

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Order reserved on : 07.05.2018

Pronounced on : 28.05.2018

Hon'ble Mr. Justice V.C. Gupta, Member (Judicial)

Original Application No. 332/00021/2017

1. Radhey Shyam aged about 47 years son of Sri Bihari Lal r/o vill. Rai Singh Khera post Mati Distt. Lucknow.
2. Ram Dayal aged about 47 years son of Sri Kamta Prasad r/o vill. Rai Singh Khera post Mati Disttt. Lucknow.
3. Sharwan Kumar aged about 50 years son of Sri Shitla Prasad r/o house no. 590/66 Gopal puri Alambagh.
4. Ram Kumar aged about 46 years son of Sri Ram Swarup r/o village Jahangirpur post Gosaiganj Distt. Lucknow.
5. Kanchanwati aged about 42 years daughter of Sri Hem Raj r/o vill Ram deo ka purwa post Jamtha Distt. Gonda.
6. Bacchey Lal aged about 45 years son of Shri Matru r/o vill. Katar Chavni post Khanjaha distt. Azamgarh.

.....Applicants

By Advocate : Sri Y.C. Srivastava.

Versus

1. Union of India through its General Manager, Northern Railway Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Senior Station Superintendent, Northern Railway Charbagh, Lucknow.

.....Respondents

By Advocate : Sri B.B. Tripathi.

And

Original Application No. 332/00466/2015

Radhey Shyam aged about 45 years son of Sri Ram Sewak r/o 557/27/3 Gali No. 8 Pawanpuri Alambagh, Distt. Lucknow.

.....Applicant

By Advocate : Sri Y.C. Srivastava.

Versus

1. Union of India through its General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Senior Station Superintendant, Northern Railway Charbagh, Lucknow.

.....Respondents

By Advocate : Sri B.B. Tripathi.

ORDER

Delivered by: Justice V.C. Gupta, Judicial Member:

These two original applications have almost similar facts and legal issues hence they are being disposed of by a common judgment.

2. The brief facts giving rise to these petitions are that the applicants of the both original application are claiming that they worked in the Railways as substitute porters on its engaged in Lucknow Division and they worked for considerable long time. All the applicants had worked for more than 120 days in a calendar year and as such they are entitled for regularization in accordance with the prevalent rules and instruction issued from

time to time. It was further contended that similar situated some persons namely Prabal Chatterji, Budhu Lal, Kamakhya Prasad and 9 others, were screened and declared successful. The applicants through, President, SC/ST Association of employees submitted representation for reengagement and regularization of the casual labourers vide letter dated 16.12.1998. On the basis of that letter opposite party no. 2, DRM, Northern Railway, Lucknow sought guidelines in this regard from opposite party no. 1, General Manager, Northern Railway. The applicants further pleaded that the Railway Board letter dated 11.12.1996 and 23.10.1997 depicts that on 30.04.1996 about 56000 casual labourers were on roll who may be absorbed against the future vacancies of 1997-98 keeping in view of their seniority, based on number of working days. It was further contended that on 21.03.2001 the General Manager (P), Northern Railway circulated the instruction of Railway Board dated 28.02.2001 with regard to absorption of the ex casual labourer borne on live casual labour register against 60% vacancies.

3. It was further contended that vide letter dated 15.12.2006, the opposite party no. 2 has asked opposite party no. 3, Senior Superintendent, Northern Railway, Charbagh, Lucknow to submit detailed report in view of the letter dated 23.11.2006. The applicants came to know that they were not inlisted but many others who were screened in the year 1990 and were not successful were again called for screening in the year 2005 and thereafter, they were appointed as Commercial Porter.

