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CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH
GUWAHATI-05

(DESTRUCTION OF RECORD RULES, 1990)

INDEX

(1) MP 98/09 order page-1
(2) MP 12/09 order page-1 dtd 12.11.09.

✓ O.A/T.A No. 262/2006.....

R.A/C.P No. 6/09.....

✓ E.P/M.A No. 83/12/09.....

1. Orders Sheet..... O.A..... Pg. 1..... to 4.....
CP 6/200 order page-1 to 4
2. Judgment/Order dtd. 14.6.2007..... Pg. 1..... to 7.....
CP 5, 6 & 7/09 order dtd 12.11.09 - page-1 - 3 261, 262, 263 & 28/05
3. Judgment & Order dtd..... Received from H.C/Supreme Court
4. O.A..... 262/2006..... Pg. 1..... to 4.8.....
5. E.P/M.P. 93/09 (C.P. 6/09)..... Pg. 1..... to 3.....
6. R.A/C.P. 6/09..... Pg. 1..... to 4.2.....
7. W.S..... Pg. 1..... to 2.2.....
8. Rejoinder..... Pg. 1..... to 8.....
9. Reply..... Pg..... to.....
10. Any other Papers..... Pg..... to.....
11. Memo of Appearance.....
12. Additional Affidavit..... page 1 to 5.....
13. Written Arguments..... page 1 to 3.....
14. Amendment Reply by Respondents.....
15. Amendment Reply filed by the Applicant.....
16. Counter Reply.....

SECTION OFFICER (Judl.)

Shalita
27/10/12

FROM NO. 4
(SEE RULE 24)
CENTRAL ADMINISTRATIVE TRIBUNAL
CHANDIGARH BENCH:

1. Original Application No. 262/06
2. Mice Petition No. _____
3. Contempt Petition No. _____
4. Review Application No. _____

Applicant(S) Suren Ramswamy Jay

Respondant(S) H. O. I. 2005

Advocate for the Applicant(S) H-K-Sarna.....

...B. Dair.....

Advocate for the Respondat(S) Railway Counsel K.K. Biswas

Notes of the Registry	Date	Order of the Tribunal
This application is in form is filed/C F. for Rs. 50/- d posted vide IPC/DD No. <u>803.88244.9</u> Dated <u>23.10.06</u>	31.10.2006	Present: Hon'ble Sri K.V. Sachidanandan Vice-Chairman.
<u>Dr. Registrar</u> <u>27.10.06</u> <u>Stops not taken</u> <u>Dr.</u>		The case of the Applicants is that they approached this Tribunal earlier by filing Original Application and vide order dated 19.07.2005, this Tribunal disposed of the Original Application with the following directions : "It is stated therein that 463 surplus ex-causal labours had to be reengaged 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 Contd/-

- 2 -

O.A. 262/2006

Contd/-
31.10.2006

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 bold statement."

The grievance of the Applicants is that vide annexure - 4 dated 10.02.2006, the Respondents rejected the claim of the Applicant No. 9 and others comparing the signatures with the other documents which has not been stated by the Tribunal and came into the conclusion that the Casual labour Cards are forged and therefore, his/their case cannot be considered. Against the said impugned order, the Applicants have filed this Application.

Heard Mr H.K. Sarma, learned Counsel for the Applicants and Dr. J.L. Sarkar, learned Standing Counsel for the Railways.

Learned Counsel for the Railways submitted that the impugned order annexure - 4 is only for the Applicant No. 7 and orders pertaining to the other Applicants have not been produced in the Application and therefore, the Application is not maintainable and no relief can be granted. Learned Counsel for the

✓

31.10.2006

Applicants submitted that same impugned order have been passed in the case of other applicants also and he will produce the same on later date.

Considering the issue involved in this case, I am of the view that the O.A. to be admitted. Admit. Issue notice to the Respondents.

Post on 14.12.2006.

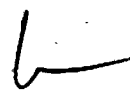

Vice-Chairman

/mb/

14.12.2006

Mr.K.K.Biswas, learned counsel for the Railways prays for time to file reply statement. Six weeks time is granted for the same.

post the matter on 25.1.2007.


Vice-Chairman

bb

25.1.2007

Further time is sought for filing of written statement. Let it be done within four weeks.

Post on 28.2.2007.


Vice-Chairman

/bb/

28.2.07.

At the request of learned counsel for the respondents four weeks time is granted to file written statement. post the matter on 29.3.07..

ce
Member


Vice-Chairman

lm

Notice & order
Sent to D/Section
for issuing to
resp. nos. 1, 2 & 3
by regd. A/D post.
8/11/06. D/No-1074 to
Dt= 1076

Notice duly served
on R-2 (A/D card
at file "c" of OA 261/06).

5/12/06.

① Notice duly served
on R.No-2,

① Respondant No-1 & 3
from a/citell.

my
13.12.06

No Wks has been
filed.

my
24.1.07

27.2.07
no Wks filed.
h.

No Wks has been
filed.

my
28.3.07.

29.3.07. Counsel for the applicant prays for four weeks time to file rejoinder. Let it be done. Post the matter on 1.5.07.

Vice-Chairman

30.3.07

W/S filed by the Respondents. page-1 to 14.

lm

1.5.07. At the request of learned counsel for the applicant two weeks time is granted to file rejoinder if any. Post the matter on 17.5.07.

21.5.07.

Vice-Chairman

No rejoinder has been filed.

30.4.07.

lm

17.5.07.

No rejoinder has been filed.

Counsel for the respondents has submitted that he has got the copy of the rejoinder and he wants to get instructions and it may be fixed for hearing. Post the matter for hearing on 30.5.07.

Vice-Chairman

23.5.07

30.5.07.

Rejoinder filed. Respondents copy served. page 1 to 8.

lm

Heard learned counsel for the parties. Hearing concluded. Judgment reserved.

Vice-Chairman

14.6.2007

Judgment pronounced in open Court, kept in separate sheets.

The case is ready for hearing.

The O.A. is disposed of in terms of the order. No costs.

29.5.07.

Vice-Chairman

29.5.07

objection filed by the respondents against rejoinder. copy served.

/bb/

21.6.07

certified copy of the judgment has been collected by the parties.

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

- [1] O.A. No. 281 of 2005
[2] O.A. No. 261 of 2006
[3] O.A. No. 262 of 2006
[4] O.A. No. 263 of 2006

Date of decision, this day the 14 of June, 2007

CORAM: The Hon'ble Shri K.V.Sachidanandan, Vice-Chairman

[1] O.A.No. 281 of 2005

1. Sri Ajant Boro, s/o sri Moniram Boro.
2. Sri Biresh Ch.Boro,s/o sri Jogen Boro.
3. Sri Dilip Choudhury, s/o sri Rameshwar Choudhary.
4. Sri Rabindra Boro, s/o sri Chandra Kt.Boro.
5. Sri Lachit Kr.Basumotory,s/o sri Pura ram Basumotary.
6. Sri Pabitra Wary, s/o sri Mahim Wary.
7. Sri Ram Nath Thakuria,s/o Sri Dayal Thakuria.
8. Sri Moni Ram Boro, s/o Umesh Boro.
9. Sri Jiten Boro, s/o Bipin Boro.
- 10.Sri Upen Boro, s/o Bhandra Boro.
- 11.Sri Rajen Swargiary,s/o Haloi Ram Swaragiary.
- 12.Sri Makthang Daimary, s/o Langa Daimary.
- 13.Sri Ratan Ch. Boro, s/o Late Jamuna Boro.
- 14.Sri Kartik Narzary, s/o Baya Ram Narzary.
- 15.Sri Warga Ram Daimary, s/o Maya Ram Daimary.
- 16.Sri Bipul Ramchiary, s/o Sri Agin Ramchiary.
- 17.Sri Monoa Kr. Basumatry, s/o Sri Jogeswar Basumatry.
- 18.Sri Lalit Ch. Boro, s/o Sri Durga Boro.
- 19.Shri Girish Ch Basumatary, s/o Sri Sambar Basumatary.
- 20.Sri Maheswar Boro, s/o Late Benga Boro.
- 21.Sri Buehan Ramchiary, s/o Sri Madhab Ranchiary.
- 22.Sri Ananta Shargiry, s/o of Late Bimal Shargiry.
- 23.Sri Bipin Daimary, s/o Sri Nabih Daimary.
- 24.Sri Kanistha Basumatary, s/o Sri Jogendra Basumatary.
- 25.Sri Samala Boro, s/o Hasa Ram Boro
- 26.Sri Bapa Ram Boro, s/o Sri Mohan Boro.
- 27.Sri Lakhi Boro, s/o Nawa Boro.
- 28.Sri Achut Ramchiary, s/o Rajen Ramchiary.
- 29.Sri Nandi Daimary, s/o Jabla Daimary.
- 30.Sri Dinesh Ch.Boro, s/o Ana Boro.

Applicants

By Advocate: Mr. B.Sarma

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, Alipuduar.

Respondents

By Advocate: Mr. K.K.Biswas

[2] O.A. No. 261 of 2006

- 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 labourers working under the respondents.

Applicants

By Advocate: Mr. H.K.Sarma

Versus

1. The Union of India, represented by the General Manger,N.F.Railway,Maligaon-Guwahati-11.
2. The General Manager [Construction],N.F.Railway, Maligaon,Guwahati-11.
3. The Dviisional Railway Manager[P] Alipurduwar Division,N.F..Railway,Alipurduwar.

Respondents

By Advocate: Mr. K.K. Biswas.

[3] O.A.No. 262 of 2006

1. Sri Suren Ramchary
2. Sri Ratan Boro.

3. Sri Mizing 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. Shri Naren Ch.Boro.

All Ex-Casual Labourers in the Alipurduwar Division,
N.F.Railway.

Applicants

By Advocate: Mr. H.K.Sarma

Versus

- 1 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] Alipurduwar
Division,N.F.Railway,Alipurduar.

Respondents

By Advocate: Mr.K.K.Biswas.

[4] O.A.No. 263 of 2006

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 Sabjib Boro
10. Shri Khargeswar Swargiary
11. Sri Pradip Kr. Boro

12. Sri Ugen Narzary.
 13. Sri Tarun Ch. Boro
 14. Sri Ramesh Ch. Ramchiary
 15. Sri Monoranjana Deori.
 16. Sri Ram Nath Pathak.
 17. Sri Gopal Basumatary.
 18. Sri Malin Kr. Das.
 19. Sri Ranhit 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 Daimary
 31. Sri Asnuma Swargiary.
 32. Sri Suren Daimary
 33. Sri Raju Borah
 34. Sri Pradip Das
 35. Sri Robin Dwaimary
 36. Sri Pradib Boro
 37. Sri Chandan Dev Nath
 38. Sri Kamaleswar Boro
 39. Shri Phukan Boro
 40. Sri Krishna Ram Boro
 41. Sri Rateneswar Boro
- All Ex-Casual Labourers in the Alipurduwar Division
[BB/Con], N.F. Railway.

Applicants

By Advocate; Mr. H.K Sarma

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

By Advocate: Mr. K.K. Biswas


ORDER

K.V.Sachidanandan-Vice-Chairman:

There are 30 applicants in O.A. 281/05, 11 applicants in OA 261/06, 17 applicants in OA 262/06 and 41 applicants in OA 263 of 2006. Most of the applicants had earlier approached this Tribunal in OA No.255 of 2003, O.A.No. 336/04, OA-No.337/04 and O.A.No.338/04. All the applicants are ~~ex-casual~~ labourers under the respondents-Railways in various Divisions and their grievances are identical/similar to appoint them against Group 'D' posts on regularization of their services. They have sought the following identical reliefs:

1. To set aside and quash the impugned orders dated 18.1.04 and 16.3.05 as the same are in violation of the principles of natural justice and not sustainable in the eye of law.
2. To direct the respondents to consider the cases of the applicants and appoint them against vacant Group 'D' posts available for filling up SC/ST backlog vacancies.
3. To direct the respondents to keep the posts vacant for the applicants till consideration for appointment of the applicants.
4. To direct the General Manager, N.F.Railway, Maligaon to issue necessary approval towards the appointment of the applicants.
5. To Direct the respondents to issue necessary order of absorption to each applicant after observing the formalities as prescribed, with retrospective effect that is from the date on which junior to the applicants were absorbed with all consequential service benefits.

2. Since the issue involved in all the four applications are identical and the applicants are identically/similarly placed employees, having a common grievance, these matters are



disposed of by way of one common order with the consent of the parties.

3. The facts of the case are that the applicants were engaged as Casual Labourers in various stations of the N.F. Railway and performed their duties to the satisfaction of all concerned. According to them, the applicants acquired eligibility for conferment of the benefits of Temporary Status as well as other benefits admissible under the law. They were entrusted the duties of Khalasi similar to regular Group 'D' employees. The applicants represented to regularize their services as per law but ultimately did not yield in a fruitful result. Thereafter, they were verbally terminated and instructed not to attend office any more. Even after such discharge, the applicants continued to perform their duties with some artificial breaks. During their disengagement and break period, the respondents engaged outsiders as Khalasi with intention to frustrate the claim of regularization of the applicants. The respondents duly maintain a Live Register incorporating therein the names of all Casual Mazdoors in order of seniority. The claim of the applicants is to regularize their services under the provisions of law. Some of the similarly situated Ex-Casual Labourers approached this Tribunal by way of filing O.A. No. 79 of 1996. The Court directed the Railway to consider their cases within a stipulated time. The applicants of the said O.A. have been granted benefit of Temporary Status. The case of the applicants is that though they

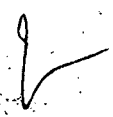
are similarly situated to the applicants in O.A.79/96, but their cases were not considered in the screening held by the respondents and as such they were deprived of an opportunity for consideration of their cases for appointment on regular basis under the respondents. The respondents ought to have extended similar benefits to the present applicants and the present applicants were discriminated in the matter of appointment. Several representations made to the authorities did not accede and the N.F. Railway Union also took up their cases through representations and correspondences but till date nothing came in affirmative, and then the present OAs have been filed.

4. The applicants earlier preferred OA. 255/03, O.A.336/04, O.A.337/04 and O.A.338/04 in which this Court directed the applicants to submit their representations giving the details of their services as far as possible and the respondents were directed to dispose of the same. Copies of the judgments are produced along with the OAs. Some of the applicants were directed to produce documentary evidence relating to Identify Cards and their cases have been rejected on the ground that genuineness of the Identity Cards could not be established, and finally the claims of the applicants were rejected by impugned orders of the respective OAs. These impugned orders are challenged on the ground of being illegal, arbitrary and violative of natural justice.

