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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

O.A./T.A No. 336/2004

R.A/C.P No. 37/05

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SECTION OFFICER (Judl.)

In The Central Administrative Tribunal
GUWAHATI BENCH : GUWAHATI

ORDER SHEET
APPLICATION NO.

336/04 OF 199

Applicant(s) H. Ghosh 2 ans.

Respondent(s) Govt 4 ans.

Advocate for Applicant(s) MS Usha Das

Advocate for Respondent(s) RG Counsel

Notes of the Registry	Date	Order of the Tribunal
<p>This application is in form is filed/C F. for Rs 20/- deposited vide IP/BD No. 206/117146 Dated 21/12/04</p> <p><i>N. S. Sanyal</i> Dy. Registrar 22/12/04</p> <p>Notice & order sent to D/Section for issuing to resp. Nos. 1, 2 & 3 by regd. A/D post. (C.A.S.) 20/1/05.</p>	<p>23.12.2004</p> <p>mb</p> <p>28.1.2005</p> <p>mb</p>	<p>Heard Ms. U. Das, learned counsel for the applicants and also Mr. J.L. Sarkar, learned counsel for the respondents.</p> <p>Issue notice to show cause as to why the application shall not be admitted.</p> <p>List on 28.1.2005 for admission.</p> <p><i>K. D. B. B. B.</i> Member (A)</p> <p>List on 2.3.2005 for admission.</p> <p>Member (A)</p>

S/R Guwahati
12-1-05

Notes of the Registry

Date

Order of the Tribunal

28.1.2005

Heard Ms. U. Das, learned counsel for the applicants.

The application is admitted, call for the records.

List on 2.3.2005 for orders.

[Signature]
Member (A)

2.3.2005

Present: Hon'ble Justice Shri G. Sivarajan, Vice-Chairman

Heard Ms. U. Das, learned counsel for the applicants. At the request of Dr M.C. Sarma, learned Railway Counsel appearing on behalf of the respondents, the matter is adjourned to 16.3.2005.

[Signature]
Vice-Chairman

16.3.05

This case relates to employment of ex casual workers in the Railways and they want assignment of temporary status and regularisation in the respective post alleged to have been held by them. Dr. M.C. Sarma, learned Railway standing counsel informed this Tribunal that the matter is under process and required some reasonable time.

In the circumstances the case is adjourned to 13.4.05.

[Signature]
Vice-Chairman

pg

May kindly be seen at
flag 'A'

This is a letter from Joint Secretaries to the Govt. of India, Dept. of Labour & Employment regarding extension of time ^{30 days} for submission of records. para wise comments in connection with O.A 247/04

Laid before the
Hon'ble Court for further
orders.

[Signature]
18.1.05
Section Officer

[Signature]

nkm

Notice duly served
on resp. No-1, 2.

[Signature]
8/2

S/R - *[Signature]*
15-3

Notice duly served
on resp. Nos. 1, 2, 3.

[Signature]
19/3/05.

12-4-05

No-1/5 L&A beca.

5/12/05.

[Signature]

13.4.2005

Dr.M.C.Sharma, learned counsel for the Railways submits that in spite of efforts written statement could not be filed and that if some more time is given written statement will be filed. In the circumstance the case is adjourned to 18.5.2005.

Service Completed.


Vice-Chairman

bb

18.5.05.

Ms. U.Das learned counsel for the applicant submits that she has received the written statement to-day and that she wants to file rejoinder.

Post the matter on 15.6.05.


Vice-Chairman

lm

15.6.2005

Post before the Division Bench on 27.6.2005.


Vice-Chairman

mb

27.6.2005

Ms. U. Das, learned counsel for the applicant submits that rejoinder has already been filed. and the original records are to be summoned. Dr. M.C. Sarma, learned Railway counsel submits that he may be allowed some time go through the matter. Post on 14.7.2005. The respondents will get relevant records also.


Vice-Chairman

mb

11.5.05

W/s submitted by the Respondents.



14.6-05

No rejoinder filed.

lm

① W/s has been filed.

② No rejoinder has been filed.



24.6.05

28.6.05

Rejoinder filed by the Applicant.



14.7.2005

Part heard. Post on 19.7.2005.

[Signature]
Member

[Signature]
Vice-Chairman

bb

Records have
been received.

19.7.2005

Heard learned counsel for the
applicants and respondents. Judgment
delivered in open Court, kept in separate
sheets.

The O.A. is ~~not~~ allowed in terms
of the order. No costs.

[Signature]
19/7/05
D. M. C. Same,
Rly. Advocate.

Received
Usha Das
Advocate
1/8/05

[Signature]
Member

[Signature]
Vice-Chairman

bb

CENTRAL ADMINISTRATIVE TRIBUNAL::GUWAHATI BENCH.

O.A. Nos. 336, 337 & 338 of 2004

DATE OF DECISION: 19.7.2005.

Sri Habul Ghosh & Ors.

APPLICANT(S)

Ms. U. Das

ADVOCATE FOR THE
APPLICANT(S)

- VERSUS -

N.F.Railways & Ors.

RESPONDENT(S)

Dr.. M. C. Sharma

ADVOCATE FOR THE
RESPONDENT(S)

THE HON'BLE MR JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the judgment?
4. Whether the judgment is to be circulated to the other Benches?

Judgment delivered by Hon'ble Vice-Chairman.

[Handwritten signature]

X

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

Original Application Nos. 336, 337 & 338 of 2004.

Date of Order: This, the 19th day of July, 2005.

THE HON'BLE MR. JUSTICE G. SIVARAJAN, VICE CHAIRMAN.

THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

1. Sri Habul Ghosh
2. Sri Haren Das
3. Sri Kishor Kumar Mandal
4. Sri Biren Boro
5. Sri Maina Boro
6. Sri Kripa Tewary
7. Sri Pradip Sarma
8. Sri Paneswar Boro
9. Sri Nagendra Boro
10. Sri Anil Kalita
11. Sri Bhogi Ram Basumatary

All are ex-casual workers under Alipurduar
Division, N.F.Railway.

..... Applicants in O.A. No.336/2004.

1. Shri Suren Ramchiary
2. Sri Ratan Boro
3. Sri Mizang Brahma
4. Sri Rajit Brahma
5. Sri Jaidev Swargiary
6. Sri Naren Ch. Basumatary
7. Sri Raj Kumar Mandal
8. Sri Biren Baishya
9. Sri Angat Das
10. Sri Radhe Shyam Mandal
11. Sri Monilal Nurzary
12. Sri Swargo Boro
13. Sri Ramesh Ch. Boro
14. Sri Biren Baishya

15. Sri Jogendra Pasi
16. Sri Ramjit Das
17. Sri Naren Ch. Boro

All ex-casual labourers in the Alipurduar
Division, N.F.Railway.

..... Applicants in O.A. No.337/2004.

1. Sri Dhaneswar Rahang
2. Sri Lohit Ch. Boro
3. Sri Rati Kanta Boro
4. Sri Monorangen Dwaimary
5. Sri Manteswar Boro
6. Sri Joy Ram Boro
7. Sri Haricharan Basumatary
8. Sri Durga Ram Daimary
9. Sri Sanjit Boro
10. Shri Khargeswar Swargiary
11. Sri Pradip Kr. Boro
12. Sri Upen Narzary
13. Sri Tarun Ch. Boro
14. Sri Ramesh Ch. Ramchairy
15. Sri Monoranjana Deori
16. Sri Ram Nath Pathak
17. Sri Gopal Basumatary
18. Sri Malin Kr. Das
19. Sri Ranjit Swargiary
20. Sri Ratna Kanta Boro
21. Sri Nirmal Kr. Brahma
22. Sri Monoj Das
23. Sri Mrinal Das
24. Sri Sanjay Kr. Narzary
25. Sri Pankaj Baruah
26. Sri Ajit Kr. Sarania
27. Sri Sunil Ch. Boro
28. Sri Bipin Ch. Boro
29. Sri Nepolin Lahary
30. Sri Rajen Lahary
31. Sri Ansuma Swargiary

32. Sri Suren Daimary
33. Sri Raju Borah
34. Sri Pradip Das
35. Sri Robin Dwaimary
36. Sri Pradip Boro
37. Sri Chandan Dev Nath
38. Sri Kamaleswar Boro
39. Sri Phukan Boro
40. Sri Krishna Ram Boro
41. Sri Ratneswar Boro

All ex-casual labourers in the Alipurduar
Division, (BB/CON), N.F.Railway.

.....Applicants in O.A. No.338/2004.

By Advocate Ms. U. Das.

- Versus -

1. The Union of India
Represented by the General Manager
N.F.Railway, Maligaon
Guwahati-11.
2. The General Manager (Construction)
N.F.Railway, Maligaon
Guwahati-11.
3. The Divisional Railway Manager (P)
Alipurduar Division, N.F.Railway
Alipurduar.

..... Respondents in all the three O.As.

By Dr. M. C. Sharma, counsel for the Railways.

.....

ORDER (ORAL)

SIVARAJAN, I.(V.C.) :

Excepting the fact that the applicants in these three O.A.s are different all of them claim the benefits of a scheme introduced by the Railways for grant of temporary status and subsequent absorption in Group 'D' posts. All these applicants had earlier approached the Tribunal by filing O.A. Nos.259, 44 and 43 of 2002 respectively. This Tribunal disposed of the said O.A.s vide orders dated 25.8.2003, 1.5.2003 and 1.5.2003 respectively (Annexure-5 in O.A.336/2004, Annexure-10 in O.A.337/2004 and Annexure-5 in O.A.338/2004) and the applicants were directed to file fresh representations setting out their respective claims. Accordingly, the applicants filed representations before the concerned respondents. The said representations were disposed of vide substantially identical orders with slight changes dated 18.3.2004 (Annexures 7, 12 and 7 respectively). The claim made by the applicants was rejected. The order passed in few such representations reads as under:

" In reference to your above mentioned application the relevant records regarding your claim of being ex-casual labour have been got verified and it is found that the genuineness of your casual labour card is not established.

Hence, your claim for re-engagement in Railway service is rejected without any further correspondence."

The applicants challenged the said orders in these three O.A.s.

2. The respondents have filed separate written statements in all the three cases. Excepting some difference in factual situation, the contentions are similar.



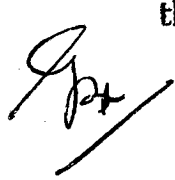
3. We have heard Ms. U. Das, learned counsel for the applicants and Dr. M. C. Sharma, learned Railway counsel for the respondents. Ms. U. Das has submitted that all the applicants were in fact engaged as casual labourers before 1981 and that there is clear evidence with the respondents in regard to the said engagement. She also contends that the Railway authorities have issued identity cards which would also reveal that the applicants were ex-casual labourers of the Railways. Counsel submits that the applicants fulfill all the conditions stipulated in the scheme for assignment of temporary status and for their subsequent absorption in Group 'D' posts. Counsel also points out that the respondents in their written statements have admitted the engagement of eight casual labourers and so far as the applicant no.1 in O.A.336/2004 the earlier order passed by this Tribunal in O.A. No.259/2002, para 3 there of clearly indicates that he was also an ex-casual labourer employee. She also relies on the communication dated 16.3.2004 issued by the Deputy Chief Engineer (Con), N.F.Railway, Jogighopa to the General Manager/Con, N.F.Railway, Maligaon (Annexures-11 in O.A. Nos. 336/2004, 338/2004 and Annexure-15 in O.A.No.337/2004) which clearly states that many of the applicants' claim are found in order. Counsel, in short, submits that all the applicants are entitled to be absorbed in Group 'D' post under the Railways.

4. Dr. M. C. Sharma, Railway counsel has relied on various averments made in the written statement and submits that the applicants had never attempted to establish their claim for availing the benefits under the scheme in the 80's and if the applicants, as a matter of fact, had any genuine claim, they should have approached the Railway authorities then and there. Counsel submits that so far as



the claim of the applicants is concerned, it is more than twenty five years gone and that if at all there is any valid claim it is lost by limitation. Dr. Sharma also points out that the respondents cannot be expected to keep all the records relating to the engagement of casual labourers made in the 80's even today. Counsel points out that the various documents relating to the engagement of the applicants are at present not traceable. Dr. Sharma also points out that so far as the casual labour live register is concerned, the original is not traceable and trust cannot be made on the xerox copies of those documents without being verified with the original. He further submits that the identity cards which were produced by the applicants were got verified and it is found that the signature of the issuing authority available in the identity cards do not match with the admitted signatures of the officers who are stated to have issued the same. He also submits that at that relevant time those officers were not employed in the division in which the applicants were alleged to have been engaged. He further submits that in the absence of any authenticated material produced by the applicants to substantiate their claim for absorption respondents cannot be directed to absorb them in the Railways. Dr. Sharma also points out that large scale manipulations were being made from certain corners in the matter of absorption of casual labourers under the scheme. He, in support, has referred to and relied on the decision of the Calcutta Bench of Central Administrative Tribunal in O.A. No. 915 of 1998. Counsel accordingly submits that the applicants' claim for benefits of the scheme cannot be sustained.

