

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH
ORIGINAL APPLICATION NO:7/98 & 143/98
DATED THE 6TH DAY OF OCT. 2000

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

- | | | |
|--------------------------------|---|-------------------------|
| 1. Shri Ramdas Hanmanta Shetty |) | |
| 2. Hanumantha Hanmappa |) | Applicants in OA 7/98 |
| 3. Mehboob Mohammed Kashim |) | |
| 4. Nazir Md. Abdul Rehman |) | |
| 5. Sadashivam Natarajan |) | |
| 6. D.Jairam Durairaj |) | |
| 7. Mohd. Yusuf Mohd. Hussain |) | |
| 8. Mohd. Hanif Babamiya |) | |
| | | |
| 1. Justine S Chelliah |) | Applicants in OA 143/98 |
| 2. Marimuthu Pitchkaran |) | |
| 3. Harilal Palki |) | |

By Advocate Shri G.s.Walia

V/s.

- | | | |
|-----------------------------------|---|-------------------------|
| 1. Union of India through |) | |
| General Manager, |) | |
| Head Quarters office, |) | |
| Central Railway, |) | |
| Mumbai CST, |) | |
| Mumbai 400 001. |) | |
| | | |
| 2. Divisional Railway Manager, |) | ... Respondents in both |
| Bombay Division, |) | OAs 7/98 & 143/98 |
| Central Railway, |) | |
| Head Quarters office, |) | |
| Mumbai CST, |) | |
| Mumbai - 400 001. |) | |
| | | |
| 3. Asst. Engineer,(Construction), |) | |
| Bombay Division, |) | |
| Central Railway, |) | |
| Head Quarters Office, |) | |
| Mumbai CST, |) | |
| Mumbai - 400 001. |) | |

By Advocate Shri S.C.Dhawan.

(ORDER)

Per Smt.Shanta Shastri, Member(A).

The issues raised and the reliefs claimed in both the OAs being similar, I have proceeded to dispose them of by a common order.

O.A.7/98

2. There are eight applicants in this OA. These applicants have approached with prayer that they should be engaged/appointed as Casual Labour/Substitutes even if they are over aged by relaxing the conditions and further to direct the respondents to prepare a seniority list of Casual Labour/Substitutes who have already worked under the respondents and are waiting for absorption/appointment and circulate the same seniority list to the respective offices for perusal of the applicants and other persons concerned.

3. These applicants had worked as casual labour between 4/6/90 to 9/3/91 and had completed according to them 120 days of service. However, their services were terminated on 9/3/91. They had therefore approached this Tribunal vide OA-248/91. The OA was decided on 3/1/92 with directions to the respondents to prepare a seniority list including the names of the applicants also in the list and provide them work as and when the vacancy arises in accordance with the order of seniority. The applicants in this OA claim that they had approached the respondents for giving them work and ^{for} absorbing them as Class-IV or Casual Labourers or substitutes. They were merely orally told that the matter was still under consideration. Thereafter a Trade Union called Madhya Railway Sthaniya Lokadhikar Samiti also requested vide their letter dated 3/9/97 addressed to Divisional Railway Manager to engage and absorb the applicants pursuant to the order passed by the Tribunal in OA-248/91. But no reply was received.

:3:

Thereafter again a letter was sent through an advocate of the applicants on 16/9/97 requesting the respondents to implement the judgement in OA-248/91. It was also mentioned therein that one Sharad J Patil was appointed on 2/5/97 ignoring the claims of the applicants who are senior to him. It is the grievance of the applicants that the respondents have failed to implement the judgement of this Tribunal in OA-248/91. Instead the Respondents are getting the work done through contractors who engage fresh labourers. There are number of vacancies available. The respondents have also not prepared any seniority list for the purpose for engaging and absorbing the employees who had already worked. The applicants are getting over aged in the meantime and are not getting employment anywhere else. It has further been stated by the applicants in this OA that an order dated 6/2/96 under the subject ~~expost facto~~ sanction of General Manager for engagement/re-engagement of casual labour engaged between 1/3/81 to 31/12/85 and after 31/12/85 and CW department of Bombay was issued and the respondents have appointed casual labourers in preference to the applicants. All these casual labourers are junior to the applicants. The respondents are not maintaining the seniority list division wise. This is being done purposely and deliberately.

3. The Learned Counsel for the applicants submits that the respondents ought to have complied with the directions of the Tribunal in OA-248/91. The only thing that the applicants have asked for is to put them in the seniority list and screen them for vacancies of casual labourers. But the respondents are flouting the orders of the Tribunal.