5. The respondents have filed a detailed reply statement contending that the records produced by the applicants were

13

proved to be false, fabricated, frivolous and fake. The records produced by the applicants were initially examined by the respondents with the records kept in the office so as to examine the veracity and their genuineness to entertain the claim. The respondents also took the opinion of the Forensic Department. Opinion of the Expert on this aspect are submitted as Annexures 1 and 2 which shows that that the Casual Labour Cards produced by the applicants did not corroborate with the signatures of the applicants in the official records. Therefore, the respondents have stated that the documents produced by the applicants appear to be fake, fabricated and false. This is the second round of litigation on the same subject. The Court in the earlier OAs directed the respondents to dispose of the representations of the applicants. The respondents disposed of their representations after examining their cases on merits, and being aggrieved the applicants filed contempt petitions which were disposed of by the court. The Railway Board directed all the Zonal Railways for an action plan for absorption of all casual labours on roll and whose names were in the live casual labour register/supplementary casual labour register. A drive was launched by the Railway Administration to absorb all the discharged casual labours after verification of representations/applications with the original casual labour certificates of engagement. There was no application for absorption/regularization from the applicants.



6. Casual Labour Card in terms of the instructions of the Ministry of Personnel, Public Grievances and Pensions, it is only kept for three years. In this case, the claim pertains to the year 1984, that is, more than 20 years. Annexure-2 is copy of such circular. After disposal of earlier OAs 255/03, 336/04, 337/04 and 338/04, the applicants are agitating the same matter in these OAs but the matters have been finally disposed of and contempt petitions also closed by this Tribunal. The applications are barred by limitation. The applicants have not approached the respondents to settle their grievances but they have directly approached the Tribunal violating the A.T. Act. On verification of records, the claims of the applicants are not tenable in the eye of law. There is no merit in the OAs and hence the OAs are liable to be dismissed.

7. The applicants, on the other hand, have filed additional affidavit by way of rejoinder, reiterating their contentions producing certain documents in order to establish that they were casual labourers. Photo copies of certain documents establish that they were casual labourers.

8. The respondents have also filed reply to the rejoinder again reiterating that the documents produced by the applicants are fake, fraudulent and their claims are not genuine.

9. The learned counsel appearing for the applicants and the respondents have taken me to various pleadings, evidence and materials placed on record. The learned counsel for the applicants

would argue that the original Casual Labour Cards have already been submitted to the respondents. Therefore, they do not possess the originals of the Casual Labour Cards and only photo copies are available which were produced. The other documents produced by the applicants would prove that the applicants were casual labourers. The photo copies produced by the applicants cannot be questioned since the finding of the Tribunal in the earlier OAs to dispose of the representations of the applicants on the basis of documents produced by the applicants. The respondents, in total violation of the directions of the Tribunal, called for opinion of the Forensic Expert. Moreover, the report of the Forensic Expert had only opined that signatures cannot be compared with the Xerox copies of the documents and, therefore, deliberately and willfully the respondents are denying the right accrued to the applicants.

10. The counsel appearing for the respondents persuasively argued that the documents produced by the applicants are fabricated and not genuine and on the basis of such a situation, the benefit cannot be extended to the applicants.

11. I have given due consideration and attention to the materials, evidence and arguments advanced by the learned counsel appearing for the parties. This is not the first round of litigation. Earlier also these applicants had approached this Tribunal in OA 255/03, OA 336/04, OA 337/04 and OA 338/04. In OA 336/04, a common order has been passed, along with OA

337/04 and 338/04, by a Division Bench of this Court dated 19th July, 2005. The relevant portion of the said judgment is quoted below:

"5. As already noted, the applicants had earlier approached this Tribunal by filing OA 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, the respondents shall examine the same as expeditiously as possible and take appropriate decisions thereon within a specified time. One such representation is Annexure-6 in the OA No.336/2004. We are sorry to note that 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 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 in 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

17
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 483 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, 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 OA

336/2004 the earlier written statements filed by the Railways in OA 259/2002 and referred to in Annexure-5 judgment in OA 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."

8. As already noted, the only reason for rejecting the claim of the applicants is that the casual labour identify 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 [Annexure-7 in OA Nos.336/2004 and 338/2004 and aannexure-11 in OA 337/2004] are quashed. The concerned respondent will pass reasoned orders on merits as directed hereinabove.

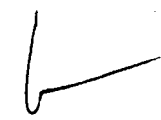
9. Before parting with, we would also like to refer to the decision of the Hon'ble Supreme Court in Ratan Chandra Samanta & Ors. Vs. Union of India & Ors., 1994 SCC[L&S] 182 relied on by Dr. M.C.Sharma. The said decision was rendered in Writ Petition [civil] filed under Article 32 of the Constitution 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 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.

19
The OAs are allowed as above. In the circumstances, there will be no order as to costs."

12. The clear finding of this Tribunal to the question as to whether Xerox copies can be relied upon is dealt with in para 6 of the judgment, as above. The Tribunal taking the decision of the Apex Court reported and discussed Supra in para 9 of the judgment, have come to the conclusion that the materials available have to be relied upon and these OAs have been allowed.

13. Now, the question is whether the respondents are justified in sending the entire matter to the Forensic Expert. It is true that the respondents have to find out whether the documents submitted by the applicants are genuine or not. But the respondents Railways cannot ignore all the documents submitted by the applicants. Whether it is Xerox copy or not, under the pretext of preservation of the period of three years, the respondents can cross-verify these documents with that available records with the Railways. If the contention of the Railways is that they do not have any records with them, the natural inference will be that the photocopies to be relied on. It is further pertinent to note that the applicants in the rejoinder have produced certain documents [Annexure-A], list of ex-casual labour sent by the Deputy Chief Engineer/Construction, N.F. Railway, Jogighopa, dated 17th July, 1995, which was certified by the P.W.I. on 1.2.1987, in

which some of the applicants figure in the list. These are correspondences from one office to another by a responsible Railway Officer in 1995. Merely stating that preservation of documents is for three years do not absolve the responsibility of the respondents in stating that the applicants were not casual labourers in the railways. There are certain procedure to be followed as per the Railways Rules that in case documents are to be destroyed, the entry should be there in the Register maintained for the same. The respondents have not been able to show any such register to prove that these documents have been destroyed by them. Therefore, their averment that the documents have been destroyed cannot be taken as a foolproof. It appears that no genuine efforts have been made out by the respondents to find out the claim of the respondents. On the other hand, they have shifted their responsibility to the Forensic Department in supersession of the direction of the Tribunal where this Tribunal categorically stated in the earlier OAs that the respondents have taken a plea that they are not having the original records then the respondents have to rely on the photocopies and other reliable records from the Railways and consider the case of the applicants individually. No such exercise has been done by the respondents and, therefore, this Court is not happy in the manner the claims of the applicants have been disposed of which has necessitated the applicants to come again by these



OAs. However, when the matter came up for hearing, the counsel for the applicants have taken my attention to the decision of this Tribunal in the case of Swapan Sutradhar and others vs. Union of India & others, O.A. No.203 of 2002, dated the 2nd June, 2004, wherein this Court has directed to re-examine the cases of the applicants therein by constituting a responsible Committee and scrutinize the cases of the applicants therein. For better elucidation, the said judgment is reproduced as below:-

Dated 2.6.2004

"ORDER

K.V.Prahladan, Member[A]:

The applicants are working as Casual Workers under the General Manager, Telecom, Silchar, Silchar Secondary Switching Area. All of them were employed from 1987-88 onwards. The applicants approached this Tribunal by way of an OA No. 278 of 2000 for grant of Temporary Status. The Tribunal vide order dated 6th September, 2001 directed the applicants to make individual representation and the respondents were directed to consider the case of the applicants after scrutinizing all the available and relevant records. A Committee was constituted as per the direction in O.A. No.278 of 2000. The Committee found that none of the applicants completed 240 days in any year. Therefore, their claim for grant of Temporary Status was rejected by the respondents. The present Original application is against that order.

2. Mr. S.Sarma, learned counsel for the applicants pointed out that the Committee made numerous discrepancies in verifying the individual particulars of the applicants. In some cases it reveals that some of the applicants have been shown to be paid Rs.200/- per day and in some cases the applicants have been paid Rs.50/- per day. Their entitlements were not uniform. Mr.A.K.Chaudhuri, learned Addl.C.G.S.C. for the respondents has agreed to re-examine the entire records of the applicants.

22
3. In the circumstances, the respondents are directed to thoroughly scrutinize all the records of the applicants for regularization by a responsible Committee. This exercise should be completed within four months from the date of receipt of this order.

The application is accordingly disposed of. No order as to costs."

14. The counsel for the applicants submitted that they are amenable to such recourse since many of the applicants in the said OA were granted the benefit by such Committee. In the interest of justice, this Court is of the view that such a responsible Committee may be constituted by the respondents with senior officials for the purpose and the said Committee shall scrutinize the available records of the applicants, as per directions in OA 336/04 and if requested, by giving a personal hearing to each individual and consider the case individually and pass appropriate orders and communicate the same to the applicants within a reasonable period, in any case within four months from the date of receipt of this order.

15. The OAs are disposed of with the above directions. No order as to costs.

Sd/ VICE CHAIRMAN

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 262 of 2006

BETWEEN

Suren Ramsiary & Ors. Applicants.

AND

Union of India & ors. Respondents.

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 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 the applicants have not been provided with 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. 262 of 2004

BETWEEN

Shri Suren Ramchiary & Ors. Applicants.

AND

Union of India & ors. Respondents.

I N D E X

Sl.No. No.	Particulars	Page
1.	Application	1 to
2.	Verification	
3.	Annexure-1	
4.	Annexure-2	
5.	Annexure-3	
6.	Annexure-4	
7.	Annexure-5	

Filed by : *[Signature]* Regn.No.:
File : WS7/SUREN Date : 26/10/06

Filed by:-
The Applicants
through
Bondana Devi
Advocate
20/10/06

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH : GUWAHATI

(An application under section 19 of the Central Administrative
Tribunal Act.1985)

O.A. No. 262 of 2006

Between

1. Shri Suren Ramchary,
2. Sri Ratan Boro
3. Sri Mizing 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 Alipurduwar
Division, N.F.Railway.

... Applicants.

- AND -

1. 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)
Alipurduwar Division, N.F.Railways,
Alipurduwar.

..... Respondents

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- 2 -

26

DETAILS OF APPLICATION

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

This application is directed against the inaction on the part of the respondents in ignoring the cases of the applicants towards granting the benefit of regularisation in terms of the policy decision adopted by them, whereas under the same fact situation persons similarly situated have been granted the said benefit.

This application is also directed against identical impugned orders dated 10.2.06 rejecting the claim of the applicants as well as other connected orders in this regard.

2. JURISDICTION

The applicants declare that the subject matter of the application is within the jurisdiction of this Hon'ble Tribunal.

3. LIMITATION

The applicants further declare that the application is filed within the limitation period prescribed under Section 21 of the Administrative Tribunal Act, 1985.

4. FACTS OF THE CASE

4.1. That the applicants are citizens of India and

permanent residents in the State of Assam and as such they are entitled to all the rights, protections and privileges guaranteed under the Constitution of India. The applicants mostly belong to the Scheduled Caste and Scheduled Tribe Community and as such they are entitled to the Special privileges guaranteed under the Constitution of India & the laws framed thereunder.

The applicants are all Ex-casual Labourers and their grievances, subject matter and the relief sought for in this application are similar in nature. Therefore, the applicants crave leave of the Hon'ble Tribunal to allow them to join together in a single petition, invoking its power under Rule 4(5) (a) of the Central Administrative Tribunal (Procedure) Rules, 1987.

4.2. That the applicants on being selected were engaged by the Respondents as Casual Mazdoors. The applicants joined their duties on various dates and discharged the responsibilities entrusted to them to the best of their ability and without blemish from any quarter. During their services under the Respondents, the applicants acquired the eligibility for conferment of the benefits of Temporary status as well as other benefits admissible under the law.

4.3. That the applicants who belong to the most economically backward sections of the society, discharged their duties under the Respondents without any blemish and

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- 4 -

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from the earning so derived by them they some how managed to maintain their families. Poised thus, the applicants were discharged from their respective services on different dates by the Respondents. The applicants who did not know about their rights and the protections available to them against the arbitrary action on the part of the Respondents, could not protest against the same. The modus operandi adopted by the Respondents was that the applicants were verbally asked not to come to work and no written orders were issued in this connection. Even after discharge from their services, the applicants continued to serve under the Respondents in various projects launched by the authorities. This was done only to frustrate their future claim of regularisation.

4.4. That your applicants state that a procedure is in vague in the Railways wherein a live Register is maintained incorporating therein the names of all casual Mazdoors in order of seniority. Names of discharged employees also find place in the said register and future vacancies in Grade-D posts are filled up from this live Register and the persons whose names figured in the said Register is to be given preference. By virtue of their services under the Respondents the names of the applicants also must figure in the Live/Supplementary Register.

4.5. That your applicants state that upon pressure being mounted upon the Respondents by various organizations engaged in fighting for the rights of the applicants and the repeated pleas made by few of the applicants and similarly situated persons, the respondents in order to clear the back

2

log of SC/ST in Group 'D' vacancies initiated a special recruitment drive . As directed, the applicants preferred individual applications expressing their willingness for being considered and for being appointed against any Group-IV post. Basing upon the applications so received a list of such persons was prepared. In the said list the service particulars of the persons concerned were also furnished. Further a supplementary list was prepared wherein the names of the applicants and their service particulars were mentioned. Mere perusal of the statement showing the service particulars of the applicants would go to show that the applicants had the requisite number of working days entitling them to the benefits of Temporary status and regularisation.

A copy of the said statement is annexed hereto as Annexure-1.

4.6. That the respondents on receipt of the representations from the applicants as well as from the organisations/Union espousing their cause decided to regularise the services of casual workers including the present applicants. The railway administration to that effect issued instructions to all its wings for furnishing necessary information regarding absorption of the applicants and other similarly situated persons against the available Group-D vacancies. In this connection it will not be out of place to mention here that in response to such a move/decision the Divisional authorities of various wings of the Railways started collecting data and furnished the same

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to the concern authority. In this connection communication dated 13.2.95 may be referred to wherein the Divisional Railway Manager (P), Alipurduwar, while indicating the vacancies available, sought for particulars from the concern authority. After verification and cross verification of the records pertaining to the service rendered by the said persons, the office of the Respondent No.2 vide letter under Memo No.E/57/CON/(SC/ST) dated 24.4.95 confirmed the service particulars of all the person referred to it, which includes the applicants.

The applicants crave leave of this Hon'ble Tribunal to place the said communications at the time of hearing of the case.

