

8

Central Administrative Tribunal, Principal Bench

O.A. No.685/2002

New Delhi this the 4th day of October, 2002

Hon'ble Mr. Kuldip Singh, Member (J)

China Tambi
S/o Shri Kanda Swami
R/o 59, Gandhi Murti,
Madrasi Colony, Morigate,
Delhi.

..Applicant

By Advocate: Shri Balwant Sharma.

Versus

Union of India through

1. The Chairman Railway Board,
Principal Secretary to Govt. of India,
Ministry of Railways, Rail Bhawan,
New Delhi-110 001.
2. The General Manager,
Northern Railway,
New Delhi.
3. The Divisional Railway Manager,
Northern Railway,
New Delhi.

..Respondents

By Advocate: Shri Rajinder Khatter.

ORDER (ORAL)

Heard the learned counsel for the parties.

2. The applicant in this case has challenged the order dated 29.1.2002 whereby the department has decided the representation of the applicant for being re-engaged after he had been released on probation in a case under Section 3 RP UP Act. The case of the applicant is that he was working as a casual labourer with the respondents-department and while in service he was involved in a theft case and was apprehended by the RPF staff along with six persons and was tried under Railway Property and Unlawful Possession Act.

Ku

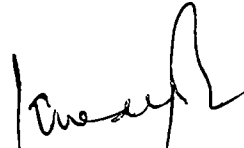
After the applicant was released on probation, though it was mentioned that this release on probation shall not be treated as disqualification to the present/future employment of the accused persons or any benefits thereunder, so the learned counsel for the applicant pleaded that the applicant has a right to be reengaged as a casual labourer. The counsel for the applicant has also referred to a judgment given in OA 1260/1990 entitled as Pardeep Singh Negi Vs. Union of India & Others. In the said case the applicant was enrolled on daily wages basis during May, 1990. He worked upto 31.8.93 and was disengaged because of want of work. He was thereafter detained by the Police and remained under trial for 37 months. Eventually by an order of the Learned ~~Additional Sessions Judge~~ ^{Criminal Court}, the applicant was acquitted on benefit of doubt and thereafter he made a representation that he should be taken back on duty and this Tribunal while relying upon a judgment in the case of T.S. Vasudevan Nair Vs. Director of Vikram Sarabhai Space Centre, 1988 (Supp) SCC 795 given by the Supreme Court wherein it was observed that "eventhough the acquittal is on benefit of doubt and it is all the same a complete acquittal when failure or inability on the part of the applicant because of his facing a Criminal trial should not disentitle him for fresh consideration for further appointment". So relying upon the said judgment of the Apex Court in Vasudevan Nair's case (Supra) the Tribunal in the said OA directed the respondents to take the applicant back as a daily wage casual employee provided there is work available for him. But the facts of the present

For

case are completely different because in the present case the applicant has not been given the benefit of doubt and has not been acquitted rather the applicant has been convicted. It is only on the point of sentence that the court instead of sending the applicant to jail released the applicant on probation but the fact remains that the conviction against the accused has been recorded by the criminal court. Since the applicant has been released on probation so he had made a representation that he should be taken back on duty but the respondents vide impugned order has refused the applicant to take him back on duty.

2. The perusal of the same would show that when the applicant had been found to be in possession of Railway Property and Unlawful Possession of the same (Railway Property) where he was working as a casual labourer, so in this case probably no management would like to keep the unlawful person who was in possession of the Railway Property. Therefore, I think that the order passed by the respondents has been rightly passed. No interference is called for.

3. In view of the above, OA has no merits and the same is dismissed. No costs.


 (KULDIP SINGH)
 MEMBER (J)

Rakesh