4. The Learned Counsel for the Respondents has taken preliminary objection in the reply filed. According to the respondents this application is barred by the law of res judicata because in OA-248/91, the applicants had claimed practically the same relief. Further, the application is also barred by limitation. The order of the Tribunal in OA 248/91 is dated 3/1/92. The applicants ought to have filed a contempt petition within one year of the judgement for compliance thereof. The applicants have not done so and have filed the present OA now in December 1997. Thus, it is hit by section-21 of the Administrative Tribunals Act.

5. Coming to the merits of the application, the learned counsel submits that the applicants had filed OA-248/91 against their termination. The Tribunal had upheld the termination but had granted them relief by way of directing the respondents to include their names in the seniority list and to provide them work whenever vacancies arose. There is a ban on recruitment of fresh casual labourers after 1986. The respondents have taken up the regularisation of those casual labourers who were already working on the basis of their seniority and when the vacancies arise. It is the contention of the respondents that the practice of screening the casual labour is done unit wise and not division wise. It is inconvenient and impracticable to prepare a combined seniority list of different units for the purpose of screening and absorption. The regular vacancies are scattered at different places in Mumbai division. It is inconvenient for casual labourers from one unit to be absorbed in a distant unit even though he may happen to be senior. The respondents admit that even though there were no vacancies, the existing casual

:5:

labourers working with the respondents were regularised some time in 1996-97 pursuant to the assurance given by the Minister for Railways on the floor of the Parliament by creating new posts in different divisions where work was available vide order dated 6/2/96. According to the respondents, the Madhya Railway Sthaniya Lokhadhikar Samithi is not recognised by the Railway Administration and therefore no reply was given to them. In the advocate's letter dated 16/9/97, it was only mentioned that one Shri Sharad J Patil was appointed on 2/5/97 without giving any particulars. The learned Counsel states that one Shri Sharad J Patil was working at DEE TRS Kalwa. Since his name was already on the role of the casual labourers, he was regularised as per seniority but he is not the same Sharad Jairam Patil who was one of the applicants in OA-248/91. The respondents also have urged that some of the applicants had not even worked for 120 days and they were no longer on the role. The respondents submit that the applicants therefore have no case.

6. The Learned Counsel for the Applicants denies that the application is barred by limitation. He submits that the applicants have repeatedly approached the concerned authorities and since no time limit was indicated in the orders of the Tribunal, only when a junior person came to be appointed that the cause of action has arisen for them to approach the Tribunal and therefore the application is well within the limitation period as the Advocate for the Respondents had written to the respondents on 16/9/97.

7. The Learned Counsel also argues that the application is not barred by ^{the principle of} resjudicata. The Learned Counsel urges that the only thing that the applicants are asking for is to bring them on

the seniority list and to give them an opportunity of being screened for purpose of absorption and regularisation. The Learned Counsel has cited a few judgements of this Tribunal and the Judgements of Madras bench of the Tribunal. In OA-1255/92 and 164/93, in the case of similarly placed casual labourers, the Tribunal had directed to consider the case of the applicants for regularisation after screening and then absorbing them if they were found fit and as per seniority and subject to availability of vacancies. The applicants had acquired temporary status having put in 120 days. The Learned Counsel has produced another judgement in a bunch of OAs led by OA No.1013/98 wherein the ground of limitation was over-ruled and the respondents were directed to prepare a seniority list of the applicants alongwith the other casual labourers who had been engaged earlier and also to regularise them if found eligible in terms of the scheme as laid down in OM dated 10/9/93 and 7/6/88 of the Department of Personnel and Training against existing and future vacancies. The applicants in those cases were also allowed relaxation of age. It was also directed that in respect of the applicants where the respondents had not accepted the claim of working, the applicants would submit a representation within a period of one month giving details of the engagement with documentary evidence as available with them and the respondents will then verify the claim of the applicants by associating the applicants. In case the claim was found to be acceptable, such applicants' names would be included in the seniority list prepared and in case the case was not established, the concerned applicant would be replied to by a speaking order within four months after receipt of

representation. In other OAs No.257/98 and 268/98 decided on 21/1/2000, this Tribunal directed the respondents to conduct an enquiry to ascertain the service particulars of the applicants and if the applicants' claims were true then they should be continued and considered after observing principles of natural justice. The Learned Counsel is also deriving support from order dated 16/1/95 in OA-1526/92 in the case of V.Gandhi V/s.Chief Personnel Officer, Southern Railway, Madras & Ors., wherein it was held that the applicant was entitled to absorption subject to his fulfilling the trade test, holding that work charged and casual labour are entitled to the benefits of para-2007 of the Indian Railway Establishment Manual for absorption to the extent of 25% against 50% of the vacancies reserved for departmental promotions. The Learned Counsel pleads that in view of the aforesaid judgements, the respondents should at least make an enquiry about the working of the applicants and should give them an opportunity of at least being screened through trade test.