4.7. That after the aforesaid development, the office of the Respondent No.2 vide letter dated 4.8.95 addressed to the DRM(P), APDJ furnished the full service particulars of the ex-casual labourers (ST/SC) as indicated in the enclosed proforma. As regards the General Manager's approval, it was stated that the case was under scrutiny. The applicants further submitted that their names figured amongst the 120 Nos of persons in the said list and the services of the applicants who worked in the Construction organization having also been approved they were under the legitimate expectation that necessary approval of the General Manager, N.F.Railways would be obtained as regards their initial appointments. The Respondent No.3 vide his letter dated 8.8.95 requested the Respondent No.2 to obtain personal

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- 7 -

31

approval of the G.M., N.F.Railway as regards the Ex-Casual Labourers who served in the Construction Organisation.

The applicants crave leave of this Hon'ble Tribunal to place the said communications at the time of hearing of the case

4.8. That after confirmation of their service particulars, the only hindrance in regularisation of their services was the approval (Ex-post facto) of the G.M., N.F.Railways. At the relevant point of time Ex-post facto approval was accorded to persons similarly situated like the applicants. The services of persons similarly situated like the applicants having been granted Ex-post facto approval, there existed any earthly reason for not according the same to the applicants and for absorbing them against the vacancies available in Grade 'D' posts. Be it stated here that sufficient number of vacancies exist under the respondents against which the applicants can be easily accommodated.

4.9. That after verification and cross verification the office of the Respondent No.2, confirmed the service particulars of the persons referred to them. As the names of the applicants were not forwarded to the said wing they were denied of opportunity of having their service particulars confirmed and thereby have lost the opportunity of being considered for appointment on regular basis, whereas similarly situated persons got their appointments.

4.10. That your applicants state that the service particulars of similarly situated persons were confirmed by the Respondent No.2 and their cases were processed for grant of Ex-post facto approval by the General Manager. The applicants were assured that the same process would be initiated in their cases shortly. Basing on the assurances given to them from time to time the applicants were under the legitimate expectation that their cases for appointment on regular basis would be processed shortly by the respondents.

4.11. That your applicants state that the Respondents having utilised their services, now can not deny to them their due service benefits. It is not understood as to why a differential treatment is being meted out to the applicants as regards grant of approval to their initial appointment. The list wherein the names of the applicants figured having been verified and the service particulars of the candidates having been stated to be confirmed, there exists no reason for not granting the due benefits to the applicants.

4.12. That on the back drop of the said facts, number of the Ex-casual labourers who were similarly situated like the applicants approached this Hon'ble Tribunal by way of an O.A. being O.A. No.79/96 inter alia praying for a direction for their absorption against the back log vacancies available for SC/ST candidates. This

Hon'ble Tribunal upon hearing the parties was pleased to

Signature

dispose of the said Original Application with a direction to the Respondents to consider the cases of the applicants, thereto and to take a decision as regards their appointment within the time limit specified therein.

4.13. That your applicant states that the applicants in O.A. 79/96 preferred representations as directed but the same were not attended to. But ultimately the Respondents in the month of December, 1999 issued call letters to persons similarly situated like the applicants on pick and choose basis, for attending a Screening for absorption against a Group 'D' posts. But the applicants whose names were also figured in the said list were not issued with any call letters and were kept in dark about the said process. The whole exercise was carried out behind the back of the applicants.

4.14. That your applicant states that although they are similarly situated with the applicants in the O.A. 79/96 their case were not considered in the Screening held and as such they were deprived of an opportunity for consideration of their cases for appointment on regular basis under the respondents. The persons who were called for screening, were selected for appointment against Grade 'D' posts vide memorandum dated 21.4.2000. Be it stated here that amongst the persons so selected include persons who had joined their services under the respondents along with the applicants and/or were junior to the applicants and as such the applicants were discriminated in the matter of public

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employment.

4.15. That your applicant states that the persons screened and selected vide memorandum dated 21.4.2000 were appointed against vacancies available in Group 'D' posts and for this necessary post facto approval was also granted by the G.M., N.F.Railways. But the applicants who were similarly situated were deprived of this benefit.

The applicants crave leave of this Hon'ble Tribunal to produce the said memorandum dated 21.4.2000 at the time of hearing of the case.

4.16. That the applicants on coming to learn about the deprivation being meted out to them as regards their appointment, took up the matter with the All India Scheduled Caste and Schedule Tribes Railway Employees Association, who in turn brought the deprivation being meted out to the applicants before the National Commission for SC and ST. The organizations thought for the rights of the applicants in the National Commission for SC and ST. The organizations fighting for the rights of the applicants, have all along been requesting the respondents to take steps for appointing all the Ex-casual labourers on regular basis. Be stated here that the names of the applicants were also recommended and submitted by the organizations fighting for the rights of the applicants.

4.17. That your applicants state that in spite of repeated requests from the organizations involved for

Summary

- 11 - 35

getting justice to the applicants, the Respondents have failed to take any action for considering the cases of the applicants in tune with the consideration done in case of 49 similarly situated persons. Due to discriminatory attitude adopted by the Respondents the applicants continued to suffer.

4.18. That your applicants state that there is no dispute as regards 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 posts, it was incumbent upon the respondents to take necessary steps for considering the cases of the applicants for such appointment. The pick and choose method adopted by the respondents in this connection has resulted in the applicants being discriminated in the matter of public employment.

4.19. That pending consideration of the case of the applicants, the Respondents have issued an advertisement inviting application from fresh candidates for filling up vacant post of Track man, under a special recruitment drive for SC & ST. A total of 595 vacancies have been advertised. The applicants who are ex-casual labourers are entitled to preference in matters of appointment. The Respondents ought to have first cleared the list of Ex-casual labourers and thereafter are required to consider the case of fresh candidates.

A copy of the said advertisement is annexed hereto as Annexure-2.

4.20. 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.44/02, 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 dispose 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. But the respondents without applying their mind have rejected the claim of the applicants vide identical orders dated 18.3.04.

The applicants crave leave of this Hon'ble Tribunal to produce the said orders at the time of hearing of the case.

4.21. That the applicants beg to state that the method which has been adopted at the time of disposing of the representations filed by the applicants is not at all sustainable and liable to be set aside. The Respondents at the time of disposing of the representations of the applicants only took into consideration the signature of the officer on the records not the service particulars. Since the records contained the identity cards along with photograph and the statements/biodata was in order, so the respondents should have taken into consideration the photograph of the applicants and must give personal hearing as well as the data which were tallying with the original records.

4.22. That assailing the legality and validity of the aforesaid impugned action, the present applicants preferred Original Applications before the Hon'ble Tribunal which was registered and numbered as OA No. 337/04. The Hon'ble Tribunal after hearing the parties to the proceeding was pleased to allow the said OA vide common judgment and order dated 19.7.05 directing the respondents to consider the cases of the applicants afresh towards regularisation of their services within a period of four months from the date of receipt of the order.

A copy of the said judgment and order dated 19.7.05 is annexed herewith and marked as Annexure-3.

Signature

4.23 That the applicants beg to state that the Hon'ble Tribunal, while addressing the issue regarding the genuineness of identity card as well as the defence advanced on behalf of the railway administration in their pleadings including the records, made an observation that it was the railway administration who maintain the records at the same time as controverting the genuineness of the same. For better appreciation of the factual aspect of the matter the observation made by the Hon'ble Tribunal is quoted below.

"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 of 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 discussing with the relevant organization the letter is sent along with Xerox copies of the "Casual Labour Live Register" for suitable and

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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 bold statements.

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 held and extracted hereinabove and to take a decision in the case of

Summary

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 (Annexure-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 of merits as directed hereinabove."

4.24. That the applicants beg to state that the Hon'ble Tribunal as stated above while discussing the entire matter directed the railway authority to consider the cases of the applicants ignoring the identity cards and were directed to take into consideration the Xerox copy of the live register maintain by them while verifying the cases of the applicants.

4.25. That the applicants immediately after the pronouncement of the aforesaid judgment dated 19.7.05 submitted representations before the concern authority but there was no response from the railway administration towards disposal of the said representation. Having no other alternative the applicants had to approach the Hon'ble Tribunal once again by filing CP No.36/05 (OA No.337/04). During the pendency of the contempt petition the contemnors submitted their reply enclosing a copy of one of the identical impugned orders dated 10.2.06 rejecting the cases of the applicants. The Hon'ble Tribunal after hearing the parties also going through the said order dated 10.2.06

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- 17 -

closed the aforesaid contempt petition vide judgment and order dated 10.3.06.

Copies of one of such identical impugned order dated 10.2.06 and the judgment and order dated 10.3.06 are annexed herewith and marked as Annexure-4 and 5.

The applicants crave leave of this Hon'ble Tribunal to produce the impugned orders in respect of other applicants at the time of hearing of the case.

4.26. That the applicants beg to state that the respondents while issuing the impugned order dated 10.2.06 rejected the claims of the applicants. The respondents took into consideration the authenticity of the identity cards as well as live register of casual workers. The said grounds were taken by the respondents in OA No. 337/04 and those ground having been said to be unfounded by the Hon'ble Tribunal in its judgment and order dated 19.7.05, the respondents ought not to have reiterated the same stand. It is noteworthy to mention here that the respondents against the judgment and order dated 19.7.05 have not preferred any appeal/Writ petition and as such by operation of law same attained its finality and it is not open for the respondents to reiterate the same. In this contention it will not be out of place to mention here that the law is well settled that if a judgment passed by a competent Court of law is not

- 18 -

72

assailed, same attains its finality and it operates as Res-judicata between the parties.

4.27. That the applicants beg to state that the respondents by the aforesaid impugned order dated 10.2.06 virtually made an attempt to rewrite the judgment and order dated 19.7.05 for which they are liable for severe punishment. Apart from that the judgment and order dated 19.7.05 having not been assailed same attained its finality and same is binding on the railway administration. In the judgment and order dated 19.7.05 in para 6 the Hon'ble Tribunal while evaluating the statements made by the applicants as well as the counter statements made by the respondents and the records, observed that the stand taken by the railway regarding authenticity of the record is totally baseless and on that background of the case in para 8 of the said judgment the Hon'ble Tribunal directed the railway administration to examine the cases of the applicants taking into consideration the Xerox copy of the casual labour live register ignoring the identity cards. The Hon'ble Tribunal vide its aforesaid judgment dated 19.7.05 also rejected the earlier impugned orders dated 18.3.04. It is noteworthy to mention here that the contention of the impugned orders dated 10.2.06 is nothing but the reiteration of the impugned orders dated 18.3.04 and as such same are not maintainable in the eye of law and required to be set aside and quashed.

4.28. That the applicants beg to state that there is no dispute as to the genuineness of the bio-data of the

applicants and same having been verified to be correct therefore the respondents ought not to have issued the impugned orders dated 10.2.06 which is violative of the direction and observation made in the judgment and order dated 19.7.05.

4.29. 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-2 advertisement till date.

4.30. That this application has been filed bonafide for securing the ends of justice.

5. GROUND FOR RELIEF WITH LEGAL PROVISIONS

5.1. For that the action of the respondents in passing the impugned order dated 10.2.06 is illegal, arbitrary and violative of natural justice, hence same is liable to be set aside and quashed.

5.2. 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 of genuineness is not at all sustainable in the eye of law as

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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 quashed.

5.3. For that the impugned action on the part of the authorities in denying to the applicants their due appointments is in clear violation of the judgment and order passed by the Hon'ble Tribunal as well as the Principles of Natural Justice in addition to being arbitrary, illegal and discriminatory. The respondents while passing the impugned order have virtually nullified the judgment and order passed by the Hon'ble Tribunal. The judgment and order passed by the Hon'ble Tribunal having attained its finality, the respondents ought not to have interfered with by passing the impugned order.

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

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

5.6. For that similarly situated persons having already

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been considered for appointment and the applicants also being similarly placed cannot be deprived of an opportunity of consideration of their services.

5.7. 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.

6. DETAILS OF REMEDIES EXHAUSTED:

The applicants declare that they have no other alternative and efficacious remedy except by way of filing this application.

7. MATTERS NOT PREVIOUSLY FILED OR PENDING BEFORE ANY OTHER COURT:

The applicants further declare that no other application, writ petition or suit in respect of the subject matter of the instant application is filed before any other Court, Authority or any other Bench of the Hon'ble Tribunal 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 prays that this application be admitted, records be called for and notice be issued to the Respondents to show cause as to why the reliefs sought for

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in this application should not be granted and upon hearing the parties and on perusal of the records, be pleased to grant the following reliefs:

8.1. To set aside and quash the impugned order dated 10.2.06 as same is violative of natural justice and not sustainable in the eye of law.

8.2. To direct the Respondents to appoint the applicants against Group-D posts as has been done in case of similarly situated employees.

8.3. To direct the respondents to keep 14 posts vacant till consideration for appointment of the applicants.

8.4. Cost of the application.

8.5. 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-2 advertisement without first considering the cases of the applicants till finalization of this OA.

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10.

The application is filed through Advocate.

11. PARTICULARS OF THE I.P.O.

- (i) I.P.O. No.: 03 882449
- (ii) Date: 23-10-06
- (iii) Payable at: Guwahati

12. LIST OF ENCLOSURES:

As stated in the Index.

48

- 24 -

VERIFICATION

I, Shri Suren Ramchiary, aged about 33 years, Son of S.Ramchiary, presently residing at Maligaon, in the district of Kamrup, Kamrup, do here by solemnly affirm and state that the statement made in this petition from paragraph 4.2 - 4.3 , 4.16 , 4.17 , 4.29 _____ are true to my knowledge and those made in paragraphs 4.4 - 4.15 , 4.18 - 4.28 _____ are matters records of records information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

I am the applicant No 1 in the present application and well acquainted with the facts and circumstances of cases and I have been authorised by the other two applicants to swear this verification.

And I sign this verification on 26th day of Oct..
2006.


