

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Dated: This the 6th day of August 2018.

Original Application No. 601 of 2013

PRESENT:

HON'BLE MR. RAKESH SAGAR JAIN, MEMBER -J

Bhuvanehwar Raikwar son of Masalti Resident of House No. 1318, Masihaganj, Kalsi Ka Bagicha, Seepari Bazar, District Jhansi.

.....Applicant

By Advocate: Shri R.K. Shukla

Versus

1. Union of India through its General Manager, North Central Railway, Allahabad.
2. Divisional Railway Manager, North Central Railway, Jhansi.
3. Senior Divisional Personal Officer, North Central Railway, Jhansi.
4. Senior Station Superintendent, North Central Railway, Khajraha.

.....Respondents

By Advocate: Shri P. Mathur/Shri Pawan Kumar Srivastava

O R D E R

1. The present Original Application has been filed by applicant Shri Bhuvanehwar Raikwar seeking following reliefs:-

"(i) Issue an order or direction setting aside the order dated 12.2.2009 passed by respondent No. 3 (Annexure A-1 to the 1st Compilation)

(ii) Issue an order or direction directing the respondents to consider the applicant for absorption and appoint the applicant on a Group D as per absorption scheme issued by Railway Board within a specific period.

(iii) Issue any other suitable order or direction which the Hon'ble Tribunal may deem fit and proper under the facts and circumstances of the case.

(iv) Award the costs of the application in favour of applicant".

2. Applicant's case is that he was initially engaged as a waterman i.e. Casual labour under the Station Superintendent, Khajraha between 28.7.1988 to 28.7.89 in broken spell and he completed 139 days as per the certificate (Annexure-A2) issued by respondent No.4. His date of birth is 3.11.1970 and was 28 years old as on 1.4.99 and belongs to OBC category and passed class 8th.

3. The Railway Board decided to absorb ex-casual labourers and vide notification No. E (NG) II-99/CL/18 dated 11.5.1999 (Annexure-A4), directed to ascertain the ex-casual labourers and prepare a list from the causal labour register and supplementary casual labour register and by the said notification directed that the upper age limit of the ex-casual borne on live register/supplementary live casual labour register as on 1.4.1999 and therefore to see whether the candidates are within the prescribed age limit and OBC candidate are within 43 years of age as on 1.4.1999.

4. It has been further averred in the application that the Railway Board issued notification No. 42 of 2001 dated 28.2.2001 (Annexure-A5) wherein it was laid down that the ex-casual labourers borne on the live casual labour register will be considered for absorption on the number of days put in as casual labour and thereafter the ex-casual labour in the supplementary casual labour register.
5. The notification was partially modified by circular dated 20.9.2001 (Annexure-A6) providing age relaxation to ex-casual labourers who had put in minimum 120 days of casual service.
6. Respondent No. 2 issued letter dated 30.8.2001 (Annexure-A7) in which it was mentioned that it should neither be construed as an employment notice nor re-engagement notice or notice for screening. This is only for assessing the number of eligible casual labour available in the register still available. The concerned officer of Jhansi Division was also directed to display the aforementioned letter on the notice board and it was also provided that casual labour should submit their particulars in duplicate to the Incharge Depot by 30.9.2001.
7. In pursuance of the letter dated 30.8.2001, the applicant submitted his particular on the prescribed proforma on 24.9.2001 in the office of respondent No. 4 which was received by the office of respondent No. 4 on 24.9.2001 and

thereafter sent to office of respondent No. 3 vide letter dated 1.10.2010 (Annexure-A9).

