicant

Versus

Union of India & 16 Ors

Respondents

Shri S.C.Dhawan

Advocate for the
Respondents

CORAM:

Hon'ble Smt. Shanta Shastry, Member(A)

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

Shanta J.
(SMT SHANTA SHASTRY)
MEMBER(A)

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CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:603/2000
DATED THE 25th DAY OF OCT, 2002

CORAM:HON'BLE SMT. SHANTA SHASTRY, MEMBER(A)

Shri Yunus Dadamiya Mujawar
Ex-Casual Labour of Optg. Deptt.,
Central Railway, Solapur Division,
R/o 145, New Tiregaon Forest,
Chandni Chowk, Solapur,
Dist.Solapur (M.S.) Pin 413 001

... Applicant

By Advocate Shri R.D.Deharia

V/s.

1. Union of India Through
The General Manager, C.Rly,
C.S.T., Mumbai Pin-400 001.
2. The Divisional Railway Manager,
Divisional Office, C.Rly,
Solapur, Pin - 413 001
3. Shri Anil Audember Kamble,
Gangman, C/o.Assistant Engineer
(B>G>) C.Rly, Kurudwadi,
P.O.Kurudwadi, Dist.Solapur(M.S.)
4. Shri Rajkumar Sharnappa Jamadar,
C/o.Assistant Engineer C.Rly,
AT & PO-Shahabad, Dist.Gulberga,
(Karnataka).
5. Shri Fatru Patel Rukum Patel,
C/o.Assistant Engineer C.Rly,
AT & PO - Shahabad, Dist.Gulberga,
(Karnataka)
6. Shri Mohd. Rafique Gafoor Shaikh,
C/o.Assistant Engineer,C.Rly,
AT & PO - Ahmednagar,
(Maharashtra)
7. Shri R.M.Kamble,
Gangman, C/o.Assistant Engineer,
C.Rly, AT & PO - Shahabad
Dist. nGulberga (Karnataka).
8. Shri S.J.Bhosle, Gangman
C/o.Assistant Engineer, C.Rly,
AT & PO - Shahabad
Dist.Gulberga (Karnataka)

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9. Shri G.P.Jadhav, Gangman,
C/o.Assistant Engineer,
C.Rly, AT & PO - Shahabad
Dist.Gulberga (Karnataka)
 - 10.Shri R.L.Tatuskar, Gangman,
C/o.Assistant Engineer, C.Rly,
AT & PO Shahabad,
Dist.gulbarga (Karnataka)
 - 11.Shri P.K.Jadhav, Gangman,
C/o.Assistant Engineer, C.Rly,
AT & PO Shahabad,
Dist.Fulberga (Karnataka)
 - 13.Shri A.A.Shaikh, Gangman
C/o.Assistant Engineer, C.Rly,
AT & PO - Daund,
Dist.Pune (M.S.)
 - 14.Shri P.P.Kulkarni, Gangman,
C/o Assistant Engineer, C.Rly,
At & PO Daund,
Dist.Pune (M.S.)
 - 15.Shri S.P.Sagar, Gangman,
C/o.Assistant Engineer, C.Rly,
AT & PO Ahmednagar,
Dist.Ahmednagar (M.S.)
 - 16.Shri R.B.Kulkarni, Gangman,
C/O.Assistant Engineer, C.Rly,
AT & PO Ahmednagar,
Dist-Ahmednagar (M.S.)
- ... Respondents

By Advocate Shri S.C.Dhawan

(ORDER)

Per Smt.Shanta Shastri, Member(A)

The present OA has been filed by the applicant seeking regularisation in service. He has made the following prayers:-

- (i) He is entitled to be absorbed as a regular candidate in class IV (Group D') Category in Engineering or any other departments as he was engaged prior to 01/01/1981 and his name is borne on Casual Labour Live Register maintained by the Respondents.
- (ii) In the light of the above submission the Respondents be directed to re-engage/screen/regularise the service in Group 'D' service the Applicant forthwith; with consequential benefits in preference to his erstwhile junior Casual Labours.
- (iii) In view of the above submissions in Para 5.6 of this Application and since the regular appointment of Respondent No.7 to Respondent No.17 as Gangman vide ...3.

