

**(2011) 04 DEL CK 0148**

**In the Delhi High Court**

**Case No : Writ Petition (C) 2579 of 2011**

Pradeep Kumar and Others

APPELLANT

Vs

Union of India (UOI) and Others

RESPONDENT

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**Date of Decision :** 25-04-2011

**Acts Referred:**

**Citation :** (2011) 04 DEL CK 0148

**Hon'ble Judges :** Dipak Misra, C.J; Sanjiv Khanna, J

**Bench :** Division Bench

**Advocate :** G.D. Bhandari, for the Appellant; R.V. Sinha and R.N. Singh, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. The Petitioners, five in number, have impugned the order dated 31st August, 2010 passed by the Central Administrative Tribunal, Principal Bench, Delhi (Tribunal, for short) in the present writ petition. The Petitioners had worked as Casual Labourers in Central Organization for Operational Information System in 1985. They continued to work for about two years. The said project was for computerization of freight operations of the Indian Railways.

2. After 1987, the Petitioners have four rounds of litigation with Union of India, Northern Railway claiming that their names should be included in the Live Casual Labour Register (LCLR).

3. The first original application OA No. 1002/2000 filed by the Petitioners was disposed of by the Tribunal directing the Respondents to treat the application as a representation and to verify and consider whether names of the Petitioners could be included in the LCLR. The representation was considered and rejected by the Respondents.

4. Petitioners filed second OA being OA No. 2406/2003 but without success as this OA was dismissed vide judgment dated 7th May, 2004. The Tribunal followed the Full Bench decision in the case of Mahabir Sing v. Union of India and held

that the claim of the Petitioners was belated and barred by limitation.

5. Undeterred, the Petitioners filed the third OA being OA No. 1183/2005. The Respondents raised the plea of res judicata, but the same was turned down and vide decision dated 2nd March, 2006, the Respondents were asked to examine the claim of the Petitioners and whether the juniors to the Petitioners had been re-engaged. The Respondents considered the case of the Petitioners and passed an order dated 4th August, 2006 rejecting the request of the Petitioners for re-engagement. The Petitioners filed a contempt application but without success.

6. The Petitioners thereafter filed the fourth OA, OA No. 2406/2006, which was dismissed on the ground of constructive res judicata vide decision dated 23rd November, 2006. This decision was challenged in W.P.(C) No. 5875/2007, which was allowed vide judgment dated 24th February, 2009. The Court held that the principle of constructive res judicata was not applicable, but no final relief was granted to the Petitioners and the matter was remitted to the Tribunal. The operative portion of the judgment dated 24th February, 2009 reads as under:

7. We may note at this stage that impugned order dated 4.8.2006 passed by the Respondents records that the names of the Petitioners were not in the LCLR and there seems to be some interpolation. We would extract the following portion of the said order highlighting this aspect:

7. With regard to applicants 1, 2, 4 & 6, it is clear from the Annexure A-8 to O.A. dated 21.8.2001 and Annexure C to O.A. dated 28.11.2002 (the impugned orders issued by Railways, which the applicants have sought to be quashed in present O.A.) that the names of the applicants were not included in L.C.L.R. of Delhi Division by 28.11.2002 and that the inclusion of names of applicants 1, 2, 4, 6 at S. No. 243-A, 348-A, 353-A, 252-A respectively, in "red ink" in L.C.L.R. of Delhi Division is an "interpolation" after 28.11.2002 without the sanction/approval of Competent Authority and without authentication by any officer, as there exist no supporting documents in this office and the applicants have not provided any also.

7.1. Even though, these impugned orders of Railways have been quashed and set aside by the orders of the Principal Bench of C.A.T. In present case, it is noted that these applicants did not figure in the list of 263 Ex-Casual Labourers, who were called for short listing held on 18-20 Sept. 2001, conducted by Delhi Division.

7.2. Besides, recently the Principal Bench of C.A.T. in its decision dated 02.06.2006 in O.A. 1180/2006 in case of Ishwar Singh and Ors. v. U.O.I and in decision dated 09.06.2006 in O.A. 779/05 in case of Shri Ramesh Chand v. U.O.I., has upheld the Administration's policy decision dated 14.06.2005 of not operating the L.C.L.R. on Delhi Division except for 16 Ex-Casual Labourers, whose names have been placed in the L.C.L.R. in compliance of Court's specific orders with the approval of the Competent Authority. The decision of not operating L.C.L.R. was taken into consultation with the recognized unions and

with the approval of Competent Authority and this has been done to prevent misuse of L.C.L.R. and to stop any fake or fraudulent appointments. While passing these orders, the Tribunal has also gone through the original records in relation to L.C.L.R. of Delhi Division and also relied on the decision of the Supreme Court dated 10.04.2006 in the case of Secretary, State of Karnataka and Others Vs. Umadevi and Others, (brought out in Para 5.0 above). Thus, the L.C.L.R. of Delhi Division having these 16 names is the only document recognized as factual. It is further noted that six applicants, in present case, are not included in the list of 16 Ex-Casual Labourers, whose names are placed in the L.C.L.R. in compliance of specific court orders with the approval of the Competent Authority.

7.3 In view of the foregoing, especially the decisions mentioned in Para 1.0.5.0 and 7.2 above, no parallel can be drawn in favour of 6 applicants viz. a viz. (sic) the case of Shri Ramji Lal, Bhupal, D.K. Mishra or Mohd. Salim. The plea of six applicants in the instant case is not taken to be genuine.

8. It hardly needs to be emphasized that if the names of the Petitioners were not in the LCLR and there is some interpolation, then even the 3rd OA was not maintainable as the Tribunal proceeded on the basis that names of the Petitioners were in fact appearing in the LCLR and the question was only for re-engagement on the ground that juniors to the Petitioners were re-engaged. Insofar as inclusion of the names of the Petitioners in LCLR is concerned, that had already been rejected in the 2nd OA. However, all these aspects are to be gone into by the Tribunal.

7. The Tribunal reconsidered the entire matter and has given two findings in the impugned order dated 31st August, 2010. Firstly, there was interpolation in the records of the Respondents and the names of the three Petitioners have been fraudulently entered into the LCLR. As mentioned above, the Petitioners have been making requests and have repeatedly approached the Tribunal for inclusion of their names in the LCLR. If the Petitioners' names were already included in the LCLR, there was no reason or cause for them to repeatedly move the Tribunal. The Tribunal after examining the records has come to the conclusion that names of the three Petitioners were interpolated on 28th November, 2002 without sanction/approval of the competent authority. It has also come to the conclusion that there is no supporting document for authentication of the said list. As far as the said findings are concerned, the same are essentially findings of facts. These findings cannot be categorized as perverse or based upon irrelevant or no material. Name of two other Petitioners is not in the LCLR. The Tribunal has also examined the case of discrimination with reference to the case of Ramji Lal, Devendra Kr. Mishra and Mohd. Salim. These cases have been distinguished on the ground that Ramji Lal had obtained an ex-parte decision in his favour dated 5th August, 1994, Mohd. Salim was appointed on compassionate ground with the approval of the General Manager and Mr. Devendra Kr. Mishra was appointed on specific direction of the Tribunal. The

Tribunal has relied upon the decision of the Constitution Bench of the Supreme Court in Secretary, State of Karnataka and Others Vs. Umadevi and Others,

8. In view of the aforesaid reasoning given by the Tribunal with which we concur, we do not find any reason to interfere. The writ petition is accordingly dismissed in limine.