8. Applicant's further case is that despite approaching respondent No.2, no response was forthcoming whereupon he along with other person filed O.A. No. 163 of 2004 wherein the respondents took the objection that the working days of applicant were 20 days. The O.A. was disposed of by the Tribunal vide order dated 1.2.2006 directing the respondents to verify the details of the applicant and informed him accordingly. On verification by respondent No. 4, the working days of applicant was found to be 139 days and applicant's application dated 24.9.2001 was also found available on the record but that respondent No. 2 vide order dated 23.5.2006 (Annexure-A12) rejected the claim of applicant for regularization on the ground that (i) application pursuant to notification dated 30.8.2001 was not received in the office of respondent No.2 and (ii) Number of working days of applicant was found to be 27 days whereas it should have been 120 days.
9. That applicant challenged the order dated 23.5.2006 (Annexure-A12) in the Tribunal which set aside the said order and directed the competent authority to reconsider the case of the applicant in view of directions contained in the Tribunal's order dated 1.2.2006 in O.A. No. 163 of 2004. The representation filed by the applicant was rejected by respondent No.3

vide order dated 12.2.2009 on the same ground as mentioned in the order (Annexure-A12) which grounds of rejection are false and concocted. The certificates issued by Station Superintendent, Khajraha shows the details of the days worked by the applicant is 139 days and in this regard the first certificate dated 31.7.1988 was issued by Mr. Tillesler and that of year 1989 was issued by Mr. Tikkekhar. Thus, without holding the certificates as fake documents, his claim of working 139 days was illegally rejected by respondent No. 2.

10. Hence, the present application for (i) setting aside the impugned order dated 12.2.2009; (ii) directing the respondents to consider the absorption and appointment of applicant on a Group 'D' posts.

11. The contents of impugned order dated 12.2.2009 (Annexure-1A) is that on receipt of letter dated 18.11.2008, by the railway authorities from the applicant, the impugned order dated 12.2.2009 was issued by Sr. Division Commercial Officer, Jhansi and addressed to the applicant to the effect that notification was issued on 28.2.2001 on direction of Railway Board whereby all the ex casual labour including the waterman were asked to give particulars in the prescribed proforma whose names were entered in the live casual register whereby their names could be considered for regularisation in group 'D' posts. All the proforma were to be sent to this office through the Incharge depot where

the live casual register of the applicants were prepared and the last date for submission of the forms is 30.9.2001. In pursuance of the notification, applications of ex casual labour were received out of which application of 681 persons were received who have already been engaged. Applicant's application in pursuance of the notification was not received in this office and therefore no proceeding could be undertaken in his case. It was found that from 17.6.89 to 16.7.89, he had worked for 27 days and his allegation that he worked for 139 days could not be verified. Therefore due to his working for 27 days, no proceeding can be undertaken in his case whereas as per the notifications, there should be 120 working days. Therefore on this ground no proceeding can be conducted in his case.

12. In counter affidavit, the stand of respondents is that the impugned order dated 12.2.2009 is a reasoned order passed in direction of the Tribunal wherein the applicant was informed that he had worked only 27 days and his representation was not received in the office. It is the further case of respondents that that the certificates relied upon by the applicant have no credential value as the same have not been issued by any competent authority and persons issuing the certificates had no authority to issue the certificates. It is denied that the applicant has submitted any representation. The certificate as mentioned in para 4.8 does not support the applicant as the

alleged verification was done by Station Superintendent, North Central Railway, Khajraha dated 17.3.2006 is based on the master pay sheet which certifies the working of the applicant for 27 days only although in the document as annexed by the applicant, the working base has been shown as 139 days, which is against the original documents on the basis of which the verification has been done by the said Incharge Depot i.e. the Station Superintendent, Khajraha. The acknowledgement by D.D.Verma alleged to be a senior clerk in the recruitment section is false as Sri Verma was never posted in the recruitment section and the administration has taken serious view and action has been taken against said Sri Verma under DAR as per annexure CR5. Moreover, the entire exercise of screening has been completed in 2003-2005, as such, the claim of applicant is belated which cannot be granted to the application.

