

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH ALLAHABAD

Dated: This the 07th day of August 2018.

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER (J)

Original Application No. 1285 of 2010

Vyas Muni Pandey (Khalasi) aged about 50 years, S/o Late Pauhari Pandey, R/o Village Banjariya, PO Bankata Station, District Deoriya (U.P)

. . . Applicant

By Adv: Shri J.N Rai

V E R S U S

1. Union of India through General Manager, North Eastern Railway, Gorakhpur Zone, Gorakhpur.
2. Chief Personal Officer, North Eastern Railway, Gorakhpur Zone, Gorakhpur.

. . . Respondents

By Adv: Shri Avnish Tripathi

O R D E R

1. Applicant Vyas Muni Pandey seeks the relief of re-engagement and regularization of his service as class IV employee in North Eastern Railway Gorakhpur Zone, Gorakhpur and as also to fix the original seniority of the applicant along with back wages and to further get the applicant reference over his juniors as well

as fresh recruits in the matter of regularization as and when regular vacancies arises and in case applicant has exceeded maximum age limit for the regularization, the same be ignored and relaxed since he has become over age as a result of non-compliance of the obligation of the respondents to regularize him on his own term as per direction of Hon'ble Apex Court in Inder Pal Yadav Vs. Union of India. The applicant be regularized on the availability of the vacancies which are still available as per advertisement dated 6.12.2007 for Group 'D' posts. That the respondents be directed to continue the name of applicant in the Live Casual Register where the applicant is placed at Serial. No. 1012.

2. Applicant's case is that he worked as Casual Labour - Khalasi from 19.9.1980 to 20.1.1983 and from 17.12.1984 to 15.4.1985 under Rail Path Nirichhak (Nirman), North Eastern Railway Siwan Zone, Gorakhpur under Samstipur Barabanki Project, thereby working for the period of 976 days as shown the Live Labour Casual Register of North Eastern Railway Gorakhpur prepared in the year 1985.

3. That the re-engagement of the applicant was ignored even though his juniors who had not completed the minimum 120 days were engaged and that photocopy of service card of the applicant is enclosed herewith as Annexure A-3. That some persons had filed O.A. No. 828/2002 which was decided vide order dated 10.2.2006 wherein direction was given that the applicants therein be given preference over their juniors as well as fresh recruits in the matter of regularization and if the applicant have exceeded the

maximum age, the same be ignored and age relaxation be given to them

4. As per the OA, the applicant was working as casual labour under the railways for the period from 19.9.1980 to 20.1.1983 and claimed to have completed 120 days with his name was at Serial No. 1210 in the live register of the railways as was directed by the Hon'ble Apex Court in Indra Pal Yadav v/s Union of India, 1985 (2) SCC page 548.

5. According to the applicant, he approached this Tribunal through O.A. No. 643/08. The O.A. was decided with a direction to the respondents to decide his representation dated 09.09.2008 according to rules which was rejected as per impugned letter dated 16.11.2009 (Annexure- A1). His representation asking for reappointment in the Railways was rejected by an order dated 16.11.2009, which has been impugned in this O.A. The applicant is seeking the quashing of this order and reinstatement as a regular Group D employee in accordance with his seniority assigned under Live casual labour register with all consequential benefits as well as treat him to be within the prescribed age limit.

6. It has been stated that respondent No. 3 has illegally rejected the representation against rules and regulation. He claims that his earlier application for regularization was registered at serial no. 1012 in the live casual labour register, since, he had completed 976 days of duty. Hence, he is eligible for regularization in Group 'D' post in accordance with seniority on the live casual labour

register. The applicant has also referred to impugned order where it has been stated that the respondents had placed an advertisement in the Newspaper dated 27.10.1999 to update the live casual register and it was notified therein that all previously employed casual labours should appear before the controlling officer within 45 days to get their records updated. The applicant could not respond to this notice as he is a resident of rural area and did not have access to the newspaper. It is his contention that the respondents should have intimated him about this notice at his residential address which they did not do. Thereby he was denied the opportunity to get his papers updated as required. It is further been stated that the rejection of his representation on grounds of his being over age is also illegal.

