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CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR

ORDERS OF THE BENCH

15.08.2011

OA No. 13/2009

Mr. C.B. Sharma, Counsel for applicant.

Mr. Anupam Agarwal, Counsel for respondents.

On the request of the learned counsel for the parties,
put up for hearing on 13.09.2011.

K.S. Rathore
(Justice K.S. Rathore)
MEMBER (J)

AHQ

30000
9/8
13.9.2011

Mr. C.B. Sharma, Counsel for applicant
Mr. Anupam Agarwal, Counsel for respondents

Heard. The OA is disposed of by
a separate order.

Anil Kumar
(Anil Kumar)
M(A)

**IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
JAIPUR BENCH, JAIPUR.**

Jaipur, the 13th day of September, 2011

ORIGINAL APPLICATION No. 13/2009

CORAM :

HON'BLE MR.ANIL KUMAR, ADMINISITRATIVE MEMBER

Gangaram son of Shri Sunder Lal aged about 43 years, resident of Village and Post Jeevali PO Wazirpur Tehsil Gangapur City, District Sawaimadhopur. Last employed as Casual Worker (TS holder) under PWI, West Central Railway, Gangapur City.

... Applicant

(By Advocate : Mr. C.B. Sharma)

Versus

1. Union of India through General Manager, West Central Zone, West Central Railway, Jabalpur (M.P.).
2. Divisional Railway Manager, West Central Railway, Kota Division, Kota.

... Respondents

(By Advocate: Mr. Anupam Agarwal)

ORDER (ORAL)

The applicant has filed this OA thereby praying for the following reliefs:-

- "(i) That the entire record relating to the case be called for and after perusing the same respondents may be directed to provide regular appointment to the applicant by treating date of initial engagement as 21.04.1981 by quashing letter dated 28.11.2008 (Annexure A/1) with all consequential benefits.
- (ii) That the respondents be further directed to allow the applicant to work as applicant is temporary status holder till regularisation of services.
- (iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.
- (iv) That the cost of this application may be awarded."

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2. This OA is made against the letter dated 28.11.2008 issued on behalf of respondent no. 2 by which it has been informed to the applicant that his date of initial engagement as 21.07.1981 is correct and he cannot be extended benefits as per directions of this Hon'ble Tribunal in earlier OA No. 59/2005 which was disposed of vide order dated 01.09.2008. In spite of the fact that correct date of initial engagement is 21.04.1981 and after 120 days applicant was granted temporary status with effect from 21.07.1981. In fact 21.07.1981 is the date of granting temporary status and not initial engagement. Besides this, the contention of respondent no. 2 that date of initial engagement mentioned in other orders has no foundation is not at all justified, as all these letters/orders were issued by the authorities working under respondent no. 2 and also office of respondent no. 2. Respondent no. 2 failed to disclose that from which date temporary status granted to the applicant vide letter dated 09.08.1989. As regards, age of the applicant in the year 1981, when he was below 18 years, and respondents in practice to engage persons below age of 18 years, but their services regularized/ counted from the date of completion of 18 years and contention of the respondent no. 2 that the applicant not worked from 19.04.1999 to 18.07.1999 is against letter issued by Station Superintendent in the year 1999. Therefore, the action of the respondents in connection with non regularisation of the applicant to the post of Gangman after screening on the ground that the date of initial engagement is disputed inspite of the fact that certain junior persons to the

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applicant have been regularized after screening and matter of the applicant is still pending with the respondents. The applicant is a temporary status holder and respondents are not engaging him, his services were neither be terminated nor is any action pending against the applicant. The applicant has filed the copy of the letter dated 28.11.2008 as Annexure A/1.

3 According to the applicant, he was initially engaged as Casual/ Substitute workers on 21.04.1981 and worked upto 1999 with the respondents and the respondents utilized his services as hot weather ^{waterman} employee. In the letter dated 08.04.1993 (Annexure A/2) in which the name of the applicant appeared at sr. no. 2, the date of appointment has been shown as 21.04.1981. In another communication, which is Annexure A/3, the name of the applicant appeared at sr. no. 92 in which date of initial appointment is 21.04.1981. In a letter dated 12.04.1996 (Annexure A/4), the name of the applicant appears at sr. no. 91 and his date of initial appointment has been shown as 21.04.1981. In another letter dated 17.03.1999 (Annexure A/5), the name of the applicant is at sr. no. 63, his date of initial appointment has been shown as 21.04.1981. The Screening Committee observed that if the applicant has been engaged after 14.07.1981 for the first time then he is not eligible for this screening but on verification, ^{if} his first date of appointment is 21.04.1981, then he is suitable. Then vide letter dated 17.06.1994 (Annexure A/6) the name of the applicant is at sr. no. 2 and the date of his engagement has