Signature

The left-over name from (120) & (58) Ex. Casual lists of SC & ST Candidate with old serial Nos. & Biodata

Sl. No.	Old Sl. No.	Name	Father's Name	Date of birth	Dt. of engagement	Dt. of Discharged	Address
I	II	III	IV	V	VI	VII	VIII
1.	61	Sri Suren Ramchiary	S. Ramchiary (ST)	22-01-63	27-03-84	07-01-86	C/O N.C Basumatary Vill.- Namanigaon P.O.- Rangapara, Dist.- Sonitpur, Assam
2.	75	Sri Ratan Boro	Jamuna Boro (ST)	01-02-66	02-04-84	31-12-86	Vill.- Natun Ghatuwa P.O.- Phuluguri Dist.- Sonitpur, Assam
3.	83	Sri Mizing Brahma	H. Brahma (ST)	03-05-66	13-06-85	31-12-86	Vill.- No.2 Phul Somoni P.O.- Gelapukhuri, Dist.- Sonitpur, Assam
4.	92	Sri Rajit Brahma	Karuna Brahma (ST)	01-10-66	05-01-85	31-08-85	Vill.- No. 2, Kailajuli P.O.- Dop- Dopi Via.- Rangapar Dist.- Sonitpur, Assam
5.	95	Sri Jaidev Swargiary	Pamal Swargiary (ST)	27-03-65	01-07-85	31-01-86	Vill.- Padampukhuri P.O.- Badeti Dist.- Sonitpur, Assam
6.	97	Sri Naren Ch. Basumatary	Agan Ch. Basumatary (ST)	25-02-66	07-05-85	31-08-86	C/O H. Boro Vill.- Rangapara, N. Colony223 P.O.- Rangapara Dist.- Sonitpur, Assam
7.	101	Sri Raj Kumar Mandal	Radha Krishna Mandal (ST)	20-05-67	01-02-85	31-12-86	C/O Sri Dilip Kr. Ghosh Ward No.2 Loco colony P.O.- Rangapara Dist.- Sonitpur, Assam
8.	102	Sri Biren Baishya	Baga Ram Baishya (SC)	10-11-66	03-05-85	31-12-85	C/O L.R. Boro Madhabdev nagar P.O.- Maligaon, Ghy-11 Dist.- Kamrup, Assam

*Attended
Biri
Advocate*

9.	103	Sri Angat Das	Rupen Das (SC)	15-03-67	03-05-85	31-10-85	C/O Krishna Dutta Rly. Market, Ward no.-2 P.O.- Rangapara Dist.- Sonitpur, Assam
10.	104	Sri Radhe Shyam Mandal	Harekrishna Mandal (SC)	15-03-67	01-03-85	31-12-85	C/O Haricharan Sutradhar Hindugaon, Ward No.-2 P.O.- Rangapara Dist.- Sonitpur, Assam
11.	108	Sri Manilal Narzary	Debu Ram Narzary (ST)	02-09-66	30-06-85	30-06-86	Vill.- Padampukhuri P.O.- Badeti Dist.- Sonitpur, Assam
12.	110	Sri Swargo Boro	Dina Ram Boro (ST)	02-02-66	27-03-84	21-06-86	Vill.- Simaluguri P.O.- Khilikhaguri Dist.- Sonitpur, Assam
13.	111	Sri Ramesh Ch. Boro	Dina Ram Boro (ST)	01-01-66	27-03-84	21-06-86	Vill.- Simaluguri P.O.- Khilikhaguri Dist.- Sonitpur, Assam
14.	25	Sri Biren Baishya	Daya Ram Baishya (SC)	25-03-68	03-05-86	31-12-87	C/O Biraj Das Vill.- Rangapara, Garden Colon P.O.- Rangapara Dist.- Sonitpur, Assam
15.	114	Sri Jogendra Pasi	Sacheda Pasi (UR)	03-02-67	21-07-75	15-11-75	Vill.- Alipurduar Jn. Rly. Qr. No. 368/B P.O.- Alipurduar Jn. Dist.- Jalpaiguri, N. Bengal
16.	115	Sri Ramji Das	Sundar Das (SC)	21-04-67	21-07-75	15-11-75	Vill.- Santicolony, Near SC/ST office P.O.-Alipurduar Jn. Dist.- Jalpaiguri, N. Bengal
17	69	Sri Naren Ch. Boro	Phani Ram Boro (ST)	05-03-68	10-04-86	15-05-87	Vill.- Silikhabari Via Thelamar P.O.- Silikhabari Dist.- Sonitpur, Assam

Recruitment Drive for Scheduled Caste & Scheduled Tribe Candidates

Office No. NFR-2/2001

Category No. 01

Closing Date: 23 Nov. 2001

Invited from eligible SC and ST candidates for filling up of 695 posts of Trackman in N.F. Railway. The recruitment is for 4 (FOUR) DIVISIONS OF N.F. RAILWAY, I.E. TINSUKIA, LUMDING, ALPURDUW, KATHAR.

Read the entire notification carefully before filling up the application form.

AN TEST SHALL BE CONDUCTED ON SAME DAYS FOR ALL FOUR DIVISIONS MENTIONED BELOW. HENCE CANDIDATES MUST SEND APPLICATION TO ONE OF THE FOLLOWING DIVISIONS ONLY AS PER THEIR CHOICE.

Each candidate applies to only one division. Number candidate is liable to be cancelled.

Special drive for filling up of SC/ST backlog vacancies (Total number: 688)

Division	Category of Post	Total number of vacancies	Breakup of Vacancies		Address for sending application
			SC	ST	
Tinsukia	Trackman Khalsai	112 2	67 1	65 1	Divisional Railway Manager (Personnel) N.F. Railway, Kathar, Bihar, Pin-854105
Lumding	Trackman Khalsai	144 35	68 11	86 24	Divisional Railway Manager (Personnel) N.F. Railway, Lumding, Assam Pin-782447
Alpurduw	Trackman Khalsai	130 12	37 6	93 6	Divisional Railway Manager (Personnel) N.F. Railway, Alpurduw, West Bengal, Pin-730123
Tinsukia	Trackman	140	67	83	Divisional Railway Manager (Personnel) N.F. Railway, Tinsukia, Assam, Pin-786125
Total		526	237	358	

At Tinsukia: SC-Scheduled Caste, ST-Scheduled Tribe.

Note: (1) The number of vacancies given is provisional and may increase or decrease as per requirement of the Railway. The Railway will not be responsible for any loss suffered by the candidate due to reduction of vacancies.

(2) The Administration reserves the right to hold separate, additional/supplementary or re-examination for all or some of the candidates.

(3) Application will be accepted at N.F. Railway Headquarters Office.

2. Scheme for Recruitment

(a) Recruitment process shall be in three stages:

(i) Objective type written examination (Preliminary Test)

(ii) Objective type written exam (Final Test)

(iii) Physical efficiency test.

Successful candidates who come through the two stage written test will be subjected to physical efficiency test to assess candidates fitness for the post.

(However, the procedure is liable to change without any further notice)

The medium for these examinations shall be Hindi and/or English.

THE WRITTEN EXAMINATIONS AND PHYSICAL EFFICIENCY TEST SHALL BE HELD AT THE DIFFERENT PLACES WITHIN THE JURISDICTION OF N.F. RAILWAY ONLY.

3. Job Requirement: The post of Trackman is basically meant for the maintenance of Railway track. The job entails lifting of heavy rails and working with spade, sickle, beater steel, bar-crow, etc. based on the P.W. for the upkeep of track, bridges and other track features.

The post of the Trackman will be in the remote areas of Divisions. The nature of job is arduous and requires a high level of physical fitness for efficient discharge of duties.

4. Basic requirements of physical fitness and job conditions are also applicable in case of Khalsai, as per Order No. 2010-00-3150-85-3540/- plus usual allowances as per the prevailing rates for Trackman.

As per Order No. 2550-00-2600-00-3200/- plus usual allowances as per the prevailing rates for Khalsai.

5. Minimum Academic Qualification:

(a) VI pass from recognized educational institution.

(b) Possession of degree School Certificate will disqualify the candidate.

(c) Age as on 01.09.2001

(d) Age limit: 18 to 23 years.

(e) Existing Railway Employee:

(i) Have put in 3 years continuous service including Casual Labour and Substitutes)

(ii) Age limit: 18 to 23 years.

(iii) Application should be sent through the cadre controlling authority.

Physical Standard:

(a) Candidate must possess sound body health and physical fitness to do hard work as indicated in the requirement, anywhere and at any time throughout the year. The physical efficiency test will include lifting weight of 40 kg and ability to run with the weight for a distance of 100 m within prescribed time.

(b) Physical Standard:

(i) Candidates selected in order of merit and as per existing reservation rules, will be put through medical examination to assess their fitness.

(ii) Type of Post: (a) For Khalsai and (b) For Trackman and Khalsai

(c) Place of posting: They can be posted within the jurisdiction of the divisions of N.F. Railway, wherever they are & the station anywhere on N.F. Railway.

(d) Payment of examination fee/postal expenses:

Examination Fee:

(i) SC/ST candidates: Rs. 10.00 (only postal charges)

(ii) Mode of Payment: Crossed Indian Postal Order(s) drawn in favour of FA&CAO/N.F. Railway. The postal order(s) should be payable at (Guwahati). Candidates must write their name, full address and place provided in the Postal Order(s). The date of issue of Postal Order(s) must not be prior to the date of issue of the Employment Notice. Postal Order without the seal from the issuing post office will not be accepted and their candidature will be rejected. Payment in any other form will not be accepted and the application will be summarily rejected.

(iii) How to apply:

(a) The candidate should apply to the Divisional Railway Manager (Personnel) of the Division according to the choice as per application form given at Annexure 'A' on good quality plain paper of A-4 size.

(b) All entries in the application form should be duly filled in blue/black ball point pen, in case any entry is not applicable for a candidate, 'Not applicable' (NA) should be written against that column.

(c) The postal address of the candidate with pin code for communication with the name of the nearest Railway Station and Permanent address must be given.

(d) Candidates must sign in Hindi (and not in English) in different places on the application form as indicated therein and not merely write their names in block capital letters in signature column.

(e) Style and language (English or Hindi) of signature on the upper portion of Admit Card, Answer

Sheet and language (English or Hindi) of signature on the upper portion of Admit Card, Answer

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Sheet and language (English or Hindi) of signature on the upper portion of Admit Card, Answer

6. The last date and time of receipt of application is 23.11.2001 (5.00 p.m.) and it will not be extended on any account. Applications received after the closing date and time will be summarily rejected.
6. Application should be filled in by the candidate in his or her own handwriting only.
7. If more than one application is received in one envelope of the applications will be rejected.
8. Candidates who are working in any government department or public sector undertaking should send their application through their department and they should also submit 'no objection certificate' along with the application.
9. Envelope containing the application and its enclosure should be addressed to the Divisional Railway Manager (Personnel) at the concerned division according to the choice of the candidate superseding the words "Application in response to Employment Notice No. NFR-2/2001 (Special Recruitment Drive for SC/ST)" on the top left side of the envelope.
10. Enclosures:

The following enclosures should be properly stapled/attached along with the application:

(A) Copies of certificates in regard to academic qualification, proof of age, caste, mark sheet must be attached by any of the following authorities and enclosed along with application. Particulars given on the back of the mark sheet/certificates should also be photocopied and submitted.

(1) Members of Parliament or Members of Legislative Assembly.

(2) District Officers of Central or State Government.

(3) Tahsildars or Nayab/Dy. Tahsildars authorized to exercise Magistrate Powers.

(4) Principals or Head Masters of all recognized educational institutions.

(5) Three recent passport size photographs of the applicant with full signature on the front of the photographs, one of which should be pasted in the space provided in the application form and the other two stapled/attached with all enclosures.

(C) SC and ST candidates must attach caste certificates in prescribed format issued by the competent authority. (Format of certificate for SC/ST is given at Annexure-B)

14. Notes:

(A) Necessary certificates/testimonials/documents must be in English or Hindi. If it is not so, the exact translation of the same typed in English/Hindi and attested by any of the authorities mentioned at- 13.10. (A) above should be produced.

(D) A candidate who submits any forged certificate for securing eligibility shall be liable not only for rejection of his candidature for this particular recruitment but he will be rebuffed from appearing in any examination conducted by any zonal railways/Railway Recruitment Boards and will also be liable for legal action.

(C) Candidates' final appointment will be made based on verification of the Caste Certificate etc.

(D) The decision of the Divisional Railway Manager (Personnel) of the divisions in all matters relating to eligibility of candidates, allotment of examination centres and any other matter related to recruitment shall be final and binding on the candidates and no enquiry or correspondence will be entertained in this connection.

(E) N.F. Railway shall invite only those found eligible to appear in the written test and subsequent stages of selection. It does not undertake any responsibility for sending reply to the candidates not selected or not called for written/physical efficiency test etc.

(F) N.F. Railway is not responsible for any postal delay and wrong delivery etc.

(G) The number of vacancies shown in this employment notice is provisional and may increase or decrease according to exigencies.

(H) Candidates trying to use unfair means or canvassing in any form will be disqualified and their candidature will be cancelled without any notice.

(I) Impersonation or misbehaviour in the examination hall will render the candidate disqualified.

(J) Railway Administration reserves the right to hold any re-examination or additional examination/physical efficiency test/interview.

(K) For any legal action arising out of this employment notice the jurisdiction shall be CAG/Guwahati only.

(L) Do not buy the form from any person or agency as nobody has been authorized to sell forms.

(M) Railway administration is not responsible for any inadvertent error in the advertisement and will not be held for any postal delay or wrong delivery.

Dy. Chief Personnel Officer (O&A) & Controller of Recruitment

Attachment-A

APPLICATION FORMAT

(To be filled by the candidate in his/her own handwriting)

* Community

(SC/ST)

** Division for which applied

* SC-Scheduled Caste; ST-Scheduled Tribe

** State choice for one Division only out of 4 Divisions i.e. Alpurduw, Kathar, Lumding & Tinsukia. (Indicate your District and State according to present address)

DISTRICT

STATE

Signature and photograph of the candidate

1. I do hereby apply for recruitment to Group 'D' post in _____ Division of N.F. Railway in response to Employment Notice No. NFR-2/2001 CATEGORY NO. 01.

2. Name of the candidate:

3. Father's Name (Giv/Lale):

4. (i) Date of Birth (In Christian Era)

Date

Month

Year

(ii) Age as on 1.9.2001:

Year

Month

Days

(iii) If you claim age relaxation, I state the reason thereof.

(Documentary proof to be attached)

6. Full Postal Address for communication: (In capital letters):

Name _____
Co. _____
Road/Lane _____
Village _____
Post Office _____
Dist. _____
Pin _____
State _____

6. Nearest Railway Station

Over

Station

Signature of the candidate

Attended
Advocate

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.

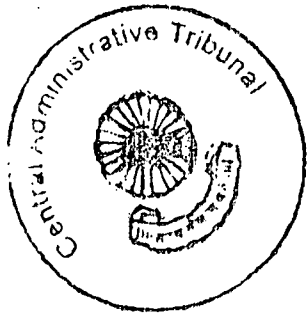
THE HON'BLE MR. K.V. PRAHLADAN, ADMINISTRATIVE MEMBER.

