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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A. No.1440/98

New Delhi, this the 16th day of February, 1999

HON'BLE SHRI N. SAHU, MEMBER(A)

Inder Mohan
S/o Shri Phalad Rai
r/o F-234, Raj Nagar-II,
New Delhi-45.

....Applicant

(By Advocate: Shri V.P.Sharma)

Versus

1. Union of India through
the General Manager,
Northern Railway,
Baroda House, New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Bikaner Division
Bikaner(Har.).

....Respondents.

(By Advocate: Shri R.L.Dhawan)

O R D E R (ORAL)

HON'BLE SHRI N. SAHU, MEMBER(A)

Heard Shri V.P.Sharma, learned counsel for the applicant and Shri R.L.Dhawan, learned counsel for the respondents.

2. This O.A. is directed against the order dated 21.11.97 passed by the Divisional Superintending Engineer-I, Northern Railway, Bikaner rejecting the claim of the applicant for registration of his name in the Live Casual Labour Register for the purpose of re-engagement. The Divisional Suptdg. Engineer-I passed this order in compliance with the directions of this Bench in O.A.1895/97 decided on 8.8.97. The impugned order holds that the applicant worked under PWI, Loharu for a period of 78 days between 28.12.83 to 14.3.84. It is stated that the applicant "did not perform the duties of a bonafide casual

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labour and never discharged by the Railway Administration on completion of work or for want of further productive work etc." It is stated that "the applicant has left the Railway work and site willfully, voluntarily, arbitrarily and without information to the administration." It is submitted by the learned counsel for the applicant that the allegations made in the order are unsubstantiated. He cited the decision of this Bench in the case of Chunni Lal vs. Union of India reported in 1997(2) ATJ 370 in which it is held that in all cases of absconding, the employer is bound to give notice to the employee calling upon him to resume his duties. He states that no notice has been given to the applicant. He cited the decision of the Tribunal in the case of Beer Singh vs. Union of India in O.A.78/87 decided on 16.3.90 which laid down the same proposition of law. He also cited other decisions in support of his stand.

3. Learned counsel for the respondents brought to my notice para 4 of the circular dated 28.8.87 (Annexure R-2) which states that additional requirements be met by re-engaging the casual labour who had earlier worked on the seniority unit and had been retrenched due to completion of work done on the basis of their seniority. He states that the applicant had left on his own and for this purpose, he has brought to my notice the affidavit filed by the PW1, Northern Railway, Loharu. In this affidavit dated 22.9.98, it is submitted that the track renewal work for which the applicant was engaged as Casual Labour Gangman on 28.12.83 was completed on 31.5.85 whereas the applicant left service of his own accord from 15.3.84 without any intimation to his Sr. Subordinate Incharge. It is contended that this is

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not a case of absconding nor it is a case of retrenchment nor it is possible to hold that the applicant had left on completion of the project and, therefore, there is no justification in the claim for placing his name in the Live Casual Labour Register. Learned counsel for respondents has cited the case of Rattam Chandra Samanta vs. Union of India - JT 1993 (3) S.C. 418 in support of his contention that the O.A. is barred by limitation. He also cited the order of this Bench in O.A.2012/96 (Jaipal vs. Union of India) decided on 2.9.97 to which I am a party. The next point of the learned counsel for respondents is that under Rule 179 (xiii) Clause (c) of IREM (Vol.I), page 39, a minimum of 6 months service is needed and as the applicant's service was hardly 78 days, his claim for placement of his name in the Live Casual Labour Register is not supported by the Rules. Shri Dhawan also submitted that in the case of P.Lourdsamy vs. Union of India - SLJ 1998 (1) CAT 32, it is held that IREM Rules have statutory force. Finally, it is submitted that any enforceable right must arise out of a rule or law on the subject. For this purpose, he cited the decision of the Supreme Court in the case of Punjab National Bank vs. K.C.Chopra - JT 1997 (7) SC 161.

