

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 340/98

24.2.2007
Date of Decision:

S. Hukumchand

Applicant.

Shri U.M. Joshi

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S. Masurkar

Advocate for
Respondent(s)

CORAM:

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

Hon'ble Shri.

- (1) To be referred to the Reporter or not?
- (2) Whether it needs to be circulated to other Benches of the Tribunal?
- (3) Library

D.S. Bawej
(D.S. BAWEJA)
MEMBER (A)

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

OA. NO. 340/98

Dated this the 24th day of February 2000.

CORAM: Hon'ble Shri D.S.Bawej, Member (A)

Suresh Hukumchand,
R/o. Nana Seth Tukaram Chawl,
Room No. 1, Tisgaon,
Kalyan (E), Dist. Thane.

... Applicant

By Advocate Shri U.M.Joshi

V/S.

Union of India through

1. The General Manager,
Central Railway,
CST, Mumbai.
2. The Chief Personnel Officer,
Central Railway,
CST, Mumbai.

... Respondents

By Advocate Shri V.S.Masurkar

O R D E R

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

The applicant was engaged as a casual labourer on Central Railway on 19.10.1983 at the construction site of Rashtriya Chemical Factory, Railway line, Panvel. After the completion of the work, the applicant was discharged on 18.10.1984. The applicant was neither given any notice of termination nor paid any compensation as per Section 25/F of the Industrial Disputes Act. The applicant thereafter made several requests for engaging at some other place/work but there was no response. The applicant had completed more than one year of service and as per rules, he was entitled for grant of Temporary

status after 6 months. With the grant of Temporary status, the applicant would have been entitled for the benefits as laid down in Vol.II of Indian Railways Establishment Manual. The applicant was also entitled for a screening for regularisation against Group 'D' posts but the applicant was not screened. It is further brought out that Dy.CE (Construction) Panvel as per letter dated 12.7.1989 was advised that Chief Administrative officer has granted ex-post facto sanction for regularisation of 2131 casual labourers engaged on or after 10.12.1981. The name of the applicant is included in this list. With the issue of this letter, the applicant acquired the right for being screened for regularisation. The applicant has further submitted that in pursuance of the judgement of the Hon'ble Supreme Court in the case of Inder Paul Yadav, the Railway Board issued the circular dated 11.9.1986 laying down the detailed scheme of regularisation of the Project casual labour. As per this scheme, seniority list is to be prepared for the purpose of regularisation but the applicant has not been advised of his seniority position. He also submits that several casual labourers have been regularised without the publishing of the seniority list. The applicant also filed the proforma for screening which was verified by the PWI sent to Divisional office. Feeling aggrieved by non regularisation by the respondents, the applicant has filed the present OA. on 28.1.1997 seeking several reliefs as detailed in para 8 in the OA.

2. The applicant has sought the following reliefs :-

- (a) To grant temporary service with all consequential benefits.
- (b) To declare and hold that the discharge from service on 18.10.1984 is illegal and void.
- (c) To direct respondents to regularise the services in Group 'D' as per seniority in terms of judgement of the Apex Court in the case of Inder Paul Yadav and with reference to letter dated 12.7.1989 of Dy. CE, Panvel.
- (d) to direct respondents to prepare a seniority list of the casual labourers for purpose of regularisation. Also direct respondents to give job of casual labourer till his regularisation.
- (e) to grant interest of 18% per annum on the arrears.

3. The respondents have opposed the application in the written statement on three counts (a) applicant has not challenged any specific orders and hence there is no cause of action. (b) The cause of action arose on 18.10.1984 and the present OA, filed on 28.1.1997 suffers from delay and laches and (c) Last engagement of the applicant was in Nagpur Division and therefore the OA, filed before this Bench is not maintainable on account of non jurisdiction. As regards merits, the respondents submit that the applicant was engaged as casual labourer on 19.9.1983 against a Deposit Work. Upon the completion

of the project due to curtailment of casual labour strength, the services of the applicant were terminated giving one month's notice under Section 25-F of Industrial Disputes Act from 18.10.1984. The applicant, however, refused to accept the notice and compensation as per provisions under Industrial Disputes Act. The respondents have further stated that the applicant was also engaged as casual labourer from 23.5.1985 to 18.6.1985 on Jabalpur Division and 30.11.1987 to 18.12.1987 and 19.2.1988 to 18.5.1988 on Nagpur Division. In view of this, the applicant can claim regularisation on the Nagpur Division only if due as per the extant rules. The respondents submit that the proforma said to have been filled for screening and verified by the Permanent Way Inspector (Construction) Panvel was in response to letter dated 17.8.1994 (R-III) but the same was subsequently withdrawn as per the letter dated 7.10.1994. It is further stated that Railway Board's letter dated 11.9.1986 is not applicable to the applicant as the scheme as per this letter is applicable to those who were in employment on the date of issue of this order. The respondents rely upon the order dated 6.7.1999 in OA.291/94 in the case of Selvaraj Kaprivel vs. G.M. Central Railway of this Bench for this submission. As regards the temporary status, the applicant is not entitled for the same after completion of 6 months. With these submissions, the respondents plead that the applicant is not entitled for the reliefs prayed for.

