

RESERVED

**CENTRAL ADMINISTRATIVE TRIBUNAL**

**ALLAHABAD BENCH ALLAHABAD**

Dated: This the 18<sup>th</sup> day of January 2019

**HON'BLE MR. RAKESH SAGAR JAIN, MEMBER – J**

**Original Application No. 818 of 2010**

1. Tribhuwan S/o Late Basudeo R/o Village Badhani Tola Kudariha, District Gorakhpur.
2. Mithai Prasad S/o Babu Ram R/o Village Lakshmipur, Post Mahua Bujurg Bodarwar, District Kushinagar.
3. Ram Murat S/o Ram Lal R/o Village Badhani (Kudarihan), Post Sarhari, District Gorakhpur.
4. Rama Kant Sri Ram Sajan, R/o Village Mahuapar, Post Jangal Agahi, District Gorakhpur.
5. Ramekesh S/o Ram Lakhan R/o Village Kudariha, Post Sarhari, District Gorakhpur.
6. Ramdhani S/o Ganga R/o Village Badhani, Post Marchahi, District Gorakhpur.
7. Subhash S/o Tirath R/o Village Uttarasot, Post Manjhariya, District Gorakhpur.
8. Ram Chander S/o Bhola, R/o Village and Post Jangal Kaudiya, District Gorakhpur.
9. Bachacha Singh S/o Murat, R/o Village Rampur Chakiya, Post Peeparpati, District Maharajganj.
10. Jawahar S/o Triveni, R/o Village Khudari, Post Gaura Dubey, District Maharajganj.
11. Sugreev Chand S/o Vindeshwari, R/o Village Keshavpatti Post Chauri Chaura, District Gorakhpur.
12. Sant Lal S/o Ramjati, R/o Village Gahira (Bhumidhari Tola), Post Sardar Nagar, District Gorakhpur.
13. Ram Sajan S/o Mahadev, R/o Village Siyarampur, Post Rampur, District Gorakhpur.
14. Sarju S/o Batohi, R/o Village Dudhai, Post Sardarnagar, District Gorakhpur.

.....Applicants

By Advocate: Shri Ashish Srivastava

Versus

1. Union of India through Director Establishment (N) II, Railway Board, New Delhi.

2. The General Manager, N.E. Railway, Gorakhpur.  
 3. The Chief Administrative Officer (Construction), N.E. Railway, Gorakhpur.

... Respondents

By Adv: Shri P.N Rai

**ORDER**

1. Applicant Tribhuwan and others in the O.As filed under Section 19 of Central Administrative Tribunal Act, 1985 seeks the following reliefs:-

- "i) This Hon'ble Tribunal may be pleased to quash the impugned order dated 5-21.4.2010 (Annexure A-1 to the original application) whereby the applicants have been declared ineligible in the screening held for absorption in the Department.
- ii) This Hon'ble Tribunal may be pleased to quash the impugned notification dated Board's letter dated 23.3.2010 (Annexure A-2 to the original application) issued by respondent No. 1.
- iii) This Hon'ble Tribunal may be pleased to quash the impugned notification dated 6.12.2007 (Annexure A-3 to the original application) passed by the respondents.
- iv) This Hon'ble Tribunal may be pleased to issue direction to the respondents to appoint the applicants in Group D post against the existing vacancies without putting any embargo in the upper age limit.
- v) Any other relief, which this Hon'ble Tribunal may deem fit and proper in the circumstances of the case may be given in favour of the applicants.
- vi) Award the costs of the original application in favour of the applicants".

2. The applicant seeks (1)quashing of order dated 5-12.04.2010 (Annexure- A1) whereby the applicants have been found to be ineligible in the screening held for absorption in the department;(2)quashing of impugned notification dated 23.03.2010 (Annexure – A2) whereby only cases of applicants who fulfil the eligibility conditions including age limit be considered; (3)quashing of Notification dated 06.12.2007 (Annexure- A3) which is a advertisement seeking applications for appointments in the department; (4) direct the respondents to appoint applicants to Group –D post without putting any embargo on the upper age limit.
3. So, the applicant seeks the relief of re-engagement and regularization of their service in Group – D post without putting any embargo on the upper age limit and to further get the applicants preference over his juniors as well as fresh recruits in the matter of regularization as and when regular vacancies arises and in case applicants have exceeded maximum age limit for the regularization, the same be ignored and relaxed since they have become over age as a result of non-compliance of the obligation of the respondents to regularize them on their own term as per direction of Hon'ble Apex Court in Inder Pal Yadav Vs. Union of India. The applicants be regularized on the availability of the vacancies which are still available as per advertisement dated 6.12.2007 for Group 'D' posts. It is the case of applicants that their juniors have been regularised in the year 1993 and 1994.
4. In their counter-affidavit, the respondents have stated that no juniors to the applicants have been appointed. The appointments were made on open line post and option were invited from all ex-casual workers and those who had given their option were appointed and since the applicants had not given their option, they could not be appointed. The Railway Board has not given approval for giving overage relaxation.

