

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR
OA No. 220/2002

DATE OF ORDER : 29/05/2003

Govind Ram son of Late Shri Bhanwar Lal aged about 42 years, resident of ward No. 15, Badloliya Bhawan, 118, Kharda Phulera, District Jaipur. Last employed as Casual Labourer under PWI Phulera Junction.

..... Applicant.

VERSUS

1. Union of India through General Manager, Western Railway, Churchgate, Mumbai.
2. Divisional Railway Manager, Western Railway, Jaipur Division, Jaipur.
3. Sr. Divisional Personnel Officer, Western Railway, Jaipur Division, Jaipur.
4. Assistant Engineer, Western Railway, Phulera.
5. Sr. Section Engineer (P. Way) Phulera, Junction, Phulera.

..... Respondents.

Mr. C.B. Shama, Counsel for the applicant.

Mr. S.G. Hassan, Counsel for the respondents.

CORAM:

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

ORDER

PER MR. M.L. CHAUHAN, MEMBER (JUDICIAL)

The applicant has filed this application against the alleged arbitrary, illegal and unjustified action of the respondents by which certain junior persons to the applicant have been regularised for the post of Gangman ignoring the claim of the applicant and has

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prayed for the following reliefs:-

"(i) That the entire record relating to the case be called for and after perusing the same, the respondents may be directed to regularised the services of the applicant on the post of Gang-man or any other suitable post from the date juniors so regularised with all consequential benefits.

(ii) 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.

(iii) That the cost of this application may be awarded.

2. The case of the applicant, as made out in brief, is that the applicant was initially engaged as Casual Worker on 3.7.1982 under respondent No. 5 and worked upto 12.4.1984 and thereafter the applicant was not allowed to work inspite of the fact that certain persons those engaged after the applicant were allowed to continue on the work. In the year 1990, the respondents issued seniority list of Casual Workers upto 31.12.1988 vide letter dated 1.12.1990 and in that seniority list, applicant's name finds place at sl. No. 19. The persons whose name find mention at sl. Nos. 20, 21 and 25 of the seniority list dated 1.12.1990 (Annexure A/2) have been regularised but the services of the applicant has not been regularised till date inspite of the fact that the applicant requested the respondents from time to time since 1991 and thereafter to respondent no. 4 vide letter dated 4.1.2001 (Annexure A/3) followed by reminders dated 12.4.2001 (Annexure A/4) and 14.6.2001 (Annexure A/5) but nothing has been done for regularisation of the applicant.

3. The respondents have contested this application on merits as well as on account of limitation. They have submitted that

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the cause of grievance accrues to the applicant as back as in 1991 and the OA has been filed in the year 2002 whereas limitation under prescribed under Section 21 of the relevant Act of 1985 is one year. Hence the present OA is barred by limitation and the same is liable to be dismissed. Representation dated 12.4.2001 (Annexure A/4) as stated to have been sent after eleven years, was never received by the answering respondents. On merit, it is stated that applicant was initially engaged as Casual Worker on 7.3.1983 and not on 3.7.1982. He has worked only for 274 days with intervals under broker period as mentioned in Para 4.1 of the reply. It is further stated that the applicant absented himself as & when he liked. As regards issuance of seniority list dated ^{4.1990} ~~1.12.90~~ vide letter dated 1.12.90 is concerned wherein the name of the applicant is shown at sl. No. 19, has not been denied. It is further stated that the Screening of Casual Labourers was conducted by the Screening Committee on 30.7.1991 and 23.8.1991 in which the applicant also appeared and vacancies of casual workers for regularisation were also worked out to 31 vacancies. The applicant was considered against the vacancies available for General category after excluding the vacancies meant for SC/ST and vacancies reserved for workers of the Project. The applicant was not found suitable by the Screening Committee and persons junior to him who were found suitable were regularised. It is further submitted that the case of the applicant was considered despite the fact that the applicant absented himself from 1984 to 1990 but he was not found suitable by the Screening Committee.

