IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH,

JAIPUR

Dated of order: 6.08.2003

OA No.460/2002

Budhi s/o Shri Kanhiya aged about 43 years r/o Village and Post Paprera, Tehsil Kumher, Distt. Bharatpur. Last employed as Casual Labour under PWI, Bandikui/Jaipur/ Achnera.

.. Applicant

Versus

1. The Union of India through General Manager, North-Western Zone, North-Western Railway, Jaipur.
2. Divisional Railway Manager, North-Western Railway, Jaipur Division, Jaipur
3. Senior Divisional Personnel Officer, North-Western Railway, Jaipur Division, Jaipur

.. Respondents

Mr. C.B.Sharma, counsel for the applicant.

Mr.S.S.Hasan, counsel for the respondents.

OA No.461/2002

Yadram s/o Shri Prabhu aged about 41 years, r/o Village and Post Paprera, Tehsil Kumher, Distt. Bharatpur. Last employed as Casual Labourer under P.W.I. Bandikui/Jaipur/ Achnera.

.. Applicant

Versus

The Union of India through General Manager, North-Western Zone, North-Western Railway, Jaipur.

2. Divisional Railway Manager, North-Western Railway, Jaipur Division, Jaipur

3. Senior Divisional Personnel Officer, North-Western Railway, Jaipur Division, Jaipur

.. Respondents

Mr. C.B.Sharma, counsel for the applicant.

Mr.Anupam Agarwal, counsel for the respondents.

OA No.462/2002

Nem Singh s/o late Shri Badle aged about 44 years r/o Village and Post Paprera, Tehsil Kumher, Distt. Bharatpur. Last employed as Casual Labourer under P.W.I. Bandikui/ Jaipur/Achnera.

.. Applicant.

Versus

1. The Union of India through General Manager, North-Western Zone, North-Western Railway, Jaipur.
2. Divisional Railway Manager, North-Western Railway, Jaipur Division, Jaipur
3. Senior Divisional Personnel Officer, North-Western Railway, Jaipur Division, Jaipur

.. Respondents

Mr. C.B.Sharma, counsel for the applicant.

Mr.M.C.Goyal, counsel for the respondents.

OA No.465/2002

Bhagwan Singh s/o Chet Ram aged about 40 years, r/o Village and Post Paprera, Tehsil Kumher, Distt. Bharatpur. Last employed as Casual Labourer under P.W.I. Bandikui/ Jaipur/Achnera.

.. Applicant.

Versus

1. The Union of India through General Manager, North-Western Zone, North-Western Railway, Jaipur.

2. Divisional Railway Manager, North-Western Railway, Jaipur Division, Jaipur

3. Senior Divisional Personnel Officer, North-Western Railway, Jaipur Division, Jaipur

.. Respondents

Mr. C.B.Sharma, counsel for the applicant.

Mr.N.C.Goyal, counsel for the respondents.

CORAM:

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

O R D E R

Per Hon'ble Mr. M.L.Chauhan

These applications have been made against the arbitrary, illegal and unjustified action of the respondents by which certain junior persons to the applicants have been regularised on the post of Gangman/Khallasi ignoring the claim of the applicants, as such these applications are being disposed of by a common order.

2. The applicants are Casual/Substitute workers who were engaged in the year 1980 and worked upto 1987 under the P.W.I, Bandikui/Jaipur/Achnera with intermediate breaks and have prayed for the following reliefs (which are identical in all the OAs):-

i) That the entire record relating to the case be called for and after perusing the same, the respondents may be directed to engage the applicant on work and further regularise the service of the applicant on the post of Gangman or any other suitable post from the date juniors so regularised with all consequential benefits.

ii) That the respondents be further directed not to

fill up the vacant posts as advertised vide Annexure-A/5 from open market till the regularisation of services of the applicant.

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 costs of this application may be awarded"

2.1 As already submitted above, the applicants were initially engaged as Casual Labour. To be more precise, the applicant in OA No. 460/02 was engaged as Casual Labour for the first time on 1.2.80. He worked for 220 days during the year 1980 with intermediate breaks. He left service on 2.10.80 and remained absent for a period of about one year. Thereafter he was again re-engaged on 12.11.81 and in the year 1981 he worked only for 68 days. In 1982 he worked for 16 days, in 1983 for 30 days, in 1985 for 79 days, in 1986 for 60 days and in 1987 for 78 days. He left service on 31.3.87.

2.2 The applicant in OA No.461/02 was initially engaged as Casual Labour on 1.2.80. He worked for 158 days with intermediate break in the year 1980. He was again re-engaged in the year 1984 when he worked for 96 days. He was again engaged in December, 1985 when he worked for 5 days. In the year 1986 he worked for 87 days with intermediate breaks and in 1987 the applicant worked for 77 days when he left service on 31.3.87.

