

**CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW**

Original Application No. 332/00147/2015

**ORDER RESERVED ON : 10.04.2018
ORDER PRONOUNCED ON : 12.04.2018**

HON'BLE MR. JUSTICE V.C.GUPTA, MEMBER (JUDICIAL)

1. Mohd. Tufail, aged about 48 years, son of Late Shri Shainkul, resident of- House No.- 554/235, Kailashpuri, Alambagh, Lucknow.
2. Jugal Kishore, aged about 52 years, son of Late Shri Heera Nand, resident of- House No.-551/GH/13, Natkhera Road, Alambagh, Lucknow.

.....Applicants

By Advocate : Sri Praveen Kumar

Versus

1. Union Of India through General Manager, Northern Railway, Baroda House, New Delhi.
2. The Divisional Railway Manager, Northern Railway, Hazratganj, Lucknow.
3. The Senior Divisional Personnel Officer, Northern Railway, Lucknow.

.....Respondents

By Advocate : Sri B.B. Tripathi for Sri H.G. Upadhyay.

ORDER

HON'BLE MR. JUSTICE V.C.GUPTA, MEMBER (JUDICIAL),

This is an application the following reliefs have been sought by the applicants:

- 1. To pass an order on the basis of reference received by respondent no. 1 send from respondent no. 2 as**

referred in letter dated 04.04.2013 contained as Annexure No. A-15 to this OA.

- 2. To hold fresh screening for applicants with a view to regularize their services in terms of the judgment passed by the Hon'ble Supreme Court in the matter of Indra Pal Yadav and regularize their services against Group D post with all consequential benefits.**
- 3. Any other relief, which this Hon'ble Tribunal may deem fit, just and proper under the circumstances of the case, may also be passed.**
- 4. Cost of the present case, as the applicant have unnecessary dragged into litigation.**

2. The brief facts giving rise to this O.A. are that the applicant no. 1 alleged to have been engaged as casual labour under respondent No.3 during 20.09.1982 to 14.07.1984 and applicant no. 2 have been served under the respondent no. 3 during the year 1979-1980 and their names were mentioned in Casual Labour Live Register. The photo state copy of which has been annexed as Annexure A-3 to this O.A. It has been contended that both the applicants had worked for more than 140 days as mentioned in the Casual Labour Live Register, the details of which has been given in the same and are extracted herein below :

How may screened for regular absorption but left for want of post facto approval/ court cases.				
	Name	Father's Name	S. No.	No. of days
30.	Mohammad Tufail	Saikul	-	380
31.	Jugul Kishore	Hira Nand	-	349

3. It has been contended that by respondent no. 1 issued letter dated 15.11.1998 and again on 11.07.2002 the asking the lower authorities to provide the details of casual laborers for considering their names for regularization but this exercise has gone in vain for the reason of non availability of post facto approval from General Manager. Thereafter,

on 29.09.1999 and 23.06.2003, the applicant no. 2 and applicant no. 1 respectively made representation to the Respondent No. 2 for considering their claim for regularization. The copy of which has been annexed as Annexue-A-4. It was also contended that on 16.12.1998, the respondent No.1 issued guidelines regarding engagement of casual labourers on the basis of Casual Labour Live Register, a decision was taken in 1993 that non working casual labourers have been taken from Moradabad Division as safaiwala. It was contended that the matter was submitted to General Manager and was remain pending with him. However, on 11.7.2002, the respondent No. 1 issued a letter requiring details in the matter of non working casual labour born in the Casual Labour Live Register and yet to be regularized. Again on 15.12.2006 and 4.7.2007 the respondent No.1 asked Respondent No. 2 for providing the similar details. In response the authorities on 10.7.2007 sought further guidelines for regularization vide letter dated 25.11.2008. On 5.2.2009, the General Manager (Personnel) required some more details from Respondent No. 2 for the aforesaid purpose. The correspondence continued amongst the authorities till 2013.

5. Aggrieved by the non action of the authorities, this O.A. has been filed.

6. The counter affidavit has been filed. A preliminary objection has been taken regarding limitation to file the O.A. It was contended that prayer made by the applicant to regularize their services in terms of the judgment passed by the Hon'ble Supreme Court in the matter of Indra Pal Yadav against a Group D post could not be allowed.

