

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

MUMBAI BENCH

ORIGINAL APPLICATION NO: 1119/93

10.8.98

Date of Decision:

Kashinath Laxman

.. Applicant

Shri D.V.Gangal

.. Advocate for
Applicant

-versus-

Union of India & Ors.

.. Respondent(s)

Shri V.S.Masurkar

.. Advocate for
Respondent(s)

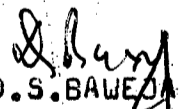
CORAM:

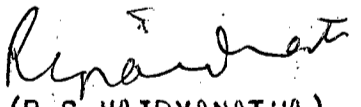
The Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman

The Hon'ble Shri D.S.Baweja, Member (A)

(1) To be referred to the Reporter or not ?

(2) Whether it needs to be circulated to
other Benches of the Tribunal ?


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA)
VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA.NO. 1119/93

Announced this the 10th day of August 1998

CORAM: Hon'ble Shri Justice R.G.Vaidyanatha, Vice Chairman
Hon'ble Shri D.S.Baweja, Member (A)

Kashinath Laxman,
Vill. Bokare, Tal. Karjat,
Dist. Raigad.

By Advocate Shri D.V.Gangal ... Applicant

V/S.

Union of India through

1. The General Manager,
Central Railway,
Bombay V.T.
2. The Divisional Railway Manager,
Central Railway,
Bombay V.T.

By Advocate Shri V.S.Masurkar ... Respondents
C.G.S.C.

ORDER

(Per: Shri D.S.Baweja, Member (A))

The applicant was engaged as a Casual Labour under Permanent Way Inspector (Maintenance), Neral, Central Railway on 26.4.1983. He worked continuously upto 18.4.1984 when his services were terminated orally. Thereafter, the applicant kept representing and waiting for re-engagement but did not get any response. On contacting the office of respondents, it was given to understand to him that post-facto sanction of General Manager is required for the engagement of the applicant and on receipt of such sanction only the services of the applicant will be considered for regularisation. The applicant submits that proposal for seeking post-facto sanction of the General Manager was submitted by the Divisional Railway Manager as per letter dated 4.3.1991 and the

~~Name of~~ the applicant appears at S.No. 185.

However, the applicant has not got any intimation regarding the post-facto sanction of the General Manager. The applicant represented on 30.9.1992 and 6.11.1992 but did not get any reply. Feeling aggrieved, the applicant has filed the present application on 15.10.1993 seeking the following reliefs :- (a) to direct the respondents to grant post facto sanction of the General Manager for his engagement as Casual Labour and eventually regularisation of the services, (b) to hold and declare that the termination of the applicant is void, (c) to direct the respondents to regularise the service of the applicant from the date his junior is regularised, (d) to direct the respondents to grant casual appointment forthwith on monthly rated basis, (e) to direct the respondents to grant back wages and continuity of service and (f) to direct the respondents to reinstate the applicant in service.

2. The applicant has challenged his termination stating that he had completed one year of continuous service with artificial breaks in service and, therefore, under the law he was entitled to one month's notice and retrenchment compensation before his services could be terminated. Since the respondents have not taken any such action, the termination of services of the applicant is illegal and void. The applicant further contends that he is entitled for regularisation as per the extant rules laid down by the Railways extracted at Annexure-'A-3'. The applicant also



alleges that the respondents have robbed him of his livelihood without any authority of law and thus the provisions of Article 21 of the Constitution of India have been violated. The applicant also alleges that the respondents have violated the provisions of Articles 14 & 16 of the Constitution of India by denying the right of equality before law.