Office Order No.34 of 1999 issued under letter No. SUR/P/Rect/CL/IV/Volunteer Asstt. to T.C./dated 01/11/99 is illegal and bad-in-law; the Respondents be directed to terminate the services of the Respondent No.7 to 17 forthwith.

- (iv) Pass any orders or writ or direction which this Hon'ble Tribunal may deem fit and proper under the circumstances of the case

2. The applicant submits that he was initially engaged as casual labour with effect from 16/4/77 under the Station Master, Central Railway, Dudhni, Solapur Division and he was issued a Casual Labour Card No.Optg./CL/25 dtd. 16/04/1977. Further, he continued to work as casual labour as and when required for a total period of 363 days from 16/4/77 till 12/3/1987. The applicant was discharged from work with effect from 22/11/1988 as his services were not required. Thereafter the applicant states that he approached the Railway authorities several times to re-engage him but he did not meet with any success. Thereafter, in the year 1998, the Railway Board vide their letter dated 9/10/1998 directed the respondents that vacancies in the different departments of the divisions/units may be filled up by screening the casual labour borne on the Live Register and after exhausting them by screening those borne on the supplementary Live Register of the Division/Units. According to the applicant, he comes within the purview of this letter of the Railway Board. Accordingly, the applicant had submitted his application in the prescribed proforma to the respondent no.2 with reference to the notification issued on 13/6/99 calling for the particulars of casual labour borne on the Live Register and supplementary Live Register in Group 'D' category in Solapur Division. His

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application had been forwarded to respondent no.2 through proper channel after verification of his particulars. He also sent an advance copy of his application to respondent no.2. However, he did not hear anything in the matter.

3. In the meantime according to the applicant many casual labours who were junior to him had been screened and given regular appointment in Group 'D'. Further, 16 outsiders who were neither casual labour nor borne on the Casual Labour Live Register had been regularly appointed in Group 'D' by respondent no.2 by ignoring the claim of the applicant. The applicant also sent a joint representation on 25/2/2000 to the respondents but of no avail.

4. Being aggrieved the applicant has therefore approached this Tribunal for re-engagement and absorbing him by regularising in Group 'D' category in Engineering or any other department as was done prior to 1/1/1981.

5. The respondents have filed a reply. The respondents initially raised the point regarding alternative remedy being available to the applicant under the Industrial Disputes Act and Tribunal not having jurisdiction. Also the applicant had not pointed out any recruitment rules under which he was eligible to be appointed, and that the application is barred by limitation.

6. The respondents submit that the applicant was appointed as substitute Motor Vehicle Driver during March 1987 in a purely temporary and adhoc capacity as he was not eligible for appointment to the post of Motor Vehicle Driver. As he wrongly appointed, his services were terminated by following the prescribed procedure on 22/9/1988. The same was challenged by

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the applicant vide OA 691/88 and 27/89. Both the OAs were heard on 7/6/1989 and were dismissed holding that the termination of the service of the applicant was legal and valid. SLP filed against the aforesaid order was also dismissed on merits on 25/10/1989.

7. The respondents have denied that the applicant had worked during the period 3/2/77 to 18/11/84 as claimed by him either with Station Master Dudhani or with Inspector of Works, Shahabad in broken spells. According to the record available the applicant has worked only for the period from 2/3/1987 to 1/11/1988 as substitute Motor Vehicle Driver. The entries made in the Casual Labour Card produced by the applicant, according to the respondents were prima facie bogus and they seem 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. The respondents have stated that in order to verify the alleged entries in the casual labour card, a welfare inspector was deputed to the concerned stations. On verification of records it was reported that the applicant had not worked during the period 8/2/1979 to 22/7/1984 under the Station Master, Dudhani and the inspector of works, Shahabad. The correctness of the entries for the period from 16/4/1977 to 8/5/1978 since old record was not available for verification.