4. It was further contended that the applicants names were entered on live casual labour register as they have worked for considerable long time but without considering the name of the applicants for reengagement and for their regularization, notification was issued for recruitment of Class- D employee

from open market. Consequently, the applicants submitted a representation on 21.01.2008 to opposite party no. 1 requesting therein that a sympathetic view be taken by taking post facto approval as has been taken in respect of other person but nothing has been done. Consequently, the applicant no. 1, 2 & 3 of O.A. No. 21 of 2017 filed O.A. No. 14 of 2008 and applicant No. 4, 5 & 6 filed O.A. No. 15 of 2009 challenging the fresh advertisement and sought direction to appoint and regularized the services of the applicants against Group-D post.

5. Similarly, the applicants of O.A. No. 466 of 2015 alongwith similarly situated person filed an O.A. No. 38 of 2014-Ashok Kumar & others Vs. U.O.I. & others. In the meanwhile, DRM (Personnel), the opposite party no. 2 made a reference to the General Manager vide its letter dated 19.08.2013 for consideration of the claim of absorption of ex-casual porters. However, the Tribunal disposed of the aforesaid OAs filed by different persons by order dated 31.01.2014 passing similar orders directing the respondents to take decision in the light of reference made by letter dated 19.08.2013 in accordance with law as well as rules and regulations on the subject within a period of 3 months from the date of receipt of copy of the order.

6. In compliance of the aforesaid order, the matter was decided vide order dated 08.07.2014. It has been contended that without considering the representations of the applicants and without considering the reference dated 19.08.2013 in terms of the judgment dated 31.01.2014 the respondents rejected the claim of the applicants by impugned orders dated 08.07.2014.

7. The similar orders were passed on 05.08.2014 in respect of applicants of O.A. No. 466/2015. The impugned orders passed in both the OAs are extracted herein below for ready reference:

O.A. No. 21/2017

Northern Railway

Divisional Office
Lucknow

No. 220-E/5-9/Court Case

Dated : 08.07.2014

S/Sh.

1. Ram Dayal S/o Kamta Prasad, (Address: Vill. Rai Singh Khera, PO: Mati, Lucknow) 226014
2. Radhey Shaym s/o Bihari Lal, (Address: Vill. Rai Singh Khera, PO: Mati, Lucknow) 226014
3. Satya Kumar s/o Hari Ram, (Address: Duniya Ka Puram, PO: Baiderpur, Lucknow)
4. Rajesh Kumar s/o Jai Narayan, ((Address: Vill. Rai Singh Khera, PO: Mati, Lucknow) 226014
5. Hawan Kumar s/o Raghuveer Prasad, (Address: 1-13-M, Barha Railway Colony, Alambagh, LKO) 226005
6. Sipahi Lal s/o Santu, (Address: 1-13-M, Barha Railway Colony, Alambagh, LKO) 226005
7. Anup Kumar s/o Ram Bachan, (Address: House No. 457, Sector-H, Kanpur Road, Lucknow) 226012
8. Ram Chander S/o Hari Kishan, (Address: Vill. Ludhausi, PO: Malihabad, LKO) 226102
9. Kamlesh Kumar s/o Ram Dularey, ((Address: 1-13-M, Barha Railway Colony, Alambagh, LKO) 226005
10. Sarvan Kumar s/o Sheetal Prasad, (Address: 590/66, Gopalpuri, Alambagh, LKO) 226005.

Sub: I. Compliance of judgment/order dated 31.01.2014 passed by Hon'ble CAT/LKO in OA 14 of 2009- Ram Dayal & 09 Others V. UOI & Others.

II. CCP No. 332/00031/2014 –Ram Dayal v. V.K.Gupta (GM) & Others.

Hon'ble CAT/LKO has decided the OA No. 14 & 15 of 2009 vide common judgment dated 31.01.2014 with following directions:

"....In view of above, without entering into the merits of the case, the both OAs are disposed off with a direction to the respondents to take a decision on the reference made vide letter dated 19.08.2013 in accordance with law as well as rules and regulations on the subject within a period of three months from the date of receipt of a copy of this order passing a reasoned and speaking order."