3. The respondents have contested the claim of the applicant through the written statement. The respondents submit that the applicant was engaged as a casual labour till 18.2.1984 and thereafter he did not turn up for work and the allegation of the applicant that his services were terminated is baseless. The applicant thereafter did not make any representation stating that his services were terminated and the relevant rules for termination were not followed. Respondents further submit that the applicant has annexed copies of his representations dated 9.5.1991, 30.9.1992 and 6.11.1992 though the respondents have not received ^{the same} but on going through these representations, no mention has been made that the services of the applicant were terminated. Therefore, the allegation of termination is only an after-thought. The respondents also state that the letter dated 4.3.1991 at Exh. 'A-1' of the DA. is not the proposal of Divisional office submitted to the General Manager for post-facto sanction but for engagement of casual labour, this letter only has been addressed to the Field Unit to verify service particulars of the staff mentioned in the list on a representation made by the Union. The respondents

have also made a contention that in terms of Railway Board's letter dated 22.11.1984, the applicant's name should have been struck off from the Casual Labour Register. The respondents have strongly denied that there is any violation of the provisions of Articles 14,16,19 and 21 of the Constitution of India. Apart from the application having no merits, the respondents also take a plea that the application is highly time barred by limitation and deserves to be dismissed on this count alone.

4. The applicant filed a misc. application proposing amendment to bring on record the additional averments with regard to the screening done on 15.4.1991. This amendment application was allowed. Through the amended averments, the applicant has brought out that the screening was done during April,1991 for engagement for a period of two months for summer vacation job. The applicant though had appeared in the screening but was not given the job arbitrarily ^{and} his name was dropped. Subsequently, the screening for regular absorption was done and a panel of 37 candidates was issued on 17.6.1993. In this panel, two candidates viz. Shri Suresh Nathu and Shri Dashrath Balu who were junior to the applicant, based on the working days, have been regularised ignoring the claim of the applicant. Thus the applicant has been subjected to discrimination on two folds, firstly, by not giving the job for a period of two months for summer vacation ^{period} and secondly, due to non-empanelment for regularisation.

(W)

5. The respondents have filed reply to the Misc. application seeking amendment to the OA. which ~~was~~ indicated earlier was allowed. The respondents contend that the alleged juniors, viz. Shri Dashrath Balu and Suresh Kumar ^{though} had earlier worked as Casual Labour in the Engineering Department ~~but~~ they were subsequently engaged for the summer vacation job in 1991. In view of this, these two employees were screened for regular absorption in the Carriage and Wagon Department. On the other hand, the applicant did not make any efforts to approach Carriage and Wagon Department for his engagement for the summer vacation job and therefore he was not considered for screening. The respondents have further added that screening for the Engineering Department was held on the various dates during 1991-92 and the applicant's name appeared at S.No. 149. The panel was finalised and circulated on 11.8.1994. However, the applicant did not attend ~~this~~ screening on the due dates and therefore he had been marked as 'absent' in the proceedings of screening committee. In view of this ~~fact~~, the applicant is not entitled for any claim for regularisation as prayed for.

6. The applicant through a Misc. application made a prayer that respondents be directed to produce the record of all the 386 casual labourers mentioned in the list in the letter at Annexure-'A-1' for inspection of the applicant. This prayer of the applicant was not allowed. However, the respondents were directed to permit the applicant to inspect the seniority list of ^{all 386} casual labourers and the record of service of the ~~casual~~ labourers at Sl.Nos. 313 and 348 only. This inspection

was allowed to the applicant and thereafter he filed a Misc. Application indicating the result of inspection carried by him reiterating the submissions made earlier. The respondents have also filed a reply to this Misc. Application.

7. The applicant has filed rejoinder reply to the main written statement of the respondents. The applicant while controverting the statements of the respondents has reiterated the averments made in the OA. as well as ⁱⁿ the Misc. applications referred to earlier.

8. We have heard the arguments of Shri D.V. Gangal, learned counsel for the applicant and Shri V.S. Masurkar, learned counsel for the respondents. The material brought on record has been also carefully gone into.