7. In their counter-affidavit, the respondents have stated that the impugned order dated 16.11.2009 has been passed strictly according to rules. It has been categorically stated that no casual labour junior to the applicant has been reappointed. Since the applicant could not present his documents in response to the advertisement in the newspapers dated 27.10.1999 his name did not find place in the updated list as on 01.04.1999.

8. The respondents have also quoted Para 3-B of the Railway Board circular dated 11.09.1986 which provides for giving temporary status to casual labours of a project and it has been pointed out that the applicant does not come out within the zone of consideration under this provision as well.

9. During hearing the applicant's counsel argued mainly on the lines of his pleadings. Whereas, Learned counsel for the respondents confined his arguments to the fact that the applicant being over age cannot be given any relief by the Tribunal.

10. The documents on record were carefully scrutinized along with the impugned order and after due consideration of the points raised during hearing, I find that the impugned order does not suffer from any infirmity. Beside the fact that the name of the applicant does not appear in the updated records which may be due to the fact, that admittedly, the applicant did not submit the documents as required by the newspaper notification dated 27.10.1999 by the due date, it is also relevant to note that no casual labour junior to the applicant in live casual register has been reappointed.

11. Regarding the applicants being over age, learned counsel argued that the case of the applicant has been delayed because of delay in conducting the screening tests. If on account of delay in declaration of result due to fault of the respondents, applicant has become over age, then decision should not be against the applicant, because he was not responsible for delay or being overage subsequent to consideration of his case by the screening committee.

12. Learned counsel for the respondents argued that the applicant had been duly considered by the screening committee and was found unsuitable as per the existing rules. He further argued that the applicant

himself pleaded that he is entitled to age relaxation shows that he was an over age and, therefore, no relief can be given to the applicant giving him relaxation in the age by this Tribunal.

13. So, far as the question of over age is concerned, admittedly, the applicant is over age. In the application has given his age to be around 50 years at the time of filing the application and so, at this time he would be around 58 years old. The case law relied upon by the respondents in case of Union of India and others Vs. Ashok Kumar and others (Civil Misc. Writ Petition No. 1006/2016) passed by Division Bench consisting of Hon'ble Mr. Justice V.K.Shukla (J) and Hon'ble Mr. Justice Mahesh Chandra Tripathi (J) on 4.2.2016 clearly support the case of the respondents. The Hon'ble High Court observed as under:- In view of above, the Court is of the considered opinion that Railway Board being the competent authority has issued various instructions time to time in respect of service conditions of Group 'D' and Group 'C' staffs, in continuation of the same the matter of age relaxation in respect of Ex-Casual Labourers and working Casual labour was considered and number of Railway Board letters has been issued for granting age relaxation as well as regarding eligibility criteria. As per the Railway Board Circular dated 28.2.2001 in continuation of the Railway Board's letter dated 25.7.1991, age relaxation was further fixed as upper age limit of 40 years in case of General candidates; 45 years in case of SC/ST and 43 years in case of OBC and the same has also been granted in case of Casual/ substitute Group 'C' and Group 'D' posts. As such the Ex-Casual

Labours are entitled to be considered in the light of the aforesaid Railway Board Letters and the incumbents' claims are liable to be considered for absorption with prospective effect. The Railway Board is rule making authority for Group 'C' and 'D' employees in view of Rule 157 of the Railway Establishment Code, Volume-I, thus, above instructions, which have been issued for absorption/regularisation of ex-causal labours/ Group 'D' employees and once the Hon'ble Apex Court in series of judgments had categorically held that Railway Board has got rule making authority, then the same has statutory force and having binding effect.

14. The railway authorities advertised for 4549 posts vacancies in Group 'D' post but did not consider the name of applicant even though his name was in the live register. In compliance to a letter from the office of General Manager, Gorakhpur Zone, he submitted his 'Pariwad; in the office of the Chief Personal Officer North Eastern Railway Gorakhpur Zone, Gorakhpur. Thereafter in pursuance to his representation, the impugned order dated 16.11.2009 was passed by Chief Personal Officer, North Eastern Railway, Gorakhpur Zone rejecting his prayer for re-engagement while re-engaging his juniors even though they had not completed the minimum working days of 120. The respondents be also directed to continue his name in the live causal labour register. He had filed a representation as per direction of the Tribunal in the O.A filed by him and which representation was rejected by the railway authority vide impugned order dated 16.11.2009.

