

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

O.A. No.290/00154/2013

Jodhpur, this the 20th September, 2019

Reserved on 02.09.2019

CORAM

**Hon'ble Smt Hina P. Shah, Judicial Member
Hon'ble Ms Archana Nigam, Administrative Member**

Ramji Lal Bhadaria S/o Shri Babu Lal Bhadaria, aged 54 years, R/o Railway Quarter No.140-B, Medical Railway Colony, Hanumangarh Junction, District-Hanumangarh (Raj).

.....Applicant

By Advocate :Mr. Nishant Motsara.

Versus

- (1) Union of India through General Manager, Northern Western Railway, Jaipur.
- (2) Senior Divisional Personnel Officer, Northern Western Railway, Bikaner.
- (3) Divisional Personnel Officer, Northern Western Railway, Bikaner.
- (4) Divisional Railway Manager, Northern Western Railway, Bikaner.

.....Respondents

By Advocate :Mr. Vinay Jain

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ORDER

Per Smt. Archana Nigam, Member (A)

The applicant has filed the present OA under Section 19 of the Administrative Tribunals Act, 1985 for seeking following reliefs:-

- "(i) That applicant may be given pay fixation from 07.03.1979 on which he was appointed as casual labour worked for more than 120 days and fulfilled all condition of temporary Railway employee.*
- (ii) That all other benefits like revised pay scale, house rent and compensatory allowances, dearness allowances, increment, leave, medical facilities etc. beyond pay fixation which are also attached to the employee to whom the status of temporary railway employee is given may be given to the applicant from 07.03.1979.*
- (iii) Any other favourable order which this Hon'ble Tribunal may deem just and proper in the facts and circumstances of the case may kindly be passed in favour of the applicant.*
- (iv) Original Application filed by the applicant may kindly be allowed."*

2. Brief facts of the case as stated by the applicant are that the applicant was initially appointed as casual labour in respondent department on 07.03.1979 as Khalasi. He was working as Hot Weather Waterman till 1988. He was selected in the panel in the year 1994 and department has passed all employees in which applicant was standing at serial No.111'A'. Applicant demanded his initial service record but department didn't provide him. The applicant at Annexure-A/3 has annexed copy of order dated 23.02.1994 in which his name has been shown at Serial No.4. It is further submitted that the Senior Divisional Personnel Officer, Northern Railway, Bikaner, also issued a letter on 13.08.1990 (Annexure-A/4) in which the person who was working at Hot Weather Waterman may not be discharged. So, it is clear from the aforesaid orders of the respondent department that the applicant was working in the period from 1979 to 1990 as casual labour. It is further submitted that in the year 1991,

the respondent department again issued a letter in which it was instructed that the person who was working as casual labour may be examined for medical examination in which applicant is standing at serial No.97 and was appointed on the post of Box Porter in "D" category post. Thereafter, the applicant asked for detailed of his seniority vide letter dated 29.03.2011 and in pursuance of that the respondent department stated vide reply dated 27.04.2011 (Annexure-A/6) that the applicant was appointed on 31.10.1991 and his seniority will be given for this very date, whereas the applicant is working on the said post for last 25 years as casual labour. Thereafter, the applicant has also submitted an application in the year 1992 for special increment of family planning which is extended to the person who has temporary status. He again submitted his application in year 2007. So far as pay fixation of the applicant is concerned, the applicant moved an application in the year 2010 prior to that, but no heed was paid to the same. However, the Railway establishment vide Annexure-A/1 dated 21.01.2013, redeployed the applicant from the present post R.R.B./Box Porter to the post of Gatemen in the same grade and G.P. The applicant has also annexed a copy of card at Annexure-A/2 issued by the respondent department in which applicant's service record shows that he was working as casual labour, but the respondent has not considered the same. Hence, he has filed the present OA.