8. The Learned Counsel for the respondents submits that since the applicants had approached this Tribunal once with similar prayers and since the applicants failed to file either a Contempt Petition or to take up the matter immediately after the order dated 3/1/92, in OA-248/91, the applicants' case cannot be considered now after a lapse of so many years. The Learned Counsel is relying upon the judgement of the Supreme Court in the case of Hukum Raj Khimsara, Appellants V/s. Union of India & Ors. in Civil Appeal No.2237 reported in AIR 1997 SC 2100. In this matter, the question which was considered was whether the application seeking the implementation of the earlier order of

the Tribunal was barred by limitation. The Tribunal held that the application was barred by limitation. The Supreme Court held that the Tribunal was right. It was observed that the final order passed by the Tribunal is executable under section-27 of the A.T.Act within one year from the date of its becoming final. Since the application was not filed within one year of the order becoming final order, the application was barred by limitation and hence it deserved to be dismissed. It was also observed further that the applicant had not even made any application for condonation of delay. The Learned Counsel for the respondents therefore urges that the OA needs to be dismissed on these grounds itself.

9. I have heard the Learned Counsel for the Applicants as well as for the Respondents. I would like to first deal with the objection regarding resjudicata and limitation. I do find that the applicants' prayer was no different in OA-248/91 from that in the present OA. The applicants cannot agitate the same issue as it was decided earlier by the Tribunal on 3/1/92 in clear terms. Secondly, the applicants do not seem to have made any move to get the compliance of Tribunal's order within the period of limitation i.e. within one year of passing of the order. There does not appear to be any Contempt Petition filed, though the applicants state that they kept approaching the respondents repeatedly, the applicants have not produced any documentary evidence in support of that. The only effort of the applicants has been in the year 1997.

10. They are themselves to be blamed for laches and delay. In view of the judgement of the Supreme Court as stated by

the Respondents in the case of Hukum Raj (Supra), I cannot accept this plea that the application is not hit by the principles of resjudicata. The application therefore deserves to be dismissed both on the grounds of resjudicata as well as limitation.

OA-143/98

11. In this OA there are three applicants who claim to have worked as casual labourers. They have sought the same relief as the applicants in OA-7/98. The respondents point out that these applicants had filed OA-723/91 and their termination was upheld by the Tribunal and the application was disposed of on 25/1/95 with a direction that the applicants should make application ~~biting~~ out the facts of each case before the concerned authorities within four weeks from the date of the order i.e. 25/1/95 and the respondents will consider the case of those persons who made such application within 8 weeks from the date of receipt of such application and if they found that any of the applicants are ready to be screened then relief may be granted and if the applicants representation is rejected, the rejection should be done by a speaking order.

12. The applicants therein do not appear to have made any representation. No material has been produced to show that the applicants persued further in the matter. Thereafter the applicants have approached this Court only in 1997 and their application is therefore barred by limitation. I have perused the judgement in OA Nos.723/91. I find that there were about 41 applicants in that OA. Against these 41 applicants, only Shri

...10.

J.S.Chellayya i.e. Applicant No.1 in the present OA was a party and the other two applicants did not plead in OA-723/91. Therefore, the ground of resjudicata will apply only in the case of Applicant No.1 and not others. From the judgement in OA 257/98 and 262/98 produced by the Learned Counsel for the applicants however I find that same applicants as in OA-723/91 had again filed further application No.257/98 and 262/98 which were decided on 31/1/2000. However, the applicant No.1 in the present case as well as the other two applicants do not appear to be parties to these OAs filed later on.

13. As far as applicant No.1 is concerned, on the basis of the discussion in para 9 in OA-7/98, his case deserves to be dismissed. In regard to the other two applicants, even if it were to be presumed that they have approached for the first time in 1997, I find that they had worked between 21/3/84 to 18/8/84 and again from 4/7/90 to 8/3/91 as per the statement filed in this OA.

14. As their services were terminated in 1991, the applicants should have approached this Court within a period of six months after representing their grievance. The applicant has not produced any documents in support to show that he had made any representation before 1997. He cannot therefore approach this Court for the same relief. Also it has recently been held by Full Bench of this Tribunal by order dated 10/5/2000 in the case of Mahavir & Ors Versus Union of India & Ors in OA No.706/1996 and other similar OAs. Railway Board circular dated 25/4/1981 and 28/8/1987 which provide placement of names of casual labourers on the live casual labour register do not give a continuous cause of

:11:

action, hence provisions of section 21 of the Administrative Tribunals Act would be applicable. I am bound by the judgement. Placing reliance on this judgement, I find no merit in the case of remaining two applicants also.

15. In the facts and circumstances of the case, both the OAs 7/98 and 143/93 are dismissed. I however do not order any costs,

(SHANTA SHASTRY)
MEMBER(A)