4. The applicant has also filed rejoinder whereby reiterating

that he was initially appointed on 3.7.1982 and not on 7.3.1983 and, therefore, period upto 3.7.1982 to 6.3.1983 has to be included in the working days of the applicant. At the outset, it is stated that whether the applicant was initially engaged on 7.3.1982 or on 3.7.1982 will not have any bearing on the matter in controversy as admittedly the applicant has put in 120 days in service so as to entitled him to kept his name in Casual Live Register of the Casual workers even if his initial engagement is 7.3.1983.

5. I have heard the learned counsel for the parties and have gone through the material placed on record. The point which requires consideration in this case is whether applicant whose name has been kept in Live Register of Casual Labourers and thereafter abandoned his services and assert his right for regularisation after many ^{ifsc facto} years/entitled for regular absorption at any time and cause of action is continuous one. Further question which may require consideration in this case is that even if it is assumed that the name of casual labourers in Live Register creates continuous cause of action, whether the applicant has made out a case for his regularisation from the date his juniors casual labourers have been regularised.

6. The learned counsel for the applicant argued that as per Railway Board's Circulars, he was entitled for regularisation as per seniority and he has also relied upon the decision of the Cuttack Bench of Central Administrative Tribunal in the case of Prafulla Sahoo and others vs. Union of India & Others 2002 (2) ATJ 607 to contend that the application can be entertained any any time.

7. Now let me examine and consider the first question viz. the contention put forth by the learned counsel for the applicant is that as per Railway Board's Circular, casual labour borne on the Casual Labour Register has to be considered for absorption strictly as per their turn according to seniority based on the total number of service put in by them, as such the applicant being senior to persons named in Para 4.3 should also have been regularised from the date when they were regularised in the year 1991. In order to answer this question, it may be stated that the casual labourers whose names have been kept in Live Register of the Casual Labourers can be categorised in two categories (i) whose services have been disengaged as there is no work available (ii) those who have ~~xxxxx~~ abandoned their work even though the work was available and their junior persons were still working. As far as former category of casual labourers is concerned, there is no dispute, that they have right of appointment in future as & when work is available as per seniority and they are also entitled for regularisation in their turn as per seniority subject to availability of posts. In such cases, cause may be continuous ~~and~~ one and they can claim appointment/ regularisation as & when work/posts are available in future. As far as latter category of casual ~~workers~~ is concerned, according to me, aforesaid right cannot be bestowed upon them indefinitely and after considerable lapse of time. Such Casual Labourers cannot wait for time immemorial and approach the Tribunal at leisure and at their whims, may be years latter and assert their right of consideration for regularisation from the date their juniors have been regularised or even from future date. The very fact that his name has been included in the Live Register, ifso facto does not entitle the person concerned for regular absorption and cause of action would not be continuous one. The view which have been taken be me is fully supported by the Full Bench decision of Delhi High Court in Jagdish Prasad vs. Union of India & Others 2003(1) AISLJ

406 whereby the earlier decision rendered by DB of Delhi High Court in the case of Shish Pal Singh & Others vs. Union of India was held not to be a good law. In the case before the Delhi High Court, the petitioner worked from 1984 to July 1986. He made representation in the year 1998 and the Full Bench of Delhi High Court in Paras 6 to 9 held as under:-

"6. It is not a case where an employee is entitled to a salary or pension so that the cause of action for filing the Original Application would be a continuous one. The petitioner filed the Original Application on the ground that his name be directed to be placed in the Live Casual Labour Register."

7. Even if his contention is accepted to be correct that he made a representation in this behalf as far back as on 24th September, 1987, he should have approached the Tribunal within the period of limitation. Section 21 of the Administrative Tribunal Act provides a period of one year as the period of limitation for filing an Original Application before the Tribunal. The question how the period of limitation should be counted after an employee has filed a representation came up for consideration before the Apex Court in S.S. Rathore v. State of M.P., AIR 1990(1) SLJ 98(SC), wherein the Apex Court in no uncertain terms held that he may await an answer or a reply to his representation for a period of six months whereafter he should file an appropriate application in the following terms:

"22. It is proper that the position in such cases should be uniform. Therefore, in every such case until the appeal or representation provided by a law is disposed of, accrual of cause of action for cause of action shall first arise only when the higher authority makes its order on appeal or representation and where such order is not made on the expiry of six months from the date when the appeal was filed or representation was made. Submission of just a memorial or representation to the Head of the establishment shall not be taken into consideration in the matter of fixing limitation."

