

J. A I P U R.

O.A. NO. 43/91

Date of Decision: 28.11.94

HARI NARAYAN

: Applicant.

VERSUS

UNION OF INDIA & ORS : Respondents.

None present. : Counsel for the applicant.

Mr. Manish Bhandari : Counsel for the respondents.

CORAM:

Hon'ble Mr. Gopal Krishna, Member (J)

Hon'ble Mr. B.N. Dhoundiyal, Member (A)

PER HON'BLE MR. GOPAL KRISHNA, MEMBER (JUDICIAL):

Applicant, Hari Narayan, has mainly prayed in this application U/S 19 of the A.T. Act, 1985 for a direction to the respondents for his re-engagement as casual labour.

2. We have heard the learned counsel for the parties and have gone through the records of the case.

3. The applicant's case is that he was initially engaged as a casual labour a long time back. Thereafter, a seniority list of casual labourers was issued on 30.5.85 but a few years back, the applicant and many others similarly situated casual labourers appeared in the seniority list were not allowed to continue their duties and it was verbally informed that whenever candidates are required they will be called as per their seniority. In the circumstances, the applicant, as contended by him, has been waiting for being called. The applicant has now come to know that the Respondent No. 1 has issued an order on 8.8.1990 directing the Respondent No. 2 to re-engage the casual labourers mentioned in the said letter but this benefit has been restricted to only 10 persons excluding the applicant.

4. The respondents' contention is that the applicant has failed to prove his engagement in the Railways. It is also stated that the alleged seniority

Chauhan

list has also not been filed. It is stated by them that the applicant's averment that he was not allowed to continue his duties is incorrect, but the respondents have unequivocally stated that the re-engagement of casual labourers are made on the basis of the policy decision taken by the Railway Board pursuant to the Judgment rendered in the case of Inderpal Yadav and, as such, the absorption and regularisation is being made on the basis of the said policy and a live register is also maintained for this purpose.

5. The learned counsel for the respondents has placed reliance on JT 1993(3) SC 418 - Ratam Chandra Samanta & Ors Vs. Union of India & Ors, wherein it has been observed by their Lordships at page 420 as follows:-

"6. Two questions arise, one, if the petitioners are entitled as a matter of law for re-employment and other if they have lost their right, if any, due to delay. Right of casual labourer employed in projects, to be re-employed in railways has been recognised both by the Railways and this Court. But unfortunately the petitioners did not take any step to enforce their claim before the Railways except sending a vague representation nor did they even care to produce any material to satisfy this Court that they were covered in the scheme framed by the Railways. It was urged by the learned Counsel for petitioners that they may be permitted to produce their identity cards etc., before opposite parties who may accept or reject the same after verification. We are afraid it would be too dangerous to permit this exercise. A writ is issued by this Court in favour of a person who has some right. And not for sake of roving enquiry leaving scope for manoeuvring. Delay itself deprives a person of his remedy available in law. In absence of any fresh cause of action or any legislation a person who has lost his remedy by lapse of time loses his right as well. From the date of retrenchment if it is assumed to be correct a period of more than 15 years has expired and in case we accept the prayer of petitioner we would be depriving a host of others who in the meantime have become eligible and are entitled to claim to be employed. We would have been persuaded to take a sympathetic view but in absence of any positive material to establish that these petitioners were in fact appointed and working as alleged by them it would not be proper exercise of discretion to direct opposite parties to verify the correctness of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 to 1979."

6. In view of this decision, the applicant cannot
C. K. R. S. claim re-engagement as casual labourer as a matter of

right, but it is still open to the respondents to consider his case for re-engagement wherever work is available in terms of the scheme framed by the Railway Board if the applicant is able to establish his case.

7. With these observations, the application is disposed of, with no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL)
Administrative Member

Gopal Krishna
(GOPAL KRISHNA)
Member(Judicial)