

(Reserved on 12.01.2018)

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD

This the 02nd day of February, 2018.

HON'BLE MR. GOKUL CHANDRA PATI, MEMBER (A).

Original Application Number. 330/01128/2016

Brayesh Kumar, aged about 53 years, son of Sri Shanker Dayal, Working as Peon at Gorakhpur Cantt. Railway Station under North Eastern Railway, Lucknow Division, Lucknow.

.....Applicant.

VERSUS

1. Union of India through General Manager, North Eastern Railway, Gorakhpur.
2. Divisional Railway Manager, North Eastern Railway, Lucknow Division, Lucknow.
3. Senior Division Personnel Officer, North Eastern Railway, Lucknow Division, Lucknow.
.....Respondents

Advocate for the applicant : Shri A.K. Srivastava

Advocate for the Respondents: Shri R.K. Rai

ORDER

By means of the present original application the applicant has prayed for a direction to the respondents to regularise the applicant from the date when next screening test was held after being given temporary status employee arrears of salary etc.

2. The facts of the case, as per the O.A are that the applicant was initially engaged as Casual Labour on 02.08.1983 and he was granted temporary status on 01.04.1987 alongwith Time Pay Scale. He continued to work as Avegy Staff from 1997. It is stated that the respondents No. 3 issued a notification for screening test in which the applicant appeared on 16.03.2006 but his name was not shown in list of successful candidates (Annexure A-1 to the O.A). The applicant made several representations (Annexure A-3 to the O.A) to the respondents for regularization of his service. Having received no response, the applicant has filed the instant Original Application .

3. The respondents have filed Counter Reply. The respondents have raised preliminary objection that the O.A is time barred as the cause of action arose in the year 2006 when applicant's service was not regularised after screening. Further, filing of successive representations will not extend the period of limitation in view of the law laid down by Hon'ble Supreme Court in the case of Union of India Vs. A. Durairaj – 2010 (14) SCC 389.

4. On merits, It is stated that as per office record, the applicant's date of birth is shown as 20.06.1963 on the screening result dated 26.07.2006. Further date of first engagement of the applicant as casual labour under Railway service is recorded as 02.02.1977. Thus, at the time of first engagement as casual labour, the date of birth of the applicant was 13 years 07 months and 12 days which is lower than the statutory age limit of 18 years. Therefore, the first engagement of the applicant was casual labour was not as per law. On the basis of aforesaid irregular engagement applicant was granted temporary time scale on 01.04.1987. As per notification dated 19.04.2005 and 08.03.2006, the applicant appeared in the screening test held between 12.05.2005 to 17.05.2005 and 20.03.2006 to 23.03.2006 respectively. As per result of the screening test vide notification dated 19.9.2006, the applicant was declared successful and placed at SI. No. 2 subject to age relaxation at the time of his initial appointment, pending before the G.M, N.E.R., Gorakhpur. Vide letter dated 18.12.2006 the matter was referred to the Railway Board and the Railway Board vide letter dated 27.04.2016 did not agree with the proposal of G.M, N.E. Railway stating that there is no provision in the rule for age relaxation in lower age limit. On the basis of this clarification of the Railway Board, the applicant is not entitled to be regularized on the ground that his initial engagement was irregular and temporary status was not granted as per rules.

5. The applicant has filed Rejoinder Affidavit reiterating the facts in O.A.

6. Heard Shri A.K. Srivastava, learned counsel for the applicant and Shri R.K. Rai, learned counsel for respondents. Applicant's counsel submitted that the applicant was given temporary status with time scale in 1987. But he is not being regularized even after passing the screening test, although others have been regularised. Respondents' counsel submitted that the age of the applicant when he was first appointed was less than 18 years. His date of birth as shown during screening test was 20.06.1963. Although the applicant was declared successful in the screening test held in 2006 and he was placed at SI. No. 2 of the notification dated 19.09.2006 notifying the list of qualified candidates, but he could not be regularized pending relaxation of age at the time of appointment. The proposal for relaxation of age was not agreed by Railway Board due to which regularization of the applicant could not be done.