8. This being the background, the applicant was not called for screening when he submitted his application in 1999 as he had never worked as casual labour earlier as claimed by him.

9. In regard to the so called juniors of the applicant being

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regularised, the respondents contend that there is no question of comparison as those people had actually worked whereas the applicant had never worked as casual labour during the period that he claimed to have worked. Similarly, the applicant referred to some outsiders being appointed. The respondents submit that those persons were appointed in order to comply with the judgement of the Supreme Court dated 27/7/1995 in the case of Volunteers to Assist Ticket checking staff and the order of Jabalpur Bench of CAT in OA No.663/90 dated 20/9/1995. Their appointments were therefore because of Court judgements. The respondents have also denied that any junior casual labour had been regularised. Even the joint representation of the applicant dated 20/5/2000 was without any basis. According to the respondents, the applicant has failed to make out any case for grant of any relief and prayed to dismiss the OA.

10. The learned counsel for respondents Shri Dhawan also mentioned about a judgement of this Tribunal dated 12/4/2002 in OA No.194/2001 wherein on account of holding a bogus labour card, the applicant therein was not considered for fresh appointment and also for regularisation and the same was dismissed.

11. I have heard learned counsel for both the parties. The respondents took preliminary objection regarding jurisdiction. The applicant has brought out in his rejoinder that it is not mandatory to first seek remedy under the I.D.Act. I agree. The issue has been settled in the judgement dated 8/10/2001 of the Full Bench Patna in OA No.537/92, 38/94 and 462/98 in the matter of Yogendra Mahta and Ors etc V/s. Union of India. It has held that the Tribunal has jurisdiction to consider the cases of

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casual labourers relating to termination/retrenchment of their service, grant of temporary status and subsequent regularisation. The objection of the respondents is overruled. During the course of the arguments, the learned counsel for the applicant had also sought production of certain documents namely copy of the report of the welfare inspector verifying the particulars of the applicant, the judgement dated 27/7/1995 of the Supreme Court and the judgement of the Jabalpur Bench in OA 663.90 as well as Live Register of the Casual Labour maintained by the respondents vide MP dated 12/2/2002. This Court had directed the respondents to produce the report of the welfare inspector and the judgement referred to in the reply by the respondents. Accordingly, the record was produced by the respondents. A perusal of the same shows that the Welfare Inspector had been deputed actually by Shri Deharia, the present learned counsel for the applicant in his capacity as then Railway Authority and he had accepted the report and had agreed that the casual labour card of the applicant was bogus. Shri Deharia had further moved a note to DRM, Solapur about the card being bogus. The statement made in the reply regarding the report of the welfare inspector is a reproduction of the facts as brought out in the original report of the welfare inspector. It is thus very clear that the applicant had not worked either at Dudhani Station or at Shahabad. The period for which the details were not available is the period from 16/4/77 to 18/5/77 and 1/3/1978 to 8/5/1978 i.e. ^{a very short period} in all a period of three months i.e. 90 days. Therefore going by the report of the Welfare Inspector, I have to hold that the applicant was not engaged from 1979 to 1984 as claimed by him.

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His further appointment as a substitute casual labour was rightly terminated due to his having produced a bogus card and the termination has been upheld right up to the level of the Supreme Court.

12. The learned counsel for the respondents has also drawn my attention to a judgement dated 12/4/2002 in a similar case in OA No.194/2001. In the said OA the applicant had sought regularisation claiming that he had worked as casual labour. However it was found that his services were terminated because of his having a fake labour card. The OA was dismissed hold that Government is well within its right not to consider him for fresh employment or regularisation as whatever employment had been claimed was obtained through fraud. The present OA is squarely covered by the aforesaid judgement. I follow the same.

13. In the facts and circumstances of the case the application being devoid of any merit is dismissed. I do not order any costs.

J. Shanta S.

(SMT. SHANTA SHASTRY)
MEMBER(A)

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