

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 25th day of August, 2006

ORIGINAL APPLICATION No 515/2005.

CORAM:

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

Jagmohan Verma
s/o Hemu Verma,
age 39 years
r/o Village
13, State Road,
Bandikui,
Distt. Dausa.

..Applicant

(By Advocate : Mr. Amit Mathur)

Versus

1. Union of India through
General Manager,
Northern Western Railway,
Station Road,
Jaipur.
2. Divisional Railway Manager,
NW Railway, Station Road,
Jaipur.
3. Pawan Kumar
s/o Ram Vilas,
'D' Engineering,
Substitute Gangman,
Office of DRM,
N.O.W. Railway,
Jaipur.

.. Respondents

(By Advocate: Shri N.C.Goyal)

ORDER

Per Hon'ble M.L.Chahan.

The applicant has filed this OA thereby praying for the following reliefs:-

- (i) The original application preferred by the applicant may kindly be allowed and the respondents may be directed to re-engage the applicant in the services and further regularize their services as per law. The respondent may be directed to engage the applicant in place of R-3.
- (ii) Any other order or relief which this Hon'ble Tribunal thinks just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.
- (iii) Cost of the original application be awarded in favour of the humble applicant."

2. Briefly stated, facts of the case are that the applicant was initially engaged as Casual Labour by the respondents in the year 1986. It is the case of the applicant that during the period from May, 1986 till June, 1989. He worked for more than 20 months continuously in the office of respondents and attained the status of temporary employee after working for 120 days continuously. The respondents thereafter retrenched the services of the applicant alongwith many other labourers. Such action of the respondents was challenged by filing OA in the year 1989 for redressal of grievance. It is stated that in OA No.331/92 submitted by Shri Kamal Singh and 26 others the applicant was also party before the learned Tribunal. The learned Tribunal vide order dated 9.9.93 disposed of the OA with directions to the respondents to consider the case of the applicant as per policy framed. It is further stated that after passing of the

order by the learned Tribunal the applicant represented his case before the respondents that they are eligible for appointment/re-engagement and they may be given appointment as per the order passed. Copy of the representation has been placed by the applicant on record as Ann.A5. It is the case of the applicant that he continued to make representations to the respondents for his absorption and ultimately has filed OA in the year 1998 for inclusion of his name in the Live Casual Labour Register. The said OA was allowed and directions were issued to the respondents that if the contentions of the application are found correct then his name may be included in the Live Casual Labour Register. The applicant has placed a copy of the judgment at Ann.A6. The grievance of the applicant is that action of the respondents by giving appointment to other employees and ignoring claim of the applicant is violative of Article 14 and 16 of the Constitution of India and direction may be given to the respondents to consider case of the applicant. It is on the basis of these facts that the applicant has filed this OA praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have stated that as per order of the Hon'ble Principal Bench in the case of Mohan Lal and others, the Railway Board has issued instructions. As per these instructions persons who

were fulfilling the conditions of the scheme, their names were included in the list. The respondents have placed copy of the scheme as well as list of candidates dated 10.12.92 as Ann.R1. The respondents have categorically stated that they have not received any representation (Ann.A5) pursuant to the order passed by the Principal Bench. It is stated that in the said representation at Sl.No.1 and 2 of reference the applicant has given reference of the letter dated 23.4.1992 and letters dated 30.1.90, 17.2.87 and 12.1.89. They are related to the Engineering whereas the applicant in representation has stated that he had worked as Loader/Unloader. At Sl.No.4, the applicant himself has submitted about the scheme, it means the applicant himself was knowing that he is not fulfilling the conditions of the scheme as such his name has not been included in the list prepared vide letter dated 10.12.1992 (Ann.R1). The respondents have stated that name of the applicant cannot be included as the applicant was not fulfilling the conditions as per the scheme Ann.R1.

