

Reserved on 17.08.2021
Delivered on 29.09.2021

Case :- WRIT - A No. - 41653 of 2014

Petitioner :- U.O.I. Thru G.M. North Central Railway And 3 Ors.

Respondent :- Kanta Prasad Charway And Another

Counsel for Petitioner :- Prashant Mathur

Counsel for Respondent :- S.C., Syed Mushfiq Ali

Hon'ble Mrs. Sunita Agarwal, J.

Hon'ble Mrs. Sadhna Rani (Thakur), J.

(Delivered by Justice Sadhna Rani (Thakur))

The Union of India through the General Manager, North Central Railway, Allahabad and three others are before this Court challenging the judgment and order dated 23.05.2014 passed by the Central Administrative Tribunal, Allahabad Bench, Allahabad in the Original Application No. 23 of 2010 (Kanta Prasad Charway Vs. Union of India and others), wherein a direction has been given to the petitioners herein to consider the case of the respondent no. 1 for screening deeming that the respondent no. 1 had filed his bio-data within time.

The brief facts giving rise to the present writ petition are that the Railway Board had issued the Circulars dated 09.10.1998 and 11.05.1999 regarding absorption of those ex casual labourers, who were not on the roll although their names existed in the live/ supplementary live casual labour register, as against the Group 'D' vacancy in different departments, provided that they had put in minimum 120 days of casual service as on 01st April, 1999. Further, the Circulars dated 28.01.2001 and 20.09.2001 were issued by the Railway Board laying down the criterias for screening of the ex-casual labourers. Apart from the said instructions, Circular dated 30.08.2001 was also issued from the office of the Divisional Railway Manager, Central Railway, Jhansi requiring eligible casual labourers to submit their particulars in the prescribed proforma in duplicate with all relevant documents through

their last Depot Incharge on or before 30.09.2001 and that those particulars were to be forwarded to the competent authority on or before 01.10.2001.

The respondent no. 1, at the first instance, had filed an Original Application No. 1326 of 2008 (Kanta Prasad Charway Vs. Union of India and others) before the Central Administrative Tribunal, Allahabad, wherein the direction was issued on 05.02.2009 to the competent authority to decide the representations of the respondent no. 1 by passing a reasoned and speaking order, in accordance with the rules within three months.

In compliance of the said directions, the petitioners had decided the representations of the respondent no. 1 by the order dated 29.04.2009 wherein the finding has been recorded that the concerned authority had neither received any particulars/bio-data of the respondent no. 1 regarding absorption in the Group-'D' post nor the name of the respondent no. 1 existed in the live/supplementary live casual labour register maintained for the ex-casual labourers. Resultantly, the representation of the respondent no. 1 was rejected.

The order dated 29.04.2009 was challenged by the respondent no. 1 in the Original Application No. 23 of 2010, which has been allowed by the Tribunal vide impugned order dated 23.05.2014 in the following words:-

“OA is allowed. Impugned order dated 29.04.2009 is quashed and set aside. The respondents are directed to consider the case of the applicant for screening deeming that the applicant had filed his Bio-data within time, within a period of three months from the date of receipt of a certified copy of this order. However, it is made clear that if the applicant is found suitable for absorption and is appointed by the respondents, he would not be entitled to get any back wages.”

The grounds taken herein to challenge the order impugned are:-

1. It is the case of the respondent no. 1 that he had worked in broken spells for total 386 days from 04.06.1986 to 07.07.1990 and acquired the status of monthly rated casual labour. His name was stated to be recorded in the LTI/live casual labour register but the respondent no. 1 had failed to enclose the document in support of the said averments. The certificates on the plain papers alleged to have been issued by the concerned authorities

under whom he had worked, were fabricated documents.

2. It is asserted that in pursuance of the Circular dated 30.08.2001, the respondent no. 1 had neither applied nor he was entitled for consideration as his name did not find place in the casual/supplementary live casual labour register. Further the respondent no. 1 did not mention the details of his name being entered at serial no. P/203 in the alleged prescribed proforma.

3. The LTI register was only an attendance register and was not a confidential document. On the other hand, live casual labour register, was an important document maintained at the Divisional headquarter.

4. As the respondent no. 1 did not apply for absorption he was not entitled for consideration of his claim for absorption in the Group – 'D' post, the selection for which had been finalised in the year 2003-04.

5. The application alleged to have been received by the Depot Incharge and the contents of the working certificates did not disclose the status of the respondent no. 1, about his name being borne in the live/supplementary live casual labour register.