8. In that view of the matter, the petition ought to have filed an application within a period of 18 months from the date of filing of the said representation. He did not do it and as such his application has rightly been held to be barred by limitation.

9. This aspect of the matter is squarely covered by a decision of the Apex Court in Ratam Chandra Samanta and Ors. vs. The Union of India and Others, JT 1993(3) SC 418, wherein it was held:

"5. The representation does not give any detail. It is not mentioned if the scheme was given due publicity or not. No explanation is given as to why the petitioners did not approach till 1990. Nor it is stated if any of the casual labourer of the project were remployed. It is vague and was lacking in material particulars."

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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 Railway and this Court. But unfortunately the petitioner 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 ~~in~~ that they were covered in the scheme framed by the Railways. It was urged by the learned counsel for petitioner 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 manœuvring. 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 ~~by~~ ~~in~~ 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 correct of the statement made by the petitioners that they were employed between 1964 to 1969 and retrenched between 1975 and 1979.

7. Relying upon the decision of the Apex Court, the Hon'ble High Court held that in the case of this nature, the cause of action would not be a continuous one. Similarly, in the instant case, the applicant worked upto 12.4.1984 and thereafter according to respondents, he abandoned his work and filed representation for the first time in the year 2001 for regularising his services from 1991 when junior person to the applicant were regularised. Thus keeping the ratio, laid down by the Apex Court, as reproduced in the judgement of the Delhi High Court, I am of the view that applicant is not entitled to any relief and the cause of action would not be a continuous one.

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9. ~~That~~ apart, even on merit, the applicant has not made out any case ~~as~~ even if it is assumed ^{that} the cause of action is continuous one, Admittedly the applicant was disengaged from service w.e.f. 12.4.1984 and thereafter ^{according to the applicant,} he was not allowed to work whereas according to the respondents, he abandoned the work. From the material placed on record, it is clear that the case of the applicant along with junior persons were considered by the Screening Committee when screening was conducted on 30.7.1991 and 23.8.1991. The applicant also appeared before the Screening Committee. The applicant was not found suitable by the Screening Committee and whereas junior to the applicant as mentioned in Para 4.3 of the OA were found suitable and thus regularised. Thus the applicant was aware in the year 1991 that certain junior persons have been regularised. The applicant has not placed any material on record as to why he has not challenged the selection and regularisation of his juniors made in 1991. The applicant has also not disclosed to this Tribunal as to why he did not ~~ever~~ approached to this Tribunal or made any representation to the authorities concerned ^{for} about about 11 years so as to enforce his claim before Railway authorities except sending a vague representation in the year 2001. It is legally settled that delay itself deprives the applicant the remedy available in law. In the 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, the period of more than 17 years have expired and even from the date of regularisation of his juniors, the period of 11 years have expired and in case the ~~pxy~~ prayer of the applicant is accepted, it would be depriving the rights of others whose services in the meantime has been regularised ~~and~~ or has become eligible or entitled for regularisation. The decision of the Cuttack Bench ~~of~~

in the case of Prafulla Sahoo and others, as relied upon by the learned counsel for the applicant, is of no assistance to the applicant in the facts and circumstances of this case in as much as in the case of Prafulla Sahoo, his case for regularisation was not considered whereas persons junior to him in the list of substitute was granted permanent Group 'D' post. In the instant case, the case of the applicant for regularisation was considered alongwith his juniors but he was not found suitable by the Screening Committee and as such his services were not regularised.

10. For the reasons as stated above, I am of the view that the applicant has not made out any case for regularisation of his services on the post of Gangman or any suitable post from the date his juniors were regularised and as such the present OA is dismissed with no order as to costs.


(M.L. CHAUHAN)
MEMBER (J)