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

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

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

1. Shri Suren Ramchiary - 31
2. Sri Ratan Boro - 30
3. Sri Mizing Brahma - 32
4. Sri Rajit Brahma - 32
5. Sri Jaidev Swargiary - 34
6. Sri Naren Ch. Basumatary - 38
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 - 10
14. Sri Biren Baishya



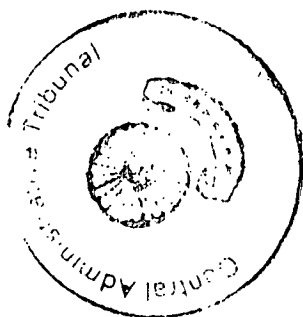
Attested
By
Advocate

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

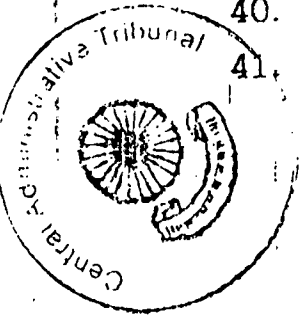
All ex-casual labourers in the Alipurduar
Division, N.F. Railway.

..... 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 4
8. Sri Durga Ram Daimary - 2
9. Sri Sanjit Boro
10. Shri Khargeswar Swargiary
11. Sri Pradip Kr. Boro
12. Sri Upen Narzary - 1
13. Sri Tarun Ch. Boro
14. Sri Ramesh Ch. Ramchairy
15. Sri Monoranjana Deori
16. Sri Ram Nath Pathak - 7
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 - 6
28. Sri Bipin Ch. Boro
29. Sri Nepolin Lahary
30. Sri Rajen Lahary



32. Sri Suren Daimary
33. Sri Raju Boreh
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 - 3



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.A.s.

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

31-
4
ORDER (ORAL)

SIVARAJAN, L.(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.

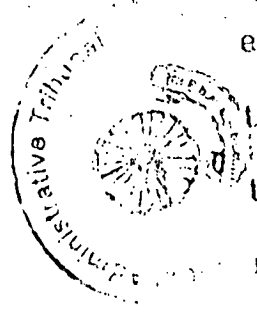
[Signature]

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

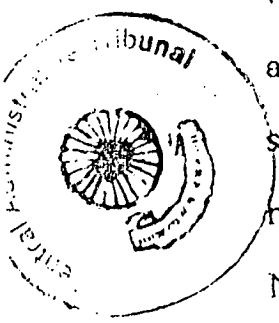
57

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



9/2

59

8

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 extent 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 46 surplus ex-casual labours had to be re-engaged and therefore after

9 -36-

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 bold statements.

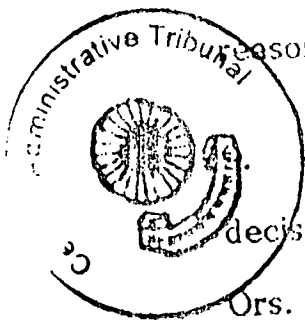
Now, coming to the matter on merits the respondents are in possession of records (xerox copies of the live register) containing the details of the applicants. Of course some of the applicants do not find a place in the said records also. In respect of applicant no.1 in O.A.336/2004 the earlier written 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 respondent 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 in want of vacancy within the panel period."

GA

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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 extracts 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.~~



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

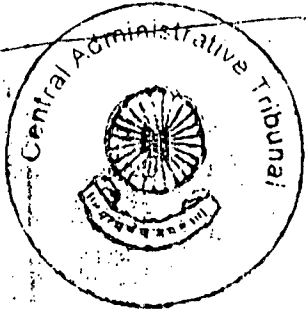
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before the authorities, in the above circumstances, was repelled. The said decision is not applicable in the instant case for the reason that there are necessary averments in the representation filed by the applicants and necessary materials are also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

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)



TRUE COPY
प्रतिप्रति

11/8/05
अनुभाग अधिकारी
Section Officer (Judl)
Central Administrative Tribunal
गुवाहाटी-५
GUWAHATI-5.

N.F.RAILWAYREGISTERED WITH A/D

Office of the
General Manager/Con,
Maligaon, Guwahati-11
Dated: 10-02-2006

No.E/63/CON/I/Loose

ORDER

WHEREAS, in the year 1987, Railway Board vide letter No.E(NG)II/28/CL/2 dated 4.3.1987 provided the opportunity to call ex-casual labourers engaged with the NF Railway for enlistment of their names in the Supplementary / Live Casual Labour Register. For the aforesaid purpose all the Ex-casual labourers were asked to submit application within 31.3.1987, so that their cases can be examined and considered by the Administration.

WHEREAS, in the year 1998 Railway Board launched a special drive vide Board's letter No.(NG)II/98/CL/32 dated 9.10.1998 for regularization of all the Ex.casual Labourers borne on live/Supplementary Register against regular vacancies. As a result of the aforesaid special drive all the Ex-casual labourers were regularized.

WHEREAS, in the case of Sri **Rajkumar Mandal** it was found that there is no evidence, whatsoever, to show that Sri **Rajkumar Mandal** as during the relevant period of time., i.e **01.2.85 to 31.12.86** was engaged with the Railways as casual labour & consequently, the party never represented also before the Railway administration.

WHEREAS, it was only in the year 2002 that Sri **Rajkumar Mandal** alongwith other applicants filed **OA No.44/02** before the Guwahati Bench of the Central Administrative Tribunal. The **OA No.44/02** was disposed of by the Tribunal vide order dated 01.5.2003 with direction that the applicants may submit individual representation to the Railways within one month from the date of the order.

WHEREAS, pursuant to the aforesaid order of the Tribunal Sri **Rajkumar Mandal** submitted an application dated Nil. For General Manager/Con, the APO/CON by letter dated 18.3.2004 informed Sri **Rajkumar Mandal** that the relevant records regarding his claim of being Ex-casual labour were looked into and it was found that the genuineness of his casual labour card was not established and therefore, your claims for re-engagement is rejected.

WHEREAS, subsequently alongwith 16 other applicants Sri **Rajkumar Mandal** preferred **OA No.337/2004** before the Guwahati Bench of the Central Administrative

Attested
Sri
Advocate

10/2/06

67
Tribunal seeking absorption with Railways in Group-D post. The Tribunal disposed of the Original Application by its common order dated 19th July, 2005. The operative portion of the order is quoted hereinbelow:-

".....The respondents are directed to consider the case of the applicants ignoring the identity card and based on their own records, viz, the Xerox copy 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.... Afresh within a period of four months from the date of receipt of this order".

WHEREAS, in compliance of the order of the Tribunal the matter was reconsidered and the case of Sri **Rajkumar Mandal** was examined in detail. For the said purpose all the relevant records and materials were looked into and verified. As a result, certain shocking facts were noticed.

WHEREAS, the identity card of Sri **Rajkumar Mandal** was shown to have been issued by K.C.Choudhury as AEN/BG/CON/Bongaigaon. It is worthwhile to note that in the Identity Card the period of employment of Sri **Rajkumar Mandal** is from 01.2.85 to 31.12.86. However, during the aforesaid period Shri K.C.Choudhury was promoted and functioning as XEN/CON(Sr.Scale) and as Dy.CE/Con(JA Grade) from 8.10.87. His signature as AEN/CON/Bongaigaon during the relevant period is definitely not genuine. Moreover, the signature of Shri K.C.Choudhury as available on official records does not tally with signatures on Casual Labour Cards purported to be signed by Shri K.C. Choudhury.

WHEREAS, the records pertaining to the Live Register have also been examined. It is found that the purported Live Register of Casual Labourers was forwarded purportedly by late S.S.Ghosh as Executive Engineer/BG/CON/Bongaigaon by forwarding letter dated 5.1.89. However, the signature of late S.S.Ghosh on the aforesaid forwarding letter has been verified by other available records related to late S.S.Ghosh and there are strong reasons to believe that the signature of late S.S. Ghosh on the aforesaid forwarding letter are forged because the same do not tally with his signature on other available records, authenticity of which is doubtful. Therefore, the aforesaid forwarding letter and the Live Register of the Casual Labourers are fabricated documents and no reliance can be placed on the same.


10/2/06

- 41 -

Further, this may be noted that in accordance with the Railway Board's Circular communicated to all Zonal Railways vide No.E(NG)II/96/CL/61 dated 3.9.96 an action plan was drawn to ensure absorption of all casual labour on roll and also whose names were kept in the live casual labour register and supplementary live casual register and the entire process of which were to be completed by the December/1997 so that a position of no casual labour is achieved. To ensure the said action plan a massive drive was launched by the Railway Administration to ensure whether any casual labour was borne on live register/supplementary live casual labour register, who was earlier at any time were engaged by Railway, and to consider their cases on merits. But as per available records in this office you did not make any representation at that time to any of the competent railway authority in regard to your claim as your name was actually not available on supplementary/casual labour live register.

WHEREAS, there is no other relevant authentic material available on record by which it can be held that Sri **Rajkumar Mandal** was engaged as a casual labour with the railways at any point of time. There are reasons to believe that Sri **Rajkumar Mandal** without having been engaged as casual labourer with the Railways at any point of time, with the connivance of certain persons indulged in fabrication and forgery of records and thereafter belatedly made an attempt in the year 2002 to get a permanent job in the Railways.

For the aforesaid reasons, the case of Sri **Rajkumar Mandal** for absorption in the Railways cannot be entertained and the same is hereby rejected.


(A. Saikia)
Dy. Chief Personnel Officer/Con
N.F. Railway, Maligaon, Guwahati-11
For General Manager/Con

To
Shri **Rajkumar Mandal**,
C/o Dilip Kr. Ghosh,
Vill: Loco Colony
Ward No.2
P.O.- Rangapara
Dist: Sonitpur
PIN: 784505

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition Nos. 36/05, 37/05 & 38/05
In Original Application Nos. 336/04, 337/04 & 338/04.

Date of Order: This the 10th day of March 2006.

THE HON'BLE SHRI B.N. SETHI, VICE CHAIRMAN (A)

THE HON'BLE SHRI K.V. SACHIDANANDAN, VICE CHAIRMAN (J)

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 C.P. No. 36/2005.

1. Shri Suren Ramchiary ✓
2. Sri Ratan Boro ✓
3. Sri Mizing Braluna ✓
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 ✓

*Attended
By
Advocate*



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14. Sri Biren Baishya ✓

15. Sri Jogendra Pasi

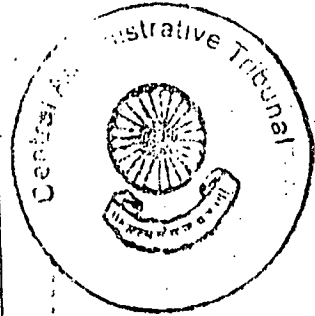
16. Sri Ranjit Das

17. Sri Naren Ch. Boro ✓

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

..... Applicants in C.P. No.37/2005.

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. Ramchary ✓
15. Sri Monoranjan 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 Ansumia 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 C.P. No.38/2005.

- Versus -

1. Shri A.K. Jain,
General Manager (Construction)
N.F. Railway, Maligaon,
Guwahati, Assam.

Shri Arjun Rakshit,
Divisional Railway Manager,
Alipurduar Division, N.F. Railway,
Alipurduar, West Bengal.

Contemners/ Respondents
in all the petitions.

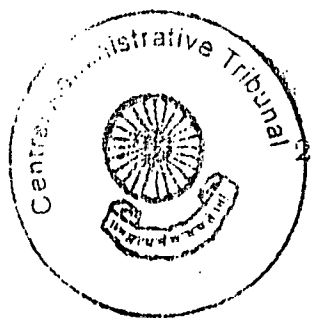
ORDER

B.N.SOM VICE CHAIRMAN (A)

All these three contempt petitions involve similar facts and arising out of the order dated 19.7.2005 passed by this Tribunal in O.A.336, 337 and 338 of 2004. We have disposed of all the Contempt Petitions by this common order.

2. For the purpose of adjudicating the matter we have examined C.P.36/2005 in detail.

3. The petitioner by filing the instant Contempt Petitions has brought to our notice the fact that the respondents/contemners had acted in a

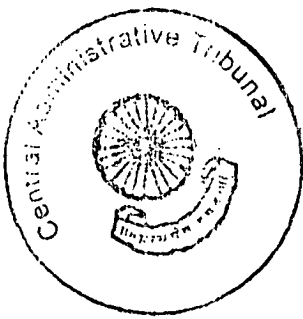


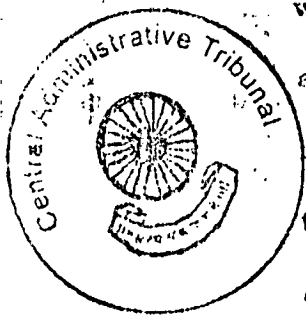
69 contemptuous manner in implementation of our order dated 19.7.2005 passed in O.A.337 of 2004. It is also the allegation that the respondents had acted willfully and their inactivity deserves appropriate action under the Contempt of Courts Act 1971.

4. The respondents have filed a detailed show cause reply dated 7.2.06 after receipt of our notice. It is their submission that they have taken all necessary steps to search the documents of the applicants in the O.A as directed by the Tribunal in consideration of their cases on merits. They have also disclosed that they have scrutinized the documents/xerox copies of the Casual Labour Register forwarded under XEN/Con/Bongaigaon letter No.E/BNGN/Con/CL/502 dated 5.1.1989 and the CL cards submitted by the applicants. The respondent after examining the records had passed a speaking order dated 10.2.2006 (Annexure-A) and the same was duly communicated to the applicant by his letter No.E/63/CON/I/Loose. He has further disclosed that he has found the applicant's case being not on merit and that the documents relied on by the petitioner to be fabricated, vague and false. He has, therefore, submitted that as the scrutiny of the records belied the claims of the applicant that the Contempt Petition is liable to be dismissed with cost.

5. The learned counsel for the petitioner has vehemently opposed the submission made in the reply stating that the respondents have not only not implemented the order of the Tribunal dated 19.7.2005, they have also acted arbitrarily and have not shown respect to the order dated 19.7.2005.

6. We have perused the order passed by the alleged contemner which is at Annexure-A. The direction issued to the respondents in O.A.336/2004 dated 19.7.2005 was as follows :





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"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 (Annexure-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."

