

**CENTRAL ADMINISTRATIVE TRIBUNAL
PATNA BENCH, PATNA
OA/050/00636/14**

Reserved on: 26.03.2018

Pronounced on: 02.04.2018

C O R A M

**HON'BLE MR. A.K. UPADHYAY, ADMINISTRATIVE MEMBER
HON'BLE MR. JAYESH V. BHAIRAVIA, JUDICIAL MEMBER**

1. Bhavani Devi, w/o Late Ram Badan, son of Sadhu Sharan Gope, resident of Village- Hathidah, P.S.- Hatidah, District- Patna, Ex-Substitute Health Attendant Medical Superintendent, East Central Railway, Barauni, District-Begusarai, Bihar.
2. Smt. Anita Kumari (married daughter).
3. Smt. Savita Kumari (married daughter).
4. Miss Rpa Kumari (un-married daughter, aged 17 years).
5. Subham Lal (Son, aged about 15 years).

..... Applicants.

- By Advocate: - Mr. G. Bose, Sr. counsel with Mr. Vikash Jha

-Versus-

1. The Union of India through the General Manager, E.C. Railway, Hajipur.
2. The General Manager, E.C. Railway, Hajipur.
3. The Divisional Railway Manager, E.C. Railway, Sonapur.
4. The Senior Divisional Personnel Officer, E.C. Railway, Sonapur.
5. The Assistant Personnel Officer, E.C. Railway, Sonapur.
6. The Health Superintendent Garhara, E.C. Railway, Garhara, Barauni, District-Begusarai.

..... Respondents.

- By Advocate(s): - Mr. Mukundjee, Sr. Panel counsel
Mr. Vinay Kumar

O R D E R

Per A.K. Upadhyay, A.M.:- This OA has been filed by the applicants seeking the following reliefs:-

“(i) The impugned order dated 15.07.2013 passed by the respondent no. 4 as contained in Annexure A-1 be set aside.

(ii) After setting aside the impugned order as contained in Annexure A-1, the respondents may be directed to re-engage the applicant in service, which they themselves have admitted that persons who had withdrawn the case, were re-engaged.

(ii) The cost of litigation may be awarded in favour of the applicant against the respondents.

(iii) Any other relief or reliefs, which your Lordships may deem fit and proper in the facts and circumstances of the case, for which the applicant is found entitled to may be passed in favour of the applicant.”

2. This application was originally been filed by Shri Ram Badan, who was a temporary status railway employee in the Railways w.e.f. 23.11.1990 vide office order No. 282 dated 25.01.2001. It was discovered that his initial engagement was without GM's approval. As such, after screening and empanelment for regular posting the proposal was sent to GM for approval. It was directed by Headquarter to disengage such persons till post-facto approval is granted to them. Accordingly, the applicant along with similarly situated persons were disengaged from work vide letter dated 26.05.2006.

3. This was challenged by the applicant in OA 257/2006 which was decided along with 33 other similar cases by the Tribunal's Patna Bench order dated 11.10.2006 in the light of the judgment of the Hon'ble Supreme Court in the matter of **State of Karnataka Vs. Uma Devi** 2006(4) SCC 1. The applicant filed a review against this which was also dismissed. The applicant was called for 'sakhsatkar'

by the DRM's letter dated 09.01.2007, 24.09.2007, but he did not turn up and, therefore, his case could not be taken up. The parties have not filed a copy of this judgment, but the respondents have filed a copy of the judgment dated 8 March 2007 in the review application filed by the applicant in RA No. 11 of 2007 by which the RA was dismissed. Therefore, it is clear that the judgment of the Tribunal was not in favour of the applicant. To satisfy ourselves, we obtained the concerned file from the registry and perused the judgment dated 11.10.2006. In this order the constitution bench judgment in the Uma Devi case (supra) has been extensively quoted and in para-30 the Tribunal has recorded its own observations as follows:-

“ 30. A person employed as a casual worker under any Scheme or under a Rule, even if granted temporary status can have no claim to be absorbed permanently in a regular post, or by creating a regular post, as that would be against the constitutional scheme for public appointments. As noted by their Lordships in the case of Umadevi, a person coming from the back door should go from the back door.