5. As already noted, the applicants had earlier approached this Tribunal by filing O.A. No. 259, 44 and 43 of 2002 and this



Tribunal had disposed of the said applications by directing the applicants to make representations before the Railways. We find that the Tribunal had specifically considered the contention of the respondents that the claim of the applicants is highly belated. The Tribunal observed that when similarly situated persons have earlier approached the Tribunal and obtained reliefs and were absorbed the applicants cannot be denied the benefits, if they are really entitled to, on the ground of delay. It was further observed that when similar nature of orders were passed it was equally incumbent on the part of the respondents to issue notices to all the like persons so that they could also approach the authority for appropriate reliefs. The Tribunal, however, observed that ends of justice will be met if a direction is issued on the applicants also to submit their representations giving details of their services and narrating all the facts within a specified time and if such representations are filed within the time, respondents shall examine the same as expeditiously as possible and take appropriate decisions thereon within the specified time. The applicants pursuant to these directions made representations. One such representation is Annexure-6 in O.A. No.336/2004. We are sorry to note that the respondents had dealt with the matter in a very casual manner by passing the impugned orders all dated 18.3.2004. The orders only say that the genuineness of the casual labour cards is not established. It is not clear as to whether the applicants were afforded an opportunity by the Railways for establishing the genuineness of the casual labour cards. There is no averment in the written statement in this respect. Further, there is no case for the Railways that they have ascertained the genuineness of the casual labour cards from the officers who are stated to have



issued the cards. From the written statement and from the submission of Dr. Sharma it is clear that the names of the persons who have issued the casual labour cards were very much known to the Railways. Why in such a situation, no such step was taken to verify the genuineness of the casual labour cards with those officers is anybody's guess. We do not want to further comment on the conduct of the Railways. Dr. Sharma has placed before us the identity cards, the records of the officers who had issued the identity cards and also the records containing the xerox copies of the casual labour live register. We have perused the said records. We do not want to say anything with regard to the identity cards i.e. as to whether they are genuine and were issued during the relevant period and why the Railways did not make any effort to ascertain its genuineness through the officers who are stated to have issued those cards. For our purpose, the extract of the xerox copies of Casual Labour live register is sufficient.

6. Now, on the question whether the xerox copies of the Casual Labour live register can be relied, respondents have taken a stand in the written statements that unless the details contained in the xerox copies are verified with the original it cannot be relied. The respondents at the same time do not have the original of the Casual Labour live register. How it is missing is neither clear nor stated. Now, coming to the xerox copies of the Casual Labour live register, on perusal of the records, we find the reason for taking such photocopies in a communication dated 5.1.1989 issued by the Executive Engineer/BG/CON, N.F.Railway, Bongaigaon to the Deputy Chief Engineer/CON, N.F.Railway, Jogighopa. It is stated therein that 463 surplus ex-casual labours had to be re-engaged and therefore after



holding discussions with the relevant organization the letter is sent along with xerox copies of the "Casual Labour Live Register" for suitable and necessary action by the Deputy Chief Engineer. Xerox copies of the said document are available in the records maintained by the Railways. From the above it can be assumed safely that the xerox copies represent the original and it is maintained in the regular course of business of the Railways. It is surprising, when the xerox copies of the casual labour live register along with the letter dated 5.1.1989 is in the records maintained by the Railways, how they could say in the written statement "For obvious reasons, these records could not be relied upon as authentic due to the fact that such materials are capable of being manipulated due to the high stakes involved." On this aspect also, we do not want to make further observation which may eventually damage the reputation of the persons who made such bald statements.

7. Now, coming to the matter on merits the respondents are in possession of records (xerox copies of the live register) containing the details of the applicants. Of course some of the applicants do not find a place in the said records also. In respect of applicant no.1 in O.A.336/2004 the earlier written statements filed by the Railways in O.A.259/2002 and referred to in Annexure-5 judgment in O.A.336/2004 the following observations occurs:-

"In the written statement the respondents however admitted that one ex casual labour namely, Sri Habul son of Ruplal was screened thereby indicating that the applicant was screened but he could not be absorbed for want of vacancy within the panel period."

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8. As already noted, the only reason for rejecting the claim of the applicants is that the casual labour identity cards produced by the applicants the genuineness of which is doubtful. In the circumstances, as already discussed, the respondents are directed to consider the case of the applicants ignoring the identity cards and based on their own records namely, the xerox copies of the casual labour live register, the documents with reference to which the earlier written statements were filed and extracted hereinabove and to take a decision in the case of the applicants in all the three cases afresh within a period of four months from the date of receipt of this order. For the said purpose, the impugned orders all dated 18.3.2004 (Annexures-7 in O.A. Nos.336/2004 and 338/2004 and Annexure-11 in O.A. No.337/2004) are quashed. The concerned respondent will pass reasoned orders on merits as directed hereinabove.

9. Before parting with, we would also like to refer to the decision of the Hon'ble Supreme Court in Ratan Chandra Samanta & Ors. vs. Union of India & Ors., 1994 SCC (L&S) 182 relied on by Dr. M. C. Sharma. The said decision was rendered in Writ Petition (Civil) filed under Article 32 of the Constitution of India. In that case the applicants who were ex-casual labours in South Eastern Railways alleged to have been appointed between 1964-69 and retrenched between 1975-78 had approached the Supreme Court for a direction to the opposite parties to include their names in the live casual labourer register after due screening and to give them re-employment according to their seniority. Supreme Court rejected the said Writ Petition stating that no factual basis or any material whatsoever prima facie to establish their claim was made out in the Writ Petition. The contention that the petitioners therein will produce all the documents

gpt

before the authorities, in the above circumstances, was repelled. The said decision is not applicable in the instant case for the reason that there are necessary averments in the representation filed by the applicants and necessary materials are also available in the records maintained by the Railways.

The O.A.s are allowed as above. In the circumstances, there will be no order as to costs.

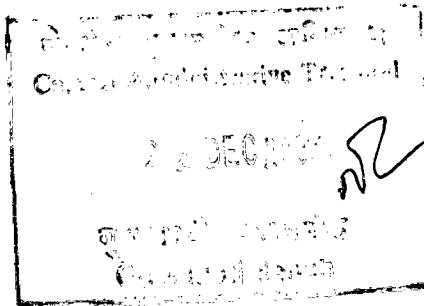


(K.V.PRAHLADAN)
ADMINISTRATIVE MEMBER



(G.SIVARAJAN)
VICE CHAIRMAN

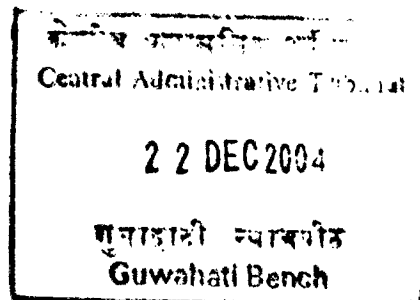
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SYNOPSIS

The applicants are ex-casual worker under Railway. All of them were engaged on or before 1981. They worked in various places under Alipurduwar Division as Khalasi. The applicants during their service tenure made request to the concerned authority for their conversion to regular employee and accordingly and the concerned authority took up their cases for conversion to regular employee by conferring temporary Status as per law. Suddenly the respondents instructed the applicants verbally not to attend office any more. Even after such discharge the applicants continued to perform their duties with some artificial breaks.

As per rule the respondents are duty bound to maintain a line register of the casual and ex-casual workers to provide work as per their seniority. In the instant case neither the Respondents nor the applicants have been provided regular work as per their seniority. Non-maintenance of such register deprived the applicants their due claims of regularisation. Hence this application.



BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Title of the case : O.A. No. 336 of 2004

BETWEEN

Shri Habul Ghosh & Ors. Applicants.

AND

Union of India & ors. Respondents.

I N D E X

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10.	Annexure-8	
11.	Annexure-9	
12.	Annexure-10	
13.	Annexure-11	

Filed by : *Ilsha Das*
 Advocate
File : HABUL

Regn.No.:

Date :

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL.
GUWAHATI BENCH.

OA No. 336 /04.

- BETWEEN -

1. Sri Habul Ghosh.
2. Sri Haren Das.
3. Sri Kishor Kumar Mandal.
4. Sri Biren Boro.
5. Sri Maina Boro.
6. Sri Kripa Tewary.
7. Sri Praip Sarma.
8. Sri Paneswar Boro.
9. Sri Nagendra Boro.
10. Sri Anil Kalita.
11. Sri Bhogi Ram Basumatary.

All are ex casual workers Under Alipurduar
Division, N.F. Railway.

.....Applicants.

-AND-

1. Union of India.

Represented by General Manager, N.F. Railway, Maligaon.
Guwahati-11.

2. The General Manager (Construction).
N.F. Railway, Maligaon, Guwahati - 11.

3. The Divisional Railway Manager (P).
Alipurduar Division, N.F. Railway, Alipurduar.

.....Respondents.

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Filed by
The applicant's through
Alaka Das.
Advocate
22/12/04

H. Ghosh

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PARTICULARS OF THE APPLICATION

1. PARTICULARS OF THE ORDER AGAINST WHICH THIS APPLICATION IS MADE:

This application is directed against the identical order dated 18.3.84 passed by APO/Con for General Manager/Con to the applicants.

2. LIMITATION:

The applicants declare that the instant application has been filed within the limitation period prescribed under section 21 of the Central Administrative Tribunal Act.1985.

3. JURISDICTION:

The applicants further declare that the subject matter of the case is within the jurisdiction of the Administrative Tribunal.

4. FACTS OF THE CASE:

4.1. That the applicants are citizens of India and as such they are entitled to all the rights, privileges and protection as guaranteed by the Constitution of India and laws framed thereunder.

4.2. That all the applicants are ex-casual labourers and

H. Ghosh.

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their grievances, subject matters are similar in nature and hence they crave leave of this Hon'ble Tribunal to join together in a single application invoking it's power under Rule 4(5)(a) of CAT, (Procedure) Rules of 1987.

4.3. That all the applicants are qualified to hold any Group-D posts under the Respondents. Due to poverty they had to abandon their studies and started looking for job at their teen age. The applicants in search of job approached the office of the Respondents and applied for Group-D posts. After due selection the applicants were engaged by the Respondents as casual Mazdoor in various station under Alipurduar Division, N.F.Railways, Alipurduar. The applicants on being selected joined their respective services and continued to perform their duties to the satisfaction of all concerned. The services rendered by the applicants had made them eligible for conferment of Temporary Status as well as other benefits admissible under law.

4.4. That after such appointments they had to perform their normal duties khalasi under the Respondents authority. Their such duties and responsibilities were similar to the duties and responsibilities of regular group-D employees. The applicants during their service tenure made request to the concerned authority for their conversion to regular employee and accordingly in fact the concerned authority took up their cases for conversion to regular employee by conferring Temporary Status as per law. However suddenly the Respondents issued verbal instructions to the applicants not to attend office any more. Even after such discharge the applicants continued to perform their duties with some artificial breaks. Applicants protested the aforesaid action of the Respondents but inspite of assurance

nothing yielded in positive.

4.5. That the applicants state that after their Respondents authority however allowed them to work with some artificial breaks. The Respondents during these breaks period engaged outsiders as khalasi with the intention to frustrate the claims of regularisation of the applicants. As per the rule the Respondents are duty bound to maintain a live register of all the casual as well as ex-casual workers and to provide work as per their seniority. In the instant case neither the Respondents maintained the live register nor the applicants have been provided regular work as per their seniority. Non-maintenance of such register deprived the applicants their due to claims of regularisation under various provision of law.

4.6. That the applicants state that various Unions took up the matter of the applicants along with other similarly situated ex-casual workers. It is pertinent to mention here that some of the similarly situated ex-casual workers approached this Hon'ble Tribunal by way of filing D.A.No.79/96 praying for a direction towards their absorption under the Respondents. The aforesaid OA was disposed of by judgment and order dated 11.11.99 directing the Railway Respondents to consider their cases within a stipulated timeframe.

A copy of the judgment and order dated 11.11.99 is annexed herewith and marked as ANNEXURE-1.

4.7 That after the pronouncement of the aforementioned judgment the Respondents took initiative for ex-post facts approval by the General Manager, Railway and the applicants of the said OA have been granted with the benefit of Temporary

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Status. The Respondents in implementing the ANNEXURE-1 judgment issued call letters to those applicants of OA.79/96 for attending screening test and after the screening they got their absorption in the Group -D post. However, the Respondents confined the said benefits only to those applicants of OA No.79/96. In facts, presents applicants are also similarly situated like that of those applicants and the respondents ought to have extended similar benefit to the present applicants.

4.8 That the applicants state that although they are similarly situated like that of those applicants in OA.79/96, their cases were not considered in the screening held and as such they were deprived of an opportunity consideration of their cases for regular absorption under the Railways. Persons who were called for the said screening test held in the month of Dec '99 and thereafter got their absorption against Group-D post. To that effect the Respondents issued a Memorandum dated 21.4.2000 publishing a list of Selected screened ex-casual workers. It is pertinent to mention here that most of those selected ex-casual workers are junior to the present applicants and as such the present applicants were discriminated in the matter of appointment.

A copy of the Memorandum dated 21.4.2000 is annexed herewith and marked as ANNEXURE-2.

4.9 That the applicant on coming to learn about deprivation made several request to the concerned authority for consideration of their cases but nothing came out in positive. Situated thus, they requested the N.F. Railway Employees Union to take up their cases and according the said Union took up their cases and made several correspondences to the Respondents authorities for consideration of their cases. However, till date nothing came out.

in affirmative, hence this application.

4.10 That the applicant state that during their service tenure the authority concerned took up the matter of the applicants for their absorption against Group-D vacancies, but due to reasons best known to the said authorities process of absorption was kept in cool storage. It is pertinent to mention here that the Railways Board by its letter bearing No.E(NG)11/98/CL/32 dated 9.10.98 issued categorical instruction to all the zonal heads to fill up the Group-D vacancies by the Ex-casual workers born on Live/supplementary.Live casual Labour Register within a stipulated time frame.Instructions have also been issued to verify the records of all the casual/Ex-casual workers so that they can be absorbed accordingly in the Group-D establishment.The aforementioned letter dated 9.10.98 is not available with the applicants but reflection of the same can be verified from the letter dated 11.5.99. But the Respondents did not implimented the instructions contained in the said letter issued by the Railway Board and for that the applicants are now nowhere. juniors to them are enjoying the benefits of absorbing and applicants who could not approach the door of the court are discriminated.

An extract of the letter dated 11.5.99 is annexed herewith and marked as ANNEXURE-3.