In compliance of the above noted orders, the matter in question has been carefully considered and examined and it is found that OA No. 14 of 2009 has been filed by our seeking following relief(s):

- (a) Quash the impugned advertisements issued in Employment Newspaper on 04-10.08.2007 & 22-28.10.2007 for appointment of fresh hands.
- (b) Direct the opposite parties to appoint/regularize the services of the applicants against Group 'D' posts within a specified period of 2 months keeping in view their past services as substitute Posters.
- (c) Direct the opposite parties not to make fresh appointments on Group 'D' posts until the services of the applicants are regularized against vacant Group 'D' pots.

You have further filed Suppl. Affidavit alleging that the Railway Admn. have issued letters dated 05.02.2009 & 02.04.2009 for regularization of casual labour. In this regard, it is intimated that you have chosen to file the instant OA for the first time in 2009. Upon perusal of the OA & other pleadings, it is revealed that you were allegedly dis-engaged in 1988 and you slept over the matter upto 2009, i.e. for 21 years. As such, your claim was grossly barred by limitation as prescribed in Section 21 of the AT Act, 1985.

Further, you have relied upon certain references alleged to have been made in respect of engagement /regularization of casual labors and also annexed certain engagement letters in respect of S/Sh. Vishal Kumar Mishra, Vikrant Trivedi and Sanjay Kumar Singh. In this connection, it is submitted that the above named were engaged as Fresh Face Substitutes with the personal approval of General Manager. Their engagement had nothing to do with the regularization of Casual Labours and as such seeking parity with them by you is totally irrelevant.

Not only this, the references cited by you are not relevant keeping in view the fact that no reference had ever been made in your case. It would not be out of place to mention here, that as per Master Circular 20(44) and Railway Board's directions dated 22.11.84, the name of casual labour who has not worked in the Railway in preceding two completed calendar years, his name should be struck off from the Live Casual Labour Register. The Hon'ble Full Bench of CAT in the case of Mahabir & Others vs. UOI & Others as reported in 2000 (3) ATJ page-1 have clearly held that the Railway Board's circular 25.04.1981 & 28.07.1981, which provides for placement of names of Casual Labour in the Live Casual Labour Register do not give a continuous Cause of Action. Not only this, the Hon'ble High Court, Delhi in his full bench decision as reported in ESC/2002 Vol.-III Page-574 in the matter of Jagdish Prasad vs. UOI & Others, the Hon'ble HC has clearly held that merely placement of the name on the Live Casual Labour Register will not give any good ground for claiming any relief after inordinate delay in the matter.

So far as the last reference made by this office on

19.08.2013 is concerned, it is stated that the same was made with regard to the case of Sh. Arun Kumar s/o Sh. Deen Dayal, ex-Casual Labour. The GM(P)/NR after re-examining the case, has rejected the case of Sh. Arun Kumar vide letter No. 220-E/190/CL/LKO/Pt.II/E-IV dated 23.09.2013 and as such the reference dated 19.08.2013 is irrelevant so far as your case is concerned. Your case is decided accordingly in compliance of orders of Hon'ble Tribunal.

DA: Nil.

Sd/-
(R.C. Biarwa)
For Divisional Railway Manager (P)
Northern Railway, Lucknow

Northern Railway

Divisional Office
Lucknow

No. 220-E/5-9/Court Case

Dated : 08.07.2014

S/Sh.