7. It has been further contended that in this case, as per the pleadings, the cause of action accrued to the applicant no. 1 in the year 1984 and applicant no. 2 in the year 1980, but the present application has been filed in 2015 i.e. after more than 30 years and is grossly barred by time. They worked more than 140 days in between 1979 to 1984 as per thier own admission and thereafter they were

never engaged. Therefore, this application is liable to be dismissed as barred by time as no application for condonation of delay has been filed. It is also stated that as per Railway Board Circular, the name of casual labour who has not worked in the Railway in the preceding two completed calendar year, his name should be struck off from the Live Casual Labour Register. It was further contended that merely placement of the names on the Live Casual Labour Register does not give a continuous cause of action as held by Full Bench of Hon'ble Tribunal in the case of **Mahabir Vs. Union of India & Others reported in 2000 (3) ATJ-1**. Similar view has been taken by Delhi High Court in the case of **Jagdish Prasad Vs. Union of India & Others**. It was also contended that the reference made on 19.8.2013 was not of the applicant or for casual labourers in general but it was in respect of one Arun Kumar, ex-casual labour. It was also contended that case of Arun Kumar was also rejected by letter dated 23.9.2013. As such, the application is not maintainable and is liable to be dismissed.

8. Rejoinder affidavit has been filed reiterating the earlier stand taken in the O.A. Written arguments is also filed by the respondents in this case. Hence, I have also taken into consideration the written arguments submitted by the respondents.

9. I have heard the learned counsel for the parties and perused the record of the case.

10. After hearing the arguments of the parties counsel certain questions arise for deciding the O.A. and shall be taken one by one.

(A) Whether the OA Filed is barred by time?

11. The learned Counsel for the applicant would submit that the cause of action is continuing as the case of the applicant has not been considered even after giving representation in 2nd January, 2014.

12. The 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.

The Division Bench has taken a view that a person who is sleeping over his right 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:

"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 benefiturdi 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."

13. In the present case the applicants worked more than 140 days as stated by applicant no. 1 and 2 in between 1982 to 84 and 1979-80 respectively and thereafter never engaged by the Railways. They did not file any legal proceeding for their regularization till filing of this O.A.

which has been filed after more than 30 years. They are trying to take advantage of litigation fought by diligent employees without bringing the facts of those cases. In view of it this Tribunal this case is not based on continuous cause of action and is highly barred by time because to file OA limitation is one year from the date of accruing the cause of action as given in section 21 of Administrative Tribunal Act 1985.

(B) Whether benefit of Indra Pal case can be extended to the applicant?

14. So far as the case of Indra Pal Yadav is concerned, the Supreme Court in the aforesaid case **(Indra pal Vs. Union of India and Ors. 1985 (2) SCC-648)** approved scheme for project casual labours. The judgment reveals that this scheme was modified and made effective from 1st June 1981 and the persons who were working in the project as casual labour from 1st January 1981 were allowed the benefit of scheme with an observation that absorption would be based on longest period of service and in the process, if any adjustment is necessary, the same must be done on the basis of principle of industrial jurisprudence that the man with longest service shall have priority over those who joined later on. As such, principle of last come first go or first come last go as contained in Section 25 (G) of the Industrial Dispute Act 1947 has been accepted. The relevant para of Indra Pal Yadav's case (Supra) as contained in para 3 ,4 , 5 and 6 are extracted herein below for ready reference:

“3. Railway Ministry framed a Scheme and circulated the same amongst others to all the General Managers of Indian Railways including production units as per its circular No. E(NG)II/84/CL/41 dated June 1, 1984. In the Scheme it was stated that all the General Managers were directed to implement the decision of the Railway Ministry by the target dates It was further stated that a detailed letter regarding group 5 1(ii) would follow. Such a letter was issued on June 25, 1984. Thereafter, these matters were set out for examining the fairness and justness of the Scheme and whether the Court would be in a position to dispose of these petitions in view of the Scheme. That is how these matters came up before us.

The relevant portions of the Scheme read as under:

"5.1. As a result of such deliberations, the Ministry of Railways have now decided in principle that casual labour employed on project (also known as 'project casual labour') may be treated as temporary on completion of 360 days of continuous employment. The Ministry have decided further as under:

(a) These orders will cover:

(i) Casual labour on projects who are in service as on 1.1.84; and

(ii) Casual labour on projects who, though not In service on 1.1.84, had been in service on Railways earlier and had already completed the above prescribed period (360 days) of continuous employment or will complete the said prescribed period of continuous employment on re-engagement in future. (A detailed letter regarding this group follows).

(b) The decision should be implemented in phases according to the schedule given below:

Length of service i.e. continued employment)	Date from which may be treated as temporary	Date by which decision should be implemented
(i) Those who have completed five years of service as on January 1, 1984	January 1, 1984	December 31, 1984
(ii) Those who have completed three years but less than five years of service as on January, 1, 1984	January 1, 1985	December 31, 1985
(iii) Those who have completed 360 days but less than three years of service on January 1, 1984	January 1, 1986	December 31, 1986
(iv) Those who complete 360 days after January 1, 1984	January 1, 1987 or the date on which 360 days are completed whichever is later	March 31, 1987

5.2. The Ministry would like to clarify here that casual labour on projects who have completed 180 days of continuous employment would continue to be entitled to the benefits now admissible to them (so long as they fulfil the conditions in this regard) till they become due for the benefits mentioned in the preceding sub-paragraph."