4.11 That the applicants beg to state that their employment as well as the member of working days are not in dispute. The service particulars of the applicants are very much available with the respondents. As per the instructions contained in the Railway Board's letter dated 9.10.98, the Respondents aught to have taken initiative in the matter regarding verification of records of the applicants and as per their seniority aught to

H. Ghosh

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have regularised their services against the Group-D vacancies. The Mozdoor Union represented the matter of the applicants enclosing their biodata but till date the respondents have not intimated any thing to the said union. On the other hand recently the Respondents have issued various advertisements to fill up Group-D post under the Railways ignoring the claim of the applicants. as per procedures as well as the instructions contained in the Railway Boards letter the Respondents ought to have taken initiative to fill up those posts by the applicants who are the experienced hands but having not done so they have violated the settled principles of Law as well as the instructions contained in the Railway Boards letter.

Copies of some of the representations made by the Union are annexed herewith and marked as ANNEXURE-4 copy.

4.12 That the applicants beg to state that there is no dispute as regard the fact that they were engaged as casual labourers at different points of time by the Respondents and they having expressed their willingness for being appointed against any Group-D vacant post, it was incumbent upon the Respondents to take necessary steps for their such absorption. The pick and choose method adopted by the Respondents in this connection has resulted in hostile discrimination. As stated above the respondents now sought to fill up some of the group-D vacancies by issuing fresh advertisements from time to time ignoring the claims of the present applicants. Mention may be made of one of such advertisements issued in the year 2001 by which they sought to fill up 595 posts of track man by way of a special drive for SC/ ST. From the above advertisement it is clear that number of vacant posts are still in existence and which can be filled up through the applicants. The Respondents instead of making fresh

advertisement ought to have first clear the list of Ex-casual labourers including the present applicants.

4.13. That your applicants state that aggrieved by the action of the Respondents for non-consideration of the cases of the applicants, the applicants preferred original application No.259/02 praying for a direction towards the Respondents to consider their cases for any Group-D post and to appoint them against vacant group-D posts available for filling up SC/ST backlog vacancies. The applicants also made prayer for a direction to the General Manager N.F.Railway, Maligaon to issue necessary approval towards the appointment of the applicants.

That applicants state that the Hon'ble Tribunal after hearing both the parties was pleased to disposed of the said OA directing the applicants to submit their representation giving the details of their services as far as practicable to the respondents authority narrating all the facts within six weeks from the date of receipt of the order and after filing such representations within that time the respondents shall exercise the same as expeditiously as possible preferably within two months from the date of receipt of the same and take appropriate decision as per law.

A copy of the judgment and order dated 1.5.2003 passed in OA No.44/02 is annexed herewith and marked as Annexure-5.

4.14. That the applicants beg to state that the applicants filed their detailed representations narrating their grievances within the time prescribed the this Hon'ble Tribunal. But when they have not received any information from the Respondents they

H. Ghosh

preferred Contempt Petition No.37/04 before this Hon'ble Tribunal. During pendency of the Contempt petition the applicants came to know about the impugned order dated 18.3.04 by which the APD/con for GM/Con has rejected their claims on the ground that the genuineness of their casual labour card was not established.

Copies of representations dated 25.5.03 and the impugned order dated 18.3.04 are annexed herewith and marked as Annexure-6 and 7 respectively.

4.15. That the applicants beg to state that the chief personnel officer/IR for General Manager (P) issued a letter to the CE/Con-II/MLG bearing No.E/57/2/11(E) Loose dated 17.3.04 by which requests has been made to examine the issue of regularisation of Group of Casual Labourers in APDJ division (Under construction) and take appropriate action without further delay. An advise had been sought for action taken so as to apprise Railway Board with reference to the pending MR reference.

A copy of the order dated 17.3.04 is annexed herewith and marked as Annexure-8.

4.16. That the applicants to state that the in response to the letter dated 17.3.04 the chief Engineer/Con/II, for General Manager(P), N.F.Railway, Maligaon. By the said letter bearing NO.E/63/Con/I dated 25.3.04 the CE/CON/II informed the GM(P), N.F.Railway, Maligaon that on getting the Central Administrative Tribunal's direction in OA No.43/02 and 44/02, individual applicants were asked to submit documents/casual labour cards in support of their claim of having worked in the

H. Ghosh

Railway, accordingly the applicants furnished/submitted aforesaid documents. He further stated that the documents had been got verified by WLI/Con and Dy.CE/Con/JP2 to ascertain/establish the genuineness of the claims.

This is also informed that both WLI/Con/MLG and Dy.CE/Con/JP2 have given the report that though the names of the applicants were found available in the documents but the signatures as appearing in the casual labour cards are not tallying and on the basis of aforesaid reports, the individual applicants of the OAs had since been informed by the office vide letter No.E/63/Con/I dated 18.3.04 that genuineness of the claim could not be established hence the case is rejected.

A copy of the said letter dated 25.3.04 is annexed herewith and marked as Annexure-9.

4.17. That the applicants beg to state that the applicants could obtain a copy of the order bearing No.E/227/ESV/(E) AP dated 30.3.04 issued by the A.P.O./II for Divisional Railway Manager(P) Alipurduwar Junction to the General Manager (P), N.F.Railway/Maligaon intimating the fact due to non-availability of sufficient documents the cases of the applicants could not be verified. And also apprised the fact that though assurance given by the GM/Con/MLG to send all the available documents had been advised to approach to take more time from the Central Administrative Tribunal, Guwahati.

A copy of the aforesaid letter dated 30.3.04 is annexed herewith and marked as Annexure-10.

H. B. Hosh

4.18. That your humble applicants beg to state that the applicants some how could collect the copy of the report of verification of documents/records submitted by the Dy.Chief Engineer (Con), N.F.Railway, Jogighopa before the General Manager/Con, N.F.Railway, Maligaon by the letter bearing No.E/74/4/JP2/(CAT) dated 16.3.04. An extract of the said letter has been quoted below.

2. Case No.OA No.259/2002(11 Nos)

In this case, total applicants were 11 Nos out of which the name of 8 Nos. are found in order as per the records of file No.E/255/2(JPZ)(Bio-data). The name of (i) Shri Kripan Tewary (ii) Shri Pradip Sarma and (iii) Shri Habul Ghosh are not traced out in the CL Register/Records.

Based on the Casual Register (Xerox), the remarks are furnished below.

(i) The name of applicants Sl.No.1 to Sl No.8 (as per verification report of WLI/CON/MLG) are traced out and Bio-datas (DOB, DOA & DOB) of the applicant tally with Casual Labour Service Card's data.

(ii) The signature of the officer concerned as reflected on the CL cards (Poto copy) and documents (data of CL register) are seem to be similar but it can not be confirmed for want of identification of original signature.

A copy of the said letter dated 16.3.04 is annexed herewith and marked as Annexure-11.

4.19. That the applicants begs to state that the action of the Respondents in passing the impugned order dated 18.3.04 is per se illegal arbitrary and violative of natural justice. The Respondents did not give any personal hearing at the time passing

the order. The names and service particulars are found in the records only the signatures were not tallying with the signatures in the representations. It is obvious that a signature of a person will not tally with a signature sign around 15 years ago. The Respondents being a model employer must give a personal hearing all the applicants before passing the impugned order. Since the service particular of the applicants are found on the Respondents ought not to have passed the aforementioned impugned order basing only on signature of the applicants which they put 20 years ago.

4.20. That the applicants beg to state that the method which has been adopted at the time of disposing of the representations filed by the applicant is not at all sustainable and liable to be set aside. The Respondents at the time of disposing of the representations of the only taken into applicants consideration the signature found on the records not the service particulars. The applicants most humble beg to state that since they are not engage with paper works and they were disengaged long back were the signatures may not tally with the signatures found in the records. Since the records contained the identity card along with photograph so the respondents must first take into consideration the photograph of the applicants and must give personal hearing.

4.21. That the applicants beg to state that the Respondents themselves have admitted that the name and Bio-data of the applicants as mentioned in the verification report of WLI/CON/MLG are found to be in order so far, (as per casual labour Register of XEN/BG/CON/BNGN). Also admitted by the Respondents that after verification the casual labour service

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cards of the applicants and same were seem to be in order, but could not be confirmed about the genuineness, since no original records for cross-check in this connection were available in that office. The applicants most humbly beg to submit that it is the duty of the respondents to keep the records of the casual labour. It is also submits that the report of the verification is itself contradictory and same is not sustainable in the eye of law.

4.22. That the applicants beg to state that the process of selection pursuant to the Annexure-9 advertisement is almost completed and the 595 posts are sought to fill up those within a very short time. As such, the applicants pray that Your Lordships would graciously be pleased to pass an interim direction not to fill up the posts till finalisation of this application. In event of not granting the interim order as prays for than the applicant will suffer irreparable loss and injury.

4.23. That in the event of your Lordships being pleased to pass an interim direction as has been prayed for, the balance of convenience would be maintained in favour of the applicants inasmuch as they are entitled to be absorbed against the available Group 'D' posts and further no appointments have been made in pursuance to the Annexure-9 advertisement till date.

4.24 That the applicants are all qualified to hold Group-D post under the Respondents as they have completed requisite number of working days as the Respondents ought to have initiated steps towards their absorption. The Respondents instead of implementing the scheme as well as instruction in regard to absorption of Ex-casual workers now have issued various

H. Ghosh

advertisements which is contrary to Law. In that view of the matter, the applicants pray before this Hon'ble Tribunal for an appropriate interim order restraining the Respondents to initiate any further steps towards filling up of any Group-D vacancies first considering the cases of the applicants.

4.25 That this application has been filed bonafide and to secure ends of justice.

5. Grounds for relief with legal provisions:

5.1. For that the action of in passing the impugned order dated 18.3.04 is illegal, arbitrary and violative of natural justice, hence same is liable to be set aside and quash.

5.2. For that the Respondents are duty bound to fill up the ST/SC backlog vacancy by the Ex-casual labourers. In not doing so they have advertised those posts and sought to fill up those posts from open market without first considering the cases of the applicant is not at all sustainable and same is liable to be set aside and quash.

5.3. For that the procedure adopted by the Respondents in disposing of the representation without taking into consideration the records found at the time of verification and the rejection of their claim on the ground genuineness is not at all sustainable in the eye of law as same has been done without giving personal hearing to the applicants violating the natural justice of the applicants hence same is liable to be set aside and quash.

5.4. For that in any view of the matter the impugned

A. Bhash

action on the part of the authorities in denying to the applicant their due appointments is in clear violation of the Principles of Natural Justice in addition to being arbitrary, illegal and discriminatory.

5.5. For that the applicants being ex-casual labourers of the Respondents and their names being available in the leave/supplementary Register they are entitled to the benefits under the Rules and the Respondents can not discriminate between similarly situated persons.

5.6. For that the Respondents can not take advantage of the fact that the applicants belong to the lowest stratum of the society and their ignorance of their rights. All of them being members of ST community are entitled to special privileges.

5.7. For that similarly situated persons having already been considered for appointment and the applicants also being similarly placed cannot be deprived of an opportunity of consideration of their services.

5.8. For that in any view of the matter the impugned action on the part of the respondents is not maintainable and the applicants are entitled to the reliefs prayed for.

5.9. For that in any view of the matter the impugned action of the respondents are not sustainable in the eye of law and liable to be set aside and quashed.

The applicant craves leave of the Hon'ble Tribunal to advance more grounds both legal as well as factual at the time

H. Ghosh

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of hearing of the case.

6. DETAILS OF REMEDIES EXHAUSTED:

That the applicants declare that he has exhausted all the remedies available to them and there is no alternative remedy available to them.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING IN ANY OTHER

COURT:

The applicants further declare that he has not filed previously any application, writ petition or suit regarding the grievances in respect of which this application is made before any other court or any other Bench of the Tribunal or any other authority nor any such application, writ petition or suit is pending before any of them.

8. RELIEF SOUGHT FOR:

Under the facts and circumstances stated above, the applicant most respectfully prayed that the instant application be admitted records be called for and after hearing the parties on the cause or causes that may be shown and on perusal of records, be grant the following reliefs to the applicants:-

8.1. To set aside and quash the impugned order dated 18.3.04 as same is violative of natural justice and not sustainable in the eye of law.

8.2. To direct the Respondents to consider the cases of the applicants and appoint them against vacant Group-D posts available for filling up of SC/ST backlog vacancies.

8.3. To direct the respondents to keep 17 posts vacant till consideration for appointment of the applicants.

8.4. To set aside and quash the action of the Respondents in advertising the posts vide Annexure-9 advertisement without first considering the cases of the applicants is not at all sustainable in the eye of law and as the same is violative of Article 14 and 16 of the Constitution of India.

8.5. To direct the General Manager N.F. Railway, Maligaon to issue necessary approval towards the appointment of the applicants.

8.6. To direct the Respondents to issue necessary order of absorption to each applicants after absorbing the formalities as prescribed, with retrospective effect that is from the date on which juniors to the applicants were absorbed with all consequential service benefits.

8.7. Cost of the application.

8.8. Any other relief/reliefs that the applicant may be entitled to.

9. INTERIM ORDER PRAYED FOR:

The applicants pray for an interim direction to the respondents not to fill up the vacancies advertised vide Annexure-9 advertisement without first considering the cases of the applicants till finalisation of this OA.

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11. PARTICULARS OF THE I.P.O.:

1. I.P.O. No. : 20 Gr 117149
2. Date : 21/12/04
3. Payable at : Guwahati.

12. LIST OF ENCLOSURES:

As stated in the Index.

H. Ghosh

VERIFICATION

I, Sri Habul Ghosh, S/O. Late Ruplal Ghosh, aged about 40 years, at resident of vill. Rangapara, dist- Sonitpur, Assam. I hereby solemnly affirm and verify that the statements made in para- graphs 2, 3, 4 to 45, 419 - 425 & 5 to 12... are true to my knowledge and those made in paragraphs 1, 46 - 418..... are also matter of records and the rest are my humble submission before the Hon'ble Tribunal. I have not suppressed any material facts of the case.