1. Bachche Lal S/o Matru, (Address:1-13-M,Railway Colony, Alambagh, LKO)
2. Rajneesh Kumar s/o Ram Kheri, (Address: Vill. Pure Masi, PO: Shadipur, Pratapgarh)
3. Mujiburrehman S/o Kamaruddin Ansari, (Address: Vill. & PO: Babuganj, Pratapgarh)
4. Smt. Kanchanwati D/o Hemraj, (Address: 57/66, Alambagh, Lucknow).
5. Ram Kumar S/o Ram Swaroop, (Address: Vill. Jahangirpur, PO: Mahamudpur,Lucknow).
6. Raja Ram s/o Suchit Ram, (Address: 1-13-L Barha Railway Colony, Alambagh, LKO)
7. Md. Shamimuddin S/o Md. Rafiq,(Address:1-13-C, Barha Railway Colony, Alambagh, LKO)
8. Ram Dulaey S/o Laxman, (Address: Vill & PO Bansi Majhar Ka Purwa, Jagesherganj, Pratpgarh)
9. Bachchu Lal S/o Ziley, Pal, (Address: Vill Madhapur, PO Kataiya, Praatapgarh)
10. Ramdeo S/o Laxman, (Address :Vill. & PO Bansi Majhar Ka Purwa, Jagesherganj, Pratapgarh)

Sub: I. Compliance of judgment/order dated 31.01.2014 passed by Hon'ble CAT/LKO in OA 15 of 2009- Bachche Lal & 09 Others V. UOI & Others.

II. CCP No. 332/00030/2014 -Bachche Lal v. V.K.Gupta (GM) & Others.

Hon'ble CAT/LKO has decided the OA No. 14 & 15 of 2009 vide common judgment dated 31.01.2014 with following directions:

“...In view of above, without entering into the merits of the case, the both OAs are disposed off with a direction to the respondents to take a decision on the reference made vide letter dated 19.08.2013 in accordance with law as well as rules and regulations on the subject within a period of three months from the date of receipt of a copy of this order passing a reasoned and speaking order.”

In compliance of the above noted orders, the matter in question has been carefully considered and examined and it is found that OA No. 14 of 2009 has been filed by our seeking following relief(s):

- (a) Quash the impugned advertisements issued in Employment Newspaper on 04-10.08.2007 & 22-28.10.2007 for appointment of fresh hands.
- (b) Direct the opposite parties to appoint/regularize the services of the applicants against Group ‘D’ posts within a specified period of 2 months keeping in view their past services as substitute Posters.
- (c) Direct the opposite parties not to make fresh appointments on Group ‘D’ posts until the services of the applicants are regularized against vacant Group ‘D’ pots.

In this regard, it is intimated that you have chosen to file the instant OA for the first time in 2009. Upon perusal of the OA & other pleadings, it is revealed that you were allegedly dis-engaged in 1988 and you slept over the matter upto 2009, i.e. for 21 years. As such, your claim was grossly barred by limitation as prescribed in Section 21 of the AT Act, 1985.

Further, you have relied upon certain references alleged to have been made in respect of engagement /regularization of casual labors and also annexed certain engagement letters in respect of S/Sh. Vishal Kumar Mishra, Vikrant Trivedi and Sanjay Kumar Singh. In this connection, it is submitted that the above named were engaged as Fresh Face Substitutes with the personal approval of General Manager. Their engagement had nothing to do with the regularization of Casual Labours and as such seeking parity with them by you is totally irrelevant.

Not only this, the references cited by you are not relevant keeping in view the fact that no reference had ever been made in your case. It would not be out of place to mention here, that as per Master Circular 20(44) and Railway Board’s directions dated 22.11.84, the name of casual labour who has not worked in the Railway in preceding two completed calendar years, his name should be struck off from the Live Casual Labour Register. The Hon’ble Full Bench of CAT in the case of Mahabir & Others vs. UOI & Others as reported in 2000 (3) ATJ page-1 have clearly held that the Railway Board’s

circular 25.04.1981 & 28.07.1981, which provides for placement of names of Casual Labour in the Live Casual Labour Register do not give a continuous Cause of Action. Not only this, the Hon'ble High Court, Delhi in his full bench decision as reported in ESC/2002 Vol.-III Page-574 in the matter of Jagdish Prasad vs. UOI & Others, the Hon'ble HC has clearly held that merely placement of the name on the Live Casual Labour Register will not give any good ground for claiming any relief after inordinate delay in the matter.