9. The respondents have opposed the application on the ground of being barred by limitation. This issue is being dealt with first before going into merits. From the reliefs prayed for ^{and} detailed in Para 1 above, it is noted that there are two sets of reliefs. One set of reliefs concern termination of service, re-engagement as casual labour, treating the service as continuance and payment of backwages. The other set of reliefs refer to post facto sanction of the appointment of the applicant as casual labour by the competent authority and to regularise the applicant against the regular vacancy from the date his junior is regularised. So far as the first set of reliefs is concerned, on the facts of the case, we find that the present OA. is highly time barred. The services of the

applicant are alleged to have been terminated on 18.4.1984. The respondents have, however, stated that the applicant left on his own and did not report for duty after 18.4.1984. Without going into the controversy, of termination of services, the fact is that the applicant was not in service after 18.4.1984 and therefore the cause of action arose on that date. The applicant seems to have kept quiet after 18.4.1984 as there is no averment in the OA. that he made a representation against his oral termination and pursued the matter further with the concerned authority for re-engaging the applicant. The representation for his re-engagement was made only in 1991 which has been brought on record. This representation also ^{does not} mention that his services were illegally terminated in 1984. The applicant has pleaded that the respondents robbed him of his livelihood and thereby violated the provisions of Article 21 of the Constitution of India. If the applicant was in dire need of job to sustain him, then he would have agitated the matter with reference to his termination of service and not just kept quiet as is evident from the averments made in the OA. In case the respondents had not responded to his request for engagement, he could have sought legal remedy which he has done now after a period of more than 8 years. The applicant has not brought ^{out} any reasons for delay in seeking the legal remedy against his alleged illegal termination of services leaving aside ^{with} filing of ^{an} application for condonation of delay. ^{With} these facts, the limitation with regard to the first set of reliefs connected with termination of service is glaring

and we have no hesitation to hold that the OA. filed in 1993 for these reliefs is barred by limitation and therefore the application deserves to be dismissed on this count alone. With regard to second set of reliefs, we are, however, inclined to treat that the application is not barred by limitation. Though the applicant had not brought out any averments with regard to the screening and formation of panel for regularisation of casual labour for the C&W Department but subsequently through the amendment application necessary averments with regard to the panel for Carriage & Wagon Department have been brought on record. Since the main claim of the applicant is regularisation with reference to his junior, the application for this relief with the amendment carried out is within time and is not barred by limitation. Accordingly, we have gone into merits of this relief only subsequently. In fact, during the hearing, the focus of arguments of the learned counsel for the applicant was on regularisation.

10. Through the amendment, the applicant has brought out that screening for the Carriage & Wagon Department for engagement during the summer period for a period of two months was done during April, 1991 and ^{the} applicant ~~was~~ ^{but} eligible and also had appeared in the screening ~~was~~ not selected. Subsequently, the same staff engaged for summer vacation was screened for regular absorption and the panel was published on 17.3.1993. Referring to this panel, the applicant has alleged that two employees, viz. Suresh Nathu and Dashrath Balu who were also from the Engineering Department and junior to the applicant based on the days of working

have been regularised and thereby the applicant has been discriminated. The respondents have stated that Suresh Nathu and Dashrath Balu though belonging to Engineering Department were considered for engagement in the Carriage & Wagon Department during 1991 summer season and by virtue of this working, they were considered for screening for the Carriage & Wagon Department. The respondents further add that the applicant did not approach for screening for summer season. Keeping these rival facts in view, it is to be deliberated whether the claim of the applicant is admissible for regularisation since two alleged juniors have been regularised as per the panel dated 17.6.1993. Considering the facts available on record, we are of the view that there is no merit in the claim of the applicant, though the respondents have stated that the applicant did not approach for screening for engagement during the summer season of 1991, but the applicant has categorically stated both in the OA. in Para 4.1 as well as in the Misc. Application No.1200/94 that he appeared in the screening held in 1991 but he was not granted the appointment. The alleged two juniors Shri Suresh Nathu and Dashrath Balu were selected in the screening and were engaged during the summer season of 1991 as brought out by the respondents. Once the applicant had appeared in the screening along with his alleged juniors and he was not selected in the screening for engagement in the Carriage & Wagon department, the applicant cannot claim parity with these two alleged juniors who were originally from Engineering Department. As per the version of the respondents, the screening for regularisation from the Carriage & Wagon Department was done from the staff who had been engaged during the summer season of 1991 and