6. The original documents of working must be in the possession of the respondent no. 1 and only if he was having originals he could get the documents attested by the authority concerned. The original documents, however, had not been produced by him.

7. The affidavit dated 02.05.2014 was filed by the petitioners before the Tribunal placing the report dated 31.03.2014 along with the report of the Station Superintendent Dholpur, statement of Sri R.P. Gurjar, muster roll and pay sheet on record, which were not controverted by the respondent no. 1.

8. The Tribunal did not appreciate the live casual labour register available with the Divisional Railway Manager (Personnel), Jhansi. The alleged working pertaining to the period from 04.06.1996 to 28.07.1986, from April, 1989 to July, 1989 and from April, 1990 to July, 1990 could not be verified on account of non-availability of the records after 22 years.

9. The statement of Sri R.P. Gurjar, the then Deputy Station Superintendent had been completely ignored wherein he had not only denied his signatures on the proforma but had specifically stated that the application dated 24.09.2001 had neither been verified by him nor he had forwarded the

same to the Divisional Railway Manager (Personnel), Jhansi. The petitioners not only denied the genuineness of the working certificate but at the same time they had also denied the name of respondent no. 1 having appeared in the live casual labour register at serial no. P/203.

10. Regarding the signature of Sri R.P. Gurjar, the tribunal has held that the signatures available in the letter dated 18.03.2014 and the application form dated 24.09.2001 were of the same person.

In this regard, it is contended that the Tribunal had exceeded in his jurisdiction by substituting himself as a hand writing expert and opining the signatures being same and identical seeing with naked eyes. The Tribunal had further exceeded in his jurisdiction in condoning the delay ignoring the provisions of the Central Administrative Tribunal Act specially the provisions as contained in Section 21 dealing with the limitation. Hence, the findings of the Tribunal being perverse and against the law are liable to be set aside.

In the counter affidavit, it is contended by the respondent no. 1 that he was an ex-casual labourer and had worked from 04.06.1986 to 07.07.1990 (for a total period of 386 days). His name was entered in the live register at serial no. P/203. He had submitted his bio-data on 25.09.2001 to the Station Superintendent, Dholpur in pursuance of R.B.O. dated 28.02.2001 and DRM Notification dated 30.08.2001, which was duly received by the concerned officer namely Sri R.P. Gurjar. He then sent the representations dated 25.05.2003, 15.12.2003 and 13.01.2004 when he came to know that some ex-labourers, who worked for a lesser period had been absorbed. The respondent no. 1 again sent reminder dated 10.09.2008 and filed Original Application No. 1326 of 2008.

It is contended that many ex-labourers were regularised in the years 2004, 2008 and 2019. Their appointment letters had been filed as RA-'1' and RA-'2'. The cause of action was continuing and hence the original applications moved before the tribunal cannot be said to be barred by limitation.

It is contended that the live register was not a permanent document, which was preserved for verifying the particulars of ex casual labours and if it was

not available then how the other ex labours' particulars were verified from the year 2004 to 2010.

Regarding the signatures of Sri R.P. Gurjar on the 'receiving' of the bio-data of respondent no. 1, it is contended that the Tribunal in its order dated 23.05.2014 at page-'7' had clearly held that the signatures of Sri R.P. Gurjar on his statement and the signature made on the bio-data, are same and identical, which could be visualised with the naked eyes.

It is thus, contended that as per the Railway Board scheme dated 28.02.2001 and 20.09.2001 for the absorption of ex-casual labourers, the respondent no. 1 had applied well within time, his name existed in the live register and his application was received by the concerned officer. If his application had not been forwarded to the DRM office within time, the answering respondent no. 1 cannot be penalised. He is the eligible candidate for screening and absorption.

The rejoinder affidavit has been filed by the petitioners wherein the contentions of the respondent no. 1 in the counter affidavit are denied and the facts mentioned in the writ petition are reiterated.

After filing of this petition, vide order dated 12.08.2014 of this Court the operation of the impugned order dated 23.05.2014 passed by the Tribunal had been stayed which is in operation till date.

Heard the rival submissions and perused the records.

Rest of the facts are admitted to both the parties except that in pursuance to the instruction dated 30.08.2001 of the DRM (P)/6 Jhansi, the respondent no. 1 had applied for his absorption from casual labour to the permanent employee; his application was received by Sri R.P. Gurjar, Deputy Station Master on 25.09.2001; the name of respondent no. 1 had figured at P/203 in the live casual labour register and his claim was made within time.

The counsels of both the parties had confined their arguments to the above points only.