And I sign on this the Verification on this the 20th day of Dec. of 2004.

Habul Ghosh
Signature.

Original Application No. 79 of 1996.

Date of decision: This the 11th day of January, 1999.

Hon'ble Mr. Justice D.N. Baruah, Vice-Chairman.

Hon'ble Shri G.L. Sanglyine, Administrative Member.

Shri Ananda Ramchiary & 31 Others.

All are ex-casual labourers
in the Alipurduar Division,
N.F. Railway.

Applicants

By Advocate Mr. S. Sarma.

-versus-

1. Union of India,
represented by the General Manager,
N.F. Railway,
Maligaon, Guwahati-11.

2. The Divisional Railway Manager (P),
Alipurduar Junction,
Alipurduar.

3. The General Manager (Construction),
N.F. Railway, Maligaon,
Guwahati-11

..... Respondents

None appears on behalf of the respondents.

ORDER

BARUAH J (V.C.).

Thirty two applicants have filed this present application. Permission as per the provisions of Rule 4 (5) (a) of the Central Administrative Tribunal (Procedure) Rules 1987 was granted by order dated 28.5.96.

2. In this application the applicants have prayed for directions to the General Manager, N.F. Railway Maligaon, to issue necessary approval towards engagement

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Advocate

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of the applicants made on or after 1.1.1981 and also to confer the benefits to the applicants as casual labourers under the rules and thereafter appoint the applicants against the available backlog vacancies meant for Scheduled Tribe candidates and another reliefs they are entitled to.

3. All the applicants belong to a community recognised as Scheduled Tribe and therefore they are entitled to special privileges under the Constitution. The applicant on being selected, were engaged as casual worker and had been working as such. They worked the requisite number of working days to get temporary status as well as other benefits under the Scheme. However, service of the applicants had been terminated prior to 1981. Thereafter, in the year 1995, the Divisional Railway Manager, Alipurduar Junction, N.F. Railway, issued a circular dated 13.02.1995 regarding Special Recruitment Drive of SC/ST candidates. As per the said circular in order to clear the backlog of SC/ST Group 'D' recruitment categories in terms of GM(P)/MLG's letter dated 1.7.1993, special recruitment drive was under the process and due to non-availability of Scheduled Tribe candidates amongst the existing casual labourers in combined seniority list, a list of SC/ST ex-casual labour of open line

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Advocate

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and construction organisation was submitted by the Divisional Secretary AISCATERA/APDJ. In the said list names of 56 numbers of construction ex-casual labour was submitted. Pursuant to this list, the name of the applicants were included. However, name of the applicant No. 18 was not in the said list.

4. Heard Mr. S. Sarma, learned counsel appearing on behalf of the applicants.

5. Mr. Sarma submits that the authority after having decided to engage casual workers and application having been forwarded except the applicant No. 18 they ought to have been engaged but nothing was done. Mr. Sarma further submits that non-action of the authorities to engage the applicants giving all the benefits they are entitled to under the scheme has caused great hardships to the applicants besides they are being prejudiced. Therefore he prays a direction to the respondents to act in terms of the decision taken by the authorities concerned as mentioned above.

6. On hearing the counsel for the applicant and on perusal of the application we feel it will be expedient if the applicants file representation giving details about their grievances within a period of one month from the date of receipt of this order. If such representation is filed within this period, Contd...

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Advocate

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the authority shall consider the same and take a decision regarding engagement of the applicants. As the respondents have already taken a decision to engage the applicants there may not be any difficulty in taking such decision.

7. We, therefore dispose of this application with direction to the respondents to consider the case of the applicants if any representation is filed within one month from the date of receipt of this order and respondents shall take decision regarding the engagement of the applicants within two months thereafter.

8. Considering the facts and circumstances of the case, we however, make no order as to costs.

sd/VICL CHAIRMAN
sd/MEMBER (HUMAN)

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Advocate.

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Advocate.

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Northeast Frontier Railway

Office of the

Divl. Rly. Manager(P)/APD

MEMORANDUM : No.E/227/RCSV(E) AP

Dated: 21/04/2000

The result of the screening test held on 13.1.2000 in the screening of Ex- ST Casual labour of Construction Organisation and FCW Units are furnished below. The following Ex- ST Casual labour of Construction Organisation and retrenched Casual labour of FCW Units who worked in the territorial jurisdiction of this Division, their names are arranged in order of seniority based on total number of service put by them.

The result of screening test has been approved by DM/APD on 19.4.2000.

Sl. No.	Name	Father's name.	Under whom worked.	Date of Birth.	Date of first engagement.	Total days.	Whe-ther SC/ST/OBC.	Educational qualification.
1	2	3	4	5	6	7	8	9
1.	Ganesh Narjinary	D. Narjinary	GM/CON/MLG	20.11.65	1.5.84	975	ST	VIII passed.
2.	Keshab Ch. Boro	Kamala Kanta Boro	-do-	23.9.66	5.9.84	879	ST	VIII passed.
3.	Bhubaneswar Boro	Janaki Boro	-do-	13.3.65	27.3.84	847	ST	IX passed.
4.	Amir Boro	Lt. Lati Ram Boro	-do-	3.1.65	27.3.84	847	ST	X passed.
5.	Pratim Kharakata	N. Kharakata	-do-	3.2.65	27.3.84	817	ST	IX passed.
6.	Mondram Swargiary	Lt. J. Swargiary	-do-	31.3.66	27.3.84	817	ST	IX passed.
7.	Pratin Ch. Kalita	Lt. Jogeswar Kalita	SEN/FCW/MLG	31.12.59	10.6.82	724	UR	X passed.
8.	Arunda Ramchary	Lt. M. Ramchary	GM/CON/MLG	21.3.66	20.4.84	600	ST	IX passed.
9.	Hareswar Boro	Geolaram Boro	-do-	16.7.66	26.9.84	680	ST	IX passed.
10.	Ripen Ch. Brahma	Dharen Brahma	-do-	1.2.66	1.5.84	610	ST	IX passed.
11.	Hari Chandra Boro	Nepat Boro	-do-	3.5.67	1.5.85	610	ST	VIII passed.
12.	Arabinda Boro (I)	Dhendra Boro	-do-	1.4.67	1.5.85	610	ST	IX passed.
13.	Dwipen Boro	Hari Chandra Boro	-do-	27.5.66	1.8.84	590	ST	IX passed.
14.	Jadav Swargiary	Powl Swargiary	-do-	27.3.65	1.7.84	588	ST	IX passed.
15.	Khagendra Nath Boro	Salaram Boro	-do-	1.3.66	1.5.84	455	ST	IX passed.
16.	Jogen Boro	Khaniram Boro	-do-	20.11.65	1.8.84	518	ST	X passed.
17.	Minhal Chakraborty	LT. Khagendra Chakra- Borty	SEN/FCW/MLG	1.1.63	19.7.84	408	UR	S. F. passed.
18.	Tapan Seal	Amritlal Seal	-do-	3.8.66	22.7.78	404	UR	S. F. failed.
19.	Pratap Kr. Boro	Rabin Boro	GM/CON/MLG	1.10.66	15.6.85	322	ST	IX passed.
20.	Ranjit Brahma	Lt. N. Brahma	-do-	1.10.66	13.6.85	322	ST	IX passed.
21.	Arundha Boro (II)	Harin Ch. Boro	-do-	20.6.67	13.6.85	322	ST	X passed.
22.	Phul Basumatary	Maheswar Basumatary	-do-	23.6.67	13.6.85	322	ST	VIII passed.
23.	Bima K. Basumatary	Arish Kr. Basumatary	-do-	2.4.67	13.6.85	321	ST	IX passed.

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- 25 - 18 -

S/Sl. No.	Name	Category	Age	Height	Weight	ST	Remarks
24.	Ashok Ranchiary	Lt. M. Ram Sasimetary	GM/CON/MLG	11.3.67	1.11.85	304	ST IX passed.
25.	Bhabit Bora	Pata Bora	-do-	30.3.67	1.11.85	394	ST VIII passed.
26.	Danabaran Deka	Bhokularam Deka	-do-	27.3.67	1.8.84	275	ST IX passed.
27.	Kamleswar Bora	B.R. Bora	-do-	1.1.68	1.4.85	275	ST IX passed.
28.	Amil Kr. Yadav	J.P. Yadav	SEN/FCW/MLG	15.2.67	1.6.85	281	OST VIII passed.
29.	Uttam Ch. Bora	Baliram Bora	GM/CON/MLG	2.1.68	1.5.85	243	ST -do-
30.	Kamuna Kanta Swargiary	Katiram Swargiary	-do-	1.3.66	1.0.4.85	243	ST -do-
31.	Samala Bora	Lt. Manjula Bora	-do-	15.6.66	1.85	239	ST -do-
32.	Haril Chandra Bora	Lt. Umesh Bora	-do-	2.6.66	1.5.84	211	ST -do-
33.	Yanowsa Swargiary	Lt. D.R. Swargiary	-do-	1.3.65	1.4.85	214	ST -do-
34.	Yanow Swargiary	Ratim Swargiary	-do-	30.5.67	1.5.85	214	ST -do-
35.	Rajmal Bagumetary	B. Bagumetary	-do-	1.1.67	1.8.85	212	ST -do-
36.	Arup Bora	Lt. Arun Bora	-do-	1.1.67	1.85	184	ST IX passed.
37.	Heramba Kr. Daimary	Phisala Daimary	-do-	1.1.67	1.6.85	184	ST -do-
38.	Ratiram Bora	Lt. Jogendra Bora	-do-	31.1.66	1.4.84	183	ST -do-
39.	Rajendra Daimary	Donda Daimary	-do-	30.11.65	1.5.84	153	ST VIII passed.
40.	Golak Ch. Bora	Dabar Bora	-do-	1.2.63	1.4.84	153	ST -do-
41.	Sibhas Bora	Maram Bora	-do-	17.2.66	1.4.84	153	ST IX passed.
42.	Maniram Bora	Lt. Umesh Ch. Bora	-do-	21.3.66	1.8.85	153	ST -do-
43.	Krishna Bagumetary	Soni Bagumetary	-do-	7.1.67	1.11.85	151	ST -do-
44.	Narayan Bagumetary	Rajendra Bagumetary	-do-	1.3.65	1.4.85	141	ST -do-
45.	Jitendra Bora	D.R. Bora	-do-	1.2.65	1.5.85	121	ST -do-
46.	Sikur Ch. Bora	Moraram Bora	-do-	20.3.66	1.5.84	123	ST -do-
47.	Prafulla Swargiary	M.C. Swargiary	-do-	30.5.67	1.85	123	ST -do-
48.	Gajendra Nath Bora	D.N. Bora	-do-	2.1.60	1.5.79	121	ST S.F. Passed.
49.	Parash Bora	Anaram Bora	-do-	20.5.67	12.85	121	ST IX passed.

Copy forwarded for information & necessary action to :-

- 1) GM(P)/MLG. (2) SPO/RSV/MLG. (3) GM/CON/MLG, SPO/HS/MLG.
- 4) Dy. Secy./CON/MLG. (5) SEN/FCW/MLG. (6) DM(W)/RDT.
- 7) Divl. Secy./AFREJ/PDI. (8) Converter/AFREJ/PDI. (9) Divl. Secy./AISTREA/PDI.
- 10) C.R. to Sr. PO/PDI. (11) C.M.S./RDT.

Attested

Advocate.

(sdas/21/22)

For Divl. Rly. Manager (P),
AFREJ/PDI.

21/4/20
21/4/20
21/4/20

(Copy of Rly. Board's letter No. E(NG)II/78/CL/2 dated 11-5-99).

Sub:- Screening of Casual Labour borne on the Live Register/Supplementary Live Register.

Attention is invited to the instructions contained in Board's letter No. E(NG)II/78/CL/2 dated 11-5-99, regarding the screening of Group-D vacancies in the different departments of screening casual labour borne on Live/Supplementary Live Register. In accordance with the discussions held on this subject in Board's office with the CPO(A)s of all Zonal Railways on 1-4-99, appropriate action may be taken to verify the authenticity of the existing Live/Supplementary Live Casual Labour Registers and for updating the same as on 1-4-99, in accordance with the instructions contained in Railway Board's letters No. E(NG)II/78/CL/2 dt. 21-2-94, 22-11-84, E(NG)II/78/CL/2 dt. 25-4-86, E(NG)II/78/CL/2 dt. 12-6-87, E(NG)II/78/CL/2 dt. 8-12-88. The final figures of the number of persons on Live/Supplementary Live Casual Labour Register respectively, as on 1-4-99, may be informed to Board by 31-5-99.

