

(1990) 08 DEL CK 0011

In the Delhi High Court

Case No : Original Appeal No. 1767 of 1989

Chiman Lal

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 16-08-1990

Acts Referred:

Constitution of India, 1950 — Article 14, 16

Citation : (1991) 20 DRJ 57

Hon'ble Judges : P.K. Kartha, J;D.K. Chakravorty, J

Bench : Division Bench

Advocate : G.D. Bhandari and B.K. Aggarwal, for the Appellant;

Judgement

P.K. Kartha, J.

(1) The grievance of the applicant who has worked as Gangman in the Northern Railways, relates to his non-regularization on the ground that on verification, his period of work prior to 4.10.1978 was found to be forged and bogus.

(2) The facts of the case in brief are as follows. According to the applicant, he was engaged as a Casual Labour on 3.1.1977 in the Engineering Department of Northern Railway, that he worked as a Gangman in the Maintenance of Railway Track up to 1980. that he was not regularised though he attained temporary status in 1985 and was paid regular pay-sale, that he had undergone and passed the medical examination for regulations in 1983, that his services were terminated on 15.3.1985 but on his representation, he was employed on 14.4.1985, that the respondents held a screening in 1986 for regularization of Casual Labourers when he was not considered and selected, that 197 Casual Labourers who were junior to him were regularised, that he filed OA-2227/88 in this Tribunal which was disposed of by order dated 22.11.1988 holding that the respondents will consider his case in accordance with the scheme formulated by the Railways for regularization and absorption of Casual Labourers who were in employment from 1981 onwards, that selection was ordered to be held for

regularization and absorption of a large number of Casual Labourers in which his name did not find a place and by the impugned order dated 206 1989 a list of unsuccessful candidates was issued indicating the reasons of rejection against each of them. Against the name of the applicant, it was remarked as under:-

"Working days prior to 4.10.1978 found forged in terms of Dse Pb D.O. No. DSC/ Conf/PP/Report dated 18 1.1986."

(3) It was further added that "In case these objections are removed and approved by the competent authority, their names shall be placed on the panel."

(4) The representations submitted by him on 9.3.1989 and 30.6.1989 did not receive any favorable response.

(5) The applicant has contended that having been granted temporary status in 1985, he has acquired a prescriptive right and is legally entitled to be absorbed on permanent basis, that the impugned order is discriminatory as his juniors have been regularised in 1985-86 and again in 1989 and that the allegation that the period prior to 4.10.1978 is forged, is not tenable and cannot be raised after a lapse of about 11 years,

(6) The version of the respondents is that he was not appointed as a Casual Labourer in 1977, that he was not engaged as Gang man in the maintenance Track up to 1980, that he was not considered fit for regular appointment as his working period of 1977 was false and fictitious and that suitable disciplinary action will be initiated against him.

(7) We have gone through the records carefully and have considered the rival contentions. Having worked for more than 120 days continuously, the applicant has acquired temporary status. He was also passed the Screening Test for regularisation and the reason for his non-regularization is that the period of his service prior to 4.10 1978 has allegedly been found to be bogus No enquiry under the Railway Servants Discipline and Appeal Rules, 1968 has been initiated against him for the alleged mis conduct.

(8) The Supreme Court has observed in C O. Arumugam v. Tamil Nadu.WO (2) Scale 1041, that "every civil servant has right to have his case considered for promotion according to his turn and it is a guarantee flowing from articles 14 and 16 of the Constitution The consideration of promotion could be postponed only on reasonable grounds. To avoid arbitrariness, it would be better to follow certain uniform principle. The promotion of persons against whom charge has been framed in the disciplinary proceedings or charge sheet has been filed in criminal case, may be deferred till proceedings are concluded They must, however, be considered for promotion if they are exonerated or acquitted from the charges. If found suitable. they shall then be given the promotion with retrospective effect from the date on which their juniors were promoted.

(9) The aforesaid principle applies also to regularisation. No charge has been framed against the applicant or charge-sheet filed in the criminal court against

the applicant In view of this, there is no justification to deny his regularisation merely on the ground that the respondents may be contemplating disciplinary proceedings against him. As no such proceeding has been initiated against him after a lapse of over eleven years, the learned counsel for the respondents argued that it cannot be held now in view of the decision of the Supreme Court in *State of M P. v. Bani Singh* 1990 SCALE. We, however, leave open that question as "it is not in issue before us.

(10) In the conspectus of the facts and circumstances of the case, we set aside and quash the impugned order dated 206 1989, insofar as it relates to non-empanelment of the applicant on the ground that his service prior to 4.10.1978 had been found to be fictitious and forged. He shall be deemed to have been empanelled from the date his juniors were empanelled and he would be entitled to all the consequential benefits.

(11) The respondents shall comply with the above directions within a period of three months from the date of communication of this order. We make it clear that the respondents will be at liberty to take any action against the applicant for any alleged misconduct in accordance with law, if so advised. The parties will bear their own costs.