

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

JAIPUR, this the 10th day of October, 2006

ORIGINAL APPLICATION No 597/2005.

CORAM:

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

Sua Lal,
s/o Shri Ram Dev,
aged 43 years,
r/o Near Haripura Chambal Power House,
Phulera,
District Jaipur.

..Applicant

(By Advocate: Shri C.B.Sharma)

Versus

1. Union of India,
through General Manager,
North Western Zone,
North Western Railway,
Jaipur.
2. Divisional Railway Manager,
North Western Railway,
Jaipur Division,
Jaipur.
3. Assistant Engineer,
North Western Railway,
Phulera,
District Jaipur.

.. Respondents

(By Advocate: Shri Anupam Agarwal)

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ORDERPer Hon'ble Mr. M.L. Chauhan.

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

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

(ii) That the respondents be further directed not to fill-up the vacant posts through open market without re-engagement and regularization of services of the applicant.

(iii) Any other order, direction or relief may be passed in favour of the applicant which may be deemed fit, just and proper under the facts and circumstances of the case.

(iv) That the costs of this application may be awarded."

2. Briefly stated, facts of the case are that the applicant was engaged as Casual Labour/Substitute worker on 28.2.1977 and worked upto 3.8.1977 at Phulera. Thereafter he was dis-engaged. The grievance of the applicant is that persons junior to him have been given employment whereas he has never been engaged. Accordingly, he filed OA No. 601/1993 whereby he has prayed that direction may be given to the respondents to engage him in service by granting his seniority as Casual Labour from the date of his initially appointment. The said OA was dismissed by holding that said OA was filed in the year 1993 whereas he was last engaged on 3.8.1977. Thus, the applicant has approached the Tribunal after more than

15 years and there is no reasonable explanation available on record for this delay. Accordingly, the said OA was dismissed as barred by limitation in view of the law laid down by the Apex Court in the case of Bhoop Singh vs. Union of India, AIR 1992 SC 1414. This Tribunal also declined the relief to the applicant regarding seniority as well as re-engagement to the applicant as prayed for. This Tribunal, on the basis of the contention raised by the applicant that his name find mention in the casual labour live register observed that if the casual labours are engaged, the applicant may also be considered according to his seniority. Thus, the observation which was made by this Tribunal on the basis of the contention raised by the applicant was that in case his name find mention in the casual live register he may be engaged according to his seniority. According to the applicant, action of the respondents in regularizing services of the persons who were engaged after the applicant as Gangman is arbitrary, as such he is entitled for engagement and for regularization of services prior to persons who have been allowed to work. It is further stated that the respondents have advertised 1300 posts of Gangman/Khallasi in the year 2002 to be filled through open market. The applicant approached the respondents by various quarters but the respondents have ignored the claim of the applicant and have appointed the junior persons. It is on these

basis the applicant has filed this OA thereby praying for the aforesaid reliefs.

3. Notice of this application was given to the respondents. The respondents have categorically stated that no person junior to the applicant has been regularized ignoring claim of the applicant as there is no casual labour waiting for engagement. It is further stated that as per averment made by the applicant, the applicant had worked in the year 1977 and filing of the OA after more than 29 years is clearly barred by limitation for which no application for condonation of delay has been preferred. Therefore, the present OA is not maintainable.

4. The applicant has filed rejoinder. Alongwith rejoinder, the applicant has annexed copy of the letter dated 2.6.1992 (Ann.A12) to show that his name was available in the live register at Sl.No.50, as such, the respondents were duty bound to re-engage the applicant.

5. I have heard the learned counsel for the applicant and gone through the material placed on record. I am of the view that the applicant is not entitled to any relief for more than one reason. Admittedly, the applicant has filed OA No.601/1993 whereby he has prayed for re-engagement in service by

granting his seniority as casual labour from the date of his initial appointment. The said OA was dismissed by this Tribunal vide judgment dated 26.7.2000 (Ann.A1). The Tribunal has categorically held that the application has been filed after a lapse of more than 15 years without any reasonable explanation, as such, the same is hopelessly time barred in view of the law laid down by the Apex Court in the case of Bhoop Singh (supra). The applicant cannot take any assistance from the observations made by this Tribunal while disposing of the OA on the basis of the contention raised before the Tribunal that name of the applicant find mention in the casual labour live register and in case casual labour are engaged, the applicant will also be considered according to his seniority. It may be stated that such direction was given on 26.7.2000 whereas the present OA has been filed on 28.12.2005. The respondents have categorically stated that there is no casual labour on live register waiting for engagement. The applicant cannot draw any assistance from the letter dated 2.6.1992 (Ann.A12) annexed with the rejoinder which shows that name of the applicant find mention at Sl.No.50 of the Casual Labour Live Register. This all happened in 1992. As per railway Board circulars, in case a person remains absent from work for two years his name has to be struck down from the rolls. In the present case, it is admitted case between the parties that the applicant worked in the

year 1977 and thereafter he was dis-engaged. As can be seen from the facts stated in para 3 of the judgment dated 26.7.2000, the applicant was re-employed in the year 1986-87 details of which has been mentioned in Ann.A2 and thereafter the applicant was not engaged. It is not known how name of the applicant was incorporated in the live register. In any case, the fact remains that the applicant is out of job for a considerable long period and in view of the policy of the Railway Board, in case the applicant absented for two years from the work, his name has to be struck down from the rolls. In any case, 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 service on the post of Gangman as prayed for. The respondents as a matter of policy, have now decided that all appointments under Group 'D' shall be made by the concerned Railway Recruitment Board as per Railway Board circular dated 27.11.2001. In view of this development, the applicant is not entitled to the relief prayed for. Further the Constituion Bench of the Hon'ble Supreme Court in the case of Secretary, State of Karnataka vs. Uma Devi, 2006 AIR ACW 1991 has deprecated the action of the Union, the States, their departments and its instrumentalities to resort to regular appointment and regularization of service dehors the rules and it was categorically held that the Constitution does not

