

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
JAIPUR BENCH

Jaipur, this the 1st day of October, 2008

Review Application No. 22/2008
(Original Application No. 185/2006)

CORAM

HON'BLE MR.M.L.CHAUHAN, MEMBER (Judicial)
Hon'ble Mr. B.L.KHATRI, MEMBER (ADMINISTRATIVE)

Chand Khan
s/o Shri Shokat,
aged about 42 years,
worked as T.S.Holder Beldar,
under Inspector of Works at Achnera
r/o 147/L, Railway Colony,
Achnera.

.. applicant/respondent

Versus

1. Union of India
through the General Manager,
North Western Railway,
Hasanpura Road,
Jaipur
2. Divisional Railway Manager,
North Central Railway,
Agra
3. Divisional Rail Manager,
North Western Railway,
Power House Road,
Jaipur


.. Respondents-applicants

(By Advocate: Shri Hawa Singh)



O R D E R (ORAL)

The present Review Application has been filed by the respondents in the OA for reviewing the order dated 21.8.2008 passed in OA No. 185/2006, Chand Khan Vs. Union of India. In the OA the applicant has claimed relief regarding regularization of his services on the basis of his screening and grant of temporary status by the respondents. The said OA was finally disposed of by this Tribunal vide the aforesaid order which is under review in this Review Application. As can be seen from para 5 of the judgment, this Tribunal has declined the prayer of the applicant regarding regularization of services on the premise that since the applicant has not worked after 1987 and the OA has been filed after a lapse of 19 years i.e. in the year 2006, as such, even if the applicant has got case on merits, relief regarding regularization of his services cannot be granted at this stage. However, on the submissions made by the learned counsel for the applicant that he will be satisfied at this stage, in case direction is given to the respondents to re-engage the applicant as Casual Labour afresh, this Tribunal specifically observed that no such positive direction can be given to the respondents qua this aspect also. However, passing reference was made that since the applicant has worked with the respondents for about 7 years, in case work is available with the respondents and the applicant




present himself before the authorities within a period of one months from passing of the order in that eventuality respondent No.2 shall consider his case for afresh engagement. At this stage, it will be useful to quote relevant portion of Para 5 whereby the aforesaid observation has been made and thus reads:-

"5.....Learned counsel for the applicant, however, submitted that he will be satisfied at this stage in case respondents are directed to re-engage the applicant as Casual Labour afresh as admittedly the respondents have engaged a junior person to the applicant. Be that as it may, no positive direction can be given qua this aspect also. We hope and expect that since the applicant has worked with the respondents for about 7 years, in case the work is available with the respondents and the applicant presents himself before the authority within a period of one month from today in that eventuality, respondent no.2 i.e. Divisional Rail Manager, North Central Railway, Agra shall consider his case for fresh re-engagement as Casual Labour."

2. The review applicants have filed this Review Application merely on the ground that such direction could not have been given in view of the decision rendered by the Apex Court in the case of Secretary, State of Karnataka vs. Uma Devi (3), 2006 (3) SLR 1 wherein their Lordships have categorically held that all public appointments should be made in conformity with the statutory rules framed under Article 309 which regulate recruitment and conditions of a person appointed to service and posts in connection with the affairs of the Union or the State. Thus, according to

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the review applicants, the direction issued by this Tribunal is contrary to the mandate given by the Hon'ble Apex Court in the case of Uma Devi (supra). Another ground taken by the applicant is that admittedly the OA was time barred and there was no application for condonation of delay, as such, in view of the provisions contained in Section 21(3) of the Administrative Tribunals Act, 1985, the OA was not liable for consideration and the same was required to be dismissed on this score also. According to the review applicants, since the applicant has not attended work after 1987 till 2006, as such, his case cannot be considered especially when there is no provision to engage Casual Labour.

3. We have given due consideration to the submissions made in the Review Application. At the outset, as can be seen from the portion as quoted above, this Tribunal has not given any direction that the applicant be re-engaged as Casual Labour. Rather, on the submission made by the learned counsel for the applicant this Tribunal has specifically observed that no positive direction can be given qua this aspect also. In fact, this Tribunal has made observation only to consider case of the applicant for fresh engagement as Casual Labour on the premise that the applicant has worked with the department for 7 years, not only this,  he was also granted temporary status by the

department. It was under these circumstances, that this Tribunal has directed respondent No.2 to look into the matter and consider case of the applicant in case work is available. The observation made by this Tribunal cannot be treated as direction. Needless to add that it is open for the appropriate authority to reject request of the applicant for re-engagement that too after a lapse of about 19 years in case there is no provision to engage the Casual Labour as pleaded by the review applicants in para 7 of the Review Application. Thus, according to us, the present Review Application is wholly misconceived.

4. As regards the contention raised by the review applicants that even no such direction/observations could have been made by this Tribunal in view of the law laid down by the Apex Court in the case of Uma Devi (supra) and also that the present OA was hopelessly time barred in view of the provisions contained in Section 21(3) of the Administrative Tribunals Act, and as such, should not have been entertained, suffice it to say that this action cannot afford ground for reviewing the judgment. In case the judgment is wrong, the remedy available for the review applicants is to challenge the judgment in the higher forum but certainly the Review Application cannot be entertained on the ground that the matter has been wrongly decided by this Tribunal.

5. Be that as it may, even the reference made by the review applicants to the judgment of Uma Devi (supra) and also to the provisions as stipulated under Section 21(3) of the Administrative Tribunals Act, 1985 is wholly misconceived. So far case of Uma Devi is concerned, it deals with the public employment to be made by the State or the Union against service and posts in connection with the affairs of the Union or the State. Admittedly, the Casual Labours are neither holder of the posts nor they are engaged against any post in connection with the service or posts pertaining to Union or the State. Further, the provision of Section 21 of the Administrative Tribunals Act is also attracted where dispute relates to service matters. This is not a case of such nature. In this case this Tribunal has not given any direction that service of the applicant may be regularized against a regular post which under such circumstances may amount to granting appointment against a post and in that eventuality provision of Section 21 of Administrative Tribunals Act would have been attracted. In this case, this Tribunal has simply made an observation that in case the applicant can be given fresh engagement as Casual Labour and the work is available with the department, the department may consider feasibility to engage the applicant as fresh Casual Labour. For the sake of repetition, in case

there is no provision to engage Casual Labour, as pleaded by the review applicants in Para 7, the representation of the applicant could have been rejected on that ground alone instead of resorting to the review proceedings.

6. Thus, for the foregoing reasons, the present Review Application is dismissed as not maintainable.



(B.L. KHATRI)

Admv. Member



(M.L. CHAUHAN)

Judl. Member

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