So far as the last reference made by this office on 19.08.2013 is concerned, it is stated that the same was made with regard to the case of Sh. Arun Kumar s/o Sh. Deen Dayal, ex-Casual Labour. The GM(P)/NR after re-examining the case, has rejected the case of Sh. Arun Kumar vide letter No. 220-E/190/CL/LKO/Pt.II/E-IV dated 23.09.2013 and as such the reference dated 19.08.2013 is irrelevant so far as your case is concerned. Your case is decided accordingly in compliance of orders of Hon'ble Tribunal.

DA: Nil.

Sd/-
(R.C. Biarwa)

For Divisional Railway Manager (P)
Northern Railway, Lucknow

O.A. No. 466 of 2015

Northern Railway

Divisional Office
Lucknow

No. 220-E/5-9/Court Case

Dated : 05.08.2014

S/Sh.

1. Ashok Kumar s/o Sri Ram Abhilash, (Address: 762, Sector-I, LDA, Kanpur Road, LKO)
2. Abhay Narain s/o Sri Yamuna Pd. (Address: 470/66, Ram Nagar, Alambagh, LKO)
3. Ramesh Kr. Pandeys/o Ram Narain Pandey, (Address: 570/66, Gopal Puri, Near Singhal Market, Alambagh, LKO)
4. Anil Kr. Singh d/o Sri Lalla Singh, (Address: T-30, Sewak Ram, Charbagh, Lucknow)
5. Vishal Kumar s/o Hardeo Upadhyay, (Address: Haider Kainal, Charbagh, Lucknow)
6. Awadhesh Kr. Upadhyay S/o Ram Chandra Upadhyay, (Address: 1-13-B, Barha Railway Colony, Alambagh, LKO)
7. Nagendra Kumar s/o Kedar Ram, (Address: T-71, Munauwar Bagh, Lucknow)
8. Satyendra Kr. Singh s/o Sri Bindeshwari Singh, (Address:

- 7/80, Biseshwar Nagar, Alambagh, LKO)
9. Virendra Pd. Singh s/o Sri Veer Bahadur Singh, (Address: 70/6, Munauwar Bagh, LKO)
 10. Rajesh Kumar s/o Mahaveer Prasad, (Address: 1-13-D, Barha Railway Colony, Alambagh, LKO)
 11. Janardan Prasad s/o Nawal Kishore, (Address: 570/66, Gopal Puri, Alambagh, Lucknow)
 12. Radhey Shyam s/o Ram Sewak, (Address: 503/4, Kailash Puri, Alambagh, Lucknow)

Sub: I. Compliance of judgment/order dated 31.01.2014 passed by Hon'ble CAT/LKO in OA 213 of 2009- Ashok Kumar & 11 Others V. UOI & Others.

II. CCP No. 332/00038/2014 –Ashok Kumar & other v. Pradeep Kumar (GM) & Others.

Hon'ble CAT/LKO has decided the OA No. 213 of 2009 vide judgment dated 31.01.2014 with following directions:

“....In view of above, without entering into the merits of the case, the both OAs are disposed off with a direction to the respondents to take a decision on the reference made vide letter dated 19.08.2013 in accordance with law as well as rules and regulations on the subject within a period of three months from the date of receipt of a copy of this order passing a reasoned and speaking order.”

In compliance of the above noted orders, the matter in question has been carefully considered and examined and it is found that OA No. 213 of 2009 has been filed by our seeking following relief(s):

- (a) Quash the impugned advertisements issued in Employment Newspaper on 04-10.08.2007 & 22-28.10.2007 for appointment of fresh hands.
- (b) Direct the opposite parties to appoint/regularize the services of the applicants against Group 'D' posts within a specified period of 2 months keeping in view their past services as substitute Posters.
- (c) Direct the opposite parties not to make fresh appointments on Group 'D' posts until the services of the applicants are regularized against vacant Group 'D' pots.

