

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO. 832/2001

Date of Decision: 13.11.2002

Shri Namdarkhan Yasinkhan.

Applicant(s)

Shri S.V. Marne.

Advocate for Applicants

Versus

Union of India & another

Respondents

Shri V.D. Vadhavkar.

Advocate for Respondents

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

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

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

Gajan

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH: :MUMBAI

ORIGINAL APPLICATION NO.832/2001

THIS THE 13th DAY OF NOVEMBER, 2002

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

Shri Namdarkhan Yasinkhan
Ex-casual labourer,
Central Railway,
Bhusawal, residing at
Rly Quarter No.648,
RD-1/B Railway Power House
Chawl, Bhusawal. .. Applicant

By Advocate Shri S.V. Marne

Versus

1. Union of India through
The General Manager,
Central Railway,
Headquarters Office,
Mumbai CST, Mumbai-400 001.
2. The Divisional Railway Manager,
Bhusawal Division,
Central Railway,
Bhusawal. .. Respondents

By Advocate Shri V.D. Vadhavkar.

O R D E R

The applicant has approached this Tribunal being aggrieved that his case for regularisation has been turned down vide letter dated 19.11.1999 on the ground that his name does not figure in the live register.

2. According to the applicant he was engaged as casual khalasi from 07.5.1981 under Assistant Divisional Medical officer Badnera. Thereafter he was engaged from time to time as substitute Safaiwala at Badnera, as MRCL

hot season waterman Bhusawal and Murtizapur upto 24.6.1992 in broken periods. He was granted the status of monthly rated casual labour on 26.4.1988. The applicant submits that he was called for engagement as hot season waterman vide letters dated 27.3.89 and 07.4.92. It goes to show that he had worked during those periods.

3. The applicant states further that he was called for regularisation twice on 16.3.1985 and 16.12.1987. However, he was not regularised stating that "no casual labour engaged after 18.12.1980 can be regularised."

4. The Railway Board issued orders on 09.10.1998 directing the General Managers of all the Railways to maintain casual labour live register for open line as well as for project casual labour. Casual labours on roll were absorbed under special drive during 01.5.1996 to 31.3.1998. However, such regularisation was proposed for those remaining casual labourers who were otherwise fulfilling all the conditions. It was directed that regularisation will be as per the turn according to seniority based on number of days put in prior to 01.01.1981 and there would be age relaxation as on 01.4.1999. Notices were therefore issued to Depots incharge on 20.5.1999 to operate the live register and thereafter the supplementary live register. The applicant's name was also considered, but he was not

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regularised stating that his name did not appear in the live register.

5. According to the respondents, they had gone strictly according to the rules and the name of the concerned person has to be on the casual labour live register or the supplementary live register. The applicant's name did not appear in any of these registers. According to the respondents, the list of casual labour borne on live register was prepared as per terms and conditions regarding age, educational qualification and the number of days worked by them in one stretch or broken periods with minimum of 120 days. The age limit prescribed was 33 years for general category, 36 years for OBC and 38 years for SC/ST. There was a further relaxation of age limit if a casual labour had rendered more than three years service giving relaxation upto 40 years in the case of general category, 43 years for OBC and 45 years for SC/ST. After scrutiny of the applications of casual labours including that of the applicant, the respondents could declare only a list of 22 casual labour as suitable for regularisation. They were empanelled by letter dated 26.12.1999 and other casual labour like the applicant were intimated about their ineligibility for regularisation.

6. The respondents have also expressed that they

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did not know as to how the applicant's name did not figure in the live register. The respondents further submit that the Tribunal has earlier decided similar application No. 398/2000 in the case of R.I. Khan & 22 others Vs. Union of India, OA No.50/2001 in A.D.. More Vs. Union of India vide order dated 05.12.2001. Similar OAs No.318/2000, 319/2000, 319/2000, 320/2000 and 227/2000 were decided by order dated 07.6.2001, wherein the respondents contended the fact on the basis of Railway rules, circular/ policy and the Tribunal agreed with the contention and submissions of the respondents and thereafter either dismissed or disposed of the aforesaid OAs without granting the relief prayed for. Since the applicant's case is similar, the OA deserve to be dismissed.