3. In reply, the respondents averred that the applicant was initially engaged as temporary casual labour on daily wages in the year 1979 in respondent department and he worked in different broken spells till

1985, which is clear from Annexure-A/2. The applicant's name was interpolated and was placed on the provisional panel in Class IV category vide order dated 29.02.1994 (Annexure-A/3). The applicant was thereafter initially appointed as RRB/Box Porter in grade of Rs.750-940 vide order dated 31.12.1996 and the benefit of regularization was given to him w.e.f. 31.10.1991. In pursuance of his representation regarding pay fixation of his temporary casual labour working period, the department vide letter dated 29.08.2006 (Annexue-R/1) informed him that his casual labour working period records are not available in the office, therefore, he was asked to produce his related document record. Although the applicant has submitted casual labour card Annexure-A/2, but the same is not readable and from this it is not clear that how many period he has worked, but till today he has not submitted any documentary proof of the period when he has worked as casual labour in the department. It is further submitted that as per record of the respondent department the applicant has not worked for the period from 1979 to 1990, as no record is available with them and therefore it was requested to the applicant to submit the record in this respect that he has worked from 1979 to 1990. The applicant was regularized w.e.f. 31.10.1991, therefore, he was not entitled for increment as a result of family planning operation because neither he was regular employee nor was holding temporary status on 02.04.1986. Therefore, the respondent department vide letter dated 10/11.07.2013 has rightly refixed the pay of the applicant and therefore no interference has been called from this Tribunal.

4. In rejoinder, the applicant submitted that it is the absolute duty of the respondent department to keep the record of the employee in a correct manner. Even though the respondents have admitted that the record of the applicant has gone missing. It is further submitted that even the applicant has given his representation in the year 1993 to the respondent department about the benefits attached to the employee who has got the temporary status, but in spite of that they did not take into account. He further submitted that the copy of casual labour card categorically shows that in the year 1983, 1984, 1985 the applicant was reinstated as causal labour and he has completed 120 or more day as a casual labour in respondent department. He further submits that so far as the pay fixation is concerned, it may be given from the day when applicant has got the status of his temporary casual labourers. It is further submitted that the respondent department at Annexure-R/2 stated that the applicant was initially appointed in the year 1991 then how can the family planning scheme will be applied to the applicant but the railway rules itself says that person who has got temporary status will also be liable to the benefits of the family planning scheme.

5. Heard Shri Nishant Motsara, learned counsel for the applicant and Shri Vinay Jain, learned counsel for the respondents and perused the material available on record.

6. The relief sought by the applicant in this case is that he be given pay fixation from 07.03.1979 when he was appointed as casual labour worked for more than 120 days and fulfilled all condition of temporary Railway employee. Further, he prayed that all other

benefits like revised pay scale, house rent and compensatory allowances, dearness allowances, increment, leave, medical facilities etc. beyond pay fixation which are also attached to the employee to whom the status of temporary railway employee is given may be given to the applicant from 07.03.1979.

7. In response to the claim of the applicant, the respondents have stated that admittedly the applicant was initially engaged as temporary casual labour on daily wages in the year 1979, but he worked only in different broken spells until 1985 as is evident from casual labour card provided by the applicant at Annexure-A/2. The respondents have also submitted that the applicant had submitted an application dated 16.07.2011 in the Open Court seeking for detailed information/record of his employment with the Railways. In response to that letter, the applicant was informed vide letter dated 28.08.2011 that there are no records available with the respondent department to prove that the applicant had completed 123 days services in the year 1983. They have also highlighted the attention of the applicant to respondents' letter dated 25.08.2006 by which the applicant had been asked to produce documentary evidence in support of his case. However, it has been submitted by the respondents that the applicant had not been able to submit any proof with respect to his employment with respondent w.e.f. 1979 upto 1990.