3. Separate lists of casual labour borne on the Live Register/Supplementary Live Casual Labour Register, as on 1-4-99 with the following particulars may be made out, as attached in the schedule with CPO(A)s on 1-4-99 :-

Sl.	Name.	Whether Genl./SC/ST/OBC.	Whether within the age limit of 40 yrs. for Genl. 45 yrs. for OBCs and 45 yrs. for SC/ST as on 1-4-99 YES/NO.	Whether within the limit of 10 yrs. educational criteria of class-II-IIA-IIIB-IIIC-IIID-IIIE-IIIF-IIIG-IIH-IIJ-IIK-II L-II M-II N-II O-II P-II Q-II R-II S-II T-II U-II V-II W-II X-II Y-II Z-II AA-II AB-II AC-II AD-II AE-II AF-II AG-II AH-II AI-II AJ-II AK-II AL-II AM-II AN-II AO-II AP-II AQ-II AR-II AS-II AT-II AU-II AV-II AW-II AX-II AY-II AZ-II BA-II BB-II BC-II BD-II BE-II BF-II BG-II BH-II BI-II BJ-II BK-II BL-II BM-II BN-II BO-II BP-II BQ-II BR-II BS-II BT-II BU-II BV-II BW-II BX-II BY-II BZ-II CA-II CB-II CC-II CD-II CE-II CF-II CG-II CH-II CI-II CJ-II CK-II CL-II CM-II CN-II CO-II CP-II CQ-II CR-II CS-II CT-II CU-II CV-II CW-II CX-II CY-II CZ-II DA-II DB-II DC-II DD-II DE-II DF-II DG-II DH-II DI-II DJ-II DK-II DL-II DM-II DN-II DO-II DP-II DQ-II DR-II DS-II DT-II DU-II DV-II DW-II DX-II DY-II DZ-II EA-II EB-II EC-II ED-II EE-II EF-II EG-II EH-II EI-II EJ-II EK-II EL-II EM-II EN-II EO-II EP-II EQ-II ER-II ES-II ET-II EU-II EV-II EW-II EX-II EY-II EZ-II FA-II FB-II FC-II FD-II FE-II FF-II FG-II FH-II FI-II FJ-II FK-II FL-II FM-II FN-II FO-II FP-II FQ-II FR-II FS-II FT-II FU-II FV-II FW-II FX-II FY-II FZ-II GA-II GB-II GC-II GD-II GE-II GF-II GG-II GH-II GI-II GJ-II GK-II GL-II GM-II GN-II GO-II GP-II GQ-II GR-II GS-II GT-II GU-II GV-II GW-II GX-II GY-II GZ-II HA-II HB-II HC-II HD-II HE-II HF-II HG-II HH-II HI-II HJ-II HK-II HL-II HM-II HN-II HO-II HP-II HQ-II HR-II HS-II HT-II HU-II HV-II HW-II HX-II HY-II HZ-II IA-II IB-II IC-II ID-II IE-II IF-II IG-II IH-II II-II IJ-II IK-II IL-II IM-II IN-II IO-II IP-II IQ-II IR-II IS-II IT-II IU-II IV-II IW-II IX-II IY-II IZ-II JA-II JB-II JC-II JD-II JE-II JF-II JG-II JH-II JI-II JJ-II JK-II JL-II JM-II JN-II JO-II JP-II JQ-II JR-II JS-II JT-II JU-II JV-II JW-II JX-II JY-II JZ-II KA-II KB-II KC-II KD-II KE-II KF-II KG-II KH-II KI-II KJ-II KK-II KL-II KM-II KN-II KO-II KP-II KQ-II KR-II KS-II KT-II KU-II KV-II KW-II KX-II KY-II KZ-II LA-II LB-II LC-II LD-II LE-II LF-II LG-II LH-II LI-II LJ-II LK-II LL-II LM-II LN-II LO-II LP-II LQ-II LR-II LS-II LT-II LU-II LV-II LW-II LX-II LY-II LZ-II MA-II MB-II MC-II MD-II ME-II MF-II MG-II MH-II MI-II MJ-II MK-II ML-II MM-II MN-II MO-II MP-II MQ-II MR-II MS-II MT-II MU-II MV-II MW-II MX-II MY-II MZ-II NA-II NB-II NC-II ND-II NE-II NF-II NG-II NH-II NI-II NJ-II NK-II NL-II NM-II NN-II NO-II NP-II NQ-II NR-II NS-II NT-II NU-II NV-II NW-II NX-II NY-II NZ-II OA-II OB-II OC-II OD-II OE-II OF-II OG-II OH-II OI-II OJ-II OK-II OL-II OM-II ON-II OO-II OP-II OQ-II OR-II OS-II OT-II OU-II OV-II OW-II OX-II OY-II OZ-II PA-II PB-II PC-II PD-II PE-II PF-II PG-II PH-II PI-II PJ-II PK-II PL-II PM-II PN-II PO-II PP-II PQ-II PR-II PS-II PT-II PU-II PV-II PW-II PX-II PY-II PZ-II QA-II QB-II QC-II QD-II QE-II QF-II QG-II QH-II QI-II QJ-II QK-II QL-II QM-II QN-II QO-II QP-II QQ-II QR-II QS-II QT-II QU-II QV-II QW-II QX-II QY-II QZ-II RA-II RB-II RC-II RD-II RE-II RF-II RG-II RH-II RI-II RJ-II RK-II RL-II RM-II RN-II RO-II RP-II RQ-II RR-II RS-II RT-II RU-II RV-II RW-II RX-II RY-II RZ-II SA-II SB-II SC-II SD-II SE-II SF-II SG-II SH-II SI-II SJ-II SK-II SL-II SM-II SN-II SO-II SP-II SQ-II SR-II SS-II ST-II SU-II SV-II SW-II SX-II SY-II SZ-II TA-II TB-II TC-II TD-II TE-II TF-II TG-II TH-II TI-II TJ-II TK-II TL-II TM-II TN-II TO-II TP-II TQ-II TR-II TS-II TT-II TU-II TV-II TW-II TX-II TY-II TZ-II UA-II UB-II UC-II UD-II UE-II UF-II UG-II UH-II UI-II UJ-II UK-II UL-II UM-II UN-II UO-II UP-II UQ-II UR-II US-II UT-II UY-II UZ-II VA-II VB-II VC-II VD-II VE-II VF-II VG-II VH-II VI-II VJ-II VK-II VL-II VM-II VN-II VO-II VP-II VQ-II VR-II VS-II VT-II VU-II VV-II VW-II VX-II VY-II VZ-II WA-II WB-II WC-II WD-II WE-II WF-II WG-II WH-II WI-II WJ-II WK-II WL-II WM-II WN-II WO-II WP-II WQ-II WR-II WS-II WT-II WY-II WZ-II XA-II XB-II XC-II XD-II XE-II XF-II XG-II XH-II XI-II XJ-II XK-II XL-II XM-II XN-II XO-II XP-II XQ-II XR-II XS-II XT-II XU-II XV-II XW-II XX-II XY-II XZ-II YA-II YB-II YC-II YD-II YE-II YF-II YG-II YH-II YI-II YJ-II YK-II YL-II YM-II YN-II YO-II YP-II YQ-II YR-II YS-II YT-II YU-II YV-II YW-II YX-II YY-II YZ-II ZA-II ZB-II ZC-II ZD-II ZE-II ZF-II ZG-II ZH-II ZI-II ZJ-II ZK-II ZL-II ZM-II ZN-II ZO-II ZP-II ZQ-II ZR-II ZS-II ZT-II ZU-II ZV-II ZW-II ZX-II ZY-II ZZ-II
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(Un/14699.)

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- 20 - 27 -

ANNEXURE

4

The Divisional Railway Manager (D),

Alipurduar Jn.

M.F. Railway.

Subj: - Prayer for appointment in Group 'D' in the

BRD department.

Sir,

Most respectfully, I beg to lay before you the following few lines for your information and kind consideration please.

That Sir, I have worked as casual labour from 27.1.77 to 15.4.77 and 2.11.77 to 7.1.1978 in open line under BRD/BRM.

Again-I have worked from 29.12.72 to 13.5.81 under BRD/BRM. I applied for my appointment in open line in Group 'D' category in any department in several occasions. But Sir, till date I have not been favoured with the same.

Under the above I would request your honour kindly to look into the above presently and arrange for my appointment in Group 'D' category in any department considering my working days as casual labour in the Bridge department as prayed for it an early date and obliged.

Dated: 21.05.77.

Yours faithfully,

Habul Ghosh

(Habul Ghosh.)

Ex. Casual Labour under

BRD/BRM and BRD/LHO/NM.

under BRD/BRM (N.P. Rly.)

C/O Railway Bazar (Ward No. 2)

Baran Sanshodhan Post, Panchagarh

Distt: Sonitpur, ASSAM.

Record of Service
as Casual Labour
two pages

Forwarded for
consideration of
P. 2

18.05.77
Sd/- Engineer / Bridges
18.05.77

Per
C/6

To,
The General Manager,
N.E. Railway/Maligaon.

ANNEXURE - 4

Date : 14/2/2001.

Sir,

Sub :- Absorption in Rly. Department
as Class-IV Category.

I have the honour to state that I have been working in N.E. Rly. under Bridge Department at Rangapara. My date of appointment of this department was 27/1/77 and discharged on 15/4/77. Again I put in service on 2/11/77 upto 7/1/78 & discharged. I had completed 146 days service in Bridge department. From 1978 onwards I got no service. But I beg to inform you that since I was completed my screening test during year 1979 & my S.L. No.570 but I was not absorbed in any department inspite of my application to DRM(P)/APDJ on 31/5/97. But till date no any response. In this connection I beg to inform you that I had made application to Dy. Chief Engineer Bridge Line/Maligaon on 22/3/91 but no any response. Finding no other alternative, I again approach your kind honour to look into my case & arrange to put me in service in Class-IV Category as I am qualified for the Rly. Class-IV Category.

From 1978 onwards, I heard nothing from the Rly. department and I am quite alone to strive against this. Kindly look into this & give me assurance whether I will be absorbed in the Railways. I am belonging to OBC Candidate & I got age for service.

Yours faithfully,

Habul Ghosh

(HABUL GHOSH)
Rangapara.

Copy to :-

1. Dy. Chief Engineer/Bridge/Line/Maligaon.
2. DRM(P)/APDJ/N.E. Rly/Maligaon Junction.
3. BRT/Rangapara/N.E. Rly.
4. CPO/A(C) Maligaon for Information & necessary action.
5. Labour Inspector/Maligaon.

Sd/- Habul Ghosh
Rangapara.

For
Sd/- Rangapara
Sd/- Rangapara, Assam
18/5/01

(29)

Amended - 5

48

CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI BENCH.

Original Application No. 259 of 2002.

Date of Order : This the 25th Day of August, 2003.

The Hon'ble Mr Justice D.N.Chowdhury, Vice-Chairman.

The Hon'ble Mr K.V.Prahaladan, Administrative Member.

1. Shri Habul Ghosh,
2. Shri Haren Das,
3. Sri Kishor Kumar Mandal,
4. Sri Biren Boro,
5. Sri Maina Boro,
6. Sri Kripa Tewary,
7. Sri Pradip Sarma,
8. Sri Paneswar Boro,
9. Sri Nagendra Boro,
10. Sri Anil Kalita and
11. Sri Bhogi Ram Basumatary

...Applicants

All the applicants are ex casual workers under
Alipurduar Division, N.F.Railway.

By Advocate Miss Usha Das.

- Versus -

1. Union of India,
represented by General Manager,
N.F.Railway, Maligaon,
Guwahati-11.
2. The General Manager (Construction),
N.F.Railway, Maligaon,
Guwahati-11.
3. The Divisional Railway Manager(P),
Alipurduar Division, N.F.Railway,
Alipurduar, West Bengal.

...Respondents

By Sri S.Sengupta, Railway standing counsel.

O R D E R (ORAL)

CHOWDHURY J.(V.C)

The eleven applicants claimed to be ex casual labourers in Alipurduar Division, N.F.Railway. In view of commonality of the cause of action, nature of claim and relief sought for leave was granted allowing the applicants

contd..2

Advocates.

to espouse their cause by one single application in terms of Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules 1987.

2. The applicants claimed that all of them worked in the Alipurduar Division as casual labourer on being engaged. When they were expecting for their regularisation they were arbitrarily terminated some times in 1981. After their termination all of them left for different destination in search of livelihood. The applicants thereafter came to learn about the decision taken by the authority for regularisation by absorbing all such persons and for that matter a special drive was also taken. According to applicants their names ought to have entered in Live Register for their absorption in the Railway as per the policy decision. The applicants claimed that persons similarly situated already moved the door of the Tribunal in O.A. 79/96, O.A.43/2002 and O.A.44/2002 finally disposed of by the Tribunal on 11.1.99, 1.5.2003 and 1.5.2003 respectively.

3. The respondents contested the case by disputing their claim. In the written statement the respondents asserted that the casual labourers who have worked in N.F. Railway open line before 1.1.81 and were discharged for want of work or due to completion of work were given an opportunity to apply, if they so wished for inclusion of their names in the Live Casual Labour Register. They were asked to submit their representation with adequate documentary proof so as to reach the concerned Divisional Manager's office before the specified time. It was also asserted that in Bridge Division a panel of 715 men was drawn after screening who were borne on the various BRI units under DY.CE/BR/1/MLG and copy of the ex casual

contd..3

Attended
W.D.M.
Advocate

labourers were sent to various BRI units. Out of the panel of 715 screened casual labour only 252 could be engaged. Rest could not be engaged for want of vacancies. According to the respondents none of the applicants applied for registering their names in live casual labour register or supplementary live registers in response to the notification dated 13.3.1987. As a result their names could not be registered with live casual labour register or supplementary live register. Since these applicants did not apply for the post their cases could not be considered. In the written statement the respondents however admitted that one ex casual labour namely, Sri Habul son of Ruplal was screened thereby indicating that the applicant was screened but he could not be absorbed for want of vacancy within the panel period.

4. We have heard the learned counsel for the parties at length. Miss U.Das, learned counsel for the applicant referred to the decisions of this Bench rendered in O.A.79/96 as well as in O.A.43/2002 and 44/2002. The learned counsel contended that the case of the present applicants is squarely covered by those judgments. Mr S.Sengupta, learned Railway standing counsel appearing for the respondents opposing the claim of the applicants contended that these applicants did not come in time and could not be granted relief by the Tribunal for their latches. Mr Sengupta further contended that even on merit the applicants did not deserve any consideration since they are lacking for want of particulars in respect of their services.

