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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A. No. 77/95

Date of order: 12.3.98

Nanak Singh S/o Sh. Manohari Lal, aged about 30 years,
R/o Vill-Behra Bekhpura, Post Andhara, Distt. Bharatpur,
last employed on the post of Temporary Status Hot Weather
Waterman under S.S. Kota, Western Railway.

: Applicant

Versus

1. Union of India through General Manager,
Western Railway, Churchgate, Bombay.
2. Divisional Railway Manager, Western
Railway, Kota Division, Kota.
3. Sr. Divisional Commercial Superintendent,
Western Railway, Kota Division, Kota.

: Respondents

Mr. P.V. Calla, counsel for the applicant
Mr. M. Rafiq, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

(PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL))

The applicant Nanak Singh has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to seek a direction against the respondents to re-engage the applicant on the post of Casual Labour forth-with with all consequential benefits at par with his juniors as admissible under Section 25-H of the Industrial Disputes Act, 1947.

2. Facts relevant for disposal of this OA are that the applicant was initially employed on the post of Casual Hot Weather Waterman on 5.5.1984 at Bharatpur Railway Station. He was thereafter employed as such at Kota, Bayana, Hinduan City, Kaurali (Kela Devi Mela) etc. with breaks as per the details given in the service sheet as at Annexure A-1. He

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was granted temporary status w.e.f. 28.6.1990 vide letter dated 17.4.1991 (Annx. A-2) when he was also medically examined and found fit for the post of Hot Weather Waterman vide Annexure A-3.

3. It is the grievance of the applicant that although he was discharging his duties efficiently and effectively till 30.6.1991 when his services were dispensed with and he was not taken on duty without issuance of any notice for compensation or any reason given for his retrenchment. He has also averred that thereafter the respondents have engaged two junior persons S/o Shri Mool Chand and Rajendra Singh, to the applicant in service and have further engaged about 30 persons as fresh casual labours in Kota Division after the termination of his service as disclosed in the paper news dated 1.4.1994 (Annx.A-4) and details given in para 4.4 of the O.A. His efforts made to the respondents to engage him having ~~gone~~ gone futile inspite of his reminders and representations, the last being dated 15.7.1994 (Annx.A-5), he has approached this Tribunal to claim the aforesaid reliefs.

4. The respondents while opposing the application by filing a reply have averred that as the applicant fulfilled the requirement of having completed 120 days continuously, he has been granted temporary status alongwith others purely for working against the job of Hot Weather Waterman. It is denied that the applicant was granted temporary status against or for continuous work which is never available for the applicant. According to the respondents, the applicant was engaged during the Summer Season of the year 1991 from

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8.4.1991 to 30.6.1991 for the specified period vide office letter dated 4.4.1991 (Annx. R-1) and no sooner the period of work was over i.e. 30.6.1991, not only the applicant but also all such casual labours so engaged during the year 1991 Summer Season were put off from the job. The respondents have denied that two junior persons to the applicant were engaged by the Railways as Hot Weather Waterman. According to the respondents Shri Mool Chand and Shri Rajendra Singh had been given the temporary status from 17.1.1989 and 9.2.1989 respectively i.e. much prior to the applicant who acquired temporary status only on 28.6.1990. According to the respondents two lists of seniority are maintained of the incumbents working on the post of Hot Weather Waterman. One list is prepared on the basis of the first date of appointment namely 'old faces' for the purpose of their re-engagement in any subsequent summer season and the other list is prepared on the basis of longer number of working days which in turn forms a basis of their eventual regularisation in service. It is also the averment of the respondents that by virtue of Head Office circular letter dated 19.3.1993 laying down the Scheme for re-engagement of the service of Hot Weather Watermen, such persons are appointed on regular basis strictly in accordance with the inter-se seniority of the Hot Weather Watermen depending on the availability of vacancies in Group D and their names, as per their inter se seniority, are entered in the Live Register. According to the respondents as per these instructions no new casual labour can be engaged in the Railways after 14.7.1981 and if any such casual labour is required to be engaged, it can be done only with the prior sanction of the General Manager of the

