

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 11th day of April, 2008

ORIGINAL APPLICATION No.109/2005
With MA No.92/05 and 93/05

CORAM:

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

1. Shri Sunil Kumar Jain
s/o Shri Om Prakash Jain,
aged about 43 years
r/o Plot No.146,
Kamla Nehru Nagar,
Hasanpura-C, Jaipur.
2. Shri Stayendra Kumar
s/o Shri Gayatri Lal Ji,
aged about 46 years
r/o Plot No. 146,
Kamla Nehru Nagar,
Hasanpura-C, Jaipur.

.. Applicants

(By Advocate: Shri N.K.Bhat)

Versus

1. Union of India
through the General Manager,
North-Western Railway,
Head Office North-West Division,
Near Railway Hospital, Jaipur
2. The Divisional Railway Manager,
North-West Railway,
D.R.M.Office,
Jaipur
3. Senior Divisional Engineer,
North-West Railway,
D.R.M.Office,
Jaipur.
4. Assistant Engineer,
North-West Railway, Bandikui,

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District Dausa.

5. Assistant Accounts Officer (S&C),
North-West Railway,
Kota.

.. Respondents

(By Advocate: Shri V.S.Gurjar)

O R D E R

The applicants have filed this OA thereby praying for the following reliefs:-

"i. appoint the applicants on the post of laborer/any class-D post from the date when their juniors or fresh hands have been appointed. They may also be accorded all the consequential benefits of the appointment including seniority, continuity of service and back wages etc.

ii. Any other orders, which this Hon'ble Tribunal deems just, proper and expedient in the facts and circumstances of the case, may be passed in favour of the applicant.

iii. Cost of the OA may be awarded in favour of the applicant."

2. Alongwith the OA, the applicants have also moved Misc. Application No.93/2005 for joining together and Misc. Application No.92/05 for condonation of delay. Since pleadings in this case are complete and after completion of pleadings, the matter is listed for hearing, as such, in view of the averments made in MA No.93/05, this MA is allowed and the applicants are permitted to file the aforesaid OA jointly.

3. Briefly stated, facts of the case are that the applicant No.1 was engaged as Casual Labour on 2.5.85 and his services were dis-engaged on 21.6.85. Thus, the applicant No.1 has worked only for 49 days in all. So far as applicant No.2 is concerned, he was engaged as Daftry on 29.10.74 and his services were dis-engaged vide order dated 26.2.76 w.e.f. 31.7.76. According to the respondents, the services of the applicant No.2 were dispensed with after completion of construction work of Dabala Singhana project. From the material placed on record, it is also evident that both these applicants have filed separate OAs i.e. OA No.2563/92, Sunil Kumar Jain vs. UOI, which OA was disposed of by the CAT, Principal Bench, New Delhi and OA No.858/92, Satyendra Kumar vs. UOI, the operative portion of the judgment rendered by the Principal Bench has been reproduced by the applicants in para 4 of the OA. The averments made by the applicants is that both these OAs were disposed of with direction that name of the applicant be included in the Live Casual Register if they are eligible for such inclusion in terms of Railway Board circular dated 28.8.87 and give engagement to the applicants as Casual labour if and when the need arise in accordance with their seniority in that register. It was further observed that in order to enable the respondents to take such action, the applicants should submit representation to the competent authority within one

month from the date of receipt of the order alongwith proof relating to the claim that they are entitled to be included in the Live Casual Register and in case such representations are received, the respondents were directed to dispose them of in accordance with law within a period of three months thereafter under intimation to the applicants.

4. At this stage, it may be stated that there is nothing on record to suggest that both these applicants have filed representations in terms of the direction given by the Principal Bench for their inclusion in the Live Casual Register. The directions were issued by the Principal Bench in the year 1994. It may also be relevant to state that in terms of R.B.E. No.82/86 only name of those persons has to be incorporated in the Casual Labour/ Live Casual Register who were discharged from employment at any time after first January, 81 on completion of work or for want of further productive work. Thus, admittedly, the services of the applicant No.2 were dis-engaged in the year 1976 much before the cut off date of January, 1981 and legally his name could not have been included in the Live Casual Register in terms of R.B.E.No.82/86. In terms of the judgment rendered by the Principal Bench, those Casual Labours were to be engaged, if and when need arise, whose name find mention in the Live Casual Register and engagement of

Casual Labours from open market was permissible only if no person is available as per the Live Casual Register. Thus, according to me, applicant No.2 could not have been re-engaged as Casual Labour even if the fact of approaching this Tribunal after almost two decades of his dis-engagement i.e. in March, 1976 is ignored.

5. Now let me consider the case of applicant No.1. Applicant No.1 has placed on record a copy of the letter dated 23.4.92 (Ann.A15) with the rejoinder thereby annexing seniority list of the persons engaged after 14.7.1981 in which name of applicant No.1 find mention at Sl.No.1173. Case of applicant No.1 is that he has been making repeated representations to the authorities and even railway authorities have regularized some persons who were junior to the applicant No.1 in the year 2004 as per seniority list/entry in Live Casual Register as circulated vide Ann.A15. Thus, according to applicant No.1 since his name find mention in Live Casual Register, he could be engaged on the post of Labour from the date when his junior/fresh entrants have been engaged.