5. One of the main questions in the present O.A. is whether irrespective of any fact/ground/factor, the Tribunal can give the relaxation of overage to the applicants. Regarding the applicants being over age, learned counsel argued that the case of the applicant has been delayed because of delay in conducting the screening tests. If on account of delay in declaration of result due to fault of the respondents, applicant has become over age, then decision should not be against the applicant, because they were not responsible for delay or being overage subsequent to consideration of their case by the screening committee.
6. Learned counsel for the respondents argued that the applicant had been duly considered by the screening committee and were found unsuitable as per the existing rules. He further argued that the applicant themselves pleaded that they are entitled to age relaxation which shows that they were over age and, therefore, no relief can be given to the applicant giving them relaxation in the age by this Tribunal.
7. So, far as the question of over age is concerned, admittedly, the applicant are over age. The Hon'ble Apex Court in the case of Hindustan Shipyard Limited and other vs. Dr. P. Sambasiva Rao and others reported in (1990) 7 SCC 499 has rejected the case for regularization on the ground that in case of regularization the rules to be strictly adhered to and regularization is not automatic, it depends upon the availability of vacancies, suitability and eligibility of the ad-hoc appointee.
8. So, it is to be seen also as to whether the applicant in this case do or do not fulfil the eligibility i.e. age at the time of consideration for regular absorption as per rules. As per para 2006 of Indian Railway Establishment Manual Vol. II (in short IREM), absorption of casual labourers in regular Group 'D' post has to be considered in accordance with Board's instructions subject to availability of

vacancies, suitability and eligibility. In the light of judgment of Hon'ble Supreme Court in the case of Pramod Kumar vs. U.P. Secondary Education Services Selection Board and others reported in (2008) 2 SCC 244, it has been held that the appointment, which is contrary to the rules would be void in law and no one can seek regularization.

9. I have gone through the pleadings by the parties including the supplementary affidavit filed by the applicant and also considered the submissions by the learned counsel for applicant and the respondents. Admittedly, the applicant has been found to be ineligible for regularization on the ground of being over age.
10. It is noted from the case cited by the respondents that in a similar case relating to regularization of labourers, Hon'ble Allahabad High Court in the case of Union of India and others vs. Ashok Kumar and others in Writ A-No.- 1006 of 2016, the order of the Tribunal directing regularization of the ex-casual labourers (respondents in the writ petition), was challenged by Union of India vide the judgment dated 04.02.2016, Hon'ble High Court after a detailed discussion about the position of law and the rights of the ex-casual labours, set aside the order of the Tribunal mainly on the ground that their regularization will be in violation of rules and conditions as under:-

"As per the Railway Board's letters dated 28.02.2001 and 20.09.2001, the age relaxation to the extent of service put in as Casual Labour/ Substitute, subject to upper age limit of 40 years in case of General Candidates and 45 years in the case of SC/ST candidates not being exceeded, may also be granted in the case of Casual Labour & Substitutes for recruitment against Group-C & Group-D posts. The OBC candidates will also get age relaxation upto the upper age limit of 43 years, as has been granted to the serving OBC employees vide Rly. Board's letter No.E (NG) II/95/pml/1 dated 1.6.1999 and which clearly provides that ex-casual labour, which becomes eligible as a result of above modification will be considered for absorption with prospective effect.

On the directives issued by this Court, the department /petitioners has come up with clear stand that in the past no post facto age relaxation had ever been accorded in favour of casual labours beyond the age prescribed by the aforesaid Rules. In this context, they have also relied upon the judgment passed by this Court in Writ Petition No.21799 of 2006, mentioned above.