2.3 The applicant in OA No.462/02 was initially engaged as Casual Labour on 1.02.80 and worked upto 14.5.80 for 70 days in this year with intermediate breaks and left service. Thereafter he was re-engaged after a

lapse of 4 years in the year 1984 when he worked for a total period of 99 days. In the year 1985, the applicant worked for only 4 days and in the year 1986-87 he worked for 178 days when he left the service on 31.3.87.

2.4 The applicant in OA No.465/02 was initially engaged as Casual Labour on 5.9.80. He worked for 9 days in the year 1980 and thereafter left service. He was again re-engaged in the year 1984 when he worked for total period of 94 days. Thereafter he was re-engaged after a lapse of more than one year in 1986 when he worked for a period of 46 days and left service on 25.2.86.

These facts can be ascertained from the service card annexed by the applicants in their respective OAs as Ann.A1. Thus none of the applicants have completed continuous service of 360 days, pre-requisite for conferment of temporary status.

2.5 Further case of the applicants is that after their dis-engagement, the applicants approached the authorities concerned to allow them to work as Casual workers and for their regularisation of service. They were also medically examined for fitness for appointment in the railway service and were declared as fit as per the certificate annexed with the OAs as Ann.A2. When the applicants were not re-engaged and their services were not regularised by the respondents even after medically examined, they approached this Tribunal by filing OA [illegible] titled Karan Singh and 50 others vs. Union of India and ors. in which the applicants aforesaid were also one of the applicants. This Tribunal after considering the facts and circumstances accepted the OA in part vide order dated 5.10.94 and directed the respondents to extend the benefit of Section 25-H only to the applicants according

to their seniority. Copy of this order has been annexed with the OAs as Ann.A3. It is further averred that the applicants were waiting since last 8 years for engagement and for regularisation of their services on the suitable post but the respondents ignored their claim and instead regularised other persons on the post of Gangman and on other suitable posts and also some of the applicants who were the party in OA No.534/89 were regularised, ignoring the claim of the applicants. The applicants have further averred that besides the persons who were applicants alongwith the present applicants in OA No.534/89, certain other persons were also regularised on the suitable post vide order dated 9.4.95 (Ann.A4) and some of these persons were engaged after the applicants. The grievance of the applicants is that now the respondents have advertised 1300 posts of Gangman/Khallasi which are going to be filled in through open market as per advertisement at Ann.A5 ignoring the claim of the applicants for regularisation. Thus, they filed these OAs praying for the aforesaid reliefs.

2. The respondents have filed separate replies in these OAs. It is stated that the applicants have alleged in these OAs that they have worked from 1980 to 1987 and their names were also in the Live Register maintained by the respondents. The OAs filed by the applicants are hopelessly time barred, as they were dis-engaged in the year 1987 and even the OA No.534/89 was decided by this Tribunal on 5.10.94. The applicants have also filed Contempt Petition for non-compliance of the interim order passed in the OA which was also dismissed by the Hon'ble Tribunal and thus the matter was finally closed.

Thereafter after 9 years of the decision of the earlier OA, the applicants have filed these OAs for the same reliefs and hence the present OAs are not maintainable and are hit by the principle of res-judicata. The applicants have slept over the matter for 9 years and then have filed the present OAs in the year 2002. No application for condonation of delay has been filed by the applicants and as such the OA filed by the applicants are hopelessly time barred and the same can be dismissed on this ground alone.

3.1 On merits, it has been stated that the applicants worked at different places in broken periods and the applicants are not entitled for grant of temporary status in terms of the circular dated 12.6.84 (Ann.R1) which stipulates that for grant of temporary status the person has to work for 360 days continuously. None of the applicants have worked for 360 days continuously and as such they were not granted the temporary status. It is further stated that though the applicants had alleged that they were medically examined but they have not produced any representation or documents that after they were medically examined they have presented themselves for work. It is further stated that if a workman remained absent for 2 years from the work his name has to be struck down from the roll. It is further ~~submitted~~ stated that as per Railway Board circular dated 27.11.01 copy of which has been annexed with the reply, all the appointment under Group 'D' shall be made by the concerned Railway Recruitment Board and as such the services of the applicants cannot be regularised. They cannot also be granted temporary status after 15 years of their dis-engagement and after 8 years of the decision of OA

No.534/89.

4. The applicants were given opportunity to file rejoinder. During the course of hearing, the learned counsel for the applicant produced a copy of the rejoinder pertaining to OA No.460/02 and has not filed rejoinder in other cases despite giving last opportunity.