8. In support of proof of his employment, the applicant has also not able to submit any documents, however he has annexed Annexure-A/2 copy of casual labour card issued by the respondent

department, which is not disclosed the fact that whether the applicant has worked continuously with the respondent department as Casual Labour w.e.f. 1979 to 1990. The applicant are failed to produce on record any documents which shows that the applicant has worked as casual labour with the respondent department in the specific period. Therefore, the respondents submit that it is wrong to say that the applicant was working in the respondent department from 1979 to 1990 as casual labour. It has been further submitted by the respondents that as per record, the applicant has not worked for this disputed period, however, they requested to the applicant submit any documents that he has worked from 1979 to 1990 but he is unable to submit the same.

9. It is seen that the applicant was regularized w.e.f. 31.10.1991, therefore, he was not granted increment as a result of family planning operation because he was neither regular employee nor was holding temporary status on 02.04.1986. The applicant was awarded punishment of withholding of pay increment and deduction of lower stage for three years and after completion of punishment period, applicant's pay has been fixed by letter dated 10/11.07.2013. This has been done timely on the completion of punishment. Further, it is the submission of the respondent department that the applicant was regularized by the department by order dated 31.12.1996 after screening w.e.f. 31.10.1991. Now, at this belated stage, the applicant has filed the present original application without challenging his earlier order dated 31.12.1996 that he is entitled for pay fixation from the year 1979 i.e. initial date when he was appointed in the

respondent department as casual labour. It is further submitted that the applicant has been regularised and has been granted the entire benefits and he has accepted the same and has never raised the voice and now at this belated stage he has filed the present OA claiming therein that his pay should be fixed from the year 1979. Admittedly, the present OA has been filed by the applicant in the year 2013 and from perusal of reliefs sought for by the applicant, it is clear that he has sought relief w.e.f. 1979. Therefore, in our opinion, there is gross delay in filing the present OA.

10. We have also perused the judgment of Hon'ble Supreme Court in the matter of D.C.S.Negi Vs. UOI & Ors., in which the Hon'ble Supreme Court, while examining the matter have observed on the issue of delay, specially with regard to the mandate of Section 21 of The Administrative Tribunals Act,1985 which is partly reproduced below:-

"Before parting with the case, we consider it necessary to note that for quite some time, the Administrative Tribunals established under the Act have been entertaining and deciding the applications filed under section 19 of the Act in complete disregard of the mandate of Section 21."

Hon'ble Supreme Court has further held as under:-

"A reading of the plain language of the above reproduced section makes it clear that the Tribunal cannot admit an application unless the same is made within the time specified in clauses (a) and (b) of Section 21(1) or Section 21(2) or an order is passed in terms of sub-Section (3) for entertaining the application after the prescribed period. Since Section 21(1) is couched in negative form, it is the duty of the Tribunal to first consider whether the application is within limitation. An application can be admitted only if the same is found to have been made within the prescribed period or sufficient cause is shown for not doing so within the prescribed period and an order is passed under Section 21(3)."

11. The Hon'ble Supreme Court in the case of State of Tripura and Others vs. Arabinda Chakraborty and Ors. Reported in (2014) 6 SCC 460 has held that simply by making representations in absence of any statutory provision, period of limitation would not get extended. In the present case also, the applicant has made his representation in the year 1992, 2007 and 2010 and has filed the present OA belatedly in the year 2013.

11. In view of the discussions made in the above paras, it is clear that the present OA has been filed by the applicant belatedly beyond the prescribed period of limitation and further there is no sufficient cause/reasons shown by the applicant for condoning the delay. However, the applicant has neither filed any Misc. Application for condonation of delay nor has made any pleadings for condoning the delay in filing of the OA. Therefore, the OA is dismissed on the ground of delay and latches. No order as to costs.

12. Before parting, we would however advise and expect greater due diligence by Departments such as respondent in the matter of maintenance of personnel records to avoid unnecessary litigation.

**[Archana Nigam]
Administrative Member**

**[Hina P. Shah]
Judicial Member**

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