15. As per Board circular No. 190/2001 (Annexure CR-4) has relaxed the age limit for labour to 40 for general, 43 for OBC and 45 for SC/ST candidates. This has been upheld by Hon'ble Allahabad High Court in Writ Petition No. 21779 of 2006 (Annexure CR-5).

16. The Hon'ble Apex Court in the case of Hindustan Shipyard Limited and other vs. Dr. P. Sambasiva Rao and others reported in (1990) 7 SCC 499 has rejected the case for regularization on the ground that in case of regularization the rules to be strictly adhered to and regularization is not automatic, it depends upon the availability of vacancies, suitability and eligibility of the ad-hoc appointee.

17. So, it is to be seen also as to whether the applicant in this case does or does not fulfil the eligibility i.e. age at the time of consideration for regular absorption as per rules.

18. As per para 2006 of Indian Railway Establishment Manual Vol. II (in short IREM), absorption of casual labourers in regular Group 'D' post has to be considered in accordance with Board's instructions subject to availability of vacancies, suitability and eligibility. The applicants who were engaged as casual labourers without approval of GM have been engaged irregularly. In the light of judgment of Hon'ble Supreme Court in the case of Pramod Kumar vs. U.P. Secondary Education Services Selection Board and others reported in (2008) 2 SCC 244, it has been held that the appointment, which is contrary to the rules would be void in law and no one can seek regularization.

19. I have gone through the pleadings by the parties and also considered the submissions by the learned counsel for applicant and the respondents. Admittedly, the applicant applied in response to newspaper advertisement by the respondents and he was called to appear before the screening test but was found to unsuitable.

20. Main issue in the present OA is given the facts of the case as stated above and in the light of the principles decided by Hon'ble Supreme Court and Hon'ble Allahabad High Court as in the cases cited by the parties, whether the applicant has any right to be considered to be suitable in the screening test and to be regularized.

21. The decision to issue the advertisement inviting casual labours to apply for appearing for the screening test was as per the Railway Board scheme for casual labour based on which the advertisement was issued by Gorakhpur Division on 6.12.2007 as stated in the OA. Neither the applicant nor the respondents have filed the copy of the advertisement issued by Gorakhpur Division. Since the decision of the respondents to reject the candidature of the applicant in the screening test has been challenged in the OA, it was necessary for the applicant to prove that the impugned decisions of the respondents are not as per the advertisement issued by Gorakhpur Division.

22. It is noted from the case cited by the respondents that in a similar case relating to regularization of

labourers, Hon'ble Allahabad High Court in the case of Union of India and others vs. Ashok Kumar and others in Writ A-No.- 1006 of 2016, the order of the Tribunal directing regularization of the ex-casual labourers (respondents in the writ petition), was challenged by Union of India vide the judgment dated 04.02.2016, Hon'ble High Court after a detailed discussion about the position of law and the rights of the ex-casual labours, set aside the order of the Tribunal mainly on the ground that their regularization will be in violation of rules and conditions as under:-

"Brief facts giving rise to the present writ petition are that the respondent nos.1 to 8 (in short "contesting respondents") were ex-casual labourers in the Railway Department. They have put in more than 120 days' continuous service on several times and their names were found in the casual live register and consequently they were eligible for screening and regularisation. In pursuance of the notification dated 17.12.2005, they applied for their regularization. They were called for screening test and their screening test was conducted in the month of October, 2007. When their result had not been declared by the petitioners, they sought direction to declare their result of screening test and also prayed for regularisation of their services as per existing Rules, if they are found successful in the screening test. It is reflected from the record in question that the contesting respondents, in this regard, earlier filed O.A. No.1315 of 2009 for similar relief, which was

disposed of by the Tribunal on 17.12.2009 with direction to the competent authority to consider and pass reasoned and speaking order on their representation. As per the directives issued by the Tribunal, the Divisional Railway Manager had considered their claim and rejected the same vide order dated 14.2.2010 applying the ratio of the judgment of Hon'ble Supreme Court in Secretary, State of Karnataka & Ors. v. Umadevi & Ors., (2006) 4 SCC 1.

