

**CENTRAL ADMINISTRATIVE TRIBUNAL  
PATNA BENCH, PATNA  
OA/050/00406/15**

Reserved on: 29.03.2019

Pronounced on: 02.04.2019

**C O R A M**

**HON'BLE MR. JAYESH V. BHAIKAVIA, JUDICIAL MEMBER  
HON'BLE MR. DINESH SHARMA, ADMINISTRATIVE MEMBER**

1. Mahendra Thakur, Son of Late Kali Charan, resident of Village & PO- Sukrauli Bazar, Police Station Mata, District- Kushi Nagar (UP).
2. Onkar Nath Yadav, Son of Late Ramji Yadav, resident of Village Belapat Khurd, Post Turkalia, police Station, Pipraganj, District- Gorakhpur.
3. Satya Narayan Singh, Son of Late Saryug Singh, resident of Village and PO- Ismailpur, Police Station, Hazipur, District- Vaishali.
4. Md. Munna, Son of Md. Gulam Hussain, resident of Thana Road Bhagwab Bazar, District- Saran.
5. Yogendra Mahto, Son of Sattan Mahto, resident of Village and PO- Mohanpur, Police Station- Samastipur, District- Samastipur.
6. Rajendra Singh, son of Kamaladhari Singh, resident of Village- Jahangir, PO & Police Station, Sonpur, District- Chapra.

.... Applicants.

By Advocate: - Mr. J.K. Karn

-Versus-

1. The Union of India, through the General Manager, East Central Railway, Hazipur, Bihar.
2. The Divisional Railway Manager (Personnel), Samastipur Division, Samastipur.

.... Respondents.

By Advocate: - Mr. S.K. Griyaghey

**O R D E R**

**Per Dinesh Sharma, A.M:-** The prayer of the applicants is to quash the order dated 17.04.2014 issued by D.R.M. (P) East Central Railway, Samastipur (hereinafter referred to as the impugned order) whereby the



claim of the petitioners to treat their date of regularization as 31.12.1997 has been rejected. The applicants claim that they were re-engaged as casual labourers in 1989-90. They were illegally terminated in the year 1993. They filed an OA (OA-38 of 1994) against this illegal termination, which was decided in their favour in the year 2001 and they were, consequently, reinstated by order of the Chief Administrative Officer dated 21.3.2002 (attached as Annexure 3 to the OA). This order had, while implementing the orders of the Tribunal, also indicated that the seniority of the persons mentioned in that order (which included the applicants) will be amended in comparison with those labourers who were junior to them. Following various representations by the applicants for conducting screening tests, they were finally regularized on 16.4.2009. However, they were not given the benefit of seniority as indicated in the order dated 21.3.2002 (Annexure-3). The applicants approached this Tribunal through OA/050/00020/2014, to have their seniority determined as per orders of this Tribunal in OA 38/1994. This OA was disposed of, on 08.01.2014, with a direction to the concerned respondents therein, for a decision on this matter after considering the representations of the applicants. The impugned order has been passed following that direction. The applicants have questioned it since, according to them, it does not comply with this Tribunal's order in OA 38 of 1994 and the order of Chief administrative Officer dated 21.3.2002 (issued in compliance of this Tribunal's order). The applicants' case is that the labourers junior to them were regularised with effect from 31.12.1997 (when the earlier screening test was done, which the applicants could not



appear due to being out of employment and the pendency of their case before the Tribunal ) and were granted ACP in the year 2007, and this amounts to not implementing the order of this Tribunal in OA 38 of 1994 in letter and spirit.

2. The respondents have denied the claim of the applicants being bad on facts and in law and also as barred by period of limitation. They have alleged that the order of this Tribunal in OA 38/1994 was on matter of absorption of applicants as Casual Labour and as permanent regular employee. The seniority of permanent employee and the seniority of casual labour cannot be merged. They can be treated as permanent employee only after finalisation of screening which was done only in the year 2009. The respondents have also alleged that they have complied with this Tribunal's order in OA/050/00020/2014 by issuing the speaking order dated 17.4.2014

3. We have gone through the pleadings and have heard the learned counsels of both the parties. The only issue here is whether the applicants should have their seniority determined from a back date (which, according to them, is 31.12.1997) or from the date of their regularisation following the screening. The applicants have mainly rested their claim on the decision of this Tribunal in OA 38 of 1994, where the main issue was the termination of these applicants. The relevant portion of that decision is quoted below in full:

“ In view of the aforesaid discussions, we find and hold that the impugned termination orders dt. 31.7.93 and dt.12.11.92 as contained in A-1 to A-5 of OA 38/94 and Annexure-4 of OA No. 537/92, are not sustainable, and, accordingly, they are quashed.



The termination orders shall be deemed non-est. The applicants are held entitled to be engaged and also for consideration for regularisation/absorption on the basis of the temporary status already confirmed by the respondents department upon them in accordance with law. The respondents department is at liberty to ascertain and assign the seniority position to the applicants vis-à-vis the casual labours, if any, engaged in their places following the principles of seniority and 'last-come-first-go' and to take appropriate action accordingly. With the aforesaid direction, the OAs are allowed with no order as to costs."

4. Clearly, the above decision, in the year 2001, was for re-instating the applicants in service, cancelling their termination since 1992-93. They were also "held entitled to be engaged and also for consideration for regularisation /absorption" (emphasis added). The order did not regularise them nor did it make the regularisation automatic. The order also mentioned that the department was at "liberty to ascertain an assign seniority vis-a-vis the causal labourers, if any engaged in their places following the principles of seniority and " last-come-first-go" and to take appropriate action accordingly". These words cannot be interpreted, almost two decades after the order, to mean that the respondent had no liberty to ascertain and assign seniority, as per their rules regarding assigning seniority amongst regularised employees. The applicants were not even in the respondents' employment on the crucial date (31.12.1997) from which they are claiming their seniority. Hence even if their termination is to be deemed non-est, they can't be deemed to have passed the screening test on that date.



5. There is also merit in the objection raised by the respondents about the claim of the applicants being barred by limitation. If the applicants really believe they should have been ranked senior to other casual employees and given this seniority since 31.12.1997, on the basis of this Tribunal's decision in the year 2001, they should have certainly raised it before this Tribunal much earlier. The period of limitation is not automatically extended or "evergreened" just because an order is issued by this Tribunal, "without expressing any opinion on the merit of case" directing to the respondents to decide the matter (as was done in OA/050/00020/2014 of this Tribunal).

6. As discussed above in detail, we do not find any merit in the claim of the applicants to have their regularisation effected from 31.12.1997, since it is a claim, which is not only weak on merit, but is also barred by the period of limitation. The OA is therefore dismissed. No orders as to costs.

**[ Dinesh Sharma ]**  
**Administrative Member**  
**Srk.**

**[Jayesh V. Bhairavia]**  
**Judicial Member**