Before the Tribunal, the present respondent no. 1 was the petitioner so the burden lied upon him to prove his contentions. When we go through the documents which were produced before the Tribunal, the bio-

data/particulars submitted by the respondent no. 1 appended at paper no. '138' of the paper book, which is said to bear the signatures of Sri R.P. Gurjar; one certificate regarding working of the respondent no. 1 as hot weather waterman from 04.06.1986 to 28.07.1986 appended to the paper book at page-'126' bearing the endorsement "vide letter no. DRM(P) Jhansi/P/203" on the top of it; we find that both the documents had been filed in the photocopy form and original of the same had not been produced. On the queries put by the tribunal vide order dated 31.01.2014, the petitioners submitted their reply on 09.05.2014 along with the affidavit to state as under:-

- (1) that the records of working of the applicant/respondent no. 1 were not available,
- (2) LTI register and live register of casual labour and hot weather staff were not available,
- (3) Sri R.P. Gurjar worked as the Deputy Station Superintendent at Dholpur Railway Station on 24.09.2001,
- (4) Signature of Sri R.P. Gurjar on the application was denied and a statement signed by Sri R.P. Gurjar was also enclosed with the aforesaid affidavit.
- (5) No record was available in connection with the application of any hot weather staff or any casual labour verifying or forwarding the same from Dholpur Station to D.R.M., Jhansi in response to the notification dated 30.08.2001 and also no record was available regarding receipt of such applications of casual labour in the Personnel branch of D.R.M. Office, Jhansi.

So far as the bio-data/particulars allegedly submitted along with the application, appended at page-'138' of the paper book, is concerned, neither its original receiving nor the registry receipt of its dispatch had been produced by the respondent no. 1 before the tribunal. The statement of Sri R.P. Gurjar, the alleged receiving authority appended at page-'212' of the paper book clearly shows that he categorically stated that neither he had received the application of respondent no. 1 on 25.09.2001 nor had verified or forwarded the same to the D.R.M. Jhansi. Sri R.P. Gurjar had clearly

denied his signatures over the alleged application of the respondent no. 1.

However, in contradiction to the above material, the tribunal in the impugned judgment and order dated 23.05.2014 has held as follows:-

“The signatures of Sri R.P. Gurjar on his statement and his signature made on bio-data of the applicant are the same and identical, which could be visualised with naked eyes.”

We are afraid to approve this approach of the tribunal. The tribunal had substituted itself to the hand writing expert, more so, when there was no cogent material before the tribunal to contradict the version of the officer namely Sri R.P. Gurjar.

So far as the report of the hand writing expert filed with the present writ petition is concerned, the same cannot be relied having been brought for the first time before this Court.

The signatures on the bio-data having been categorically denied by the alleged receiving authority, Sri R.P. Gurjar, there was no reason to disbelieve his version. More so, when the original receiving of the applicant/bio-data by the respondent no. 1 had not been produced before the tribunal. It was not possible for the tribunal to form an opinion regarding the veracity or genuineness of the signature of Sri R.P. Gurjar on the alleged receiving of the bio-data which is in the photocopy form. Thus, the onus of proving the fact that the particulars/bio-data was received by Sri R.P. Gurjar as the Deputy Station Superintendent at Dholpur Railway Station had not been discharged by the respondent no. 1.

So far as the contention that the name of the respondent no. 1 was borne on the live casual labour register/supplementary casual labour register, a certificate in the photocopy had been filed by the respondent no. 1. which seems to be a slip bearing endorsement “vide letter no. DRM(P) Jhansi, P/203 is clearly seen to be pasted on it before making the photocopy of the same, which renders this certificate to be a forged document.” Further Annexure-'1' to the affidavit dated 02.05.2014, appended as Annexure-'11' (at page -'200 to 207' of the paper book) is the report of the Welfare and Labour Inspector, Jhansi dated 31.03.2014. As per his report, the live register regarding casual labour of their department available in karmik

Branch, Jhansi did not contain the name of the respondent no. 1. The original register (Pages 1 to 17), which was said to be live register of Dholpur kept in the office of the D.R.M. (P), Jhansi was produced before the tribunal. This fact is also noted in the judgment of the tribunal but there is no whisper about the entries of the said register in the findings of the tribunal. The tribunal has conveniently ignored the document produced in original.

So the two documents, appended at page-'138' and '126' of the paper book could not be proved by the respondent no. 1 before the tribunal and as such the stand of the respondent no. 1 that the particulars/bio-data was submitted before 30.09.2001 i.e. well within time before the competent authority, was not proved.