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been shown as 21.04.1981. Then in another communication dated 10.04.1997 (Annexure A/7), the name of the applicant appeared at sr. no. 91 in which the date of his first engagement has been shown as 21.04.1981. Similarly in communication dated 04.05.1998 (Annexure A/8), the name of the applicant is at sr. no. 4 in which the date of his first engagement has been shown as 21.04.1981. In letter dated 16.04.1999 (Annexure A/9), the name of the applicant is at sr. no. 52 and his date of engagement has been shown as 21.04.1981. That the applicant was waiting since last five years for his appointment inspite of the fact that junior person to the applicant has been given appointment but due to dispute of the date of initial appointment, the respondents are not providing appointment, so he made further request dated 07.06.2003 (Annexure A/20) and thereafter made a request on 15.01.2004 (Annexure A/21) for providing him appointment on regular basis.

4. That when the applicant was not allowed regularisation, then he approached the Hon'ble Tribunal by filing OA No. 59/2005 and this Hon'ble Tribunal after considering the OA, reply filed by the respondents and further rejoinder filed by the applicant disposed of OA vide order dated 01.09.2008 (Annexure A/22) with the direction to respondent no. 2 to carry out necessary verification regarding engagement of the applicant taking into consideration of letters/orders passed by

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the authorities and also office of respondent no. 2 in which initial date of engagement is shown as 21.04.1981.

5. In pursuance to this direction of the Tribunal, the respondents considered the case of the applicant and rejected the claim of the applicant vide letter dated 28.11.2008 (Annexure A/1) on the ground that correct date of initial engagement of the applicant is 21.07.1981 as per letter dated 09.08.1989 by which applicant was granted temporary status and other letters/orders issued by Railway authorities have no foundation inspite of the fact that office of respondent no. 2 shown the date of initial engagement as 21.04.1981 which is evident from Annexure A/8 and further vide letter dated 24.08.1998 (Annexure A/23), respondent no. 2 circulated eligibility list who were appointed prior to 14.07.1981 in which the name of the applicant appears at sr. no. 91 and date of engagement has been shown as 21.04.1981. The case of the applicant has been rejected taking into consideration a letter dated 09.08.1999 in which the date of initial engagement has been shown as 21.07.1981 and other documents in which the date of initial engagement has been shown as 21.04.1981 have not been taken into consideration inspite of the fact that these documents have also been issued by respondent no. 2. There are more than 10 documents issued from year to year in which date of engagement has been shown as 21.04.1981. On the basis of one document~~s~~, the claim of the applicant has been

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rejected. In view of this position, the date of engagement of the applicant is 21.04.1981 and he is entitled for the benefits.

6. The respondents have filed their reply in which they have stated that the applicant has failed to prove his date of initial engagement by presenting any document issued to him such as casual labour card etc. Rather he relied upon the documents issued from time to time showing as Hot Weather Waterman. The competent authority in view of the direction of the learned Tribunal after consideration of the entire documents of the matter came to the conclusion that the order Annexure A/24 granting temporary status to the applicant is ^{the} only ~~an~~ authentic and reliable document to prove his initial date of engagement. The rest of the documents so relied by the applicant since relates to re-engagement only cannot be termed as an authentic and reliable document to ignore Annexure A/24. In fact the averment of the applicant that 21.07.1981 is the date of granting temporary status and the date of initial engagement ^{is 21.4.1981,} since contrary to the fact cannot be accepted. The applicant cannot raise hypothetical pleas to sustain his claim. It is also wrong to say that the date of temporary status has not been disclosed to him. Bare perusal of document Annexure A/24 clearly speaks that the same is from the date 120 days after the date of initial engagement. Column 4 is the date of initial engagement as NAC. The answering respondents after detailed consideration has come to the conclusion ^{as per} ~~vide~~ Annexure A/1. Mere grant of temporary status does not hold

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anyone to be regularized as well. Applicant's services were never regularized. Further after the year 1999, he was not engaged as well. Thus the decision of the respondents is as per the rules/instructions on the subject.

7. The respondents have also stated that the OA No. 59/2005 preferred by the applicant was barred by limitation as the applicant was lastly engaged in the year 1999. However vide order dated 01.09.2008 (Annexure A/22) this Tribunal directed the respondents to carry out necessary verification regarding engagement of the applicant and in case it is found that the applicant has been engaged on 21.04.1981, the respondents shall extend the benefit to the applicant forthwith. In case respondent no. 2 comes to the conclusion that the applicant was engaged after 21.04.1981 i.e. on 21.07.1981, the respondent no. 2 shall indicate the reasons as to why he is not taking reliance on their departmental communication as per Annexure A/1, A/2 and A/3. The learned Tribunal nowhere allowed the applicant to re-agitate the issue for the same cause of action. Accordingly order (Annexure A/1) did not give any fresh cause of action. The present OA has been filed after about 10 years after the date of last engagement. Therefore, the present OA is hopelessly time barred and deserves to be dismissed.