Aggrieved with the same, the contesting respondents had proceeded to approach the Tribunal by means of Original Application in question with following reliefs:-

"(i) to quash rejection order dated 14.02.2010 passed by the respondent no.2 (Annexure A-1).

(ii) to direct the respondents to declare the result of the screening test held in the month of October, 2007 in pursuance of the notification dated 17.12.2005 (wrongly written as 17.12.2003) (Annexure A-4).

(iii) to direct the respondents to regularize the services of the applicants as per the existing rules and to provide them duty in case they are found successful in the aforesaid screening test.

(iv) Any other order or direction to which this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the present case also be passed.

(v) to award cost of the application to the applicants."

After exchange of the affidavits, the Tribunal has proceeded to allow the said O.A. vide order dated 06.11.2015 with following observations:-

"Accordingly, the OA is allowed and impugned order dated 14.2.2010 (Annexure-A-1) passed by respondent no.4 is quashed. The respondents are further directed to declare the result of screening test held in the month of October, 2007 in pursuance of notification dated 21.12.2005. In case the applicants are found successful in the screening test after giving post facto approval or age relaxation as has been done earlier, they must be considered for regularization as per their service record and according to rules. The respondents are directed to declare the result of screening test within a period of two months from the date of receipt of certified copy of this order. No order as to costs."

The approach of the Tribunal is that the case of Uma Devi (Supra) is not applicable in the instant case as the applicants have put in more than 120 days' continuous service at several times and their services are liable to be regularised as per the provisions contained in Railway Rules 2001, 2003 and 2004 of Chapter XX of IREM Vol.II.

.....

The casual labours are governed by the statutory provisions and instructions issued by the Railway Board from time to time. It is relevant to indicate that time to time the Railway Board issued instructions on the subject "Absorption in Railway of Ex-Casual labour borne on the live/ supplementary live Casual Labour Registers" vide Letter No.E (NG) II/99/CL/19 dated 28.02.2001 (R.B.E. No.42/2001) wherein the minimum educational qualification has been laid down as 8th passed for Ex-casual labours (except those who have worked as Gangman) borne on Live/ Supplementary Live Casual Labour Register. In Para 2 of the aforesaid letter dated 28.02.2001, the Railway Board has issued instructions in regard to age relaxation applicable to Ex-Casual Labour on Live/ Supplementary Live Casual Labour Registers, which is extracted below:-

"Further in terms of Ministry of Railway's letter No.E (NG) II/91/CI/71 dated 25.07.91, age relaxation to the extent of service put in as Casual labour/ Substitute subject to upper age limit of 40 years in case of General candidates and 45 years in the case of SC/ST candidates not being exceeded, may also be granted in the case of Casual labour & Substitutes for recruitment against Group-C & Group-D posts. The OBC candidates will also get age relaxation up to the upper age limit of 43 years, as has been granted to the serving OBC employees vide Rly. Board's letter No.E (NG) II/95/pmI/1 dated 1.6.1999."

Consequently, the Railway Board further considered the matter of age relaxation to Ex-Casual Labours borne on live/Supplementary live casual Labour Registers and issued the detailed guidelines in Letter No.E (NG) 11/99/CL/19 dated 20.09.01, which reads as under:-

"Sub: Absorption in the Railways of Ex-casual Labour borne on the live/ supplementary live casual labour registers.

1. In terms of para 6 of this ministry's letter dated 28.2.2001, relaxation of upper age for absorption of Ex- casual Labour borne on the live/ supplementary live casual labour registers has been allowed up to 40 years in the case of general candidates, 43 years in the case of OABC and 45 years in the case of SC/St candidates, provided that they have been put in minimum three years service in continuous spell in broken spells as per instructions contained in this ministry's letter No. E (NG) II/91/CL/71 dated 25.7.91, read with their letter No. E (NG)1/95/PM-5/1 dated 11.1.1999.

....."

