

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

O.A.No.418/99

Date of order: 17.9.2002

1. Gulam Rasool, S/o Sn.Babu, working as Machineman Gr.I, O/o Dy.Controller of Stores, W.Rly, Ajmer.
2. Radhey Shyam, S/o Sh.Mohan Lal, Machine Operator Gr.II, O/o Dy.Controller of Stores, W.Rly, Ajmer.
3. Mohan Lal, S/o Sh.Ladu Ram, Ticket Printer Gr.II, O/o Dy.Controller of Stores, W.Rly, Ajmer.
4. Girdhari Singh, S/o Sh.Mool Chand, O/o Dy.COS, W.Rly, Ajmer.
5. Har Prasad, S/o Sh.Sarwan Lal, O/o Dy.COS, W.Rly, Ajmer.

...Applicants.

Vs.

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Ajmer.
3. Dy.Controller of Stores, Western Rly, Ajmer.

...Respondents.

Mr.P.V.Calla - Counsel for Applicants.

Mr.U.D.Sharma - Counsel for respondents

CORAM:

Hon'ble Mr.H.O.Gupta, Administrative Member

Hon'ble Mr.M.L.Chauhan, Judicial Member.

PER HON'BLE MR.M.L.CHAUHAN, MEMBER (JUDICIAL)

Applicants 5 in numbers have filed the O.A thereby praying for the relief that they be granted temporary status from the date when they have completed 120 days continuous service.

2. The applicants were initially appointed as Casual Labour in the department in the year 1971. The case as set out by the applicants in this application is that for the purpose of granting temporary status, the respondents prepared a list of

casual labourers showing their working days and on the basis of the said list, office order dated 18.8.89 was issued by which temporary status was conferred upon certain persons named therein w.e.f. 12.7.74 to 8.10.76. Since the name of the applicants did not find mentioned in the said list, they represented to the respondents through their Union repeatedly. As nothing has heard from the respondents, they have filed this O.A praying for the aforesaid relief.

3. The main case of the applicant is that they have completed the required working days continuously but on account of in-action on the part of the Divisional Office (Accounts side) the temporary status has not granted in favour of the applicants whereas similarly situated employees and employees appointed later on to the applicants were granted temporary status.

4. In the counter, the respondents refuted the claim of the applicants. The claim has been resisted by the respondents on the ground of maintainability of the present application being time barred. On merit, it has been stated that the applicants had not completed 120 days of continuous service so as to entitle them the grant of temporary status. Regarding non-maintainability of the application on the ground that it is barred by limitation, the respondents have stated as follows:

It is stated that the applicants have failed to establish their cases that they had completed 120 days of continuous service for being entitled for grant of temporary status.

The applicants are claiming temporary status from the year 1974/75. The cases of the applicants were taken up by the Western Rly Employees Union in the PNM meeting and the matter was treated as closed as conveyed to the Union vide letter dt.26.8.93. Applicant No.1 had also submitted his representation on 13.3.95 to which a reply had been given

on 19.4.95 (Annx.A7), that after consultation with the recognised Trade Union, the claim for temporary status had been treated as closed. It is, therefore, submitted that the grievance of the applicants pertain to the period of three years preceding the constitution of the Tribunal w.e.f. November 1985. This O.A is barred by limitation under Sec.21(2) of the Administrative Tribunals Act, 1985 and the subsequent representations will not have the effect of extending the limitation. It is, therefore submitted that this O.A is not maintainable and barred by limitation."

5. On merit, the respondents have stated that the applicants have not completed 120 days continuous service. In para 19 of the reply, the following submissions have been made:

"As already stated above, the applicants have failed to lay down any foundation for claiming temporary status by establishing the fact that they had worked continuously for 120 days. Besides that, no records for the period from 1971 to 1974 during which they had rendered services as Casual Labour are available in the office of the respondents, as, as per the provisions of item No.120 in Appendix IX of the Indian Railway Code for the Accounts Department, Part-I (revised edition-1984), labour pay sheets are required to be preserved only for five years and since the claim of the applicants pertains to the period pre-1974, the said record had been weeded out being more than 25 years old. Thus, in the absence of official records, the claims put up by the applicants cannot be verified whether they had rendered 120 days of continuous service, which is a pre-condition for the grant of temporary status. Besides that the matter has been treated

as closed in the various PNMs meetings held with the Union."

6. The applicants were given opportunity to controvert the stand taken by the respondents by filing rejoinder. The applicants failed to avail this opportunity and when the matter was again listed on 12.9.02, the counsel for the applicants submitted that he does not want to file rejoinder and let the case be heard. Consequently the matter was heard.

7. We have heard the counsel for the parties and also gone through the material on record.

8. The main point which requires our consideration is, whether the applicants are entitled for the grant of temporary status simply on the basis of their engagement as casual labours without further establishing that they ^{have} ~~are~~ put in 120 days of continuous service?

9. The counsel for the respondents while arguing the question of maintainability of this application, it ^{was} ~~is~~ submitted that the applicants are claiming temporary status from the year 1974-76. The case of the applicants were taken up by the Western Railway Employees Union in the PNM meeting and the matter was stated as closed as conveyed to the Union vide letter dated 26.8.93. Applicant No.1 had also submitted his representation on 13.3.95 to which reply has been given on 19.4.95 (Annx.A7). Thus, according to the counsel for the respondents, the cause of action has arose firstly in the year 1989 when Annexure-A3 was issued which do not contain the name of the applicants and in any case on 19.4.95 when the representation of applicant No.1 was rejected vide Annx.A7. Therefore, according to the respondents, the O.A is barred by limitation under Sec.21 of the Administrative Tribunals Act, 1985 and subsequent representation will not extend limitation.