5. We have given our anxious consideration on the matter. The plea of limitation raised by Mr Sengupta is no doubt a substantial question of law but then it will be

contd..4.

denial of justice if the applications of the applicants who are unemployed on retrenchment are thrown out on the ground of delay. After termination as it appears that they went in search of livelihood and scattered for different places. The authority reviewed its policy, which did not reach them. Only after came to know the decisions they have knocked the door of the Tribunal. The applicants are not guilty of any lapses. When similar nature of orders were passed it was equally incumbent on the part of the respondents to issue notices to all the like persons so that they could also approach the authority for appropriate relief. Be that as it may, we are of the opinion that the ends of justice will be met if a direction is issued on the applicants also to submit their representations giving the details of their services as far as practicable to the respondents authority narrating all the facts within six weeks from the date of receipt of this order and if such representations are filed within that time the respondents shall examine the same as expeditiously as possible preferably within two months from the date of receipt of the same and take appropriate decision as per law.

With these the application stands disposed of. There shall, however, be no order as to costs.

TRUE COPY

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Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

Section Officer (J)

C.A.T. GUWAHATI BRANCH

Guwahati-781005

pg

Attested
W.S.
Signature

Date - 15/9/03

To,

- (1) The General Manager (Con)
N.F. Railway, Maligaon,
Guwahati.
- (2) The Divisional Railway Manager (p)
Alipurduwar Division, N.F. Railway,
Alipurduwar.

Sub: Judgment and order passed in OA No.259/02

Sir,

With due respect we beg to lay the following few lines for your kind information and necessary action thereof.

Sir, we on being selected were engaged as casual labourer and were continuing as such in the respective posts. We completed requisite number of days, entitled for conferment of temporary status. Instead of regularising our services, we were terminated prior to 1981.

There after the Railway authority had taken steps to fill up the reserve vacancies by way of special recruitment drive vide circular dated 13.2.1995. By the communication No 6/37/2000-Gen/01 dated 26.4.2001 sent by the Director of National Communication for Scheduled Caste and Scheduled Tribes, State office, Guwahati, Govt. of India addressed to you and stated that a list of 120 ex-casual labourers, were forwarded by DRM(P)/APDJ to GM/COM/MLG for verification vide endorsement dated 10.7.95 where our names were also appeared. But our names are not yet approved by you and till now no action has been taken for our absorption.

Sir, we belong to very poor family and also belong to the protected class of persons listed as Scheduled Tribe and Scheduled Caste who are entitled for constitutional guarantee provided by the Constitution.

Sir, we the ex-casual labourers of Alipurduwar Division, N.F. Railways aggrieved by the action towards our engagement on and after 1.1.1981 and also to confer the benefits to us as casual labourers under the rules and thereafter regularise our appointment to fill up the backlog vacancies meant for Schedule Tribe and Schedule Caste candidates approached the Hon'ble Central Administrative Tribunal by way of filing above noted Original Application.

The Hon'ble Tribunal after hearing the parties to the proceeding at length was pleased to allow the OA directed the applicants to all the Original Applications to submit individual representations before you narrating our grievances within a period of one month from the date of receipt of the order. After filing of the representations. You are directed to examine the respective cases and scrutinise and verify our claims. If we fulfill the requirement. You are directed to consider our cases for

Attested
Advocate

Under

53
6341 - 12 -
absorption against available vacancies as per law and further directed to complete the process within three months from the receipt of the representations. (A copy of judgment and order dated 1.5.2003 passed in OA 43/02 is enclosed herewith).

In view of the facts and circumstances stated above we request your honour to scrutinise and verify our case and thereafter to consider our case for absorption against available vacancies as per direction of the Hon'ble Tribunal.

Thanking you.

Yours faithfully

Sd/-
Habul Ghosh

Attended
Hon
Advocate

Annexure-1

35

54

REGISTERED WITH A/D

N.E. RAILWAY

Office of the
General Manager/Con
Maligaon: Guwahati-11

No.F/63/Con/1

Dated: 18.03.2004

To

Shri

Maima Boro

/o. Sri Upendra Ch. Boro

Well - Eastmapan (J. J. Boro)

P.O. - Marmela, Dist. Darrang (Assam)

Sub: Hon'ble CAT/GHY's Order in O.A.No.

257/03

Ref: Your application dated

17.1.03

In reference to your above mentioned application the relevant records regarding your claim of being ex-casual labour have been got verified and it is found that the genuineness of your casual labour card is not established.

Hence, your claim for re-engagement in Railway service is rejected without any further correspondence.

Please acknowledge the receipt of the same.

RECEIVED

18/3/04

18/3

(P. G. Johnson)

APO/Con

For General Manager/Con

B/c

Office of the
General Manager (P)
Maligaon, Guwahati

Dated 17-03-2004

No. E/57/2/11(E)Loose.

To
CE/CON-II/MIL.G

Sub: Regularisation of a Group of casual Labourers in APDJ
division (under Construction)

A MR reference case regarding regularization of a group of Casual Labourers in APDJ division (under Construction) as forwarded vide Railway Board's letter No. 2003-E(SCT)II/5/25 dated: 21-01-2004 alongwith letter of Shri Madhab Rajbongshi, MP Lok Sabha, representation of SC/ST Association/RPAN and copies of CAT/GIY's judgement dated: 01-05-2003 in O.A. 43/2002 and 44/2002 is forwarded herewith for your examination please. It is further added that target date of implementation of CAT/GIY's judgement is already over and it is learnt that some more time is being sought from CAT/GIY. Copy of the letter No. E/211/DOP/DPG/MR dated 08-03-2004 in this regard received from APDJ division is enclosed for ready reference.

In view of above, you are requested to examine the issue and take appropriate action without further delay; otherwise there is a possibility of filing contempt petition against GM, NF Railway and GM/Construction which will create an embarrassment for the GM.

Action taken may kindly be advised so as to apprise Railway Board with reference to the pending MR reference.

(V. Pitchairaju)
Chief Personnel Officer/IR
for General Manager (P)

- (ii) Verified the Casual Labour Service Card of the applicant and same are seen to be in order, but can not be confirmed about the genuineness, since no original records for cross-check in this connection are available in this office.
- (iii) Signature of officer as found on the CL card can not be certified for want of proper identification.

37

13 66
Date - 9

Northeast Frontier Railway.

Office of the
General Manager/Con
Maligaon, Guwahati-11
Dated: 25.03.2004

No.E/63/Con/1
To

General Manager (P)
N. F. Railway/Maligaon

Sub: Regularisation of Group of casual labours in APDI
Division(Under Construction).

Ref: Your letter No.E/57/2/11(E)/Loose dated 17.03.2004.

With reference to the above it is to inform that on getting the CAT's direction in OA No.43/2002 and 44/2002, individual applicants were asked to submit documents/casual labour cards in support of their claim of having worked in the Railway. Accordingly the applicants furnished/submitted aforesaid documents.

These documents had been got verified by WLI/Con and Dy.CE/Con/JPZ to ascertain/establish the genuineness of the claims.

Both WLI/Con/MLG and Dy.CE/Con/JPZ have given the report that though the names of the applicants were found available in the documents but the signatures as appearing in the Casual Labour Cards are not tallying.

On the basis of aforesaid reports, the individual applicants of the OAs have since been informed by this office vide letter No.E/63/Con/1 dated 18.03.2004 that genuineness of the claim could not be established, hence the case is rejected.

This is for your disposal please.

(Sanjiv Roy) 18/3
Chief Engineer/Con/II
For General Manager/Con

~~NOT FOR CIRCULATION~~
~~NOT FOR CIRCULATION~~
~~NOT FOR CIRCULATION~~

- (ii) Verified the Casual Labour Service Cards of the applicant and same are seen to be in order, but can not be confirmed about the genuineness, since no original records for cross check in this connection are available in the office.
- (iii) Signature of officer as found on the CL card can not be certified for want of proper identification.

R.E. Railway

No. E/227/RESV/(E)AF

To:
The General Manager(P),
H.F.Rly./Maligaon.

Office of the
Divl. Rly. Manager(P),
Alipurduar Junction.

Dated: 30/03/2004

Subj:- CAT/CHY's order dated 3.6.03 in the
O.A. No. 43/02 & 44/02 - D. Raheng &
40 others & S. Hamohary & 16 others
C.L. -vrs- U.O.I. & others.

Ref:- GM(P)/MLQ's letter No. R/227/RESV/
SPL/92/Clear C.L. IV of 01.7.03, this
office letter of even number dated
1.9.03, 23.9.03, 16.9.03, 6.10.03 &
GM/CON/MLQ's No. R/63/CON, 1 of 25.9.03.

Kindly refer to letters numbers quoted above. As regards
subject matter, above for compliance/implementation of Hon'ble
Court's order, one JMW and one Head Clerk/E of this Division
was directed to GM/CON/MLQ for necessary verification/genuine-
ness of the applicant (41 + 17 Ex: Casual Labour) and collect
the necessary documents. But they were returned back by the
GM/CON/MLQ with the assurance that all the available documents
will be sent as early as possible and ALO/CON/MLQ has been
advised to approach to take more time from the CAT/CHY.

But neither any reply nor any available documents from
GM/CON/MLQ has yet been received by this office for which
comments from this end could not be send to Hon'ble CAT/CHY.

This is for your information please.

(A. R. Mukherjee)
A.P.O./II

for DIVL. RLY. MANAGER(P),
ALIPURDUAR JUNCTION.

Copy for information and necessary action to :-

- 1) G.M./CON/Maligaon. (2) A.P.O./Legal Cell/MLQ.
- 3) C.L.A./APD.

(udao/30304)

for DIVL. RLY. MANAGER(P),
ALIPURDUAR JUNCTION.

- (ii) Verified the Casual Labour Service Cards of the applicant and same are seem to be in order, but can not be confirmed about the genuineness, since no original records for cross check in this connection are available in this office.
- (iii) Signature of officer as found on the C.L. card can not be certified for want of proper identification.

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A22-11
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13.8.78 MISC/11

N.E. RAILWAY

Office of the
Deputy Chief Engineer/Con,
NMX-JPZ New BG Line Project.

Jogighopa.

Dated : 16-03-2004.

No.E/74/4/JPZ/(CAT)/

To

General Manager/Con,
N.E.Railway:Maligaon.

Sub: Verification of document/records.

Ref: Your letter No.E/63/Con/1 dated 5-3-2004.

With reference to your letter mentioned above, 4 OAs filed by Shri D.Rahang and 40 others, Shri S. Ramchiary and 16 others, Shri Habul Ghosh and 10 others and R.Duimary and 3 others have been verified in detail with the records as available in the file No. E/255/(2) of this office and forwarded the following remarks/comments against the individual cases.

1. Case No. OA No. 43/2002(41)

- (i) From the report of WL/CON/MLG dtd. 13.02.04, it is seen that working period of the ex-casual G/man were in between 1984 to 1989 (April/89), while JPZ project office was established at JPZ in connection with Rail-cum-Road bridge construction. No such ex-casual G/man is quoted in the report was engaged in the JPZ project so far.
- (ii) On verification, the Bio-data's of casual Labour Register (Xerox) of XEN/BG/CON/BNGN as available, the Data's (DOB, DOA & DOD etc) of ex-casual staff found seems to be correct.
- (iii) Regarding the genuineness of claim of individual cases, it is stated that there is no scope to examine the signature of officers concerned as no original documents/signature of the concerned officers who signed in the CL cards are available in this office record as XEN/CON/BNGN was not under Brahmaputra bridge construction at JPZ project.

Hence no comments regarding genuineness.

2. Case No. OA No. 44/2002(17 Nos.)

Total 17 Nos. of applicants had filed a case before Hon'ble CAT/GHY for their re-engagement in service, since they were ex-casual G/man under XEN/BG/CON/BNGN in connection with six line project.

On scrutiny of the records viz. Casual Labour Register of XEN/BG/CON/BNGN (Xerox) and Casual Labour Service Cards the following facts are found :-

- (i) Name and Bio-data of the applicants as mentioned in the verification report of WL/CON/MLG are found to be in order so far, (as per Casual Labour Register of XEN/BG/CON/BNGN).
- (ii) Verified the Casual Labour Service Cards of the applicant and same are seen to be in order, but can not be confirmed about the genuineness, since no original records for cross-check in this connection are available in this office.
- (iii) Signature of officer as found on the CL card can not be certified for want of proper identification.

Attested
H.D.

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3. Case No. OA No.259/2002(11 Nos.)

In this case, total applicants were 11 Nos., out of which the name of 8 Nos. are found in order to per the records of file No.E/255/2(HQ)(Bio data). The name of (i) Shri Kripan Tewary (ii) Shri Pradip Sarma and (iii) Shri Habul Ghosh are not traced out in the CL Register/Records.

Based on the Casual Labour Register (Xerox), the remarks are furnished below.

- (i) The name of applicants SL.No.1 to SL. No.8 (as per verification report of WLI/CON/MLG) are traced out and Bio data (DOB, DOA & DOD) of the applicant tally with Casual Labour Service Card's data.
- (ii) The signature of the officer concerned as reflected on the CL cards(Photo copy) and documents (data of CL register) are seem to be similar but it can not be confirmed for want of identification of original signature.

4. Case No.OA No.256/2003 (4 Nos.)

In this case, there are 4 (four) applicants namely (i) Shri Ratneswar Daimary, (ii) Shri Nripen Datta, (iii) Shri Nandi Daimary and (iv) Shri Monaranjon Daimary.

On going through the file No.E/63/CON/1 (MLG/HQ), it is seen that :-

- (i) Name of the applicants mentioned above are not traced out in the records/CL register of XEN/PG/CON/BNGH.
- (ii) Signature of Officer as found on the CL card (Xerox) can not be confirmed for want of original document/signature etc. Hence genuineness of the case is not confirmed.

In view to the above, CL cards and 4 OA cases are returned herewith through our special man which may please be acknowledged the receipt.

DA : Above 4(four) cases alongwith
41+15 Nos.CL cards.

Dy. Chief Engineer(Con),
H.E.Railway,Jogighopa.

WDM

11MAY2005

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
GUWAHATI BENCH, GUWAHATI.
Guwahati Bench

IN THE MATTER OF
O.A.336 OF 2004.

