

**Jayesh V. Bhairavia, M [ J ]:-** The applicant in this O.A prays for a direction to respondents to absorb them immediately against vacant group "D" post by

calculating their upper age limit from the date of screening or date of issuance of panel i.e 31.03.1992 and for quashing the letter dated 04.06.2009.

2. The brief facts of the case are as under:-

- ( i ) The applicant was working as a casual labour in the Railway. Pursuant to Circular Nos. 42/87 and 43/87 dated 04.03.1987 issued by the respondent/railway, inviting applications for regularisation of their services from casual labour along with age, and education and also total working days certificates alongwith documents upto 31.03.1987, the applicant applied for the same. The applicants were called for screening test on 03-21.08.1990 at V.N. Sharma Institute, Danapur wherein the test was taken and documents were verified.
- (ii) After due process, about 419 casual labours were declared successful. A list of successful candidates (419) was prepared for their absorption on 31.03.1992 (Annexure A/1) in which the names of applicants were find place .
- (iii) When it has come to the knowledge of applicants that their seniors and juniors have been regularised by the department then the applicants knocked the door of Labour Court where the railway had given in writing vide letter dated 18.11.1993 and 25.01.1994 (Annexure A/2) that the panel of 419 casual labours would be regularised in future vacancies as per their seniority. Thereafter many casual labours had approached this Tribunal through OA 671/2002 which was disposed of vide order dated 22.09.2003 (Annexure A/3) with direction to the respondents to consider the case of applicant for regularisation as per seniority within two months.
- (iv) In the meantime the respondents/department vide notice no.1/2003 dated 13.06.2003 had advertised the regular vacancy. However the same was stayed by the court. The

applicant further submits that as Railway Board Circular dated 05.07.1996 also direct appointment should not be done till absorption of casuals/substitute.

- ( v ) The applicant further submitted that the respondents had filed RA against the order dated 22.09.2003 passed in 671/2002 on 21.05.2004 thereafter challenged the same before Hon'ble High Court as well as Supreme Court which was dismissed.
- (vi) It is further submitted that the applicants (except at sl.no.15) had approached this Tribunal through OA 559/2003 for direction for their absorption in which similar reliefs was granted 30.12.22008 (Annexure A/7). When the said order was not complied, the applicants had filed a contempt petition i.e CCPA 27/2009 in which, the respondents had submitted that the claim of applicants have been rejected vide order dated 04.06.2009 on ground of being overage. (Annexure A/8). The CP No. 27/09 was pending alongwith other CP filed by the one Mr. Sahdeo and others vs Railway. Thereafter, the said CP no. 27/2009 was disposed of on 04.07.2013 (Annexure A/12) and the CP filed by Sahdeo and others were also disposed of.
- (vii) The learned counsel for applicant submits that there was no such criteria/order of educational qualification for regularisation and the applicants were declared passed in screening test and their names find place in the panel of 419 casual labours for regularisation.
- (viii) The applicant relief upon the judgment passed by the Hon'ble Supreme Court in the case of Indrapal Yadav & ors (reported in 1985, PLJR page 36) whereby the Hon'ble Supreme Court had directed the Railway Authority to regularise the ex-casual labour and same benefit also be given to these casual labours that did not came before court. It is further submitted that in a identical case i.e case of Siyaram Paswan and others Vs E.C. Railway in O.A No. 596/2002 this Tribunal had directed vide

order dated 27.01.2006 to consider the case of the said applicants. The respondents has filed a Review Application No. 09/2007 which was dismissed on 30.01.2007, thereafter, the order of this Tribunal was challenged by the respondents before Hon'ble High Court through CWJC No. 7978/08 which was dismissed vide order dated 10.05.2012, the respondents had filed SLP CC (Civil) No. 4535 of 2013 against the order passed by Hon'ble High court dated 10.05.2012, the said SLP was also dismissed on 05.04.2013. (Annexure A/9 & A/10 refer).

- (ix) It is further submitted that vide order dated 29.08.2013, the respondent no.2 & 3 have regularised the service after counting/treating the age 40 for Gen., for OBC age 43 and SC/ST age 45 from the year 1996 i.e the date of screening test. Out of 13 screened casuals six are regularised whereas other seven screened casuals have crossed the age of retirement/superannuation i.e 60 years. (Annexure A/11 refers).
- (x) On the basis of above facts the learned counsel for applicant submitted that for some ulterior motive the respondents are not obeying the order passed by this Tribunal which was confirmed upto the Hon'ble Supreme Court, though there are a lot of vacancy of group 'D' cadre, no action of absorption of the applicant are being taken. The cut off date decided by the respondents i.e 22.09.2003 for regularisation of the casual workers is arbitrary and also contrary to the various directions issued by this Tribunal. Therefore, the applicants absorption in group 'D' is mandatory by calculating their upper age limit from the date of screening or date of issuance of panel of successful casuals on 31.03.1992 and quashed and set aside the speaking order dated 04.06.2009 (Annexure A/8) issued by the respondents whereby the case of the applicants were denied on the ground of cross the upper age limit as the said order is

illegal. Therefore, the action of the respondents is malafide, discriminatory and against the rule; hence this O.A