In support of his contention, the counsel for the respondents have brought to our notice the decision of the Apex Court in the case of Ramesh Chand Sharma Vs. Udham Singh Kamal & Ors, 2000 SCC(L&S) 53, whereby the Apex Court held that in the absence of any application u/s 21(3) of the Administrative Tribunals Act, praying for condonation of delay, the Tribunal had no jurisdiction to admit and dispose of the O.A on merit and it was further held that the Tribunal has totally overlooked Sec.21 of the Act. Therefore, the impugned order passed by the Tribunal in that case was set aside.

10. In the instant case also, the applicant has not filed any application for condonation of delay and admittedly the cause of action is also time barred.

11. The counsel for the respondents has also drawn our attention to the decision of the Apex Court in the case of Secretary to Govt of India & Ors Vs. Shivram Mahadu Gaikwad, (1995) 30 ATC 635, whereby the Apex Court held that the application before the Tribunal was clearly barred by limitation unless an application for condoning the delay was made under Sec.21(3) of the Administrative Tribunals Act, 1985 and observed that the Tribunal totally overlooked the question of limitation which clearly stared in the face and since the application itself was barred by limitation under Sec.21 of the Act, it deserves to be dismissed.

12. The counsel for the respondents argued that the present case is squarely covered by the ratio as laid down by the Apex Court in the aforesaid two cases and as such, this O.A deserves to be dismissed, being barred by limitation under Sec.21 of the Administrative Tribunals Act, 1985.

13. The second contention raised by the counsel for the respondents is that the applicant ^{had} failed to show that they have

worked continuously for 120 days so as to entitle them for granting temporary status at par with the persons who was conferred such status vide order dated 18.8.89 (Annex.A3). We see considerable force in the submission of the counsel for the respondents. It is not disputed that the applicants were appointed as casual labour in the year 1971 on different dates. This is also clear from the LTI Register produced by the respondents pursuant to the order of this Tribunal on 20.5.02. From a perusal of this register and entries made therein, it cannot be ascertained as to whether the applicants have worked for 120 days continuously in a particular year/period as this Register do not record the entry regarding number of days an employee remained in employment under the employer during the period. Thus, this register is not helpful for the purpose of deciding the matter in controversy. The applicants have not stated in this application that they have worked continuously for 120 days in a particular year/period so as to entitle them for the grant of temporary status. ¹² Rather the case of the applicant is that they be granted temporary status from the date they completed 120 days continuous service. Thus, they are not sure when they have completed 120 days continuous service so as to entitle them for conferring temporary status. On the contrary, the respondents have specifically stated that the applicants have failed to laid-down any foundation for claiming temporary status by establishing the fact that they have worked continuously for 120 days and thus they are not entitled for grant of temporary status. It has further been stated that the claim of the applicant pertained to the period from 1971-1974 and the labour pay sheets are required to be preserved only for five years as per Appendix IX of the Indian Railway Code for the Accounts Department and the said record had been weeded out ¹²

being more than 25 years old. Thus, according to the respondents, in the absence of any official record, the claim put up by the applicants cannot be verified whether they have rendered 120 days continuous service which is a pre-condition for grant of temporary status, at this belated stage. Besides that it has further been specifically stated by the respondents that the ^{matter} has been treated as closed in the various PNM meetings held with the Union and such matter cannot be raked up at this belated stage. In view of categorical stand taken by the respondents and in the absence of any material placed on record by the applicants that they have worked continuously without any break for a period of 120 days, they cannot be granted the relief sought for. The onus to prove this fact was with the applicant especially when the respondents have pleaded that the temporary status was granted to only those persons who have completed 120 days of continuous service vide Annx.A3. It was incumbent upon the applicants to produce further proof in the nature of receipt of salary or wages for 120 days or order or record of appointment or engagement for this period. Having failed to produce any ^{contemporaneous} ~~contemporaneous~~ record as stated above, we are of the view that the applicants are not entitled to any relief at this belated stage. No doubt, it is true that on behalf of applicant No.1, a certificate Annx.A12, has been annexed with the O.A which reveals that applicant No.1 has worked as casual labour from 13.1.71 to 28.12.76 (total 1406 days) but the certificate does not indicate number of days on which applicant No.1 had rendered work monthwise with a view to show that he had worked continuously, without any break, for a period of 120 days. No material whatsoever have been produced or placed on record on behalf of other applicants to establish that they have worked continuously for 120 days without any


break, for conferring temporary status to the applicants.

14. At this stage, it will be relevant to quote the decision of the Apex Court in the case of The Range Forest Officer & Anr Vs. S.T.Hadimani, 2002(2) SLJ 316, whereby the Apex Court held that the onus to prove the claim is on the workman and unless the workman proves his claim the respondent cannot be called upon to disprove the claim. Filing of an affidavit is only his own statement in his favour and that cannot be a sufficient evidence for the Court/Tribunal to come to the conclusion that a workman had worked for 240 days in a year. In the absence of any proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground, the Apex Court set aside the award given by the Industrial Tribunal. The ratio as laid down by the Apex Court in The Range Forest Officer (supra) is squarely covered in the instant case. Accordingly, we hold that the applicants have failed to establish that they have worked continuously for 120 days in a year/period, so as to enable them the grant of temporary status at par with other employees who were granted such status vide order dated 18.8.89 (Annx.A3) and as such the applicants are not entitled to any relief.

15. The O.A is accordingly dismissed with no order as to costs.


(M.L.Chauhan)

Member (J)


(H.O.Gupta)

Member (A).