8. The respondents further submitted that all the letters referred to by the applicant Annexure A/2, A/3 are letters

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based upon earlier appointment letter. Further it being a list having no signature cannot be said to an authentic and reliable document to rely on its contents. The same is the position with regard to Annexure A/4, whose list is nothing but a copy of Annexure A/3. As regards Annexure A/5, it is stated that applicant alongwith others was called for screening under impression that he belongs to the date prior to the cut off date but after verification of his testimonials so produced by him and on record, it was disclosed that there is a dispute with regard to his initial date of appointment. Accordingly, the screening committee after its deliberations gave its recommendations to verify the initial date of appointment before regularizing the services of the applicant. The applicant failed to produce his casual labour card to substantiate his initial date of engagement. It is wrong to say that any junior to the applicant was regularized or allowed to work in derogation of the claims of the applicant. In fact the applicant lastly worked from 19.04.1999 to 18.07.1999 only. So far as Annexure A/6 to A/9 are concerned, the same being order relating to engagement only does not have substantive basis so as to rely its contents. The respondents have stated that it is wrong to say that no cognigence has been given to the various documents submitted by the applicant while verifying the initial date of appointment. In fact all these documents relates to the period after 1989. None of them relates to the period of his initial appointment i.e. 1981. In such eventuality, there was no option left for the respondents except to reply upon their own

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record. As per them, the only reliable document is the order to grant of temporary status to the applicant. Thus there is no illegality in the action of the respondents while deciding the issue vide Annexure A/1 by relying upon the same. It is just and legal^{and} deserves to be upheld.

9. The applicant has filed rejoinder and the respondents have filed additional reply.

10. Heard the learned counsel for the parties. Learned counsel for the applicant reiterated the facts as stated in the OA. He further argued that the respondents have not clearly indicated in the letter dated 28.11.2008 (Annexure A/1) that why letters given by him indicating date of appointment as 21.04.1981 have not been relied upon by the respondents. That the respondents have not given him any work since 1999. Therefore, he is not at fault if he has not been given any work by the respondents.

11. Learned counsel for the respondents argued that letter dated 28.11.2008 (Annexure A/1) has been passed in due compliance with the orders of Hon'ble CAT in OA No. 59/2005. Learned counsel for the respondents argued that the applicant was granted temporary status vide letter No. ET/891/2/1/ Part-2 Unit 1(loose) dated 09.08.1989 in which initial date of engagement has been shown as 21.07.1981. Thereafter letter No. ET/261/17/2 Part-2 dated 08.04.1993 and ET/2561/17/2

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dated 12.04.1996 were issued to engage the applicant as Hot Weather Waterman. The date mentioned in these letters have authentic base. It only indicates that the applicant had worked as Hot Weather Waterman from time to time. Therefore, the date of appointment mentioned as 21.04.1981 in these letters cannot be accepted since they are without any authentic base. The applicant has also not submitted his Labour card, which should be in his possession to prove that the date of initial engagement was 21.04.1981. Accordingly to the respondents, the date of initial appointment of the applicant is 21.07.1981 and, therefore, he is not eligible for regularisation.

12. It is not disputed that the applicant has failed to produce the labour card either before the respondents or before the Tribunal. The respondents have considered the letters filed by the applicants in OA No. 59/2005 in support of the fact that his date of initial appointment is 21.04.1981 but the respondents have carefully considered those documents and have arrived at a conclusion that the date mentioned in these letters has no authentic base. Therefore, this date i.e. 21.04.1981 cannot be treated as initial date of appointment of the applicant. The respondents are the custodian of official documents. They have clearly mentioned in the letter dated 28.11.2008 that vide letter dated 09.08.1989, the applicant was given temporary status and that is the only authentic document on record. In this document, the date of engagement of the applicant is 21.07.1981. Considering all the facts, I do not find any reason

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to interfere with the letter dated 28.11.2008 (Annexure A/1) issued by the respondents. The respondents have given reasoning as to why they are not relying on the document submitted by the applicant with the OA No. 59/2005. The respondents have also clearly mentioned that the applicant has not been working with them since 1999. He was offered job for three months from 19.04.1999 to 18.07.1999 at Midhakar Station but applicant informed respondents that he was not in a position to join the duty.

13. Considering all the aspects and facts of the case, I find that there is no merit in this OA. Hence the OA is dismissed with no order as to costs.

Anil Kumar
(Anil Kumar)
Member (A)

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