

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.222/2001.

this the 13th day of June 2002.

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

Allwyn John Shikare,
Navajivan Housing Society,
Anand Wadi, Manmad,
Dist : Nashik.
(By Advocate Shri D.V.Gangal)

...Applicant.

v.

1. Union of India, through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST,
Mumbai - 400 001.

2. The Chief Works Manager (E/W),
Central Railway Workshop,
Central Railway,
Manmad.

3. The Divisional Railway Manager,
Central Railway,
Bhusawal.
(By Advocate Shri S.C.Dhawan)

...Respondents.

: ORDER :

S.L.Jain, Member (J).

This is an application under section 19 of the Administrative Tribunals Act, 1985 seeking the direction to the Respondents to regularise the services of the applicant.

2. The applicant had earlier filed an OA (viz. OA No.1049/93) challenging the order of termination dt. 17.5.1993. The said O.A. was decided on 24.11.1999 with the following observations :

"If the services are terminated for want of work or on the ground that sanction to the project has come to an

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end, it cannot be said that the order of termination is illegal or arbitrary, particularly when the applicant is not a permanent Railway Servant but is only a casual labourer. Therefore, we cannot grant any relief to the applicant. It may be, that even a casual labourer whose services have been terminated, may be entitled to regularisation under the Regularisation Scheme, provided the applicant has the required service eligibility qualification and subject of course, to his seniority. This the applicant will get in usual course of time, provided he is entitled to the same under the Rules.

We are not even going to the question of bogus labour card mentioned in the reply, since it is not relevant for our present purpose.

In the result, the application fails and is dismissed. No order as to costs."

2. The applicant applied for the post of Khalasi vide Annexure - A-5 (page 28 of the OA). The result of the applicant was not declared.

3. The claim of the applicant is resisted by the Respondents on the ground that the applicant was engaged on the basis of Casual LabourCard produced by him showing that he had worked under the Chief Signal Inspector (Construction) Agra, Central Railway, during the period from 19.10.1982 to 18.10.1983 in broken period. It is the contention of the Respondents that the Production Units i.e. Workshop authority is not empowered to engage fresh casual labour as per Railway Rules hence their cases were referred to Divisional authority to consider the cases at their level after completion of the project work in units concerned who desires to engage the labourers. Accordingly, unit concerned who engaged them initially were asked to verify the genuineness of service card and entries therein. The service card of the applicant was also sent to Chief Signal Inspector (Construction) Central Railway Agra vide

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letter No. XEN(Mod)MMR/stf/IV dt. 22.5.1993. As the entire record of Agra was transferred to Chief Signal Inspector (Construction) Mathura, who advised vide his letter No.MTJ/N.16/2.11 dt. 26.5.1993, that there is no entry in Service Card Register/Thumb Impression Register or muster roll etc. (Annexure - 'B') in favour of the applicant to show that he had rendered service with them as mentioned in the Casual Labour Card. Thus, the name of the applicant is not reflecting in any of the record. This is the basis on which the Respondents have refused regularisation of the services of the applicant while juniors to the applicant have been regularised.

4. The Learned Counsel for the Respondents argued that the applicant will be regularised in usual course of time, provided he is entitled to the same under the Rules, which means that if the applicant is not entitled to regularisation in any of the provisions, his services cannot be regularised. As regards his conduct, he has secured the job on the basis of bogus Labour Card, hence he is not entitled to regularisation. It is true that in the earlier OA, the Tribunal has held that the question of bogus card is not relevant for our present purpose. As such, the question of bogus Labour Card was not examined in the said OA.

5. The material fact is that, even after filing of reply by the Respondents on 12.12.2001, the applicant has failed to file any Rejoinder stating the fact that in fact he has worked and the document Annexure 'B' at O.A page 51 is not true one or it does not state the correct facts. It is true that the Respondents have enquired the matter behind the back of the

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applicant, but when applicant failed to challenge the same even in the OA, the applicant's grievance that he is entitled to an enquiry in respect of the same, cannot be ignored.

6. Had the applicant challenged the said fact by way of Rejoinder, the question would have been otherwise. Keeping in view, the facts as stated by the Respondents, I am of the considered opinion that applicant is entitled to declaration of the result in view of decision in OA No.1049/93 - his own case. order passed in OA No.194/2001 - Shri Ramesh Govind Ghodeswar Vs. Union of India & Ors. The principles cannot be applied in the present case in view of earlier order in OA No.1049/93 which has now become final.

7. In the result, the OA is disposed of with the direction that the respondents to declare the result of the applicant and thereafter to consider the case of the applicant for appointment, if successful. Keeping his conduct in view as stated by them, if established after due enquiry after notice to the applicant, the respondents are at liberty to take action according to law. No orders as to costs.

S.L. Jain

(S.L. JAIN)
MEMBER (J)

B.

dr B/G/cw
Order/Judgement despatched
to Applicant/Respondent (s)
3/7/02

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