7. The submissions and the pleadings of the counsels for the both the parties were considered. The undisputed facts are that the applicant was appointed as a casual labourer and was given temporary status with time scale of pay by the respondents. As stated in the Counter Reply, the date of birth of the applicant is 20.06.1963 and as on the date of appointment of the applicant as casual labourer as per record available with the respondents, his age was less than statutory age of 18 years. The respondents have taken the stand that the initial appointment of the applicant was not as per law and hence, it was irregular and hence, unless this is regularized with approval of the Railway Board, the applicant can not

be regularized. As stated by the respondents in the counter reply, the case of the applicant was referred to the Railway Board, which did not approve with the following observations:-

"as regards the age relaxation in lower age limit, there is no provision in the Rules. As such proposal of North Eastern Railway is not agreed to."

8. It is clear that the case of the applicant could not be considered by Railway Board as there is no provision in the Rules for relaxing the age towards lower side at the time of initial appointment. On consideration of the facts and circumstances of this case, I am not able to accept this contention of the respondents. Although at the time of initial appointment of the applicant on the date, as per record of the respondents, his age was less than 18 years, there is continuity in service of the applicant as a casual labourer with temporary status. Since the date of birth of the applicant is 20.06.1963, he was more than 18 years of age after 20.06.1981 and he is continuously in employment after 20.06.1981 as per the contention of the respondents. Hence, there is no difficulty in regularizing the service of the applicant from any date after 20.06.1981. In fact, the applicant claims his date of his first appointment to be 02.08.1983 (vide the paragraph 4.1 of the OA) when the applicant was more than 18 years of age. It is stated in the counter reply that the date of initial appointment is 02.02.1977 as per the records with the respondents. But the basis or evidence based on which the date of first appointment was recorded to be 02.02.1977, has not been indicated in the counter affidavit. In absence of that and in view of the claim of the applicant that his date of first appointment as casual labourer be 02.08.1983, the date of first appointment of the applicant as a casual labourer as claimed by the applicant, that is 02.08.1983 should be accepted in absence of any other evidence otherwise. Once this is done, since the applicant has already qualified in the screening test for regularization as stated in paragraph 9 of the counter reply of the respondents, the applicant is entitled to be regularized in service after the date he was notified to be successful in the screening test, that is from 19.09.2006 as stated in paragraph 9 of the counter reply. Further, assuming the contention of the respondents that applicant's date of first appointment to be 02.02.1977 to be correct, there is no difficulty in regularizing the applicant treating his date of first appointment as 02.08.1983 as claimed by the applicant in the O.A.

9. The respondents have raised the ground that the OA is barred by limitation since it is filed after a long delay as the cause of action arose in 2006 when the applicant was not regularized after notifying him to be successful in the screening test. It is noted that in paragraph 14 of the counter reply, where the judgment of Hon'ble Supreme Court in the case of Union of India vs. A. Durairaj (2010 14 SCC 389) has also been cited, the respondents have explained why the OA is barred on account of delay. In A. Durairaj case (supra) the issue was a matter which was old and stale, which was attempted to be revived through representation. In the present O.A, the regularization of the applicant is not a stale issue as it involves higher salary and benefits for the applicant. Hence, the present O.A is distinguishable on facts from the case of A. Durairaj (Supra). Although the screening was done in the year 2006 declaring the applicant to be successful in the screening test, this can not be taken as a ground for the applicant to be aggrieved. Non-regularization of the applicant by the respondents thereafter is a cause of action. Since regularization involves higher pay scale, it implies higher salary and other service benefits for the applicant. Hence, it is considered to be a recurring cause of action for the applicant, for which the usual limitation will not apply in the light of the judgment of Hon'ble Supreme Court M.R. Gupta Vs. Union of

India & Ors reported in 1995 SCC(5) 628. Hence, the objection of the respondents on the ground of delay in filing this OA is rejected.

10. In view of above discussions, the applicant's case has sufficient merit. The respondents are, therefore, directed to regularize the applicant from the date his juniors in the notification declaring the result of the screening test vide the notification dated 19.09.2006 (as stated in paragraph 9 of the counter reply) were regularized, treating applicant's initial date of appointment as casual labourer to be 02.08.1983 as claimed in paragraph 4.1 of the OA. After regularization, the applicant shall be allowed all consequential benefits as per the existing rules and guidelines. The respondents are further directed to comply this order within two months of receipt of a copy of this order.

11. Accordingly, the OA is allowed as above. No order as to the costs

(GOKUL CHANDRA PATI)

MEMBER- A.

Anand...