As per the Railway Board's letters dated 28.02.2001 and 20.09.2001, the age relaxation to the extent of service put in as Casual Labour/ Substitute, subject to upper age limit of 40 years in case of General Candidates and 45 years in the case of SC/ST candidates not being exceeded, may also be granted in the case of Casual Labour & Substitutes for recruitment against Group-C & Group-D posts. The OBC

candidates will also get age relaxation upto the upper age limit of 43 years, as has been granted to the serving OBC employees vide Rly. Board's letter No.E (NG) II/95/pMI/1 dated 1.6.1999 and which clearly provides that ex-casual labour, which becomes eligible as a result of above modification will be considered for absorption with prospective effect.

On the directives issued by this Court, the department /petitioners has come up with clear stand that in the past no post facto age relaxation had ever been accorded in favour of casual labours beyond the age prescribed by the aforesaid Rules. In this context, they have also relied upon the judgment passed by this Court in Writ Petition No.21799 of 2006, mentioned above.

Once this is the categorical stand, then the Tribunal has definitely proceeded on the wrong premise with the finding that some persons were accorded age relaxation and regularisation in 2010. From the perusal of the details regarding the age of the contesting respondents, this much is reflected that all have crossed 50 years and consequently in the light of the Railway Board's Letter dated 28.2.2001 and 20.9.2001, no positive directions can be issued in their favour. Moreover, the regularisation can never be claimed as a matter of right as has been held by Hon'ble Supreme court in the case of Vindon T v. University of Calicut, 2002 (4) SCC 726 and Mahendra L. Jain & Ors. v. Indore Development Authority & Ors., (2005) 1

SCC 639. Hon'ble the Apex Court in Government of Orissa & Anr. v. Hanichail Roy & Ors., (1998) 6 SCC 626 has considered the case, where the Apex Court had granted the relaxation of service conditions. The Apex Court held that the Court cannot take upon itself the task of the statutory authority. The same view has also been reiterated by the Hon'ble Apex Court in Secretary, State of Karnataka v. Uma Devi (Supra). It is relevant to indicate that in Writ Petition No.21799 of 2006 (Union of India & Ors. v. Ajai Kumar & Ors.), a review application was filed by Shri Ajai Kumar and the Division Bench of this Court vide order dated 3.12.2011 had proceeded to dismiss the review application holding that where the Rules provide for maximum relaxation of eligibility including the age, the Courts do not ordinarily issue directions to exercise discretion to go beyond that maximum limit. Hon'ble the Apex Court in Uma Devi (Supra) had proceeded to observe that there cannot be recruitment to the regular posts dehors the recruitment rules and therefore the applicant cannot claim that he is entitled for regularisation.

The Court also finds substance in the contention of the petitioners that under Rule 157 of the Railway Establishment Code, Volume-I, which has been framed by His Excellency the President of India under Article 309 of the Constitution of India and has got statutory force, the General Manager has been provided rule making authority for the condition of service of the Group 'C' and 'D' Employees, thus

the instructions issued by the Railway Board regarding absorption, recruitment and promotion in respect of Group 'D' employees have got statutory force. The same has also been upheld by Hon'ble Apex Court in the case of B.S. Vadera v. Union of India, AIR 1969 SC 118, the relevant part of which is extracted below:-

"The Indian Railway Establishment Code has been issued, by the President, in the exercise of his powers," under the proviso to Art. 309. Under Rule 157 the, President has directed the Railway Board, to make rules, of general application to non-gazetted railway servants, under their control. The rules, which are embodied in the Schemes, framed by the Board, under Annexures 4 and 7, are within the powers, conferred under Rule 157; and, in the absence of any Act, having been passed by the 'appropriate' Legislature, on the said matter, the rules, framed by the Railway Board, will have full effect and, if so indicated, retrospectively also. Such indication, about retrospective effect, as has already been pointed out by us, is clearly there, in the impugned provisions.