In this regard, it is intimated that you have chosen to file the instant OA for the first time in 2009. Upon perusal of the OA & other pleadings, it is revealed that you were allegedly dis-engaged during 1986 to 1991 and you slept over the matter upto 2009, i.e. 18-23 years. As such, your claim was grossly barred by limitation as prescribed in Section 21 of the AT Act, 1985.

Further, you have relied upon certain references alleged to have been made in respect of engagement /regularization of casual labors and also annexed certain engagement letters in respect of S/Sh. Vishal Kumar Mishra, Vikrant Trivedi and

Sanjay Kumar Singh. In this connection, it is submitted that the above named were engaged as Fresh Face Substitutes with the personal approval of General Manager. Their engagement had nothing to do with the regularization of Casual Labours and as such seeking parity with them by you is totally irrelevant.

Not only this, the references cited by you are not relevant keeping in view the fact that no reference had ever been made in your case. It would not be out of place to mention here, that as per Master Circular 20(44) and Railway Board's directions dated 22.11.84, the name of casual labour who has not worked in the Railway in preceding two completed calendar years, his name should be struck off from the Live Casual Labour Register. The Hon'ble Full Bench of CAT in the case of Mahabir & Others vs. UOI & Others as reported in 2000 (3) ATJ page-1 have clearly held that the Railway Board's circular 25.04.1981 & 28.07.1981, which provides for placement of names of Casual Labour in the Live Casual Labour Register do not give a continuous Cause of Action. Not only this, the Hon'ble High Court, Delhi in his full bench decision as reported in ESC/2002 Vol.-III Page-574 in the matter of Jagdish Prasad vs. UOI & Others, the Hon'ble HC has clearly held that merely placement of the name on the Live Casual Labour Register will not give any good ground for claiming any relief after inordinate delay in the matter.

So far as the last reference made by this office on 19.08.2013 is concerned, it is stated that the same was made with regard to the case of Sh. Arun Kumar s/o Sh. Deen Dayal, ex-Casual Labour. The GM(P)/NR after re-examining the case, has rejected the case of Sh. Arun Kumar vide letter No. 220-E/190/CL/LKO/Pt.II/E-IV dated 23.09.2013 and as such the reference dated 19.08.2013 is irrelevant so far as your case is concerned. Your case is decided accordingly in compliance of orders of Hon'ble Tribunal.

DA: Nil.

Sd/-
(R.C. Biarwa)
For Divisional Railway Manager (P)
Northern Railway, Lucknow

8. It was further revealed from impugned order that the cases of the regularization of another employee namely Arun Kumar was also rejected on 23.09.2013.

9. It has been contended by the applicants that one Shri Rajendra Prasad a casual labour of the year 1992 list was called for screening in the year 2011 likewise Dinesh Kumar Saxena

and Mahendra Singh were also screened. The applicants being better claimants are also entitled to get the same treatment.

10. It was further contended by the applicant that the impugned order was passed in utter violation of Railway Establishment Manual. The respondents adopted pick and choose policy and even several persons have been engaged but the applicants have been discriminated and have neither been regularized nor re-engaged. As such the impugned order is liable to be set aside and applicants are liable to be regularized.

11. On the basis of the aforesaid pleadings, the relief was sought of setting aside the impugned order with further request to direct the opposite parties to hold fresh screening of the applicants with a view to regularize their services against Group-D post with all consequential benefits.

12. The reply has been filed in the both cases which are almost similar. In counter affidavit it has stated that the claim of the applicants is grossly barred by limitation in view of Section 21 of AT Act.

13. It was further contended that Vishal Kumar Mishra, Vikrant Trivedi and Sanjay Kumar Singh were engaged as a fresh faces of substitute with the approval of the General Manager and their engagement cannot be a ground for the regularization of the applicants.