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

5. The matter is no longer res-integra and the same is covered in view of the decision rendered by this Tribunal in OA No.111/2005, Miseriya vs. Union of

India decided on 7.3.2006. At this stage, it will be useful to quote para 5.1 to 5.4 which thus reads:-

5.1 At the outset, it may be stated that the present OA is wholly mis-conceived and deserve out right rejection, firstly, on the ground that the applicant has not approached this Tribunal with clean hands. It is admitted case between the parties that the applicant alongwith other persons filed OA No.3046/91 before the Principal Bench where the name of the applicant find mention at Sl.No.26 in the array of applicants. The said OA was disposed of vide order dated 3rd October, 1994. At this stage, it will be useful to quote para 5 of the judgment which has bearing in the present case and is in the following terms:-

“Accordingly, these OAs are disposed of with a direction to the respondents to include the names of the applicants in the Live Casual Labour Register, if they are eligible for such inclusion in terms of the circular No. 220E/190-XIX-A/RIV dated 28.8.87 of the General Manager, Northern Railway (referred to in Net Ram’s judgment) and give engagement to the applicants as casual labourers if and when the need arises, in accordance with their seniority in that Register. It is made clear that in order to enable the respondents to take such action, the applicants to submit representations to the competent authority within one month from the date of receipt of this order along with proof relating to the claim that they are entitled to be included in the Live Casual Labour Register and in case such representations are received, the respondents are directed to dispose them of in accordance with the law within a further period of four months thereafter, under intimation to the applicants.”

5.2 Thus, in terms of the aforesaid order, the case of casual labourers including the applicant was required to be considered in terms of the circular dated 28th August, 87 where a provision has been made for maintenance of Live Casual Labour Register and casual labour in future were required to be engaged if and when need arise strictly in accordance with the seniority and amongst the persons whose name find mention in the Live Casual Labour Register. At this stage, it may be stated that the Railway Board issued order i.e. RBE No. 82 of 1986 dated 25.4.1986 which was circulated by the General Manager, Northern Railway, New Delhi vide letter dated 28.8.1987, and according to this circular, a provision has been made for maintenance of Live Casual Labour Register, inter-alia on the ground that complaint had been received that those who have worked earlier were not being engaged as and when subsequent requirements arose. Accordingly, the Railway Board vide the aforesaid RBE No. 82 of 1986 decided that name of the said Casual Labourers as were discharged from employment at any time after 1st January, 1981 on completion of work or for want of further productive work can continue to be borne on the Live Casual Labour Register. It was made clear that such Casual Labour who have been discharged for want of work or on completion of work in terms of earlier instructions dated 22.11.1984, their names be brought in the Live Casual Labour Register. It was further made clear that the person engaged as Casual Labour for short duration, or for work of a short duration or for emergencies like restoration of breaches