13. I have heard and considered the arguments of learned counsels for the parties and gone through the material on record.
14. All things apart, I am of the view that the application is to be dismissed on short ground viz. over age of applicant.
15. Learned counsel for the applicant submitted that the impugned order is against law and facts of the case as projected by the applicant in the O.A. That the applicant had undergone

139 days of casual labour which has been supported by the certificates issued by the officials of the respondents and it does not lie in the mouth of the respondents to deny the veracity of the said documents and in any case the respondents do not deny that the documents have been issued by their officers though taking the stand that the officers issuing the certificates were not connected with the recruitment process and were not authorized to issue the said certificate. Therefore, the stand of the respondents that applicant had put in only 27 days of work as a casual labour is patently wrong and correct position is that the applicant had worked for 139 days. It has been further argued by the learned counsel for the applicant that he was not over-age at the time of filing the application before the respondents and it is due to the delay caused by the action of respondents that he has become over age and therefore, the delay caused by the respondents cannot be a ground to disallow the instant application.

16. On the other hand, learned counsel for the respondents submitted that the impugned order passed by the respondents is in accordance with law and facts. He has further submitted that the applicant has not been able to prove that he had submitted his particulars to the concerned authority since the stand of the applicant that he had given the particulars in proforma to Shri Verma, Section Officer is patently wrongly since the said officer was not

connected with the recruitment process and had no authority to accept any document and in this regard, disciplinary action is being taken against the said officer. It has been further argued that the applicant does not fulfill the criteria of age limit and, therefore, this Tribunal cannot contrary to the scheme and statutory rules issued by the Railway Authorities give age relaxation to the applicant. The applicant being over age, no relief can be given to the applicant for regularization of his service and therefore, the application deserves dismissal.

17. 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."

18. 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.

19. The question of removal of minimum three years service conditions (continuous or broken) for the purpose of grant of age relaxation to Ex-Casual Labour was considered by the Ministry and consequently partial modification took place and it had been decided that the Ex-Casual labour, who had put in minimum 120 days casual service, where continuous or in broken spells and were initially engaged as Casual Labour within the prescribed age limit of 28 years for general candidates and 33 years for SC/ST candidates, would be given age relaxation upto upper age limit 40 years in the case of General candidates, 43 years in the case of OBC and 45 years in the case of SC/ST candidates. Other provisions for their absorption in Group-'D' will remain unaltered. It had also been decided that the Ex-Casual who become eligible as a result of above modification will be considered for absorption with prospective effects.

20. It may be noted that Hon'ble High Court of Allahabad in Writ Petition No. 21799 of 2006, by its judgment dated 3.8.2006, while dealing with

the similar controversy in detail regarding the age limit prescribed for the general, OBC and SC/ST category, has observed as under:-

"Undoubtedly, there is scheme framed by the present petitioners for re-employment and regularisation of those casual workers who had been retrenched. The maximum age for consideration of re-employment and regularisation in the same scheme is 40 years. However, a relaxation has been provided upto certain age, i.e. in case OBC category candidate, it can be relaxed upto 43 years and in case of SC/St candidates, upto 45 years. The respondent employee admittedly belongs to OBC category and he is about 50 years of age. Thus, in view of the admitted facts, no purpose would be served if his case is considered for re-employment and regularisation, as no relaxation is permissible beyond the age of 43 years to the OBC candidates."

21. 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, who becomes eligible as a result of above modification will be considered for absorption with prospective effect.

22. From the perusal of the application, it comes out that the applicant has given his date of birth to be 3.11.1970 which would make him 48 years old as of today and therefore, in view of notifications of the Railway Board dated 28.2.2001 and 20.9.2001, no direction can be issued so as to give him relaxation of the age limit and can never be claimed as a matter of right as held by Hon'ble Apex 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.
23. Reference may also be made to Government of Orissa & Anr. v. Hanichail Roy & Ors., (1998) 6 SCC 626 wherein considering the fact that the Hon'ble High Court had granted the relaxation of service conditions, the Hon'ble Apex Court held that the Court cannot take upon itself the task of the statutory authority.
24. It may also be noted that under Rule 157 of the Railway Establishment Code, Volume-I, which 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. In this regard, the Hon'ble Apex Court in B.S. Vadera v. Union of India, AIR 1969 SC 118 held that :-

"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."

25. 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. Therefore, the instructions issued by the Railway Board as noted above have statutory force having binding effect.

26. 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.
27. In this regard, in *Union of India Vs. Arulmozhi*, (2011) 7 S.C.C. 397, 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".
28. 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/-