14. The Master Circular 20(44) of Railway Board dated 22.11.1984 provides that the name of the casual labour who was not working in the Railway in the preceding two completed calendar year, his name should be struck off from live casual labour register. It was further contended that even if name of any employee finds place in live casual labour register it does not give any grounds for claiming any relief after inordinate delay in the matter as held by Hon'ble Delhi High Court in the

case of Jagdish Prasad Vs. Union of India & Others. It was further contended that the case of the Arun Kumar was also rejected by the competent authority vide order dated 23.09.2013. The order passed by respondents is perfectly in accordance with law.

15. The applicants have not disclosed as to when they worked and for how many days they had worked. No proof of working days has been placed on record.

16. Rejoinder has been filed wherein the applicants reiterated the stand taken in the Original Application and pleaded that for the regularization of applicants as substitute porter it would be obligatory on the part of the department to consider the case of the applicants, whenever the vacancies arose on the principle of last come-first go, which the respondents has not done. The applicants had worked more than 120 days in a calendar year, therefore, it gives a right to the applicants for consideration of their candidature first before engagement of fresh faces of substitute porter.

17. I have heard the learned counsel for the applicants and learned counsel for the respondents at length and perused the record.

18. It is interesting that none of the applicants have disclosed from which date they have been engaged and till which date they continued worked as casual labour or since when they are not working as substitute porter. There is nothing on record to establish as to how many days the applicant had worked.

19. It is well settled principle of law that applicants have to prove their case on its own. The burden to prove that they had worked for more than 120 days continuously and on that basis they are entitled to regularization and reengagement lies on the

shoulder of the applicants but they have failed to discharge their burden. The respondents have not admitted the case of the applicants that they ever worked for 120 days or so.

20. So far as the question of the limitation is concerned, in absence of the working tenure of the applicants, it cannot be ascertain on the basis of pleadings as to when cause of action accrued to the applicants. Moreover, in view of the earlier litigation it appears that the applicants are not working in the railways since 1998 and they have filed the OAs in 2015 and 2017 without giving any cogent explanation for the same.

21. The counsel for respondents relied upon the judgment of Allahabad High Court delivered in **Writ Petition No. 670 of 2005, Union of India through Secretary to Government (Railways) and two others vs. Panna Lal decided on 18.04.2017**. The Division Bench has taken a view that a person who is sleeping over his rights for considerable long time cannot be granted relief. The Hon'ble High Court in the light of the judgment of Hon'ble Supreme Court in **State of U.P. and others Vs. Arvind Kumar Srivastava and Others 2015 (1) SCC 347** concluded that a person who is fence-sitters, laches and delays and/or the acquiescence, would be a valid ground to dismiss his claim. The relevant para 8, 9 and 10 is extracted herein below for ready reference:

"8. In State of U.P. and others Vs. Arvind Kumar Srivastava and others 2015 (1) SCC 347, Court considered in detail the question, "whether in the given case, approach of the Tribunal and the High Court was correct in extending the benefit of earlier judgment of Tribunal, which had attained finality as it was affirmed till the Supreme Court, whereas appellants in that case contend that respondents therein did not approach Court in time and were fence-sitters and, therefore, not entitled to get benefit of said judgment by approaching judicial forum belatedly", and finally drew the conclusion observing:

1. *"Those persons who did not challenge the wrongful action in their cases and acquiesced into the same and woke up after long delay only because of the reason that their counterparts who had approached the Court earlier in time succeeded in their efforts, then such employees cannot claim that the benefit of the word "Udu" meaning in hindi of the judgment rendered in the case of similarly situated persons be extended to them. They would be treated as fence - sitters and laches and delays, and / or the acquiescence, would be a valid ground to dismiss their claim."*

9. *Thus, it is evident that a person cannot take benefit of judgment procured by a diligent person approaching the Court within time after the cause of action had arisen long-back.*

10. *In view of above discussion, we are of the view that Original Application was not maintainable before Tribunal being barred by limitation. Tribunal, therefore, has committed manifest error in allowing the same by means of impugned judgment."*

22. In view of the above and in the light of facts and circumstances of the case, the claim of the applicants is highly barred by time and cannot be considered.