- (i) Therefore, so far the prayer in the aforesaid applications for regularization/permanent absorption of the applicants in a regular post is concerned, that prayer cannot be allowed, hence is rejected.
- (ii) So far the prayer for re-engagement of such casual labourers who stand relieved of work is concerned, in view of the fact that a casual labourer is employed for a particular purpose or period and such engagement is not meant to be a permanent one, the respondents

cannot be directed to re-absorb them and provide them work wherever available. This prayer also has to be rejected.

- (iii) The prayer in some applications for enhancing the working hours of the casual labourers has also to be rejected in view of the fact that it is for employer to decide as to what work he wants to take from a casual labourer and for what period. This Tribunal cannot force an employee to engage a casual labourer full time if the employer needs to employ him part time only. This prayer also, therefore, has to be rejected.

4. In the end the Tribunal has concluded its findings as follows:-

“ 39. We finally come to the conclusions:-

[i] Order for regularization/absorption, is sanctioned vacant posts, cannot be ordered in favour of casual labourers with or without temporary status, or of a temporary worker appointed on adhoc basis without following the rules and law prescribed for regular appointment to such post from open market in accordance with the constitutional scheme. Such prayers are rejected.

[ii] If the services of a casual labourer have been terminated as no longer required, a direction for his re-engagement cannot be granted. Such prayers are refused. However, the departments concerned should not terminate services of a casual labourer even if the work he is doing is further required to be done, with a view to appoint another casual labourer for the same work, unless the working casual labourer, for some reason, is rendered, or considered, incapable to do the work.

[iii]

[iv]

[v]

[vi]”

5. We have only quoted the relevant parts of the judgment which is applicable in the case of the present applicant.

6. Thus, the only relief granted by the Tribunal was that if the work the applicant was doing was further required to be done he should not be disengaged.

7. The subsequent litigation in OA No. 223 of 2008 and the impugned speaking order dated 15.07.2013 has to be seen in the context of the basic judgment of the Tribunal. OA 223 of 2008 was disposed of vide order dated 09.08.2012 with the following observation:-

“ In such view of the matter the OA is disposed of with a direction upon the respondents to pass order indicating their stand on the engagement of applicant post 04.03.2008 and his treatment at par with other applicants of the OAs decided on 11.10.2008. The order should be passed within 3 months from the date of communication of this order. If it is found that there is no impediment in granting relief to the applicant, the same shall be granted at par with the other applicants covered by the order dated 11.10.2008 with notional benefits. Actual monetary benefits be restricted to the date of this order. No costs.”

8. The respondents have also filed a supplementary written statement in which they have reiterated that the applicant did not avail of the opportunity given to him for appearing in the interview.

9. In the impugned speaking order dated 15.07.2013, after giving the sequence of previous litigation it has been stated that in the light of the Constitutional Bench judgment of the Hon'ble Supreme Court dated in the case of State of Karnataka Vs. Uma Devi, the claim of re-engagement after more than 6 years of his engagement is not tenable. Now the period is 12 years.

10. The said Shri Ram Badan died on 01.08.2015. A substitution petition was filed vide MA/050/00162/2016 which was allowed, and thus the present applicants who are the wife and the children of the deceased employee have been substituted in place of Shri Ram Badan.

11. It is clear from the records that Shri Ram Badam was given enough opportunity, but he did not present himself before the authorities, rather he chose to pursue the litigation. Even if we accept that some similarly situated persons were re-engaged by the respondents, in view of his death it is not practicable to extend the same benefit to his widow and children. The nature of the relief granted by the Tribunal, as discussed in the foregoing paragraphs, is such that it cannot be given to the successors of original employee.

12. In the light of the aforesaid discussion, we have to mould the relief appropriately to meet the ends of justice. The learned Sr. counsel for the applicant Shri G. Bose submitted that the applicant is a poor widow and she has pursued this litigation only because her husband was not engaged by the authorities. Therefore, she deserves to be compensated financially in an appropriate manner.

13. After considering the facts and circumstances and our observations in the preceding paragraphs, in our considered opinion it would meet the ends of justice if the Railways as a sovereign entity give some financial compensation to the widow of the deceased employee to defray the litigation cost. We assess the cost as Rs. 20,000/- and direct the railway authorities to pay the amount to the applicant within two months of receipt of a copy of this order. The OA is disposed of accordingly.

[Jayesh V. Bhairavia]
Judicial Member

[A.K Upadhyay]
Administrative Member

Srk.