Once this is the categorical stand, then the Tribunal has definitely proceeded on the wrong premise with the finding that some persons were accorded age relaxation and regularisation in 2010. From the perusal of the details regarding the age of the contesting respondents, this much is reflected that all have crossed 50 years and consequently in the light of the Railway Board's Letter dated 28.2.2001 and 20.9.2001, no positive directions can be issued in their favour. Moreover, the regularisation can never be claimed as a matter of right as has been held by Hon'ble Supreme court in the case of Vindon T v. University of Calicut, 2002 (4) SCC 726 and Mahendra L. Jain & Ors. v. Indore Development Authority & Ors., (2005) 1 SCC 639. Hon'ble the Apex Court in Government of Orissa & Anr. v. Hanichail Roy & Ors., (1998) 6 SCC 626 has considered the case, where the Apex Court had granted the relaxation of service conditions. The Apex Court held that the Court cannot take upon itself the task of the statutory authority. The same view has also been reiterated by the Hon'ble Apex Court in Secretary, State of Karnataka v. Uma Devi (Supra). It is relevant to indicate that in Writ Petition No.21799 of 2006 (Union of India & Ors. v. Ajai Kumar & Ors.), a review application was filed by Shri Ajai Kumar and the Division Bench of this Court vide order dated 3.12.2011 had proceeded to dismiss the review application holding that where the Rules provide for maximum relaxation of eligibility including the age, the Courts do not ordinarily issue directions to exercise discretion to go beyond that maximum limit. Hon'ble the Apex Court in Uma Devi (Supra) had

proceeded to observe that there cannot be recruitment to the regular posts dehors the recruitment rules and therefore the applicant cannot claim that he is entitled for regularisation.

The Court also finds substance in the contention of the petitioners that under Rule 157 of the Railway Establishment Code, Volume-I, which has been framed by His Excellency the President of India under Article 309 of the Constitution of India and has got statutory force, the General Manager has been provided rule making authority for the condition of service of the Group 'C' and 'D' Employees, thus the instructions issued by the Railway Board regarding absorption, recruitment and promotion in respect of Group 'D' employees have got statutory force. The same has also been upheld by Hon'ble Apex Court in the case of B.S. Vadera v. Union of India, AIR 1969 SC 118, the relevant part of which is extracted below:-

"The Indian Railway Establishment Code has been issued, by the President, in the exercise of his powers," under the proviso to Art. 309. Under Rule 157 the, President has directed the Railway Board, to make rules, of general application to non-gazetted railway servants, under their control. The rules, which are embodied in the Schemes, framed by the Board, under Annexures 4 and 7, are within the powers, conferred under Rule 157; and, in the absence of any Act, having been passed by the 'appropriate' Legislature, on the said matter, the rules, framed by the Railway Board, will have full effect and, if so indicated, retrospectively also. Such indication, about retrospective effect, as has already been pointed out by us, is clearly there, in the impugned provisions.

In view of above, the Court is of the considered opinion that Railway Board being the competent authority has issued various instructions from 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/ regularisation 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."

11. In another case of Government Of Orissa And Anr. vs Hanichal Roy And Anr. reported in (1998) 6 SCC 626, on the issue of any relaxation of rules ordered by the Tribunal, Hon'ble Apex Court held as under:

"3. The Rule requires the Government to form the opinion, for reasons to be recorded in writing, that it is necessary or expedient to relax any of the provisions of the Rules in public interest in respect of any class or category of persons. We assume for the purposes of this appeal that the case of the respondents herein falls within a "class or category or persons", but we do not think that the Tribunal was right in, in effect, relaxing the appropriate rule itself. Having set out the facts, it should have left it to the Government to take the decision under the rule."

12. This implies that the decision regarding relaxation of any rule has to be taken by the authority concerned and it cannot be ordered by the Tribunal. In view of above position of law, this Tribunal cannot interfere in the matter of assessing suitability of the applicant unless it is proved that such actions of the respondents have violated the rules or executive instructions of the Railway Board. As stated above, no specific rule or instruction of the Railway Board has been cited by the applicant to prove that the decisions of the respondents in respect of the applicant is against the said rules or instructions of Railway Board.

13. The applicant has failed to show that the decision of the respondents to declare the applicant unsuitable in the screening test is in violation of the rules and instructions of the Railway Board.

14. In view of the above, since the applicant has failed to demonstrate any infirmity or illegality in the impugned order passed by the respondents for their regularization. Consequently, the applicant being over age, no direction can be issued by this Tribunal for absorption of

the applicant in Group 'D' posts under the existing Rules. This Tribunal cannot pass an order for relaxing the age of applicant beyond the limit set by the Railway Board and any such relaxation would be impermissible in law.

15. Reference may also be made to Union of India Vs. Arulmozhi, (2011) 7 S.C.C. 397, wherein it has been observed by the Hon'ble Apex Court that:

".....the Tribunal as also the High Court has directed the appellants to grant relaxation in age-limit over and above what is stipulated in the recruitment rules/advertisement. In view of the state factual scenario, in our opinion, the engagement of the respondents as casual labourers even for a considerably long duration did not confer any legal right on them for seeking a mandamus for relaxation of age-limit".

16. In view of the facts and circumstances of the case as discussed above, I am of the view that the applicant being over age cannot be given the relief sought for by them in the present O.A. Accordingly, O.A. is dismissed. No order as to costs.

**(Rakesh Sagar Jain)**

Member (J)

Manish/-