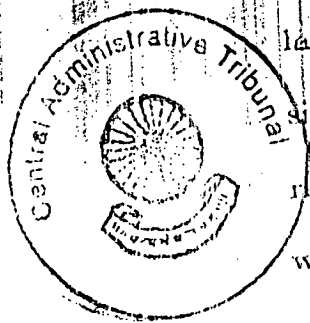
From above it is clear that the respondents were directed to consider the case of the applicant based on their own records i.e. the xerox copies of the casual labour live register, the documents based on which the earlier written statements were filed and to take a decision in the case of the applicants afresh. From Annexure-A we find that the respondent No.1 had examined the case of Shri Ranjit Brahma along with other applicants to see whether they were included as casual labour with the Railways during the relevant period of time i.e. 5.1.85 to 31.8.85. It is the submission of the respondent that there is no evidence on record to show that the applicants were so engaged during the said period. It is further submitted that the same information was also communicated to Shri Ranjit Brahma by the General Manager/Con, the APO/CON by letter dated 18.3.04. He has further submitted that while scrutinizing the relevant records as directed by the Tribunal it came to the notice that whereas the identity card issued to Shri Ranjit Brahma shown to be issued by one S.S. Ghosh, the then AEN/CON/Bongaigaon, it is found on verification of records that during that period S.S. Ghosh was not AEN/CON but he was XEN/CON and that the signature of S.S. Ghosh as

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available on record does not tally with the signatures on casual labour cards or the xerox copy of the live casual register purported to be signed by S.S. Ghosh. In the circumstances, a doubt had arisen in their mind whether forwarding of a photo copy of the live casual register on 5.1.89 was done by resorting to some undesirable means. The alleged contemner therefore had sent the relevant records for opinion of the Forensic Expert, Guwahati and obtained his opinion which is enclosed as Annexure-B. In the said Annexure-B, the Scientific Officer, Questioned Documents Division, Forensic Science Laboratory, Assam, Guwahati has opined that the person whose signatures appeared on the documents in the official record do not bear resemblance to the signatures appearing on the xerox copy of the live casual labour register or on the casual labour card. He, the alleged contemner therefore, concluded that the signatures on the records relied on by the applicant being fictitious the records are also of doubtful nature. He has further submitted that there were no credible documents placed before him by the applicants to consider his claim nor the records maintained by the respondents bear any testimony to accept the claims made by the applicant.

7. The learned counsel for the applicant has drawn our notice to the decision in the case of Union of India and Ors. vs. Subedar Devassy PV (2006) 1 SCC 613; Civil Appeal No 1355 of 2000 decided on 10.1.2006 by the Apex Court where it is held that "in contempt proceedings court is concerned only with question whether the earlier decision has been complied with or not. It cannot examine correctness of decision, or traverse beyond it and take a different view from what was taken therein, or give additional directions or delete any direction." However, we do not feel that in the instant case before us there has been any case to consider if any attempt has been made to overreach the scope of the

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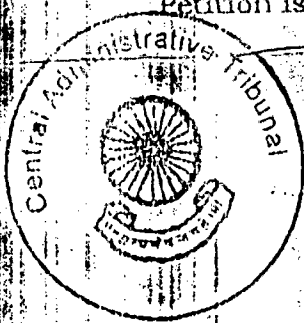


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court in this contempt proceeding and therefore not much benefit can be derived by the petitioner in this regard.

Having regard to the facts of the case as has been brought out in the speaking order passed by the respondent/alleged contemner we find that they have substantially complied with the directions issued in this regard by the Tribunal and therefore nothing survives in the contempt petition for further adjudication. In this view of the matter the Contempt Petition is dropped. No costs. Notices may be discharged.

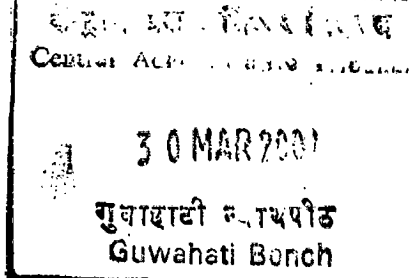


Sd/VICE CHAIRMAN (J)

Sd/VICE CHAIRMAN (A)

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प्रति लिपि
A. S. 13/3/05
अनुमान अधिकारी
Secretary (Adm) (J) (A)
Central Administrative Tribunal
पुनर्जाति १०.३०
GUW
पुनर्जाति १०.३०
12/3/05



Filed by:
Advocate
27-3-06

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, GUWAHATI

ENCHIL

O.A.No 262/2006.

Sri Supan Ramcharay & Ors. Applicants.

-Vrs-

Union of India and Ors.... Respondents.

Chief Person Officer (Con.)
N.F. Railway, Maligaon.

IN THE MATTER OF :

WRITTEN STATEMENT BY ANSWERING
RESPONDENTS.

The answering Respondents most respectfully sheweth :

1. That the answering Respondents have gone through the copy of the applicant filed by the above named Applicants and understood the contents thereof. Save and except the statements which have been specifically admitted herein below or those which are borne on records all other averments/allegations made in the application are hereby emphatically denied and the application has 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 answering Respondents confined their replies to those points/allegations/averments of the application which are found relevant for enabling a proper decision on the matter.
3. That the Respondents beg to state that for want of the valid cause of action for the Applicants the application merits dismissal as the application suffers from wrong representation and lack of understanding of the basic principles followed in the matter as will be clear and candid from the statements made hereunder.
4. That while answering the statements of this O.A the Respondents humbly submit that this is a THIRD ROUND of Litigation by the Applicants to which the Respondents had already submitted their replies and the Hon'ble Tribunal took kind note of them to dismiss the cases including the Contempt Petitions raised by them which will be construed from the underneath statements & submissions:
 - 4.1. That in the year 1987 Railway Board vide letter No.E(NG)/11/28/CL/2 dated 4.3.1987 provided an opportunity to call ex-casual Labours engaged with the

Contd.....P/2...N.F...

N.F.Railway for enlistment of their names in the Supplementary/Live Casual Labour register. For the aforesaid purpose all the casual labourers were asked to submit their applications within 31.3.1987 so that their cases can be examined/scrutinized and considered by the administration for taking further necessary action. Accordingly the casual labourers who worked for the Respondents, the N.F.Railway Administration, but could not for certain reasons be/absorbed/re-engaged in the Respondent's establishment earlier after observing all formalities of norms, rules and laws were considered on receipt of their applications ~~following~~ ^{all} the norms in the Live Casual Labour register/supplementary Casual Labour Register.

4.2. ^{Just} The applicants who are now, claiming after lapse of about 20 years of time that they had worked in the Respondents' railway organisation as casual labours in its construction wing, had not felt any necessity to get their names enrolled for their re-engagement/absorption should they had at ^{all} served the Railway during the material period they mentioned in their application.

4.3. That the Railway Board further communicated to all zonal Railways vide No.E(NG)/II/96/CL/61 dated 3.9.96 that an action plan was to be drawn to ensure absorption of all casual labours of railway so far names were kept in the Live Casual Labour register and Supplementary Live Casual Labour register and the entire process of which were to be completed by the December, 1997 so that the position of "no casual Labour" is achieved. To ensure the said action plan, a mass drive was launched by the Respondents' Railway Administration to ensure whether any casual labour was borne on Live Casual Labour register/supplementary Live Casual Labour register, who were earlier at any time was engaged by the railway and considered their cases on merits. The applicants in the instant O.A. who now claim to be in the N.F.Railway's establishment ^{that they had worked on different dates} ~~that they had worked on different dates~~ did never make any representation at that time to any of the competent railway authorities, so far the records of the Respondents are available, in regard to entertaining and examining their claims. The genuineness of the records produced by the Applicants are totally denied. The Applicants must produce the relevant documents in support of their claim in relation to their working as casual labours in the railway as mentioned in the O.A. The onus in such cases, it is humbly submitted, lies with the Applicants who bring such false, frivolous, and fabricated allegations against the Respondents to camouflage the Court of law and to obtain the undue advantage of their unsustainable claim. Merely by bringing false and fabricated allegations against the

Contd...P/3...Respondents..

Dy. Chief Personnel Officer (Con.)
 गौरीगंगा नगरपालिका

Respondents will not serve any purpose and bring the coveted fruits of the Applicants unless they can substantiate their claims with the genuineness of their documents, specially the Live Casual Labour card/Supplementary Casual Labour Card, which is a cardinal weapon to be undergone the decision by both the parties in the eye of laws as per prevailing system, procedure and law of the land.

4.4. That the Applicants filed earlier application in O.A. No ⁴⁴ of 2002 raising the same issues before this Hon'ble Tribunal and the Tribunal disposed of the said O.A. with the direction to the Respondents to dispose of their representations on merits, if filed with all necessary documents as per Respondents' requirements. The Respondents disposed of their representations after examining their cases on merits and on being aggrieved the Applicants filed a contempt petition under No.CP36/2006. The Hon'ble Tribunal was pleased to peruse the action taken by the Respondents and disposed of the contempt petition on merits.

The photo copy of the order of the said contempt petition which was dismissed on 10.3.06 is enclosed as ANNEXURE-A.

4.5. That it is humbly submitted that PURSUANT TO THIS Hon'ble Tribunal's order in O.A.No.339/2004 above, the Respondents Railway Administration, however, suo moto took necessary steps in the matter by deputing their responsible officials to verify the records so far available and to ensure genuineness of the photocopies of discharged certificates produced by all the Applicants in support of their claim for re-engagement in the Railway Administration as claimed for in their above Original Application. But on verification of records it was found that signatures on the photo copies of discharged service certificates produced by the Applicants do not corroborate with the signatures of officers/officials in the records kept and available in this office. Thus a doubt was raised regarding the genuineness of their claim and the certificates produced by the Applicants appear to be fake, fabricated and false, and therefore, could not be accepted to consider their cases for re-engagement by the Railway administration.

4.6. That it is submitted in this connection that the cut-off date for the regularization/re-engagement of the discharged casual labours was on 1.1.81 and the discharged casual labours were to submit their applications by 31.3.87 as per Railway Board's circular No.E(NG)II/78/CL/2 dt.4.3.87 and 21.10.87. The Railway Board further vide their

Contd...P/4..Circular..

रघु मुकुन्द शर्मा (नि)
Dy, Chief Personnel Officer (Con.)
पू.सी.०.३८

वप मुख्याधिकारी (नि)
Dy. Chief Personnel Officer (Con.)

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Contd.....P/5..Administration..

अप मण्डल *[Signature]* जालारी (नि)
Dy. Chief Personnel Officer (Con.)
पू०सी० रोग, म० जालारी

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

सप मुषय *[Signature]*
Dy. Chief Personnel Officer
पू०सी० रेण, म. न. न.

Respondents submit that without receiving the genuine documents the applicants' claim are not tenable in the eye of law.

4.15. That with regard to the statements made in Paragraphs-4.5, 4.6, 4.7 and 4.8 the Respondents submit that the statements made therein by the applicants' are baseless and without any supportive document to adduce the genuineness of the claim the Respondents are constrained to accede to their claim. Mere submission is not enough and justifiable to entertain one's application and/or claim in regard to yield the coveted result. The Respondents can not surmount the prevailing Rules and laws of the land so as to minimise the necessities or showing sympathy to the applicants' claim.

4.16. That with regard to the statement made in the Paragraphs-4.9 to 4.15 it is submitted that the said matter of O.A. 79/96 was altogether different from that of this application, which were decided by the Respondents on the genuineness of their claim. The applicants can not expect to yield the same fruit from the different trees which they have planted in their claim by submitting representations on the same subject and on the same matter before this Hon'ble Tribunal. Filing of repeated applications will not yield their coveted result unless they can submit the genuine Live Casual Labour card/Supplementary Casual Labour Cards and other necessary documentary evidences in support of their claim that they had worked in the Respondents construction wing *"various dates" as they had stated under para-2 of O.A.* during..... and were discharged. Had it been so, they could have come forward much earlier with the documents issued by the Respondents Railway to them to enlist their names and to get the matter settled as envisaged in the Railways two times drive launched by the Railway Board as mentioned in the foregoing paras 4.1 & 4.3.

4.17. That with regard to the statement made in the paragraphs-4.16, 4.17, 4.18 & 4.19 it is submitted that the Respondents being the model employer can not take any steps of discrimination or deprivation in regard to the parity of employment. The Respondents reiterate their statements as stated in the foregoing paras.

4.18. That with regard to the statements made in paragraphs-4.20, 4.21, 4.22, 4.23, 4.24, 4.25, 4.26, 4.27, 4.28 and 4.29 the Respondents humbly state that the matter was already decided once by both the Respondents Railway Organization and also by the Hon'ble Tribunal and the Respondents took appropriate decision in compliance with the orders given by the Hon'ble Tribunal earlier in O.A. No. 337/04 and took all positive

Contd.....P/7....steps..

Dy, Chief Personnel Officer (Con.)

गोपी रेड, गुरुदास

steps to verify the records produced by the applicants in the said O.A. which were proved to be false, fabricated, frivolous and fake live casual labour cards and did not deserve any merit of consideration of whatsoever nature. The records produced by the applicants were initially examined and verified by the Respondents with the records kept in their office so as to examine the veracity and their genuineness to entertain the claim. Albeit a doubt prima facie was raised by seeing the records produced by the applicants which appeared to be not genuine and apparently proved to be false were nevertheless got verified by the expert authorities of the Forensic department. The documents produced by the applicants after their verification by the Forensic department were submitted before the Hon'ble Tribunal by the Respondents at the time of Hearing of the Contempt Petition filed by the applicants under No. C.P.No. 36/05 and their Lordships in the Hon'ble Tribunal were kind enough to peruse the reports and documents and also were satisfied with the submission of the Respondents dismiss the contempt petition, the reference of which has been highlighted by the Respondents in the foregoing para-4.4 And the copy of which is also enclosed here with this written statement as ANNEXURE-A.

4.19. That it is humbly submitted that the PRESENT APPLICATION FILED BY THE APPLICANTS IS A THIRD ROUND OF LITIGATION ON THE SAME SUBJECT AND ISSUE BEFORE THIS HON'BLE TRIBUNAL by filing O.A No. 44 of 2002, O.A.No. 337 of 2004 and O.A. No. 262 of 2006. It is humbly reiterated that the decision & order by the Division Bench of two Hon'ble Vice-Charimans of this Hon'ble Tribunal, the operative portion of their most valued and judicious order are as under:

"Having regard to the facts of the case as has been brought out in the speaking order passed by the Respondent/alleged contemner we find that they have substantially complied with the directions issued in this regard by the Tribunal and therefore nothing survives in the Contempt Petition for further adjudication. In this view of the matter the Contempt Petition is dropped. No costs. Notices may be discharged".

A copy of the order has been annexed as ANNEXURE-A.

4.20. That this is humbly submitted that the cases of ex-casual labours were considered according to the Railway Board's direction only with those labourers were found to be borne in Live/Supplementary Casual Labour register and that too within the stipulated time framed by the Railway Board mentioned above. The Applicants could not establish by any means that their names were borne in the Live Casual labour register or in the Supplementary casual register or they approached at any point of time to any of the

Contd.....P/8..authorities..

authorities of the Respondents for inclusion/induction of their names in the Live Casual Labour register or Supplementary casual Labour register by showing genuine proof of evidences kept with them. Their approach is incurably belated and, moreover, they are unable to produce genuine documentary evidence to substantiate their claim.