7. The respondents have also raised the plea that the applicant's claim was rejected on 19.11.1999, thus the cause of action arose then. Therefore, he should have filed the OA on 19.6.2000 at the latest. But he has delayed by one year and six months and therefore, the application is barred by limitation. The respondents have also stated that the applicant was screened only once for the post of Safaiwala in 1985 wherein the Screening Committee had remarked that "no service card, appointed after 18.12.1980." According to the respondents, it is the important documentary evidence which exists to show as to why the applicant's name was not on the live register.

8. The applicant submits that the respondents have nowhere disputed that the applicant has worked during the periods enumerated by the applicant earlier in the OA. The applicant satisfies all the three conditions namely 8th standard passed, age of 33 years and 120 days of continuous service. The applicant argues that if his name is not on the live register, then how was he medically examined and granted the MRCL status. He was also called for regularisation. Even while stating that the applicant has no casual labour card, it was mentioned that he was engaged after 18.12.1980 which means that the applicant was engaged and was working till 1992. Even the letter of Railway Board dated 09.10.1998 in para 2.2 states, "however, in case of the casual labour borne on supplementary live register, the extant instructions which stipulates that the persons borne on supplementary live register will be considered for regularisation based on service after reengagement after 01.01.1981 have now lost relevance. The same are therefore modified to provide that the regularisation of casual labour borne in casual labour supplementary live register will be considered in accordance with the number of days put in by them prior to 01.01.1981, those falling in the category being placed enbloc below any who may have rendered service after reengagement of 01.01.1981. The applicant is also wondering how he could be called for regularisation if his name did not appear in the live register. The learned counsel for

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the applicant also contended that his engagement had the approval of the then General Manager.

9. I have heard the learned counsel for the applicant as well as the respondents. The only reason why the applicant has been denied the regularisation is, his name does not appear in the live register of casual labour. The respondents found it difficult to explain as to how the applicant's name did not appear in the casual labour live register. In fact, it is the duty of the respondents to maintain the live register as stipulated in the policy letter of 09.10.1998. It is to be also borne in mind that the applicant was granted the status of monthly rated casual labour, he has worked continuously for more than 120 days. He has fulfilled all the other conditions. Even while stating that he has no service card because he was appointed after 18.12.1980 there is an admission that he was engaged after 18.12.1980 and nowhere have the respondents denied that the applicant has worked as monthly rated casual labour as alleged by him.

10 The respondents have cited decision of this Tribunal in earlier case of non regularisation in several OAs dismissing the same. I have perused those judgments. In those cases the reasons given for not regularising the applicants were totally different and not that their names were not on the live register.

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These orders are distinguishable as the applicant's case is different than those in the decided OAs. In my considered view, merely because the applicant's name was not on the live register, he cannot be denied regularisation, especially when he has worked from 1981 to 1992 in broken periods and also he was granted the status of monthly rated casual labour. It is not his fault that his name is not on live register. The respondents could not explain satisfactorily the absence of his name in the live register. Nor have they disputed the fact of his having worked as MRCL. The applicant therefore deserves to be regularised. A point of limitation has been raised by respondents. Considering that the applicant is pressing a continuous cause of action the objection is over ruled. Accordingly the respondents are directed to consider regularising the applicant ignoring the fact that the applicant's name does not appear in the live register. This shall be done within a period of two months from the date of receipt of copy of the order. In the facts and circumstances of the case, the OA is allowed. No costs.

Shanta Shastri

(SMT. SHANTA SHASTRY)
MEMBER (A)

Gajan

29.9.2003.

C.P. NO: 63/2003.

Applicant by Smt. S.S. Manne.
Respondents by Shri V.D. Vadhankar.

Ad. counsel for respondents submit
that the matter is referred to Railway
Board and hence seeks time.

Adjourned to 22-10-2003.

✓

(S.P. Anya)
M.C.

WV

(S.G. Deshmukh)
M.C.

OS

✓ (A)
30/9

✓
20/10/03

① Per Tribunal Date 22/10/03
Applicant in Person/by (Both present)
Advocate/Respondent by
Council..... T.O.S.....
The matter adjourned to 21/11/03
For.....
✓ Dy. Registrar