etc. are not entitled to be brought on the Live Register in terms of instructions dated 22.11.1984 which will hold good in their cases. It was further made clear in the said order that in future Casual Labour Cards will not be issued to such Casual Labours. Thus, in view of the provisions contained in the circular dated 28th August, 1987 and also in terms of the decision rendered by the Principal Bench, as quoted above, it was not as a matter of right that name of the applicant and other Casual Labourers were to be brought in the Live Casual Labour Register. As per the judgment rendered by the Tribunal in the case of the applicant, the names in the Live Casual Labour Register were required to be incorporated only if the applicant and other persons were eligible for such inclusion in terms of circular dated 28.8.1987. For that purpose, it was incumbent upon the applicant to make representation within one month from the date of receipt of the order alongwith proof relating to claim that he is entitled to be included in the Live Casual Labour Register. It was in the event of making such representation within one month from the date of receipt of the order that the respondents were directed to dispose of the same under intimation to the applicants. Thus, in case the representation is not made by the applicant within the aforesaid period alongwith proof relating to claim that he is entitled to be included in the Live Casual Labour Register, the name of the applicant was not required to be included in the Live Casual Labour Register. Thus, the question which falls for consideration is whether the applicant has made representation in terms of the judgment rendered by the Principal Bench, as quoted above, within a period of one month. According to me, the applicant has not made any such representation in terms of order dated 3.10.1994. The only material placed before this Tribunal by the applicant in the OA is representations Ann.A2 and A3. The document Ann.A2 is letter dated 25.10.1994 whereby the applicant has prayed that in terms of judgment of the Tribunal, where his name find mentioned at Sl.No.26 in the array of applicants, he be reinstated in service. The applicant has not enclosed alongwith this representation any proof relating to the claim that his name has to be included in the Live Casual Labour Register in terms of circular dated 28.8.1987. Thus, in terms of the decision rendered by the Principal Bench in the aforesaid case in OA No.3056 of 1991, the respondents were not bound to consider his case for bringing his name in the Live Casual Labour Register. The second representation Ann.A3 is dated 9.2.1995 where the applicant has given particulars regarding his engagement as Casual Labour w.e.f. 3.10.1981 to 10.5.1987 in different spells. This representation has been addressed to the Divisional Manager, North Western Railway which was not in existence at the relevant time. The new zonal railway came in existence in the year 2000 i.e. after a period of 5 years of sending the so called representation Ann.A3. Thus, I find substance in the submissions made by the respondents in the reply that neither Ann.A2 nor Ann.A3 was received by the respondents and these are fabricated documents prepared in order to get relief from this Tribunal. Even in the rejoinder, relevant portion of which has been reproduced above, the applicant has justified that Ann.A3 is a genuine document which plea cannot be accepted in view of the reasons stated above. Further, the applicant has stated that if the Tribunal is of the view that these documents are not proved then the Tribunal may ignored these annexures and allow the applicant to plead bonafide error. In case, these annexures are ignored, the fact remains that the applicant has not made representation to the competent authority in terms of the directions given by this Tribunal in OA No.3046/91. As such, his name



was not required to be included in the Live Casual Labour Register, and further the applicant cannot be engaged as Casual Labour in future also as the future engagement has to be made strictly in accordance with the seniority as per the name shown in the Live Casual Labour Register as and when need arise. Thus, the applicant is not entitled to any relief, even on merits and also on the principle that a person who has not come before this Tribunal with clean hands is not entitled to be heard, even if he has got a case on merit. Even otherwise also, as per own showing of the applicant, the applicant has worked for 113 days in the year 1982, 16 days in the year 1984, 42 days, 29 days and 31 days in different span in the year 1985 and after a break of about 1 ½ years 71 days in the year 1987 when he was dis-engaged on 10.5.1987 (see representation dated 12.5.2004 annexed with rejoinder). Thus, the applicant has not completed 120 days continuous service in a year so as to record his name in the Live Casual Labour Register. Further, it is not the case of the applicant in this OA that he had been discharged for want of work or on completion of work, as such his name has to be included in the Live Register in terms of instructions dated 28.8.1987. Rather, the stand taken by the respondents in the reply is that his engagement was illegal and after cut off date and such type of cases were not required to be considered.