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Western Railway. The persons who are alleged to have been engaged in other Group 'D' Class IV Service, according to them, have been engaged with the specific directions of the Railway Board to the General Manager Western Railway and that the applicant cannot take any claim on that basis. It is reiterated that no person junior to the applicant has been engaged in Though in the year 1990-91 209 Hot Weather Waterman were, the year 1992 as Hot Weather Waterman. The procedure of engaging the Hot Weather Waterman and number of persons required was re-evaluated by the General Manager (E), C.C.G. Office, Bombay for the year 1992 and a sanction of 114 persons only, to be engaged was conveyed under General Manager (E) C.C.G.'s letter dated 26.2.1992. The applicant not falling within the eligible category, he cannot insist for engagement moreso when some more persons are still sailing in the same Boat.

/ engaged;
yet

5. I heard the learned counsel for the applicant and the respondents at great length and have examined the record in great detail.

6. The only ground on the basis of which the respondents are resisting the claim of the applicant appears to be the circular-letter dated 6.4.1993 relating to the manner in which the Hot Weather Waterman are to be engaged in future, which has now been made available and put on record. Clause (i) of it reads as under:-

"(i) Re-engage all those persons who were engaged last year, who are having initial engagement prior to 14.7.81, or those casual labour engaged after 14.7.81 to whom specific approval of GM has been obtained."

It is thus evident that though a rider has been placed not to re-engage those persons whose initial engagement

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has not been prior to 14.7.1981; yet even persons whose initial engagement has been after 14.7.1981 could be engaged after obtaining the specific approval of the General Manager. Though the respondents have unsuccessfully tried to justify the engagement of two persons S/o Shri Mool Chand and Rajendra Singh; yet they have tried to defend their appointment ^{on the ground} that they had acquired temporary status much prior to the applicant. Similarly, the respondents have tried to justify the engagement of some more persons in other Group 'D' Class IV services against the cadre post only with the specific directions of the Railway Board to the General Manager, yet they have ^{been} unable to explain how they have engaged persons against Group 'D' Class IV services after the dis-engagement of the applicant. If the respondents could seek approval and sanction of the General Manager in cases of persons named by the applicant; they could have also obtained the sanction in the case of the applicant who has been working as Hot Weather Waterman w.e.f. 5.5.1984 and continued to serve them till his date of dis-engagement i.e. 30.6.1991 and has been consistently making efforts in this respect. The bar of not engaging any persons whose initial engagement was after 14.7.1981 not only applied to the Hot Weather Watermen but also to all casual labour engaged by the respondents as is evident from Clause (i) of the Circular dated 6.4.1993. If this circular is interpreted strictly as urged by the respondents, no new persons even could be engaged in the Railways after 14.7.1981. When they have made use of it in specified cases, though after prior sanction of the General Manager of the Western Railway, they cannot deny the claim of the applicant Nanak Singh who has been consistently persuing them to engage him right from

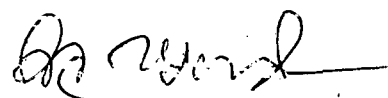
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the date of dis-engagement. It is thus apparent that the applicant has been given a discriminatory treatment in the matter of re-engagement which offends Articles 14 & 16 as also Article 21 of the Constitution of India.

7. Consequently, I find no justification for dis-allowing the relief claimed by the applicant in this CA who is also entitled to be treated in the similar manner as has been done by the respondents by engaging persons whose initial engagement has been after 14.7.1981, though with the specific approval of the General Manager, Western Railway.

8. Accordingly, the OA is allowed and the respondents are directed to seek specific sanction of the General Manager Western Railway and if need be of the Railway Board also to re-engage the applicant on the post of Casual Labour under the respondent railways with all consequential benefits, within a period of four months from the date of receipt of a copy of this order.

9. The O.A. is disposed of accordingly with no order as to costs.



(RATAN PRAKASH)
JUDICIAL MEMBER