Moreover, the process of absorption of the casual labourers attained finality in the year 2003-04, the scheme had been exhausted, the respondent no. 1 had filed Original Application only in the year 2008 before the tribunal. This long gap of five years could not be explained by him.

It is contended on behalf of the respondent no. 1 that he had sent reminder dated 10.09.2008 and when he came to know that the services of his juniors had been regularised and Jhansi Division regularised various ex-labourers in the year 2004, 2008 and 2010, he was compelled to file Original Application in the year 2008.

The receiving of the alleged reminder dated 10.09.2008 had been refused by the petitioners. The respondent no. 1 had neither filed the registry receipt of sending the representation to the proper office nor he had filed any receiving of the application along with the Original Application.

Lastly, however, as regards the arguments of the petitioner that since respondent no. 1 was not in service, he cannot claim the relief of regularisation, we are afraid to accept that as in notification dated 28.02.2001 and 20.09.2001, it is mentioned that the absorption was with regard to ex-casual labourers who obviously could not be working at the time of submitting the applications for absorption in accordance with the above noted Circulars.

In view of the above discussion, we find that the period of working of

the respondent No.1 shown in the experience certificate submitted alongwith the original application filed before the tribunal had not been substantiated from any material on record. The petitioner-herein had taken a categorical stand that it was not possible to certify the period of working from 1986 till 1990 after three decades. The genuineness of the certificate of working (experience) had, thus, been categorically denied by the petitioners herein.

The tribunal had erred in holding otherwise by returning a finding that it could not be denied that the name of the applicant was borne on the live register as the copy of the live register was not produced by the petitioner and it was stated in the affidavit dated 09.05.2014 that such a register was not available. We may further record that the tribunal in its order itself has referred in paragraph no. '7' that a register which was said to be a live register kept in a office of DRM (S) Jhansi was produced by the petitioner/respondents therein. No finding whatsoever has been returned with regard to the entries of the live register before drawing the above noted conclusion.

As regards the stand of the respondent No.1 regarding submission of his bio-data on the prescribed format for screening to enter his name in the live register, a categorical stand had been taken by the respondent by bringing the copy of the statement of the officer concerned that no such form had been received in his office on 25.09.2001 and the alleged signature on the bio-data of the applicant brought before the tribunal were forged.

The finding returned by the tribunal that signatures on the bio-data of the applicant/respondent No.1 of the officer concerned tally with his signature on the statement filed before the tribunal is neither here nor there. Such a comparison was not possible in view of the categorical denial regarding receipt of the bio-data of respondent No.1 in the prescribed format before the last date for submission of the same. No receipt whatsoever had been submitted by the respondent No.1.

Even otherwise, if it is accepted for the sake of argument that the respondent No.1 had submitted his bio-data on the prescribed format on 25.09.2001 before the competent officer, it is difficult to accept as to why the

petitioner did not approach the tribunal when his name did not find place in the list of eligible persons for regularization/live register and further when the regularization exercise was concluded in the year 2003 and 681 casual labourers were appointed on Group-D post in response to the notification dated 30.08.2001. It was admitted case of the respondent No.1 that he was not called for screening in the regularization exercise completed in the year 2003-04. Filing of the repeated representations for a period of seven years was not a plausible explanation on the part of the respondent No.1 for delay in approaching the tribunal.

We may reiterate that as the actual submission of the bio-data alongwith the prescribed application form before the competent authority was pre-requisite for screening in the exercise of regularization of Group-D post, without verification of the period of alleged working of the respondent No.1, the process of screening cannot be done. In any case, there cannot be any deemed receipt of the application form.

No malafide can be attached to any of the officers of the department for refusal to receive the application form or for non calling of the respondent No.1 in the process of screening even after submission of the application form as alleged by the respondent No.1, as there is no allegation in this regard.

The stand of the respondent No.1 of having submitted bio-data with the prescribed application form, therefore, could not have been accepted.

For all the above reasons, we conclude that the tribunal has committed grave error of law in allowing the original application of respondent No.1 by directing the petitioner-herein to consider his case for screening deeming that the respondent No.1 filed his bio-data within time. The perversity in the order is writ large on the face of the record. In absence of the cogent material, it was not possible for the tribunal to hold that the respondent No.1 had submitted the application form alongwith the prescribed format within time.

For the above, the judgment and order dated 23.05.2014 passed by the respondent No.2 in Original Application No.23 of 2010 (Kanta Prasad

Charway Vs. Union of India & others) cannot be sustained in the eye of law. The same is, therefore, set aside. The original application No.23 of 2010 is hereby dismissed.

The writ petition is accordingly, allowed.

Order Date :- 29th September, 2021

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