envisage any employment outside the constitutional scheme and without following requirements set out therein and absorption of casual labour in permanent employment who have been engaged without following the due process of selection as envisaged by the constitutional scheme, is illegal and it is the duty that courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established. The Apex Court has also overruled the earlier decision which run counter to the principles settled in the case of Uma Devi (supra). At this stage, it will be useful to quote relevant portion from the judgment which thus reads:-

"the Union, the States, their departments and instrumentalities have resorted to irregular appointments, especially in the lower rungs of service, without reference to the duty to ensure a proper appointment procedure through the Public Service Commission or otherwise as per the rules adopted and to permit these irregular appointees or those appointed on contract or on daily wages, to continue year after year, thus, keeping out those who are qualified to apply for the post concerned and depriving them of an opportunity to compete for the post. It has also led to persons who get employment, without the following of a regular procedure or even through the backdoor or on daily wages, approaching Courts, seeking directions to make them permanent in their posts and to prevent regular recruitment to the concerned posts.... It is time, that Courts desist from issuing orders preventing regular selection or recruitment at the instance of such persons and from issuing directions for continuance of those who have not secured regular appointments as per procedure established."

Their Lordships further held as follows:

“The Constitution does not envisage any employment outside this constitutional scheme and without following the recruitments set down therein.

It is ordinarily not proper for courts whether acting under Article 226 of the Constitution or under Article 32 of the Constitution, to direct absorption in permanent employment of those who have been engaged without following a due process of selection as envisaged by the constitutional scheme. The bypassing of the constitutional scheme cannot be perpetuated by the passing of orders without dealing with the deciding the validity of such orders on the touchstone of the constitutionality. It is necessary to put an end to uncertainty and clarify the legal position emerging from the constitutional scheme, leaving the High Courts to follow necessarily, the law thus laid down.

.....

Thus, it is clear 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.... 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 the relevant rules and after a proper competition among qualified persons, the same would not confer any right on the appointee.... High Courts acting under Article 226 of the Constitution of India, should not ordinarily issue directions of absorption, regularization, or permanent continuance unless the recruitment itself was made regularly and in terms of constitutional scheme.... In that context, the Union of India, the State Governments and their instrumentalities should take steps to regularize as a one time measure, the services of such irregularly appointed, who have worked for ten years or more in duly sanctioned posts but not under cover or orders of courts or of tribunals and should further ensure that regular recruitments are undertake to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed.... We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme.

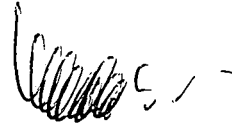
It is also clarified that those decisions which run counter to the principle settled in this decision, or in which directions running counter to what we have held herein, will stand denuded of their status as precedents.”

6. Thus, in view of the law laid down by the Apex Court in the case of Uma Devi (supra), the applicant is not entitled to any relief. The learned counsel for the applicant has drawn my attention to the judgment rendered by this Tribunal in OA No.460/02, Budhi vs. Union of India and ors., decided on 6.8.2003 and argued that the applicant may be granted similar relief. I have gone through the judgment rendered by this Tribunal in OA No.460/02 and other connected matters. I am of the view that the ratio of this judgment is not applicable to the facts and circumstances of this case. In that case also, this Tribunal has refused to grant relief to the applicant regarding their re-employment and also for conferring temporary status in terms of Railway Board instructions dated 12th June, 1984 despite the facts that there was a judgment in favour of the applicant therein whereby limited relief granted to the applicant was that they should be given the benefit of Section 25-H in case the respondents want to re-engage casual labour in any project. However, this Tribunal on the specific prayer made by the applicant thereat that the respondents may be directed not to fill up the vacant post as advertised from the open market till the regularization of service of the applicant, granted limited relief that they should be given benefit of the railway board circular No.42/2001

dated 28.2.2001 and circular No. 190/2001 dated 20.9.2001 thereby granting age relaxation and also not insisting minimum educational qualification of 8th class passed for filling up 60% of the open market direct recruitment vacancy for each recruitment in the cadre of Gangman. In the instant case, this is not the case set up by the applicant in the OA, as such the applicant is not entitled to the benefit of Railway Board circulars No.42/2001 dated 28.2.2001 and 190/2001 dated 20.9.2001. Thus, I am of the firm view that in view of the law laid down by the Apex Court in the case of Uma Devi (supra) excepting those casual labour whose services have already been regularized there is no scope for directing the respondents/department for regularizing the service or to re-engage the applicant on the basis of entry in the casual labour live register for the purpose of regularization of substitute/casual employment. All the posts in future are required to be filled up by following statutory rules. As held by their Lordship of the Supreme Court that there cannot be any further order to by-pass the constitutional requirement. Therefore, the department is bound to make recruitment in future in Grade-D strictly as per statutory rules.

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7. For the foregoing reasons, the OA is bereft of merit and the same is accordingly dismissed with no order as to costs.



(M.L. CHAUHAN)

Member (Judicial)

R/