6. As already stated above, the applicants have also filed MA No.92/05 for condonation of delay and as can be seen from the averments made in the MA, the applicants have contended that cause of action in the

matter is recurring in nature as the applicants have not been considered for re-engagement as per their seniority position and either their junior or fresh hands have been engaged. Thus, according to the applicants, cause of action has arisen as and when they were wrongly deprived from their legitimate right to be re-engaged being retrenched employee of the erstwhile Western Railway. It is further pleaded that the applicants for the first time came to know about the fact of fresh recruitment being made through paper news of July, 2004 and immediately thereafter the OA was filed after procuring appointment order of some of junior persons. Thus, according to the applicants, the OA is within limitation.

The respondents have filed reply to the MA for condonation of delay. In the reply, it has categorically been stated that by no stretch of imagination engagement/re-engagement as Casual Labour or appointment to any Class-D post cannot be construed to be matter giving rise to recurring cause of action to avail legal remedy. According to the respondents, under Section 20 read with Section 21 of the Administrative Tribunals Act, 1985 statutory bar of limitation is prescribed. According to the respondents, the advertisement issued on 30.7.04, was regarding regular appointment. Thus, the plea taken by the applicant that they came to know about engagement of persons from open market in the year 2004 is wholly

misconceived. In this case, the applicants are seeking re-engagement on daily wage basis as per the decision rendered by the Principal Bench. Thus, the applicants have not made out any case for condonation of delay.

In reply to the OA, the respondents have stated that cause of action in favour of the applicants has accrued in the year 1976 and/or in 1985 when they were dis-engaged. The OA has been filed in the year 2005, thus, the applicants cannot raise the grievance which dates back to the year 1976 and 1985 in the year 2005. The respondents have also pleaded the principle of res-judicata, inasmuch as, for the same cause of action, the applicants have earlier filed OAs which were disposed of with direction to make fresh representations and to consider their cases for inclusion in the Casual Live Register as per rules. Thus, according to the respondents the applicants, at this stage, cannot raise grievance regarding their regularisation against Group-D post. For that purpose, the learned counsel for the respondents has placed reliance on the decision of this Tribunal in OA No.597/05, Sua Lal vs. UOI decided on 10th October, 2006 whereby it was held that the fact that name of the applicant is in the Live Register will not advance his case for re-engagement as well as regularization of his services on the post, especially when the fact remains that the applicant is out of job for a considerable long period and also in view of the

policy of the Railway Board that in case the applicant absented for 2 years from the work, his name has to be struck down from the rolls. It was further observed that in view of the decision of the Constitution Bench of the Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi, 2006 AIR ACW 1991, the applicant is not entitled to the relief whereby the Apex Court has deprecated the action of the Union, the States, their departments and its instrumentalities to resort to regular appointment and regularize the services dehors the rules and it was categorically held that Constitution does not envisage any employment outside the constitutional scheme and without following the recruitments set out therein and absorption of Casual Labour in permanent employment who have been engaged without following due process of selection as envisaged by the constitutional scheme is illegal.

7. I have heard the learned counsel for the parties and gone through the material placed on record. I am of the view that the present application is hopelessly time barred and as such, at this stage, no direction can be given to the respondents to engage them as Casual Labour and to include their names in the Live Casual Register. As already stated above, services of applicant No.2 were dis-engaged in the year 1976 and as per R.B.E.No.82/86, it is only those persons whose

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services have been dis-engaged after 1st January, 1981, their names can continue to be borne on the Live Casual Register. The applicants also filed OAs for the same cause of action before the Principal Bench which were disposed of with direction to consider the case of the applicants for inclusion of their names in the Live Casual Register in terms of circular dated 28.8.87. Admittedly, name of applicant No.2 has not been included in the Live Casual Register. The Full Bench of Hon'ble Delhi High Court in Jagdish Prasad Vs. Union of India and Ors., 2003 (1) SLJ 407 has held that non-inclusion of name in terms of circular dated 28.8.87 is not a continuous cause of action. For that purpose, the Full Bench has placed reliance upon the decision of Hon'ble Apex Court in the case of S.S.Rathore vs. State of M.P., AIR 1990 SC 10. Thus, the contention of the applicant that non-inclusion of name in the Live Register is continuous cause of action, cannot be accepted. So far as applicant No.1 is concerned, his name has been included in the Live Register at Sl.No.1173 as he has worked for 49 days for a period between 2.5.85 to 20.6.85 i.e. after the cut off date of 1st January, 1981. As per policy of Railway Board, in case persons remained absent for a period of two years, his name has to be struck down from the rolls. It is admitted case between the parties that the applicant worked for 49 days w.e.f. 2.5.85 to 20.6.85. The applicant has filed OA after a

lapse of about 20 years with a prayer that he should be engaged as Casual Labour as per his seniority position in the Live Casual Register. Such a plea of the applicant cannot be entertained at this belated stage, even if the applicant has made good case on merit as the applicant has abandoned his right by not raising his grievance within reasonable time. Further, granting a relief to the applicant No.1 that he should be given preference to the outsider in the matter of engagement simply on the ground that his name find mention in the Live Casual Register and has worked for only 49 days w.e.f. 2.5.85 to 21.6.85, after a lapse of more than two decades will amount to giving innocuous directions.

8. Thus, I am of the view that the applicant has not made out a case for condonation of delay. Accordingly, MA No.92/2005 for condonation of delay is dismissed.

9. Since I have dismissed the MA for condonation of delay, no order is required to be passed in OA which shall also stand dismissed with no order as to costs.



(M.L. CHAUHAN)

Judl. Member