4. By and large the scheme certainly is an improvement on the present situation though not wholly satisfactory. However, the railway being the biggest employer and having regard to the nature of its work,

it would have to engage casual labour and therefore, as a preliminary step towards realisation of the ideal enshrined in Articles 41 and 42, we propose to put our stamp of approval on the scheme with one major variation which we proceed to herein set out.

5. The Scheme envisages that it would be applicable to casual labour on projects who were in service as on January 1, 1984. The choice of this date does not commend to us, for it is likely to introduce an invidious distinction between similarly situated persons and expose some workmen to arbitrary discrimination flowing from fortuitous court's order. To illustrate, in some matters, the court granted interim stay before the workmen could be retrenched while some other were not so fortunate. Those in respect of whom the court granted interim relief be stay/suspension of the order of retrenchment, they would be treated in service on 1.1.1984 while others who fail to obtain interim relief though similarly situated would be pushed down in the implementation of the Scheme. There is another area where discrimination is likely to rear its ugly head. These workmen come from the lowest grade of railway service. They can ill afford to rush to court. Their Federations have hardly been of any assistance. They had individually to collect money and rush to court which in case of some may be beyond their reach. Therefore, some of the retrenched workmen failed to knock at the doors of the court of justice because these doors do not open unless huge expenses are incurred. Choice in such a situation, even without crystal gazing is between incurring expenses for a litigation with uncertain outcome and hunger from day to day. It is a Hobson's choice. Therefore, those who could not come to the court need not be at a comparative disadvantage to those who rushed in here. If they are otherwise similarly situated, they are entitled to similar treatment if not by anyone else at the hands of this Court. Burdened by all these relevant considerations and keeping in view all the aspects of the matter, we would modify part

5.1 (a) (i) by modifying the date from 1.1.1984 to 1.1.1981. With this modification and consequent rescheduling in absorption from that date onward, the Scheme framed by Railway Ministry is accepted and a direction is given that it must be implemented by re-casting the stages consistent with the change in the date as herein directed.

6. To avoid violation of [Art.14](#), the scientific and equitable way if implementing the scheme is for the Railway administration to prepare, a list of project casual labour with reference to each division of each railway and then start absorbing those with the longest service. If in the process any adjustments are necessary, the same must be done. In giving this direction, we are considerably influenced by the statutory recognition of a principle well known in industrial jurisprudence that the men with longest service shall have priority over those who have joined later on. In other words, the principle of last come first go or to reverse it first come last go as enunciated in Sec. 25G of the Industrial Disputes Act, 1947 has been accepted. We direct accordingly.”

15. The perusal of Indra Pal case (supra) reveals that a casual labor who has completed at least 360 days, or 180 days continuous employment were decided to be absorbed under the scheme. The applicant has not completed 360 days or 180 days as per scheme as such, the benefit of Indra Pal case cannot be extended. Moreover, it has not been pleaded that the applicant was working as casual labour in any project.

(C) Whether Railway Board circular dated 22.11.1984 has nay effect in this case?

16. The Railway Board circular dated 22.11.1984, has made it clear that if a casual labour who was earlier discharge from service on completion of work or for want of further productive work has not work on the railway again in the preceding two complete calendar years has not engaged, his name should be struck off from the casual labour registers. The copy of 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."

17. In the case of the applicant no.1, he has not been engaged as a casual laborer after 14.07.1984 as per his own admission and applicant no.2, he has not been engaged as a casual laborer after 1980. As such, they are out of job for last more than 30-35 years by now. Their age on the date of filing this petition were more than 48 years.

18. It is not the case of the applicants that any casual labour who has less working days than the applicants was regularized as such, the applicants cannot be regularized on the basis of a decision taken by the courts or Tribunal in respect of the vigilant employee.

(C) Whether the applicant become overage on the date of presentation of OA.?

19. The applicants on the date of representation of the O.A. were more than 45 years of age as per their own admission. The age mention of the applicant no. 1 & 2 in the array of parties against their name as 48 & 52 year respectively.

20. No provision has been shown by the counsel for the applicant that any further relaxation is permissible in the case of the applicant in terms of any circular or notification of the Railways. More-over, in the judgment the Hon'ble High Court of Allahabad in **Writ Petition No.**

1006/2016 Union of India Vs. Ashok Kumar decided on 4.2.2016

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.”

21. After considering all the facts and circumstances of the case and the legal propositions of law discussed herein above, the Tribunal finds, that this petition is highly barred by time. On merit too the applicants have no case. The applicant is not entitled to any relief.

22. Hence this O.A. is accordingly dismissed. However, there shall be no order as to cost.

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

JNS