Shri H.Ghosh and 10 Others ... Applicants

Versus

Union of India represented by
The General Manager (Construction),
N.F.Railway, Maligaon, & Others Respondents.

AND

IN THE MATTER OF

Written Statement on behalf of the respondents.

The answering respondents respectfully SHEWETH :

1. That the respondents have gone through the copy of the application filed and have understood the contents thereof. Save and except the statements which have been specifically admitted hereinbelow or those which are borne on records all other averments/allegations as made in the application are hereby emphatically denied and the applicant is put to the strictest proof thereof.
2. That for the sake of brevity, meticulous denial of each and every allegation/statement made in the application has been avoided. However, the respondents have confirmed their replies to those points/allegations/averments of the application which are found relevant for a proper decision on the matter.
3. That the respondents humbly submit that the application is barred by RES JUDICATA since the matter under dispute submitted by the same parties on the same issues has been adjudicated on two previous occasions by this Hon'ble Tribunal in their judgments in O.A.79/96 and O.A.259/2002 as admitted by the applicants themselves in paragraphs 4.6 and 4.13. Copies of the judgments have been annexed with the O.A. and hence not annexed with this W.S.

The applicants also filed a contempt petition No.36/2004 which was contested by the respondents. The Hon'ble Tribunal was pleased to dismiss the contempt petition also for want of cause of action as the respondents had taken the required steps as per direction of the Hon'ble Tribunal and communicated their decision individually to the contemnors well before the filing of the contempt case.

A copy of the order of the Hon'ble Tribunal dated 4.11.2004 is annexed herewith and marked as ANNEXURE A.

Filed by
Munir 11/5/05
DA.M.C. Samra
Rly. Advocate
50
Dy. Commr. Guwahati
Dy. Commr. (Cont.)

(2)

It is therefore prayed that since the matter of the present application submitted by the same parties have already been repeatedly and conclusively adjudicated upon by the Hon'ble Tribunal the O.A. be dismissed at the threshold on the plea of RES JUDICATA.

4. That it is stated on behalf of the respondents that in the year 1987 the Railways evolved a scheme under which casual labourers who were discharged prior to 1/1/1981 for want of work or for completion of work and not reengaged thereafter could apply for inclusion of their name in the casual labour register before 31st March, 1987. This would have enabled them to get temporary status on re-engagement in due course. For this however, the discharged casual labourers had to submit written representations by 31.3.1987 along with full documentary proof of their earlier engagement with following details :

1. Name; 2. Father's name; 3. Date of birth with proof;
4. Permanent address; 5. educational qualification;
6. Personal mark of identification; 7. Name of the office/department and the place initially/previously engaged;
8. Reason for discharge; 9. Where and how employed after discharge; 10. Attested copy of photograph and signature/LTI and 11. Any other proof of having worked as casual labour on Railways.

The scheme required that the representations would be scrutinised by a Committee of duly constituted officers in regard to the genuineness of their claims before allowing them to be included in the live register of casual labourers.

It is noticed that though the applicants in the present O.A. were entitled to submit representations with full details for inclusion of their names in the live register before 31.3.1987, none of them appear to have done so.

In this connection the respondents beg to point out that the applicant No.1 of this O.A., namely Shri Habul Ghosh, was advised in no uncertain terms by the respondents vide letter No. EW/261/1 dated 14.11.2003 (in response to the Hon'ble Tribunal's direction in O.A. 259/2002) that as he failed to apply within the target date his name could not be registered in the live register and thus could not be considered for absorption in the Railways. It is not understood as to why the applicant No.1 and others still continue to pursue the matter as the letter in question has clearly clinched the issue.

A copy of letter No. EW/261/1 dt. 14.11.2003 is annexed herewith and marked as ANNEXURE B.

.... P.3.....

In view of the facts mentioned above, the respondents beg to urge that the O.A. be dismissed for want of merit.

5. That the respondents beg to draw attention of the Hon'ble Tribunal to annexure 6 of the O.A. at page 33, which is purported to be a copy of the application/representation submitted by the applicants in response to the order of the Hon'ble Tribunal dated 25.8.2002 in O.A. 259/2002. It would be seen that the representation simply stated "...we were terminated prior to 1981" without even mentioning the date from which they were respectively discharged. It therefore appears the applicants themselves were not having their facts right. They gave no details of their dates of engagement, dates of discharge, number of days of service with dates and names and designations of subordinates under whom they served, certificates showing reasons for their discharge with original signatures of subordinates under whom they served and original signatures/LTI of discharged casual labourer and such other proof of their engagement as required under the rules. In view of these vague representations, the respondents were handicapped in their effort to verify the genuineness of their claims and had therefore to reject the claims.

In the present O.A. also the applicants have not furnished any of the details of their claims and hence the O.A. merits dismissal on this count also for want of a valid cause of action.

6. That assuming for argument's sake (though not accepting) that the applicants were discharged in the year 1980 (annexure 6 states "we were terminated prior to 1981"), it would appear that a period of more than 25 years has by now expired since their alleged discharge. This long period has given rise to practical difficulties of verification of the records as the field offices of the Executive Engineer of the Construction organisation and of the Subordinates working under them shifted from one place to another due to changing needs of the construction organisation. Thus the XEN/Bongaigaon's office along those of the subordinates were shifted to Jogighopa and Pancharatna for carrying out the construction of the Jogighopa Rail-cum-road bridge. Due to this reason as well as due to lapse of time the original records were not available for purpose of proper and thorough verification of the claims of the applicants. The situation was compounded by the fact that the applicants themselves also did not or could not produce their original records. Thus, admittedly, the

enquiries were mostly based on xerox copies of the records as they were available. For obvious reasons, these records could not be relied upon as authentic due to the fact that such materials are capable of being manipulated due to the high stakes involved. Under the circumstances if the applicants could produce their original casual labour cards with attested photographs and their original signatures/LTIs along with the original signatures of the subordinates under whom they worked, the process of verification would have been greatly helped. However, as the applicants failed to furnish those particulars for verification of their claims the same had to be rejected.

Since the situation in this respect remains the same even now, the O.A. deserves to be dismissed for want of a valid cause of action.

7. That it is humbly submitted on behalf of the respondents that even if the dates of discharge of the applicants is assumed to be 1980 (though this claim is not accepted) a period of more than 25 years has elapsed in the mean time. In view of this, if the unjust claims of the petitioners is favourably considered by the Hon'ble Tribunal, the same would amount to depriving an equal number of young aspirants who in the mean time have become eligible and are entitled to claim employment. A decision in favour of the applicants would therefore be quite unfair to the new generation of aspirants, particularly as the applicants have no valid cause of action.

For this reason also the Hon'ble Tribunal may kindly consider dismissal of the O.A.

8. Parawise comments:

8.1. That as regards paragraphs 4.1 and 4.2, the respondents have no remarks to offer except to state that the applicants are put to the strictest proof of their claims.

8.2. As regards paragraph 4.3 the respondents beg to deny the averment of the applicants that they were eligible for conferment of temporary status as well as other benefits admissible under law. It is clarified that there is no record to prove the claim of the applicants except for the unproved demand that the applicants might have been utilised as casual worker on daily rate basis. Their claim depended on screening by a duly constituted committee of officers based on their application submitted with full details before a cut-off date.

In this connection the respondents beg to draw attention of the Hon'ble Tribunal to the remarks made in paragraph 4 of this O.A. and to the contents of ANNEXURE B, by which the appli- No.1 was clearly advised that he failed to apply within the target date for registration of names of Ex-casual labour and as such his name was not registered in the live register.

Similar negative replies were also sent to the other applicants who had similar records. It would thus be clear that the applicants have been making false claims in support of their demand for jobs and have no justification at all to support their claim.

8.3. As regards paragraph 4.4 the respondents deny the averments made therein and beg to state that in order to get their names included in the live register certain procedures and conditions were to be followed and only those casual labourers who satisfy certain qualifications and who produced records in support of their claims could find place in the live register. In addition, they had to apply before the cut-off date 31.3.1967 with full details. Failure to apply before the cut-off date had deprived them of their right of inclusion of name in the said register.

8.4. As regards paragraph 4.5 the respondents deny the allegation that the live register was not maintained. Respondents beg to reiterate that no record has been adduced by applicants to prove their claim that they applied in time for regularisation.

8.5. As regards paragraph 4.6 the respondents beg to state that the Hon'ble Tribunal's order was followed in letter and in spirit and the applicants were apprised of their decision as desired by the Hon'ble Tribunal. The respondents however, beg to express regret that in spite of this the applicants had chosen to file contempt petition No.36/2004 knowing fully well before filing the contempt petition that the respondents had complied with the directive of the Hon'ble Tribunal. As a result the contempt petition was dismissed vide order dated 4.11.2004, (Annexure A to this W.S.)

8.6. As regards paragraphs 4.7 and 4.8 the respondents deny that the case of the applicants was similar to those involved in O.A.79/96 and beg to state that the applicants were not entitled to consideration for regularisation as they did not apply in time with full particulars as required under extant instructions. The respondents also deny the allegation made in paragraph 4.8 that the applicants were senior ~~to~~ and were in any manner deprived of their rightful due in service by any alleged act of discrimination.

8.7. As regards paragraph 4.9 the respondents have no remarks to offer except to reiterate that the case of the applicants had no merit as they failed to apply in time as indicated in paragraph 3.2 above.

8.8. As regards paragraph 4.10 the respondents beg to state that the Railway Board's letter quoted by the applicants did not legislate that the applicants should be granted temporary status without following extant instructions. The fact

is that grant of temporary status to the applicants was dependent upon their applying in time for grant of temporary status with full particulars as mentioned in paragraph 4 above. Their cases did not merit consideration as they failed to apply in time.

8.9. As regards paragraph 4.11 the respondents deny that there was no dispute about their employment and about their service particulars. As regards the representations of the labour unions the respondents beg to state that these are normal channels of settlement of grievance and are used to settle genuine grievances. In any case, the annexure 4 quoted here was merely a representation of one of the applicants and had nothing to do with the Mazdoor Union, having any connection with the matter.

8.10. As regards paragraph 4.12 the respondents deny that the status of the applicants was undisputed since they never applied in time with full particulars for inclusion of their names in the live register of casual labourers, as stated in paragraph 8.2, above. Respondents also deny the allegation that there was any act of discrimination against the applicants by adoption of any pick and choose method. As regards the process of recruitment for filling up 595 posts the respondents beg to state that this is part of the normal work carried out by the respondents for their normal administrative work which also obliges them to fulfil certain constitutional requirements in regard to quota of jobs and employment for reserved categories.

8.11. As regards paragraphs 4.13 and 4.14 the respondents beg to state that in response to the order of the Hon'ble Tribunal dated 1.5.2003, the respondents advised applicant No. 1 vide letter No. EW/261/1 dated 14.11.2003 (Annexure B to this W.S.) clearly indicating why his claim for temporary status was rejected as stated in paragraphs 4 and 8.2 above. It appears the applicant No. 1 has chosen to mislead the Hon'ble Tribunal by withholding reference to this letter as this clearly indicates his own failure to take action in time to support his claim. It is also pointed out here that the other applicants were also suitably advised that the genuineness of their record was not established and hence their claim for re-engagement was rejected. The respondents also beg to point out that the applicants filed contempt petition No. 36/2004 even after receiving the required response from the respondents as directed by the Hon'ble Tribunal, as a result of which the Hon'ble Tribunal was pleased to dismiss the contempt petition vide order dated 4.11.2004 (ANNEXURE A).

8.12. As regards paragraphs 4.15, 4.16 and 4.17, the respondents beg to state that the correspondents referred to was internal official communications quoted without any

authority and out of context. Moreover, the letter dated 25.3.04 from the Chief Engineer, Construction/II clearly stated that "the genuineness of the claim could not be established" and hence the case was rejected. It is stated here by way of clarification that the enquiry made by the Welfare Inspector clearly revealed that the records found were only zerox copies of the register containing names and that the signatures of the officers who signed the cards did not tally with the signature of the said officers in other records. In the absence of a confirmation of the genuineness of the zerox copies of the records as revealed by the investigation the inference drawn was that the records are capable of being doctored or manipulated by interested parties to take advantage of the situation. Hence the applicants were intimated that the genuineness of their casual labour card was not established.

8.13. As regards paragraphs 4.18 and 4.19 the respondents beg to state that the letter dated 16.3.04 from the Deputy Chief Engineer (Annexure 11 of the O.A.) clearly stated that the name of Shri Habul Ghosh, that is applicant No.1 of this O.A., "was ... not traced out in the C.L. Register/Records". This makes it clear that the claim of the applicant No.1 of the O.A. had no basis whatsoever as far as the records were concerned.

In this connection the respondents beg to state that the Deputy Chief Engineer clearly stated in the letter quoted by the applicants that a) the verification was done from zerox copies of the register and b) that regarding genuineness of claims of individual cases there was no scope to examine the same for want of original records. The respondents also beg to state that the signature of the officer who signed the casual labour cards did not tally with the signature of the said officers in other official records, as revealed by the investigation. In the absence of a confirmation of genuineness of the zerox copies of the records referred to in the report, the inference drawn was that the records might have been doctored or manipulated by interested parties to take advantage of the situation. Hence, the respondents had intimated the applicants vide their communication that the genuineness of their casual labour card was not established and therefore their claim for re-engagement was rejected. In this situation it was clear that if claims of such undeserving candidates were conceded there would be a flood of such doubtful aspirants who would come out with similar demands for jobs without ever having any justification based on genuine records. The situation in which the applicants

found themselves is complicated by the fact that they never applied in time for inclusion of their names in the leve register due to their own laches. Their unfortunate situation is also compounded by the lapse of over 24 years of intervening period. As regards the question of personal hearing, it is submitted that no useful purpose would be served by the same in view of the fact that the applicants cannot produce any fresh and genuine records and the lapse of over 24 years of the intervening period would not help the respondents to enter into a further probe in the matter de novo.