In view of above, the Court is of the considered opinion that Railway Board being the competent authority has issued various instructions from time to time in respect of service conditions of Group 'D' and Group 'C' staffs, in continuation of the same the matter of age relaxation in respect of Ex-Casual

Labourers and working Casual labour was considered and number of Railway Board letters has been issued for granting age relaxation as well as regarding eligibility criteria. As per the Railway Board Circular dated 28.2.2001 in continuation of the Railway Board's letter dated 25.7.1991, age relaxation was further fixed as upper age limit of 40 years in case of General candidates; 45 years in case of SC/ST and 43 years in case of OBC and the same has also been granted in case of Casual/ substitute Group 'C' and Group 'D' posts. As such the Ex-Casual Labours are entitled to be considered in the light of the aforesaid Railway Board Letters and the incumbents' claims are liable to be considered for absorption with prospective effect. The Railway Board is rule making authority for Group 'C' and 'D' employees in view of Rule 157 of the Railway Establishment Code, Volume-I, thus, above instructions, which have been issued for absorption/ regularisation of ex-causal labours/ Group 'D' employees and once the Hon'ble Apex Court in series of judgments had categorically held that Railway Board has got rule making authority, then the same has statutory force and having binding effect.

Consequently, we are of the opinion that the contesting respondents are over age and as such no positive directives can be issued by the Tribunal for absorption under the existing Rules. Once the report of Screening Committee has already been brought on record through supplementary affidavit, whereby all the

contesting respondents have failed and relying on the judgment passed by this Court in Ajai Kumar (Supra), we are of the considered opinion that the directions issued by the Tribunal are in futility and issuance of such direction is not permissible in law and as such the contesting respondents are not entitled for any relief. The direction issued by the Tribunal is in contravention of the scheme framed by the petitioners and the Court is of the considered view that the Tribunal cannot pass such an order, which is impermissible in law."

23. In another case of Government Of Orissa And Anr. vs Hanichal Roy And Anr. reported in (1998) 6 SCC 626, on the issue of any relaxation of rules ordered by the Tribunal, Hon'ble Apex Court held as under: "3. The Rule requires the Government to form the opinion, for reasons to be recorded in writing, that it is necessary or expedient to relax any of the provisions of the Rules in public interest in respect of any class or category of persons. We assume for the purposes of this appeal that the case of the respondents herein falls within a "class or category or persons", but we do not think that the Tribunal was right in, in effect, relaxing the appropriate rule itself. Having set out the facts, it should have left it to the Government to take the decision under the rule."

24. This implies that the decision regarding relaxation of any rule has to be taken by the

authority concerned and it cannot be ordered by the Tribunal. In view of above position of law, this Tribunal cannot interfere in the matter of assessing suitability of the applicant unless it is proved that such actions of the respondents have violated the rules or executive instructions of the Railway Board. As stated above, no specific rule or instruction of the Railway Board has been cited by the applicant to prove that the decisions of the respondents in respect of the applicant are against the said rules or instructions of Railway Board.

25. The applicant has failed to show that the decision of the respondents to declare the applicant unsuitable in the screening test is in violation of the rules and instructions of the Railway Board. Therefore, the OA lacks merit and is liable to be dismissed.
26. In view of the above, since the applicant has failed to demonstrate any infirmity or illegality in the impugned order passed by the respondents for their regularization, the O.A. lacks merit and deserves to be dismissed.
27. Consequently, the applicant being over age, no direction can be issued by this Tribunal for absorption of the applicant in Group 'D' posts under the existing Rules. This Tribunal cannot pass an order for relaxing the age of applicant beyond the limit set by the Railway Board and any such relaxation would be impermissible in law.

28. Reference may also be made to Union of India Vs. Arulmozhi, (2011) 7 S.C.C. 397, wherein it has been observed by the Hon'ble Apex Court that ".....the Tribunal as also the High Court has directed the appellants to grant relaxation in age-limit over and above what is stipulated in the recruitment rules/advertisement. In view of the state factual scenario, in our opinion, the engagement of the respondents as casual labourers even for a considerably long duration did not confer any legal right on them for seeking a mandamus for relaxation of age-limit".

29. In view of the facts and circumstances of the case as discussed above, I am of the view that the applicant being over age cannot be given the relief sought for by him in the present O.A. Accordingly, O.A. is dismissed. No order as to costs.

(Rakesh Sagar Jain)

Member (J)

Manish/-