4.21. That it is not understood as to how the Applicants could raise the same issue on the same subject on the face of the above clear and clandestine judicious decision & ORDERS of this Hon'ble Tribunal for discerning the matter once for all. The Applicants' filing of this O.A is very much restrained by the Law of Estoppel.

4.22. That it is respectfully submitted that no law under the sun is there to force any establishment of employment that it would keep its entry open for the eternity so that any body may come and wishes his/her claim to induct his/her name there for his/her undue and unlawful employment according to his/her suit will.

4.23. That it is stated that even if some one of the Applicants may claim and prove of his genuine identity by producing genuine required documents that shall not be entertained because of his prolong & profound slumber and silence for the long spell of more than two decades-time and much after the cut-off date by the Respondents for enrolment & induction in service after observing all norms & formalities of service-rules.

4.24. That it is humbly submitted that this Hon'ble Tribunal may be kind enough to adjudicate the matter on the same footing on those decided cases which were finally dismissed and closed in the Contempt Petition No.....36..... of 2006 decided by their Lordships of this Hon'ble Tribunal as mentioned in the foregoing para.

4.25. That it is submitted that prior to receipt of the applications enclosed with Hon'ble CAT's order no representation of whatsoever nature was received by the Respondents Railway Administration from the Applicants at all to examine their cases on merits. As such, the Applicant has caused violation of the Section 20 of the Administrative Tribunals Act, 1985.

4.26. That it is respectfully submitted that this application is also barred by limitation as per Section 21 of the Administrative Tribunal Act, 1985 and hence, is liable to be dismissed with cost to the Respondents.

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 Dy. Chief Personnel Officer (Con.)
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4.27. That it is humbly submitted that since the contention/submission of the applicants are not genuine and not identically verified with the records of the Respondents Railway Administration, the claim of the applicants is not tenable in the eye of law and, hence, summarily be rejected abinitio and in limine.

4.28. That it is reiterated that the Respondents Railway administration had given a reasoned reply with speaking order to each of the applicant as directed by the Hon'ble CAT in the O.A. No.....337/04.....and as such, the allegation brought by the Applicants in the instant O.A., are futile, frivolous and blemishing and hence do not deserve any consideration.

4.29. That the submission in the statement made by the applicants are only concocted, fake and baseless as they have failed to submit any documentary evidence to substantiate their claim and evidential proof of the veracity of their statements.

4.30. That in the instant application the Applicants have raised the same and similar issues without enclosing the required documents and agitated the matter further which is but to take undue advantage and wastage of time and energy of the Hon'ble Tribunal. The application suffers by Res judicata, acquiescence, waiver and like infirmities and thus liable to be dismissed with cost to the Respondents.

4.31. That the Respondent, crave leave of this Hon'ble Tribunal to file an Additional written statement/Re-joinder, if necessary.

4.32. That the Respondent beg to submit that the Forensic Expert's report and all other necessary records will be produced by the Respondents at the time of Hearing/Argument of their humble submission before this Hon'ble Tribunal.

4.33. That the answering Respondents respectfully submit that the present application has no merit at all and is, therefore, liable to be dismissed with costs.

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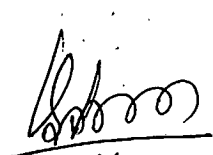
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VERIFICATION.

I, S. BEHERA, son of B. C. BEHERA, aged about 35 Years, in the capacity of Deputy Chief Personnel Officer (Construction), N.F. Railway, Maligaon, do hereby solemnly affirm and verify that the contents of paragraphs 4.1 to 4.20 are derived from the records and I believe them to be true to my knowledge & information and that I have not suppressed any material facts and the paragraphs 4.21 to 4.33 are my humble and respectful submission before this Hon'ble Tribunal.

And I sign this VERIFICATION on this 26th day of March, 2007.

Place: Guwahati.
Date: .03.2007.


SIGNATURE OF THE DEPONENT

To
The Deputy Registrar,
Central Administrative Tribunal,
Guwahati Bench, Guwahati.

नव मुख्य कार्मिक अधिकारी (नि)
Dy, Chief Personnel Officer (Con.)
पू.सी. रेस, मालगाँव
N.F, Railway, Maligaon
गुवाहाटी-11
Guwahati- 781011

CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH

Contempt Petition Nos.36/05, 37/05 & 38/05
In Original Application Nos.336/04, 337/04 & 338/04.

Date of Order: This the 10th day of March 2006.

THE HON'BLE SHRI B.N.SOM, VICE CHAIRMAN (A)

THE HON'BLE SHRI K.V.SACHIDANANDAN, VICE CHAIRMAN (J)

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 C.P. No.36/2005.

1. Shri Suren Ramchiary
2. Sri Ratan Boro
3. Sri Mizing 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 Ranjit Das
17. Sri Naren Ch. Boro

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

..... Applicants in C.P. No.37/2005.

1. Sri Dhaneswar Rahang
2. Sri Lohit Ch. Boro
3. Sri Rati Kanta Boro
4. Sri Monorangen Dwainary
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 Mriual 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 Ansumma 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 C.P. No.38/2005.

- Versus -

1. Shri A.K. Jain,
General Manager (Construction)
N.F. Railway, Maligaon,
Guwahati, Assam.
2. Shri Arjun Rakshit,
Divisional Railway Manager,
Alipurduar Division, N.F. Railway,
Alipurduar, West Bengal.

.....Contemners/ Respondents
in all the petitions.

ORDER

B.N.SOM VICE CHAIRMAN (A)

All these three contempt petitions involve similar facts and arising out of the order dated 19.7.2005 passed by this Tribunal in O.A.336, 337 and 338 of 2004. We have disposed of all the Contempt Petitions by this common order.

2. For the purpose of adjudicating the matter we have examined C.P.36/2005 in detail.

3. The petitioner by filing the instant Contempt Petitions has brought to our notice the fact that the respondents/contemners had acted in a

contemptuous manner in implementation of our order dated 19.7.2005 passed in O.A.337 of 2004. It is also the allegation that the respondents had acted willfully and their inactivity deserves appropriate action under the Contempt of Courts Act 1971.

4. The respondents have filed a detailed show cause reply dated 7.3.06 after receipt of our notice. It is their submission that they have taken all necessary steps to search the documents of the applicants in the O.A as directed by the Tribunal in consideration of their cases on merits. They have also disclosed that they have scrutinized the documents/xerox copies of the Casual Labour Register forwarded under XEN/Con/Bongaigaon letter No.E/BNGN/Con/CL/502 dated 5.1.1989 and the CL cards submitted by the applicants. The respondent after examining the records had passed a speaking order dated 10.2.2006 (Annexure-A) and the same was duly communicated to the applicant by his letter No.E/63/CON/1/Looze. He has further disclosed that he has found the applicant's case being not on merit and that the documents relied on by the petitioner to be fabricated, vague and false. He has, therefore, submitted that as the scrutiny of the records belied the claims of the applicant that the Contempt Petition is liable to be dismissed with cost.

5. The learned counsel for the petitioner has vehemently opposed the submission made in the reply stating that the respondents have not only not implemented the order of the Tribunal dated 19.7.2005, they have also acted arbitrarily and have not shown respect to the order dated 19.7.2005.

6. We have perused the order passed by the alleged contemner which is at Annexure-A. The direction issued to the respondents in O.A.336/2004 dated 19.7.2005 was as follows :

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"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 (Annexure-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."

From above it is clear that the respondents were directed to consider the case of the applicant based on their own records i.e. the xerox copies of the casual labour live register, the documents based on which the earlier written statements were filed and to take a decision in the case of the applicants afresh. From Annexure-A we find that the respondent No.1 had examined the case of Shri Ranjit Brahma alongwith other applicants to see whether they were included as casual labour with the Railways during the relevant period of time i.e. 5.1.85 to 31.8.85. It is the submission of the respondent that there is no evidence on record to show that the applicants were so engaged during the said period. It is further submitted that the same information was also communicated to Shri Ranjit Brahma by the General Manager/Con, the APO/CON by letter dated 18.3.04. He has further submitted that while scrutinizing the relevant records as directed by the Tribunal it came to the notice that whereas the identity card issued to Shri Ranjit Brahma shown to be issued by one S.S. Ghosh, the then AEN/CON/Bongaigaon, it is found on verification of records that during that period S.S.Ghosh was not AEN/CON but he was XEN/CON and that the signature of S.S.Ghosh as

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available on record does not tally with the signatures on casual labour cards or the xerox copy of the live casual register purported to be signed by S.S.Ghosh. In the circumstances, a doubt had arisen in their mind whether forwarding of a photo copy of the live casual register on 5.1.89 was done by resorting some undesirable means. The alleged contemner therefore had sent the relevant records for opinion of the Forensic Expert, Guwahati and obtained his opinion which is enclosed as Annexure-B. In the said Annexure-B, the Scientific Officer, Questioned Documents Division, Forensic Science Laboratory, Assam, Guwahati has opined that the person whose signatures appeared on the documents in the official record do not bear resemblance to the signatures appearing on the xerox copy of the live casual labour register or on the casual labour card. He, the alleged contemner therefore, concluded that the signatures on the records relied on by the applicant being fictitious the records are also of doubtful nature. He has further submitted that there were no credible documents placed before him by the applicants to consider his claim nor the records maintained by the respondents bear any testimony to accept the claims made by the applicant.

7. The learned counsel for the applicant has drawn our notice to the decision in the case of Union of India and Ors. vs. Subedar Devassy PV (2006) 1 SCC 613 Civil Appeal No.1066 of 2000 decided on 10.1.2006 by the Apex Court where it is held that "in contempt proceedings court is concerned only with question whether the earlier decision has been complied with or not. It cannot examine correctness of decision, or traverse beyond it and take a different view from what was taken therein, or give additional directions or delete any direction." However, we do not feel that in the instant case before us there has been any case to consider if any attempt has been made to overreach the scope of the

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court in this contempt proceeding and therefore not much benefit can be derived by the petitioner in this regard.

Having regard to the facts of the case as has been brought out in the speaking order passed by the respondent/alleged contemner we find that they have substantially complied with the directions issued in this regard by the Tribunal and therefore nothing survives in the contempt petition for further adjudication. In this view of the matter the Contempt Petition is dropped. No costs. Notices may be discharged.

Sd/ VICE CHAIRMAN

Sd/ MEMBER (A)

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N.F.RAILWAY

ANNEXURE-B
REGISTERED WITH A/D ¹⁰

Office of the
General Manager/Con,
Maligaon, Guwahati-11
Dated: 10-02-2006

No.E/63/CON/I/Loose

ORDER

WHEREAS, in the year 1987, Railway Board vide letter No.E(NG)II/28/CL/2 dated 4.3.1987 provided the opportunity to call ex-casual labourers engaged with the NF Railway for enlistment of their names in the Supplementary / Live Casual Labour Register. For the aforesaid purpose all the-Ex-casual labourers were asked to submit application within 31.3.1987, so that their cases can be examined and considered by the Administration.

WHEREAS, in the year 1998 Railway Board launched a special drive vide Board's letter No.(NG)II/98/CL/32 dated 9.10.1998 for regularization of all the Ex.casual Labourers borne on live/Supplementary Register against regular vacancies. As a result of the aforesaid special drive all the Ex-casual labourers were regularized.

WHEREAS, in the case of Sri **Suren Ramchiary** it was found that there is no evidence, whatsoever, to show that Sri **Suren Ramchiary** during the relevant period of time., i.e. **27.3.84 to 07.01.86** was engaged with the Railways as casual labour & consequently, the party never represented also before the Railway administration.

WHEREAS, it was only in the year 2002 that Sri **Suren Ramchiary** alongwith other applicants filed **OA No.44/02** before the Guwahati Bench of the Central Administrative Tribunal. The **OA No.44/02** was disposed of by the Tribunal vide order dated 01.5.2003 with direction that the applicants may submit individual representation to the Railways within one month from the date of the order.

WHEREAS, pursuant to the aforesaid order of the Tribunal Sri **Suren Ramchiary** submitted an application dated Nil. For General Manager/Con, the APO/CON by letter dated 18.3.2004 informed Sri **Suren Ramchiary** that the relevant records regarding his claim of being Ex-casual labour were looked into and it was found that the genuineness of his casual labour card was not established and therefore, your claims for re-engagement is rejected.

WHEREAS, subsequently alongwith 16 other applicants Sri **Suren Ramchiary** preferred **OA No.337/2004** before the Guwahati Bench of the Central Administrative Tribunal seeking absorption with Railways in Group-D post. The Tribunal disposed of

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the Original Application by its common order dated 19th July, 2005. The operative portion of the order is quoted hereinbelow:-

“.....The respondents are directed to consider the case of the applicants ignoring the identity card and based on their own records, viz, the Xerox copy 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.... Afresh within a period of four months from the date of receipt of this order”.

WHEREAS, in compliance of the order of the Tribunal the matter was reconsidered and the case of **Sri Suren Ramchiary** examined in detail. For the said purpose all the relevant records and materials were looked into and verified. As a result, certain shocking facts were noticed.

WHEREAS, the Casual labour card of **Sri Suren Ramchiary** was shown to have been issued by **Shri Bhudeb Sarmah**. It is worthwhile to note that in the Identity Card the period of employment of **Sri Suren Ramchiary** is from **27.3.84 to 07.01.86**. However, during the aforesaid period **Shri Bhudeb Sarmah** was not working as AEN/BG/CON/Bongaigaon. In fact, **Sri Bhudeb Sarmah** was State Government Deputationist and he served as AEN/CON/Jogighopa between 19.8.89 to 26.12.95 and from 9.2.96 to 29.12.98. **Sri Bhudeb Sarmah** was never posted as AEN/BG/CON/Bongaigaon. Therefore, there cannot be a question of **Shri Bhudeb Sarmah** having ever issuing an Identity Card to **Sri Suren Ramchiary**. **Shri Bhudeb Sarmah** was contacted to verify the aforesaid facts and he has given in writing that he was associated with the construction organization of NF Railway as AENCon/Jogighopa from 19.8.89 to 26.12.95 and from 9.2.96 to 29.12.98. **Shri Bhudeb Sarmah** also provided his specimen signature and it is apparent that the signature of **Shri Bhudeb Sarmah** in the Identity card of **Sri Ratan Boro** was forged and fabricated.