8.14. As regards paragraph 4.20 the respondents deny the allegation that the method of disposal of the representations adopted by the respondents was wrong. As pointed out in the foregoing paragraphs, the matter concerned with the representations was examined carefully before rejecting the claims. Factors such as passage of time, absence of original records and mismatch of signatures of officials with those of other original documents led to the conclusion that the claims of the applicants were not sustainable. As far as personal hearing is concerned, the respondents consider that the same would make no difference as the case of the applicants is not backed by any reliable supporting documents but based on false claims as mentioned above.

8.15. As regards paragraph 4.21 the respondents be to submit that the applicants have deliberately misinterpreted the correspondents in question and thus tried to mislead the Hon'ble Tribunal by motivated hiding of their own failure to apply in time for regularisation within the time frame prescribed by the Railway Board as detailed in paragraph 4 above.

8.16. As regards paragraphs 4.22, 4.23 and 4.24 the respondents beg to state that the process of recruitment of the posts referred to has nothing to do with the claims of the applicants. An interference of the kind referred to by the applicants would affect the Railway's normal administrative work and would go against public interest, especially as the recruitment in question has constitutional sanction and obligation as also because the applicants do not have any cause of action.

It is therefore prayed that the Hon'ble Tribunal be pleased to reject the plea for an interim order and dismiss the application for reasons stated above.


And for this act of kindness, as in duty bound, the respondents shall ever pray.

(9)

VERIFICATION.

I, Shri AMBESWAR SAIKIA, son of Shri LATE CHANDRA SAIKIA, aged about 50 years, at present working as Dy CPO/CONSTRUCTION, N.F. Railway, Maligaon, do hereby verify and solemnly affirm that the statements made in paragraphs 1 to 9 are true to the best of my knowledge and information derived from records which I believe to be true and the rest are my humble submissions before the Hon'ble Tribunal.

And I sign this verification on this the 10th (Tenth) day of May, 2005.


Signature of Ambeswar Saikia
Dy, Chief Personnel Officer (Con.)
Designation:
N.F. Railway, Maligaon
मुंबई-11
10/5/2005

N.E. RAILWAY

Annexure - B 69

Office of the
Dy. CE/Br-Line
Maligaon.

NO. EW/261/1

Date : 14.11.2003.

To
Shri Habul Ghosh,
Ward No. 2, Railway Market
P.O. Rangapara, Dist : Sonitpur
Assam.

Sub:- Compliance of orders/judgment dated 25.8.2002 in OA No.
259/2002 of Shri Habul Ghosh & others VS. U.O.I. others.

Ref:- Your representation to the GM/P Maligaon dated 15.9.2003

The Competent Authority has gone through your representation and Judgment/Order of the Hon'ble CAT/ Guwahati vide OA No. 259/2002 dated 25.8.2003. The observations are as under:

"It is a fact that you worked as Casual Labour before 01.01.1981 and were discharged for want of work/due to completion of works. You were asked to submit application with adequate documentary proof on or before 31.03.87 to GM/P/Maligaon vide GM/P/MLG's letter No. E/57/0/Pl.XI(C) dated 13.03.87 in response to Railway Board letter No. E/NG/178/CL/2 dated 04.03.1987..

You failed to apply within the target date for registration of names of Ex.Casual Labour. As such your name was "registered" in the Live Casual Register and you could not be considered for absorption by the Railway."

For the reasons stated above, your case is not considered suitable for absorption in the Railway.

Dy.CE/Br-Line/MLG

Copy to GM/P/MLG- for information & n.a., please

Dy.CE/Br-Line/MLG

True copy.

Heads

11/5705
A. M. C. Saino
Rly Advocate

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

ANNEXURE-A

ORDER SHEET

36/04

In O.A. No. 36/02

Name of the Applicant(s)

Habul Ghosh Jais

Name of the Respondent(s)

W. O. I Jais

Advocate for the Applicant

Ms. U. Das, Ms. B. Devi

Counsel for the Railway/C.G.S.O.

Dr. M. C. Sharma

OFFICE NOTE

DATE

ORDER OF THE TRIBUNAL

4.11.04.

Present: Hon'ble Mr. Justice R.K. Batta
Vice-Chairman.

Hon'ble Mr. K. V. Prakashdan, Administrative
Member.

Heard learned counsel for the parties
The learned counsel for the applicant
states that in view of the reply filed
by the Respondent reporting compliance
of order of this Tribunal, this applica-
tion be disposed of. The application
is accordingly dismissed.

Sd/MEMBER (J)

Sd/MEMBER (A)

Memo No.

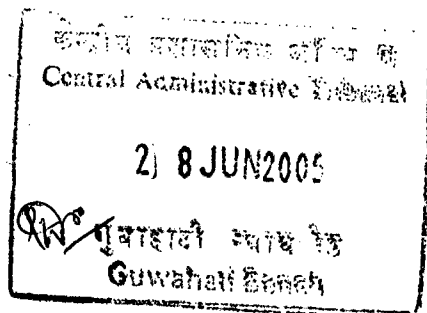
270.

Copd for information and necessary action to:

1) Miss U. Das, Advocate, Gauhati HPA Court.

2) Dr. M. C. Sharma, Rty Standing Counsel.

Section Officer,
16/11/04
16/11/04



1
Filed by
the applicant through
Advocate
27/6/05

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH GUWAHATI

OA NO. 336/2004

SHRI HABUL GHOSH & 10 ORS

.....APPLICANTS

-VERSUS-

UNION OF INDIA & ORS

.....RESPONDENTS

REJOINDER SUBMITTED BY THE APPLICANTS

- 1) That the applicants have received a copy of the Written Statement (herein after referred as WS) filed by the respondents, have gone through the same and have understood the contentions made thereof. Save and except the statements, which are specifically admitted herein below, rest may be treated as total denial. The statements, which are not borne on record, are also denied and the respondents are put to the strictest proof thereof.
- 2) That with regard to the statement made in paragraph 1 of the WS, the applicants do not admit anything contrary to the record of the case.
- 3) That with regard to the statement made in paragraph 2 of WS, the applicants beg to state that the respondents have not submitted Para wise reply only to avoid the statements which are borne on record of the case and specifically relied by the applicants.
- 4) That with regard to the statement made in paragraph 3 of the WS, the applicants while denying the contentions made therein beg to state that the respondents have failed to understand the principle of RES JUDICATA. By the present OA the applicants have challenged the order-dated 18.3.04 by which the claim of the applicants has been rejected on the ground of genuineness, which was not in existence at the time of filing of OA No. 256/02.

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The applicants further beg to submit that since the direction passed in OA No. 259/02 was complied with the counsel for the applicants submitted before the Hon'ble Tribunal for disposal of the Contempt Petition filed by the applicants.

- 5) That with regard to the statement made in paragraph 4 of the WS, the applicants while denying the contentions made therein beg to state that since the contentions of the respondents made in this paragraph has already adjudicated upon by the Hon'ble Tribunal in OA No. 259/2002, and the respondents have not challenged the same in any forum hence the respondents are estopped from taking the same plea again. The respondents themselves have admitted in their WS filed in OA No. 259/2002 that one Shri Habul, son of Rupal was screened but could not be absorbed due to want of vacancy within the panel period (paragraph 3 of the judgment passed in OA No. 259/2002). The Hon'ble Tribunal was pleased to consider the submission made by the respondents and had dealt with the contentions made in the entire paragraph. Since the order remained unchallenged the Observation made by the Hon'ble Tribunal in OA No. 259/2002 has already attained finality, hence the same cannot be reopened again, which shows complete disregard of the Hon'ble Tribunal's Order.

The applicants further beg to state that the plea taken by the respondents in the order-dated 14.3.03(annexure 2 to the WS) is contemptuous in nature. The Hon'ble Tribunal had already considered the reason for non-consideration of the case of the applicants in the said order and made observations in favour of the applicants. The respondents have taken the same plea again, which goes to show the complete disrespect of the Hon'ble Tribunal's order. Points decided by a court of law and remained unchallenged; it cannot be reopened in the same court again. If the respondents were not satisfied with the Hon'ble Tribunal's order they ought to have approached the Hon'ble High Court against the same order. Now the respondents cannot take the same plea again, which is not permissible under the law, hence it is liable to be set aside and quash.

- 6) That with regard to the statement made in paragraph 5 of the WS, the applicants while denying the contentions made therein beg to state that they themselves have admitted in order dated 16.3.04 that the Bio-data's of casual Register of XEN/BG/CON/BNGN as available, the data's of ex-casual staff found seems to be correct. This is unbelievable that the respondents have kept the Xerox copy of

the record, but not original one. If they do not have the original records then this cannot be said to the mistake on the part of the applicants. The applicants most humble submit that the respondents are trying to frustrate the claim of the applicants in the name of genuineness.

- 7) That with regard to the statement made in paragraph 6 of the WS, the applicants while denying the contentions made therein beg to state that similarly situated persons have been given the appointment depriving the claim of the applicants. The respondents being the model employer should not have discriminated the applicants as because they did not approach the court of law. Since the applicants belong to very poor family it was not possible for them to approach the court. But they have been visiting the office of the respondents keeping a hope that one day the respondents like the applicants in OA No. 79/1996 will also consider their cases.

The applicants further beg to submit that the respondents have already have admitted that the data's of the applicants are correct, now they are duty bound to consider the cases of the applicants against any group -D post.

- 8) That with regard to the statement made in paragraph 8.1 of the WS filed by the respondents, the applicant beg to state that the applicants do not have any doubt regarding citizenship and community they belong.
- 9) That with regard to the statement made in paragraph 8.2 of the WS, the applicants while denying the contentions made therein beg to reiterate and reaffirm the statement made above. The applicants further beg to state that the respondents are trying to mislead the Hon'ble Tribunal making such statement. The respondents themselves have admitted that the data's of the applicants are correct. It is not the case of the respondents that they do not have any record to verify the cases of the applicants. The respondents have denied the cases of the applicants only on the ground of genuineness. The applicants pray before the Hon'ble Tribunal to direct the respondents that to consider the cases of the applicants in any Group- D posts.
- 10) That with regard to the statements made in paragraph 8.3 of the WS, the applicants while denying the contentions made therein beg to state that the applicants never try to mislead the Hon'ble Tribunal. It is the respondent's

documents, which says that the Bio-data's of the applicants are correct. The applicants most humble submit that Bio-data's of two persons cannot be similar.

- 11) That with regard to the statement made in paragraph 8.4 of the WS, the applicants beg to state that the contentions of the respondents has already dealt with by the Hon'ble Tribunal in earlier OA. Since the respondents did not challenge the earlier OA, they are estopped from raising the same issue again before Hon'ble Tribunal.
- 12) That with regard to the statements made in paragraphs 4.5 to 8.11 of the WS, the applicants while denying the contentions made therein beg to reiterate and reaffirm the statements made above as well as in the OA. The applicants further beg to state that regarding application for inclusion of the names of the applicants has already considered by the Hon'ble Tribunal. In the WS filed in OA No. 259/02, the respondents have already admitted that Sri Habul son of Ruplal was screened but could not be absorbed for want of vacancy within the panel period (paragraph 3 of the judgment passed in OA No. 259/2002). In paragraph 5 of the judgment it is clearly held by the Hon'ble Tribunal that after termination the applicants went in search of livelihood and scattered for different places. The authority reviewed its policy, which did not reach them. Only after came to know the decisions they have knocked the door of the Hon'ble Tribunal. The applicants are not guilty of any laches. When similar nature of orders was passed it was equally incumbent on the part of the respondents to issue notices to all the like persons so that they could also approach the authority for appropriate relief.
- 13) That with regard to the statement made in paragraph 4.12 of the WS, the applicants while denying the contentions made therein beg to state that the respondents have advertised for various Group-D posts against which the applicants can be easily absorbed against any of them.
- 14) That with regard to the statement made in paragraph 8.13 of the WS, the applicants while denying the contentions made therein beg to reiterate and reaffirm the statements made above as well as in the OA.

- 15) That with regard to the statement made in paragraph 8.14 of the WS, the applicants while denying the contentions made therein beg to state that the applicants never try to mislead anybody. They are from the lower strata of the society. The applicants belong to the ST/SC community and as such they need special care from the society. The allegation made by the respondents is not at all tenable in the eye of law. If they do not have the original records then how the respondents can say that the claim of the applicants are not genuine. If the signatures of the casual labour cards are not tallying then those can be sent to the Hand Writing expert instead of rejecting the genuine claim of the applicants.
- 16) That with regard to the statement made in paragraph 8.15 of the WS, the applicants while denying the contentions made therein beg to reiterate and reaffirm the statements made above as well as in the OA. It is stated that the applicants have never tried to mislead the court. The applicants most humble submit that if the respondents do not have original records it is the lapses on their part. It is not the case of the respondents that they do not have records. If the respondents are in doubt of genuineness then the records along with casual labour cards are may be sent to the expert instead of thronging out the genuine claim of the applicants.
- 17) That with regard to the statement made in paragraph 8.16 of the WS, the applicants while denying the contentions made therein beg to state that the respondents have issued the said advertisement without first considering the claim of the applicants. Till today there are various posts lying vacant against which the applicants can be easily absorbed. Admittedly the applicants served the Railway Administration and the Railway authority being the model employer, the applicants can be absorbed against any group-D post. The applicant most respectfully submit that considering the facts and circumstances narrated above as well as in the OA, the Hon'ble Tribunal may be pleased to direct the respondents to absorbed the applicants against any Group- D after observing all formalities as per law.
- 18) That the applicants beg to submit that the applicants have their genuine claim and they are eligible to hold any Group-D post, hence the Hon'ble Tribunal may be pleased to allow the OA, the directing the respondents to absorbed the applicants against any Group- D post.