5. I have heard the learned counsel for the parties and gone through the material placed on record.

5.1 As can be seen from the relief clause which has been reproduced above, one of the prayers made by the applicants in these applications is that the respondents may be directed to engage the applicants on the work. At the outset, it may be stated that the said relief of re-engagement was agitated by the applicants by filing OA No.534/89 and no such relief was granted by this Tribunal, as can be seen from the order dated 5.10.94 passed in OA No.534/89, copy of which has been annexed with these OAs as Ann.A3. This Tribunal, vide the aforesaid order, has categorically held that any of the applicants had not pleaded in these OAs that they have worked for 240 days in the preceding calender year, as such they were not considered to be eligible for benefit of Section 25-F. Section 25-G also does not apply as the applicants had not applied the theory of 'last come first go'. This Tribunal has already granted an interim order on 3.8.89 that benefit of 25-H should be made available to the applicants. The relief so granted was continued and finally this Tribunal directed the respondents to extend the benefit of 25-H only to the applicants according to their seniority. In case of violation of the interim order

or the order passed by this Tribunal, opportunity was reserved to the applicants to move this Tribunal afresh, if they so advised. Thus, the limited relief which was granted to the applicants was that they should be given benefit of Section 25-H in case the respondents want to re-engage Casual Labour in any project. This order has attained finality. As such, the prayer of the applicants that they should be re-engaged cannot be granted as the applicants have nowhere stated that fresh persons have been re-engaged by the respondents ignoring their claim whereas they have preference for re-employment in terms of 25-H. Even otherwise also, the Casual Labours are neither holder of the civil post nor appointed to any civil service under the Union and as such the matter does not fall within the purview of the Adminitrative Tribunal Act, 1985 and, therefore, this Tribunal has no jurisdiction, power and authority to deal such matters and to give directions to the respondents to re-engage the applicants as Casual Labour as the same being not a service matter as defined under Section 3(q) and is also not covered under Section 14 of the Administrative Tribunals Act, 1985.

5.2 Similarly, the applicants are also not entitled to grant of temporary status in terms of Railway Board instructions dated 12th June, 1984 (Ann.R1) which stipulates that Casual Labour employed on projects shall be treated as temporary on completion of 360 days of continuous employment. As can be seen from Ann.R1, this order covers Casual Labour of projects who are in service as on 1.1.84 and also casual labour of projects who though not in service on 1.1.84, had been in service in railway earlier and had already completed 360 days of continuous service or will complete the said prescribed period of

continuous employment on re-engagement in future. Casual Labours - (i) who have completed five years of service as on 1.1.84 were to be conferred temporary status w.e.f. 1.1.84, (ii) those who have completed 3 years but less than 5 years of service as on 1.1.84 w.e.f. 1.1.85, (iii) those who have completed 360 days but less than 3 years of service as on 1.1.84 w.e.f. 1.1.86 and (iv) those who have completed 360 days after 1.1.84 w.e.f. 1.1.87 or on completion of 360 days, whichever is later. From the facts as narrated in para 2.1 to 2.4 above, it is evident that the applicants did not fulfil any of the conditions mentioned in railway circular Ann.R1 and as such they were not entitled for conferment of temporary status.

5.3 Regarding the prayer of the applicants for regularisation of their service on the post of Gangman or any suitable post from the date juniors were so regularised, the respondents have categorically stated that no such person junior to the applicants have been regularised. In any case, the order regarding regularisation of the so called junior persons who were regularised and on the basis of which the applicants sought their regularisation from back date, was issued in April, 1995. The applicants have not made any grievance in that regard till filing of the OA in the year 2002. The applicants have also not filed any application for condonation of delay. As such, the applications are admittedly time barred. The delay itself derive a person to the remedy available in law. In absence of any fresh cause of action of any legislation, a person who has lost his remedy by lapse of time losses his right as well. From the date of regularisation of so called juniors in the year 1995 vide Ann.A4, period of 7 years has expired and

in case the services of the applicants are regularised from back date it will affect other persons who had been regularised in the meanwhile and will also affect their seniority. Thus on this score also, the applicants are not entitled to any relief. Further, as already stated above, the OAs are time barred as per provisions contained in Section 21(i) of the Administrative Tribunals Act, 1985 and the applicants have also not moved an application for condonation of delay in terms of Sub-section (3) of Section 21 of the AT Act, which course was open to the applicants, thereby justifying the delay in filing the OA at this belated stage. Thus, having not done so, the applications cannot be entertained and no such relief of regularisation can be granted to the applicants at this belated statge. This is the view which is also held by the Apex Court in the case of Ramesh Chandra vs. Union of India, 2000 SCC (L&S) 53, whereby their Lordships observed that such applications are not required to be admitted and has to be disposed of as being time barred without any findings on merit.