WHEREAS, the records pertaining to the Live Register have also been examined. It is found that the purported Live Register of Casual Labourers was forwarded purportedly by late **S.S.Ghosh** as Executive Engineer/BG/CON/Bongaigaon by forwarding letter dated 5.1.89. However, the signature of late **S.S.Ghosh** on the aforesaid forwarding letter has been verified with other available records related to late **S.S.Ghosh** and there are strong reasons to believe that the signature of late **S.S. Ghosh** on the aforesaid forwarding letter are forged because the same do not tally with his signature on other available records, authenticity of which is doubtful. Therefore, the aforesaid

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forwarding letter and the Live Register of the Casual Labourers are fabricated documents and no reliance can be placed on the same.

Further, this may be noted that in accordance with the Railway Board's Circular communicated to all Zonal Railways vide No.E(NG)II/96/CL/61 dated 3.9.96 an action plan was drawn to ensure absorption of all casual labour on roll and also whose names were kept in the live casual labour register and supplementary live casual register and the entire process of which were to be completed by the December/1997 so that a position of no casual labour is achieved. To ensure the said action plan a massive drive was launched by the Railway Administration to ensure whether any casual labour was borne on live register/supplementary live casual labour register, who was earlier at any time were engaged by Railway, and to consider their cases on merits. But as per available records in this office you did not make any representation at that time to any of the competent railway authority in regard to your claim as your name was actually not available on supplementary/casual labour live register.

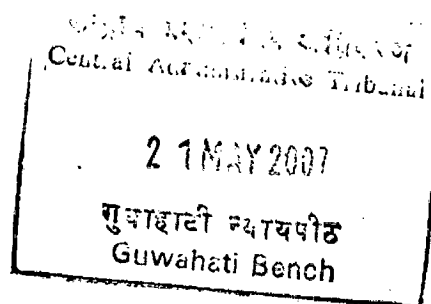
WHEREAS, there is no other relevant authentic material available on record by which it can be held that Sri **Suren Ramchiary** was engaged as a casual labour with the railways at any point of time. There are reasons to believe that Sri **Suren Ramchiary** without having been engaged as casual labourer with the Railways at any point of time, with the connivance of certain persons indulged in fabrication and forgery of records and thereafter belatedly made an attempt in the year 2002 to get a permanent job in the Railways.

For the aforesaid reasons, the case of Sri **Suren Ramchiary** for absorption in the Railways cannot be entertained and the same is hereby rejected.


(A. Saikia)

Dy. Chief Personnel Officer/Con
N.F. Railway, Maligaon, Guwahati-11
For General Manager/Con

To
Shri **Suren Ramchiary**,
Adabari Khelmati-Village
P.O. Balipara
Dist: Sonitpur(Assam).



Filed By:- 93
The Applicants
through
Hridip Mr. Das
Advocate
12.5.07

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH.

O.A. No. 262 of 2006

BETWEEN

Suren Ramchiary & Ors. Applicants.

AND

Union of India & ors. Respondents..

REJOINDER

1. That a copy of the Written Statement filed by the respondents has been served upon the applicants. the applicants have gone through the same and understood the contentions made therein. Save and except the statement which are specifically admitted herein below other statements made in the written statement may be treated as total denial and the respondents are put to the strictest proof thereof.

2. That with regard to the statement made in para 1 and 2 of the Written Statement the deponent does not admit anything contrary to the relevant records of the case.

3. That with regard to the statement made in para 3 of the Written Statement the deponent begs to state that in the instant application the applicants have challenged the order dated 10.2.06 which was not under challenge in the

earlier round of litigation. It is pertinent to mention here that the order dated 10.2.06 is not an order in final and hence same can very well be scrutinized by the Hon'ble Tribunal more so by issuing the said order dated 10.2.06 the respondents have virtually committed contempt by attempting to reopen the issue already settled by the Hon'ble Tribunal.

4. That with regard to the statement made in para 4 of the Written Statement the deponent while denying the contention made therein begs to state that the earlier applications filed by the applicants were disposed of by the Hon'ble Tribunal directing the respondents to consider their cases. It is noteworthy to mention here that those earlier applications were never been dismissed by the Hon'ble Tribunal. The respondents are trying to mislead the Hon'ble Tribunal by saying that the earlier applications were dismissed.

5. That with regard to the statement made in para 4.1 of the Written Statement the deponent begs to state that similarly situated employees under the respondents are enjoying the benefit of temporary status and subsequent regularisation. Therefore, the respondents have violated the principle of natural justice by not extending the said benefit to the present applicants.

6. That with regard to the statement made in para 4.2 of the Written Statement the deponent begs to state that the respondents can not raise the question of limitation at this stage. They could have raise the same at the earlier rounds

of litigation itself which has by now attained its finality. It is noteworthy to mention here that the point of limitation has already been adjudicated and decided by the Hon'ble Tribunal in the earlier rounds of litigation.

7. That with regard to the statement made in para 4.3 of the Written Statement the deponent begs to state that so far as the genuineness of record is concerned, the issue has already been adjudicated by the Hon'ble Tribunal in the earlier round of litigation and directed the respondents to take the same as genuine. It is pertinent to mention here that challenging the said direction the respondents have not preferred any appeal before the appropriate forum till date and therefore same has attained its finality. It is further submitted that in such a situation onus was shifted to the respondents but the respondents have failed to do so for want of records which reveals the irresponsibility on the part of the respondents for what the applicants should not suffer. Keeping and maintaining the muster roll is the bounded duty of the employer and the employer can not shift their burden by saying that records could not be traced out.

8. That with regard to the statement made in para 4.4 of the Written Statement the deponent does not admit anything contrary to the relevant records of the case. It is stated that the respondents have failed to take in to consideration the facts as well as law involved in the issue and to frustrate the claim of the applicant now even they have gone to the extent of making an attempt to re-write the judgment of the Hon'ble Tribunal.

9. That with regard to the statement made in para 4.5 of the Written Statement the deponent begs to state that without verifying the doubt so arose the respondents have rejected the claim of the applicants which has caused irreparable loss and injury to the applicants.

10. That with regard to the statement made in para 4.6 of the Written Statement the deponent while denying the contention made therein begs to state that the applicants have also submitted representations before the respondent authorities praying for their absorption but the respondents have overlooked their representations and absorbed their blue-eyed boys.

11. That with regard to the statement made in para 4.7 of the Written Statement the deponent while denying the contention made therein begs to state that the applicants have filed their representations and therefore question of non-availability of the same does not arise. It is further submitted that the respondents by making such type of submissions are trying to mislead the Hon'ble Tribunal. In the earlier round of litigation the respondents themselves have produced the records through the Railway Advocate Sri M.C.Sarma, which contained some of the originals and now to frustrate the claim of the applicants, the respondents have made such misleading statement for which the applicants pray before the Hon'ble court to draw up appropriate contempt proceeding against them.

12. That with regard to the statement made in para 4.8 of the Written Statement the deponent begs to state that the respondents are silent about the disclosure of records. The stand taken by the respondents are self contradictory, in one hand they are saying that they don't have the original records and at the same time they say that it does not tally with the original record. Why the respondents have adopted such a dubious stand contrary to their own stand is not known.

13. That with regard to the statement made in para 4.9 of the Written Statement the deponent begs to state that in the said impugned order the respondents have reiterated their stand taken in the earlier round of litigation which by now has attained its finality, and which has already been rejected by the Hon'ble Tribunal. The respondent by issuing the impugned order has made an attempt to rewrite the judgment passed in the earlier round of litigation.

14. That with regard to the statement made in para 4.10 of the Written Statement the deponent begs to submit that OA No.337/04 does not relate to the present applicants, they were not party to the said proceeding.

15. That with regard to the statement made in para 4.11 of the Written Statement the deponent does not admit anything contrary to the relevant records of the case.

16. That with regard to the statement made in para 4.12 of the Written Statement the deponent while denying the contentions made therein begs to state that the respondents have acted with a malafide intention to mislead the Hon'ble tribunal and they have gone to the extent of saying that within the Railways there is no post/nomenclature of post like casual mazdoor. In the Indian Railway Establishment Manual, Vol II in the chapter XX there is an elaborate description about the casual employees. In fact as per the Clause 2001, a casual worker, working for 120 days in a Particular year is entitled to get the benefit of temporary status. Apart from that there are several hundreds of back log in the said Group D cadre and the applicants being the members of the said SC/ST category are entitled to get such benefit.

17. That with regard to the statement made in para 4.13 to 4.18 of the Written Statement the deponent while denying the contentions made therein begs to state that the updating the live casual labour register and muster roll is the crusted duty of the respondents and by making such statement they can not shift their burden to the applicants.

18. That with regard to the statement made in para 4.19 of the Written Statement the deponent while denying the contentions made therein begs to state that the malafide intention of the respondents towards discriminating the applicants from the public employment is the net result of expansion of litigations the third round of litigation. The

respondents even after the clear cut finding have not been able to understand the implication of the same and same has led to filing of the present application and as such the OA deserves to be allowed with cost. The respondents have understood the substantial compliance to the full fledged compliance and as such the controversy as on date is still alive. From the above it is clear that the respondents have totally failed to understand the verdict of the Hon'ble Tribunal.

19. That with regard to the statement made in para 4.20 of the Written Statement the deponent while denying the contentions made therein begs to state that the respondents have miserably failed to understand the verdict passed by the Hon'ble Tribunal and passed the impugned order which is contrary to their own stand and record.

20. That with regard to the statement made in para 4.20 to 4.33 of the Written Statement the deponent while denying the contentions made therein begs to state that the respondents who even after pointing out their illegalities have tried to stick with the own dubious stand which is not sustainable in the eye of law.

21. That in view of the above the present OA deserves to be allowed by setting aside the impugned orders with cost.

VERIFICATION

I, Shri Suren Ramchiary, aged about 33 years, Son of S. Ramchiary, presently residing at Maligaon, in the district of Kamrup, Kamrup, do here by solemnly affirm and state that the statement made in this petition from paragraph 2, 4-9, 11, 12, 13, 15, 17-20

_____ are true to my knowledge and those made in paragraphs 3, 10, 14, 16

_____ are matters records of records information derived therefrom which I believe to be true and the rest are my humble submission before this Hon'ble Tribunal.

I am the applicant No 1 in the present application and well acquainted with the facts and circumstances of cases and I have been authorised by the other two applicants to swear this verification.

And I sign this verification on 16th day of May 2007.

✓ Sri Suren Ramchiary

Signature

केन्द्रीय प्रशासकीय न्यायालय
Central Administrative Tribunal
29 MAY 2006
IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

OA No. 262 of 2006

Sri Suren Ramchiary and othersApplicants

- Vs -

Union of India & Ors.Respondents

IN THE MATTER OF :

**OBJECTION PETITION by the Respondents
against the Re-joinder of the Applicants**

The Respondents above named beg to state as follows:

1. That the Respondents respectfully submit that for the sake of brevity and clarity of the case meticulous denial of each and every allegation / statement made in the Re-joinder by the Applicants has been avoided. However, the answering Respondents confined their replies in the from of Objection Petition to those points / allegations / averments of the Re-joinder which are found relevant for enabling a proper decision on the matter.
2. That it is stated that by the order dated 10.02.06 reflected under para – 3 and in subsequent paras, what do the Applicants mean in their Re-joinder is not understood. If it means the order of the Respondents' order communicated to the Applicants vide No. E/63 / CON/I/LOOSE dated 10.02.2006, then it comes under Res-judicata, as the Hon'ble Tribunal vide its Division Bench judgment / ORDER in Contempt Petition Nos. 36/05, 37/05 & 38/05 settled the matter once for all by dropping the Contempt Petitions.

A photocopy of the above ORDER has been annexed as ANNEXURE – A with the written statement of the Respondents.

3. That with regard to statements made in the paras- 5,6,7,8,9,10,11,12,13,14,15,16,17 of the Re-joinder the Respondents re-iterate their submission what had made under para – 4-1 ^{and other paragraphs} of the written statement and beg to submit further that there was no violation of principles of Natural Justice caused by the Respondents.

The persons who had approached with genuine proof of casual labour card & other ^{and authentic} authorized documents, and that too within the time - frame as directed by the Railway Board, were considered and re-engaged after observing all lawful norms & Rules.

The Applicants could not do so within the long span of more than two decades of their alleged engagements and shall have to suffer for their own faults, if at all honestly they had ever worked for the Respondents. They had never approached with any representation to the Respondents before coming to the Hon'ble Tribunal. A person has to remember that he has to discharge some responsibilities before pointing out one's duty. It is not for the Employer to run after each one of hundreds of thousands of employees home to ascertain their whereabouts for their own interests.

4. That with regard to statement at para- 14 of the Re-joinder it is stated that the Applicants could not resist their temptations to add some more names in their Contempt Petition against OA No. 329/04 whose names were not in the original Application.
5. That with regard to para - 16 of the Re-joinder it is stated that there is no such word as "Casual Mazdoor" in the Indian Railway Establishment Manual Vol-II, Chapter XX, clause 2001 with provision of "Several hundreds of back log". The Applicants' OA itself is of misrepresentation.
6. That with regard to paras- 17 to 21 of the Re-joinder it is stated that the Respondents - Railway Administration, being the model employer, have not caused any malafide or discrimination, as alleged by the Applicants, to anybody in respect of employment. The Applicants are bringing one after another allegation and inviting multiplicity of litigations for the same cause which they themselves know very well are fake, fabricated, false, frivolous and are not sustainable in the eyes of both facts and law.
7. That in re-iterating the earlier submission in the Written Statement the Respondents most respectfully submit that the instant OA suffers from Resjudicata, Waiver, Acquiescence, and Law of Estoppel, Belated Claim, Laches, Lapses and the like infirmities and, hence, it is prayed that the OA shall be dismissed in limine and with costs to the Respondents.

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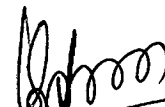
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Dy. Chief P.O. (P)
N.F. Railway, Maligaon
Gowhati-781014

VERIFICATION

I, Shri S. Behera Son of Shri B.C. Behera
 aged about 35 years and at present working as Dy. CPO/CON/N.F. Rly.
Maligaon do hereby verify and solemnly affirm that the statements made in
 the paras. 1 to 6 are derived from the records which I believe to
 be true to the best of my knowledge, information and belief and the rest are my
 humble submissions and I have not suppressed any material facts before the Hon'ble
 Tribunal.

And I sign the Verification on this the 28th day of May, 2007.

Place: Maligaon
 Date: 28.5.2007


 उप मुख्य सिग्नल अधिकारी (नि)
 Dy. Chief Signal Officer (Con.)
 पू.सी. रेल, म. लोपा
 N.F. Railway, Maligaon
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 Guwahati- 781011