23. Learned counsel for the applicants relied upon a judgment rendered by Hon'ble Apex Court in the case of **Hari Nandan Prasad Vs. Employee of FCI**, the judgment is passed in the light of the provision contains in Section 25 (f) of Industrial Disputes Act and is a case of the retrenchment of the employees. In this case the daily wager who completed 240 days of continuous service were terminated without making the compliance of Section 25 (f) of Industrial Dispute Act, 1947. Therefore, the Hon'ble Supreme Court ruled that such employees are entitled to reinstated and may be considered for regularization but this is not the case of the present applicants. The applicants were engaged as casual labourer as per own case and worked for few days and after working for few days, they are out of job since more than 15 years. They have failed to

established that their names were ever placed in live casual labour register. They have also not placed any document as to how any junior to the applicants in the seniority list has been regularized. Moreover, the applicants have crossed over the maximum age relaxation limit for recruitment. Hence, in view of the judgment rendered by Allahabad High Court in the **Writ Petition No. 1006/2016 Union of India Vs. Ashok Kumar decided on 4.2.2016** it has been ruled that further relaxation in age beyond 40, 43 and 45 years in the case of General category, OBC and SC/ST candidates respectively cannot be granted by any Court. The relevant portion of the judgment of Division Bench of High Court is extracted here-in-below:-

"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/ regularization 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.

In view of above, the writ petition is allowed and the impugned order dated 06.11.2015 is quashed and set aside."

24. In view of the Master Circular No. 20 it is clear that if Casual Labourer was not worked for preceding 2 years, his name be struck out from the live casual labour register. The circular is extracted herein below:

*"Railway Board Circular dated 22.11.1984
"Government of India (Bharat Sarkar)*

MINISTRY RAILWAYS/RAIL MANTRALAYA
(RAILWAY BOARD)

No. E(NG)II/78/CL2 dated 22.11.1984

Subject: Screening/empanelment of casual labour and substitutes maintenance of Casual labour registers.

Reference this Ministry's letter of even number, dated 21.2.1984 on the above subject. The Ministry of Railways have had occasion to review the existing instructions and procedures regarding engagement of casual labour. Instructions regulating the engagement of casual labour and providing for control over the total casual work force were issued in this Ministry's letter No. E(NG)II/84/CL/43, dated 07.06.1984.

2. The Ministry of Railways have now decided that if a casual labour who was earlier discharged from service on completion of work or for want of further productive work, has not worked on the Railways again in the preceding two complete calendar years, his name should be struck off the casual labour register. The Ministry have observed in this connection that in the matter of reengagement of an casual labour the Railway Administration will, no doubt, keep in view the relevant provisions of Industrial Disputes Act, 1947 and the Rules framed there under and the practice of displaying on the notice Board if fresh employment for discharged casual labour is available.

3. the casual labour register should be reviewed and updated annually, preferably during the first quarter of the year. The

register so maintained should be scrutinized by Sr. Gazetted Officer preferably, both at the beginning and the close of the year and in any case at least once annually after the review has taken place. The reviewing Gazetted Officer shall sign the register in taken of scrutiny.

It may be clarified that as per extent orders, if a casual labour retrenched on completion of work does not accept the offer made or turn out for work when offer is made to him on availability of fresh work, he loses the benefit of the previous spell of employment as casual labour. In this connection, attention is invited to the clarification given in para 2 of this Ministry's letter No. E(NG)II-30?CL/25, dated 02.04.1981. These orders should be strictly enforced."

How this circular is not applicable to the applicants has not been disclosed.

25. In view of the above and in the light of facts and circumstances of these case and also in view of legal proposition both Original Applications having O.A. No. 21 of 2017 and O.A. No. 466 of 2015 lacks merit and are accordingly dismissed. No interference is warranted in the impugned order.

26. There shall be no order as to costs.

(Justice V. C. Gupta)
Member (J)

JNS