3. In response to notice, the respondents have filed their written statement and submitted that :

- (i) The learned counsel for respondents submitted that in reference to an instruction dated 04.03.1987 of Railway Board, upto 31.03.1987 Ex-Casual labours were scrutinized and during verification of genuineness, it was found that not a single application could come within the zone of consideration for inclusion in casual labour supplementary live register.
- (ii) The applicants had filed O.A 671/2002 which was disposed of on 22.09.2003 with direction to respondents to consider the case of applicant for their absorption, grant of temporary status and regularisation strictly according to their seniority position in the list of 419 person and also as per reservation roster applicable for SC/ST/OBC category with a period of two months from the date of receipt of copy of this order. This order was challenged before Hon'ble High Court as well as before Hon'ble Supreme Court whereby the appeal was rejected.
- (iii) The respondents thereafter complied the order passed in OA 671/2002 and accordingly screening was done in terms of instruction contained in RBE o. 190/2001. The screening committee reckoned the age of the applicants on 22.09.2003 (i.e the date of order in OA 671/2002).
- (iv) It is further submitted by the l/c for respondents that under Rule 2(1)(C) (ii) of Railway Servant (D&A) Rules 1968, the General Manager is the competent Disciplinary Authority to issue major penalty Charge sheet to the persons at the rank of Divisional Personnel Officer and as per provision of Rule (9) and (10) of Railway Services (Pension) Rule 1993, in case of a Railway servant who has retired on attaining the age of

superannuation or otherwise and against whom departmental proceeding is pending, a provisional pension shall be sanctioned hence DCRG, Commuted value of pension and final pension cannot be sanctioned. It can only be sanctioned after completion of departmental proceedings.

- (v) The applicant, thereafter filed MJC No. 3210/2010 before Hon'ble High Court Patna whereby the stand taken by the railway in compliance of order was upheld with observation as under :-

*"We are unable to accept the aforesaid submission because Annexure 'D' purports to consider the claim of the petitioner as per order of this court. But, thereafter, on the basis of principle of absorption laid down by the Railway Board long back in the year 2001, the petitioners have been held disentitled because they had crossed upper age limit for absorption. Hence, we find no good reason to proceed against opposite parties for further action in contempt jurisdiction. This application therefore dismissed."*

- (vi) L/c for respondents further submitted that due to his carelessness/slack supervision unfair means were adopted and the candidates got his copy written by another candidates and succeeded due to which 07 deserving candidates were declared failed. Therefore, the decision of respondents is proper and this OA is liable to be dismissed.

4. The applicant has filed rejoinder to the written statement and he reiterated the earlier submission. Applicant additionally submitted that he has been fighting for his regularisation from last 25 years but any how he has been rejecting the claim despite losing the case upto Apex Court. He further submitted that at the time of screening test i.e 31.03.2007 they were below the age of 40/43/45 and the delay had been attributed by the respondents themselves by not regularizing of applicants in spite of vacancies available in the department

5. Heard the parties, perused the documents and considered their submissions.

6. In the present O.A, the respondents had denied the absorption of applicants as regular employee in Group 'D' mainly on the ground that all applicants have crossed the upper age limit for further absorption. We noticed that in identically cases where the respondents are not in a position to absorb the casual labourers due to their over age such as Sahdeo & others vs Railway in O.A No. 1029/2012 alongwith CCPA No. 75/2014 and MA No. 04/2018 And also in O.A No. 597/2002 (Siyaram Paswan & others Vs Railway) the respondent department come out with the alternative solution for offering consolidated lum sum payment equivalent to the minimum sum of leave encashment and GIS and requested this Tribunal by filing separate Miscellaneous Application in the contempt proceedings. The said MA are pending for final adjudication. On specific query put to the respondents that whether the respondents are ready to extend the same benefit as offered consolidated lum sum payment to the identical casual labourers to the present applicants/casual labourers who are reported to be over age.

The respondents submitted that on receipt of the direction, the respondents will treat every identically situated casual labourer equally and will extend the same benefits.

7. In view of this fact and also considering the readiness of the respondents that they are also ready to offer consolidated lum sum payment equivalent to minimum sum of leave encashment and GIS to the applicants/casual labourers of the panel 419 dated 31.03.1992. who were found to be over age and cannot be absorbed for work, we are of the opinion that in peculiar facts and circumstances and more particularly the applicants have crossed upper age and some of them are not keeping good health and the practical difficulty of the respondents not to absorb them in service due to over age therefore, in the larger interest it will be appropriate to direct the respondents to offer the same benefit which are extended to the identically situated casual worker/labourers. Accordingly, we direct the respondent to work out the calculation for payment and inform to the applicant about it

within three weeks time from receipt of the order for their acceptance. The applicants are entitled to submit their details if necessary to the office of respondents and further liberty to approach this Tribunal in case of proper settlement is not took place.

In view of the above observation and direction this O.A is disposed of with no order as to costs.

(Jayesh V. Bhairavia ) M [ J ]

(A.K. Upadhyay) M ( A )

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