5.4 The respondents have also stated that now as a matter of policy, the respondents have decided that all appointments under Group 'D' shall be made by the concerned Railway Recruitment Board as per railway circular dated 27.11.01. In view of this policy decision, the services of the applicants cannot be regularisation in future. The applicants have not challenged the validity of this policy decision, as such even on this score also the applicants are not entitled for any relief.

5.5 That apart, as already stated above, the applicants on earlier occasion in OA No.534/89 was granted a limited relief that they shall be entitled to the

benefit of Section 25-H. Under Section 25-H right of preference in the permanent appointment cannot be claimed by a Casual Labour. They can claim preference in case of casual appointment only. This is the view which has been held by the Rajasthan High Court in the case of Garrison Engineer, MES vs. Central Industrial Tribunal, 1993 II LLJ 876. Thus on this count also, the present applications are liable to be dismissed at the threshold.

5.5 Lastly, the learned counsel for the applicants contended that even if the applicants are held not entitled to regularisation from back date, they are entitled for absorption with prospective effect in view of the Railway Board's circulars No.42/2001 dated 28.2.2001 (Ann.A7) and circular No. 190/2001 dated 20.9.2001 (Ann.A8). On the other hand, the learned counsel for the respondents submitted that now as a matter of policy, the respondents have decided that all appointments under Gorup 'D' shall be made by the concerned Railway Recruitment Board as per Railway Board circular dated 27.11.2001. In view of this policy decision, services of the applicants cannot be regularised in future. It is further contended that names of the applicants shall be deemed to have been deleted from the Casual Labour Live Register as the applicants remained absent for 2 years from the work and their names have to be struck down from the rolls. As such they are not entitled to the benefit of absorption as prayed by them. I have considered the submissions made by the learned counsel for the parties. It is not disputed that the name of the applicants were borne on the Casual Labour Live Register/Supplementary Casual Labour Live Register. The respondents have not placed on record any document to show that if the worker remains out of work for more than 2

years, his name has to be deleted from the Casual Labour Live Register. Further, in terms of the Railway Board circular No.232/98 dated 9.10.98 (Ann.A6), the person borne on the Live Register/Supplementary Live Register has to be issued notice of screening alongwith list of persons to be screened out of the said list under the signature of an officer of the Personnel Branch of the Division concerned. In addition to displaying the Notice alongwith the list, on the Notice Board(s) etc. he will also send a letter under his signature enclosing a copy of the Notice and the list to each of the individuals concerned by Registered Post A/D advising that in case the individual does not turn up, his name will be deleted from the Casual Labour Live Register/Supplementary Casual Labour Registers as the case may be, and thereafter such casual labour would have no further claim for consideration for absorption by screening in Group 'D', so that there may not be any difficulty in taking action for deletion of the names of those who do not turn up. The respondents nowhere stated that such a procedure was ever adopted. In view of this The contention of the learned counsel for the respondents that their names stood deleted form the Live Register or Supplementary Live Register cannot be accepted for want of relevant material. The facts remain that the applicants are casual labours borne on the Live/Supplementary Live Casual Labour Register and thus they are entitled for the benefit by not insisting of Railway Circulars minimum educational qualification of 8th class pass for filling up of 60% of the open market direct recruitment vacancy for each recruitment in the cadre of Gangman in terms of Railway Board circular No.42/2001 dated 28.2.2001 (Ann.A7) and also relaxation of age in terms of Railway Board circular No. 190/2001 dated

20.9.2001 (Ann.A8) which stipulates that ex-casual labour who had put in minimum 120 days casual service whether continuous or in broken spells and were initially engaged as casual labour within the prescribed age limit of 28 years for general candidates and 33 years for SC/ST candidates would be given age relaxation upto the upper age limit of 40 years in the case of general candidates, 43 years in the case of OBCs and 45 years in the case of SC/ST candidates. The learned counsel for the respondents has not disputed that these circulars are not applicable in the case of the applicant except that the names of the applicant stood deleted from the Live Register as they have remained absent for 2 years.

In view of what has been stated in preceding para, the benefit of Railway Board Circular No.42/2001 dated 28.2.2001 (Ann.A7) and circular No.190/2001 dated 20.9.2001 (Ann.A8) may be extended to the applicants as and when the respondents intend to fill up the posts in Group 'D' category in near future.

7. With these observations, the present applicants are disposed of with no order as to costs.

(M.L.CHAUHAN)
Member (Judicial)

Certified That This is a True and Accurate Copy of The Document/Order As In The Case File No. ..... And That All The Matter Appearing Therein Have Been Legibly and Faithfully Copied with no Modification.

Copying Clerk Section Officer(Judicial)
C.A.T. Jaipur Bench