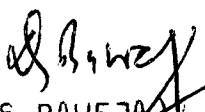
the two juniors as referred to earlier were also screened since they had been re-engaged in the C&W Department. Under these circumstances, the applicant cannot seek claim for regularisation against the panel of C&W Department on the plea that his erstwhile juniors of Engineering Department have been regularised. It may be further noted that the applicant has not made any challenge ~~of~~ his non-selection ^{the} in screening held in 1991 for engagement for the C&W Department as well as the panel of 1993 specifically in the reliefs claimed or in averments made in the OA. ^{through} the amendment application. Keeping these facts in focus, we are ~~un~~able to find merit in the claim of the applicant for regularisation in the C&W Department ~~panel~~ dated 17.6.1993.


11. In reply to the M.P.No.1200/94 filed by the applicant seeking amendment to the OA., the respondents have further submitted that the applicant was considered for screening for regularisation in the Engineering Department during the screening done from 8.10.1991 to 4.2.1992. The applicant was at S.No. 149 of the screening list and the final panel was issued on 11.8.1994. The respondents submit that the applicant was absent during the screening and as such his name was not placed on the ~~panel~~. The applicant in reply has stated that the averments of the respondents with regard to the screening done ~~for~~ the Engineering Department and the panel issued on 11.8.1994 are entirely false and baseless as no intimation was sent to the applicant for this screening. The applicant during the hearing vehemently argued this point submitting that if the applicant had been called for ^{this} screening, he would have certainly appeared for the same and there would have no occasion to agitate the matter for legal remedy before the Tribunal. Since the respondents ~~had~~ not filed any reply countering ~~this~~ statement of the applicant, they

were directed to produce the relevant records of the screening done during 1991-92 for the Engineering department and the notification issued for the same. These records were made available by the respondents. The respondents ^{also} were questioned with regard to the procedure for intimation of the screening individually to the casual labourers. The respondents explained that as per the practice followed, no individual intimation is being sent to casual labourers. The respondents further explained that the list of the screening is circulated to all the concerned subordinates ^{and the} list is placed on the Notice Board for information of all the casual labourers and in the present case also, the same procedure was followed. On going through the proceedings of the screening committee, we find that the screening of the staff has been done on different dates and there are only few casual labourers shown as absent in the proceedings which includes the applicant also. Since the large number of staff had been screened and only a few were found absent, it could be inferred that the procedure adopted by the respondents with regard to the circulation of the screening ^{to} list the casual labourers eligible for screening is quite effective. The main plea of the applicant is that he had not received any intimation individually. Since the respondents have admittedly not sent intimation individually to any casual labourer, the applicant has not been discriminated. The practice followed by the respondents as explained above also appears to be satisfactory since it may not always be possible to send intimation to casual labourers ^{individually} after several years as the up-dated addresses of the casual labourers may not be available. We are, therefore, inclined to infer that the applicant had been given

opportunity for screening for regularisation ⁱⁿ alongwith the others, but he did not appear in the same. Keeping this in view, no direction can be given to the respondents to reconsider the applicant afresh and call for screening again. Since the prayer made by the applicant is that he should be considered for regularisation without making any specific reference to the panel notified after screening, we find that the applicant has been considered for screening when due for the Engineering Department and therefore his claim does not survive.

12. For the above reasons, we are unable to find any merit in the claim of the applicant. The ^{therefore} OA. deserves to be dismissed and is accordingly dismissed. No orders as to costs.


(D.S. BAWEJA)
MEMBER (A)


(R.G. VAIDYANATHA) 10/1/98
VICE CHAIRMAN

mrj.