4. The applicant has not filed any rejoinder reply for the written statement.

5. I have heard the arguments of Shri U.M.Joshi and Shri V.S.Masurkar, learned counsel for the applicant and respondents.

6. The applicant has prayed for the relief of declaring that discharge of his service from 18.10.1986 is illegal and void as it was in violation of the provisions of Section 25-F of Industrial Disputes Act. The OA. filed challenging the retrenchment of Industrial Disputes Act is not maintainable before the Tribunal in view of the judgement of the Hon'ble Supreme Court in the case of K.P.Gupta vs. Controller of Printing and Stationery. The counsel of applicant however, during the hearing did not press for this relief.

7. The relief with regard to grant of temporary status is highly time barred. The applicant is claiming the grant of temporary status in terms of the scheme laid down by the Railway Board's letter dated 11.9.1986 by filing the present OA. on 28.1.1997. The applicant has filed a Misc. Application for condonation of delay in filing the OA. On going through the same, it is noted that it mainly refers to the issue of regularisation and in fact there is no mention with regard to grant of temporary status. The cause of action arose with the issue of the letter dated 11.9.1986 and the delay has to be explained with reference to this date. The applicant has not made any explanation for this delay

(J)

and appears to have kept quiet on this issue. The delay deprives a person of the remedy available in law. A person who has lost the remedy loses his right as well as held by the Apex Court in the case of Ramchandra Samatha & Ors. vs. Union of India, 1993 (2) SLR 811 (SC). This relief is highly time barred and therefore not maintainable.

8. As regards the relief for regularisation in Group 'D', the respondents have submitted that the applicant after his engagement on Mumbai Division was subsequently engaged from 23.5.1985 to 18.6.1985 on Jabalpur Division and from 30.11.1987 to 18.12.1987 and 19.2.1988 to 18.5.1988 on Nagpur Division. In view of this, the respondents contend that claim for regularisation if any has to be on Nagpur Division. As stated earlier, the applicant has not filed any rejoinder reply and therefore above submission of the respondents remains unrefuted. It is also noted that in the OA., the applicant has averred only in respect of engagement as casual labourer from 19.9.1983 to 18.10.1984 on Mumbai Division and has challenged his termination of services from 18.10.1984 in violation of the provisions of Industrial Disputes Act. The applicant has not made any mention of the subsequent engagements after 18.10.1984. The applicant, however, has brought on the record Casual Labour Card at Annexure-'A-1'. On perusal of the same, it is noted that the periods of working on the Jabalpur and Nagpur Division as stated by the respondents and detailed earlier are recorded.

This confirms the statement of the respondents without any doubt. Once the applicant has brought himself the casual labour card on the record, we fail to understand as to why the applicant has not disclosed the periods of working on Jabalpur and Nagpur Division. Even during the hearing, the learned counsel did not react to this aspect raised by the respondents in the written statement as well by the counsel for respondents. The counsel for the applicant argued for seeing merit in his claim with reference to working for the period from 19.9.1986 to 18.10.1984. With this fact situation, I am compelled to take a view that the applicant has not approached with clean hands. It appears that applicant has not disclosed the periods of working subsequent to 18.10.1984 perhaps with the purpose of challenging termination of his services and with the interest of regularisation on Mumbai Division. This is obvious since even in the proforma filled for screening at Annexure-'A-2', applicant has shown working from 19.9.1983 to 18.10.1984. Once the applicant has been re-engaged on another Division with separate seniority unit, then the applicant claim regularisation in that unit and not in the unit where he has worked earlier. This is clear from Railway Board's letter dated 11.9.1986 as per which the seniority is to be prepared Division wise. I, therefore, find weight in the contention of the respondents that having last worked on Nagpur Division, applicant could seek regularisation on Nagpur Division only if admissible as per the extant rules. In view of this, the prayer

for the relief of regularisation based on the working as Casual Labourer from 19.9.1983 to 18.10.1984 is not maintainable.

9. The respondents have brought out that the applicant's case is not covered by the scheme laid down by Railway Board's letter dated 11.9.1986 and have relied upon the order of this Bench in case of Selvaraj Kapirvel vs. General Manager, Central Railway in OA.NO. 291/94 decided on 6.7.1999. The ratio of this order will not apply to the present case as the applicant had been re-engaged after 1.4.1985. As per the working days, the name of the applicant required to be maintained on the live casual labour register for consideration for re-engagement and regularisation as per seniority. Therefore, applicant can seek regularisation on Nagpur Division as per his turn. *or per extant rules* (✓)

10. In the result of the above, the OA. is barred by limitation as well as devoid of merits. and *dismissed accordingly* However, this will not preclude the applicant from making representation for regularisation on Nagpur Division as per the extant rules. No order as to costs.

D.S. Bawej
(D.S. BAWEJA)
MEMBER (A) V