- 5.3 That apart, even if for arguments sake it is assumed that the applicant has got a case on merit, he is not entitled to any relief yet on another ground. The applicant has filed this OA only in the year 2005 for his re-engagement on the ground that person junior to him has been re-engaged in the year 2003. For the sake of repetition, it may be stated that in the case of a Casual Labour who has been dis-engaged, his name has to be placed in the Live Casual Labour Register in terms of circular dated 28.8.1987 and it is only those casual labourers whose names find mention in the Live Casual Labour Register that they have to be re-engaged as per seniority in future as and when work is available. Thus, incorporation of name in the Live Casual Labour Register is sine-qua-non for re-engagement in future. Admittedly, name of the applicant has not been brought in the Live Casual Labour Register in terms of the judgment dated 3.10.1994 passed in OA No.3046/91. This all happened in the year 1994 whereas the present OA has been filed after 20 years. Thus, the cause of action has arisen in favour of the applicant in the year 1994-95 when his name has not been brought in the Live Casual Labour Register.
- 5.4 The Full Bench of the Delhi High Court in the Case of 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 and the Full Bench has placed reliance upon the decision of the Constitution Bench of the Apex Court in the case of S.S.Rathore vs. State of M.P., AIR 1990 SC 10 and also another decision of the Apex Court in the case of Ratam Chandra Sammanta and ors. vs. The Union of India and ors. JT 1993 (2) SC 418. In the case before the Full Bench, the petitioner therein made a representation on or about 24th September, 1987 for placing his name on the said register in terms of circular dated 28.8.1987. He did not carry the matter further and made further representation only on or about 20th May, 1998. The Full Bench held that it is not a case where an employee is entitled to salary or pension so that the cause for filing petition would be a continuous one. The petitioner filed the petition on the

ground that his name is directed to be placed in the Live Casual Labour Register and it was held that keeping in view the decision of the Apex Court, in the case of this nature, the cause of action would not be a continuous one. The judgment rendered by the Delhi High Court in the case of Jagdish Prasad is squarely applicable in the facts and circumstances of this case. In the present case also name of the applicant was also not included in the Live Casual Labour Register. Though in the rejoinder, the applicant has annexed copy of Casual Labour Card treating to be copy of Live Casual Labour Register. It may be stated that Casual Labour Cards were issued to Casual Labourers at the time of their engagement and Casual Labour Cards are different than the entry to be made in the Live Casual Labour Register in pursuance of Railway Board order RBE 82 of 1986 dated 25.4.1986 as circulated vide letter dated 28.8.1987."

The present case is squarely covered by the reasoning given in the case of Miseriya as reproduced above. Admittedly, the cause of action has arisen in the year 1992 when name of the applicant was not included in the list of Casual Labour who has completed 120 days between the period 1.7.1990 to 30.6.1992 which list was prepared for the purpose of screening and absorption of the employees for their regularization against Group 'D' post. Thus, the present OA is hopelessly time barred.

6. Further, appointment has to be made on the basis of entry in the Live Casual Labour Register. Admittedly, name of the applicant has not been incorporated in the Live Casual Labour Register. Non-inclusion of the name in the Live Casual Labour Register in terms of circular dated 28.8.1987 is not a continuous cause of action. As such, the applicant cannot be considered for future engagement/absorption.

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7. For the foregoing reasons, the applicant is not entitled to any relief.

8. Yet for another reason, the applicant cannot be granted any relief. The applicant was engaged as Coal Loader/Unloader in the Loco Shed under the respondents. The Apex Court in the case of Secretary, State of Kar. Vs. Umadeci (S.C.), 2006 (3) SLR 15 has already held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a Court would certainly be disabled from passing an order upholding violation of Article 14 or in ordering the overlooking of the need to comply with the requirements of Article 14 read with Article 16 of the Constitution. Therefore, consistent with the scheme for public employment, this Court while laying down the law, has necessarily to hold that unless the appointment is in terms of relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee. If it is a contractual appointment, the appointment comes to an end at the end of the contract, if it was an engagement or appointment on daily wages or casual basis, the same would come to an end when it is discontinued. Similarly, a temporary employee could not claim to be made permanent on the expiry of his terms of appointment. The Apex Court

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also clarified that merely because a temporary employee or a casual wage worker is continued for a time beyond the terms of his appointment, he would not be entitled to be absorbed in regular service or made permanent, merely on the strength of such continuance, if the original appointment was not made by following a due process of selection as envisaged by the relevant rules. On this ~~basis~~, even the applicant is not entitled to any relief.

9. Accordingly, the OA is dismissed with no order as to costs.



(M.L. CHAUHAN)

Member (Judl.)

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