
(2016) 02 AHC CK 0154
In the Allahabad High Court
Case No : Writ - A No. 8409 of 2016

Balwan Singh

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Administrative Tribunals Act, 1985 — Section 19
Constitution of India, 1950 — Article 226, Article 309

Citation : (2016) 02 AHC CK 0154

Hon'ble Judges : Vimlesh Kumar Shukla and M.C. Tripathi, JJ.

Bench : Division Bench

Advocate : Raj Kumar, for the Appellant; Manoj Kumar Sharma and Sudhir Bharti, for the Respondent

Final Decision : Dismissed

Judgement

1. Balwan Singh is before this Court assailing the validity of the order dated 15.7.2014 passed by the Central Administrative Tribunal, Allahabad (in short "the Tribunal") by which the petitioner's claim for appointment in the department in question has been rejected by the Tribunal.

2. As per the record this much is reflected that the petitioner was engaged as temporary casual laborer on 24.10.1981 under Railway at Bhopal and he worked for 120 days. After completion of 120 days, he was send to Railway Hospital, Beena on 2.7.1982 for medical checkup for appointment to the post of MRCL. It is averred that his medical checkup was done by the Chief Medical Officer and the report had been transmitted to the department concerned. He was given the pay of MRCL on 3.1.1983. Thereafter, admittedly, he was not engaged in the department and he went back to his native village. After that in the year 1995 he worked for few days as waterman under the Station Master, Motijheel and thereafter he had never been engaged by the respondents.

3. In this background it has been sought to be contended before the Tribunal that much juniors to the petitioner were engaged by the department but the

applicant had never been taken back for any work. Consequently, after seeing the advertisement published in the year 2001 by the Railway for special recruitment drive, the petitioner had also proceeded to move an application/representation on 23.09.2001 by registered post to DRM (P), Jhansi claiming that juniors to the petitioner had been screened and taken back in the job and he had been discriminated but nothing has been done on the said representation. Thereafter, on 24.4.2005 and 30.07.2005 he again moved representation to the respondent authorities but again nothing has been done. Thereafter, the petitioner had proceeded to file the Original Application No. 621 of 2006 under Section 19 of the Administrative Tribunal Act, 1985. The Tribunal after considering the entire gamut of the controversy had proceeded to dismiss the aforesaid O.A. with following observations:--

"Heard the rival contentions of the parties and perused the documents. There is nothing in the O.A. through which the applicant can establish his claim. There are two applications dated 24.04.2005 and 3.7.2005. There is no proof that the letter dated 24.04.2005 has been delivered to the respondents, only the letter dated 3.7.2005 carry the seal of receiving dated 2.8.2005. I feel the applicant could not establish his case at all on the basis of his two applications. No direction can be given to the respondents for consideration of his engagement for any post such a belated stage. The judgment relied by the counsel for the applicant is not applicable to the fact of the case the applicant herein never granted Temporary status nor he has worked continuously with the department. Accordingly to him, he has worked in the year 1981, and few days in the year 1995 with the respondents, and he himself in his representations dated 24.04.2005 and 3.7.2005 has written that his juniors have been engaged by the respondents. Hence, according to his own statement he should have approached this Tribunal at that point of time, when his juniors who were engaged with him in the year 1981 have been reengaged by the respondents later on. Hence, at such belated stage, direction to engage him is not warranted as by this time he must have been over-aged and new terms and conditions already come into effect for engaging casual laborers.

Accordingly, the O.A. lacks merit hence dismissed. No costs."

4. On the other hand, Shri M.K. Sharma and Sudhir Bharti, learned counsel for the contesting respondents has vehemently opposed the writ petition by stating that the work and services of casual laborers in the railway department are governed by the statutory provisions and instructions issued by the Railway Board from time to time. The Rules regarding absorption/re-engagement/regularization of casual laborers are available in IREM Volume-II (1990 Edition) in Para 2001 to 2007. He further makes submission that from its own showing, this much is reflected that the alleged claim has been made on the ground that the petitioner had worked for certain period as temporary casual laborer under Railway at Bhopal in the year 1981 and for certain period he was engaged in the year 1983. Thereafter, in the year 1995 he worked for few days as Waterman

under the Station Master, Motijheel. Thereafter, there was absolute silence on his part and on the basis of alleged representations he had proceeded to file the aforesaid O.A. and the Tribunal has rightly proceeded in the matter that at such belated stage directions to engage him is unwarranted as by this time he must have been overage and new terms and conditions come into effect for engaging casual laborers.

5. We have proceeded to examine the record in question and find that it is admitted situation that the alleged claim has been made on the basis of certain engagements for very short period in early 1980s and consequently the alleged representations were refuted by contesting respondents before the Tribunal that no such alleged claim has ever been made, whereas the work and services of casual laborers in the Railway Department are governed by the statutory provisions and instructions issued by the Railway Board from time to time. The Rules regarding absorption/re-engagement/regularization of casual laborers are available in IREM Volume-II (1990 Edition) in Para 2001 to 2007. This much is also reflected from the affidavit, which has been sworn in the present writ petition that at present the petitioner is about 51 years of age and he has certainly become overage.

6. The claim of casual laborers in the railway department has been considered in detail by this Court in its judgment dated 4.2.2016 in Writ Petition No. 1006 of 2016 (Union of India & Ors. v. Ashok Kumar & Ors.), the relevant portion of which is reproduced as under:--

"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 regularization 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 regularization 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 High 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 regularization.

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 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 Laborers 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/regularization 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."

7. In view of above, we find that no case has been made out by the petitioner for interference under Art. 226 of the Constitution of India. The Tribunal has passed the order strictly in accordance with law and there is no infirmity in it. The writ petition sans merit and is accordingly dismissed.