4. Vigorously countering each and every aspect of the learned counsel for respondents, Shri V.P.Sharma, learned counsel for the applicant stated that what is impugned before me is Annexure A-1, an order dated 21.11.97. The grievance of the applicant is focused on this order and any extraneous arguments unconnected with the main issue in this order, cannot be raised. For this purpose, he cited the famous decision of the Hon'ble

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Supreme Court in the case of Mohinder Singh Gill and amr.
vs. The Chief Election Commissioner, New Delhi & others -
AIR 1978 S.C. 851. He particularly brought to my notice
para 8 of the said order. This ruling of the Supreme Court
lays down as under:-

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to court on account of a challenge, get validated by additional grounds later brought out."

5. The next contention of the applicant's counsel is based on the off-quoted circular of the Railway Administration dated 22.3.90 wherein it is stated in para 5 that the Division should call for representations from casual labours whose names have not been placed in the Live Casual Labour Register and those of the representations which are received on or before 31.3.87, should be considered for verification of documentary proof and if found eligible, their names should be placed on the Live Casual Labour Register. Thereafter these Live Casual Labour Registers were required to be closed and no further names to be added except those who are now retrenched or were retrenched after 1.1.81. Learned counsel counters the arguments of limitation by citing the decision of the Tribunal in O.A.1281/96 dated 30.6.97. Distinguishing the Supreme Court decision in Sammanta's case, the Bench had held that in the cases of all casual labours discharged after 1.1.81, their names are to be continued on the live casual labour register indefinitely. There was no

requirement from the applicant to make any representation and he has thus a recurring cause of action every time a vacancy arises and a junior on the live casual labour register is engaged by the respondents. He states that the impugned order is on account of the direction of the Tribunal and, therefore, the adverse findings in the impugned order gave rise to a cause of action and as the said impugned order is dated 21.11.97 and as the O.A. has been filed on 14.8.98, the said O.A. is not barred by limitation at all.

6. I have carefully considered the various submissions of the rival counsel who have argued at length and cited various authorities in support of their stand. Each case has to be specifically dealt with on the basis of the facts of that case. First let me take up the point of limitation. The impugned order dated 21.11.97 was passed by the competent authority under the orders of this Tribunal in O.A.1895/97 decided on 8.8.97. Any order passed in compliance with a direction cannot be dismissed as a scrap of paper. The findings recorded in the order virtually become findings in law and if these findings affect the rights of a person, then the person is entitled to contest those findings. The findings are that the applicant did not perform the duties of a bonafide casual labourer, that he had left the railway work voluntarily. This gives rise to a definite cause of action to the applicant. Therefore, I am unable to agree with the contention of the learned counsel for the respondents that this O.A. is barred by limitation. The decision cited by

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the learned counsel for the respondents in Sammanta's case is with regard to the facts of that case and cannot be of assistance to him in a case of this type.

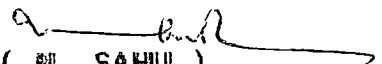
7. Having said that the O.A. is not barred by limitation, I agree with Shri Dhawan that the applicant can canvas for effective implementation of his legal rights only when such rights are conferred on him under the law. I respectfully state that the case law cited by Shri Dhawan is absolutely relevant and proper.

8. What happened in this case was that the applicant was engaged as a casual labourer/gangman for 78 days only from December, 1983 to mid-March, 1984 for track renewal work. An affidavit has been filed by the concerned railway official that he had left the service of his own accord. This cannot be equated with either abandonment or retrenchment. This affidavit has not been rebutted by the applicant. When an official files an affidavit, I presume it must be on the basis of material on record. I, therefore, accept this affidavit. Secondly, if the applicant was in need of employment in the last 14 years, he should have woken up to his rights and pursued the matter at various fora. No evidence of such an effort has been shown to the court. The law in Mohinder Singh Gill's case is not applicable here. I don't think any of the submissions of Shri Dhawan is extraneous. Those contentions of Shri Dhawan are points in law and they are confined to the actual facts that have come on record. It is settled law that any counsel can raise any point of law at any stage and this will not be treated as extraneous.

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9. I am of the view that following the orders of this Tribunal in O.A.444/98 dated 7.12.98 as well as my own orders dated 2.9.97 in O.A. 2012/96, there is no merit in this application because the mandatory period of six months necessary for inclusion of the name of the applicant in the live casual labour register has not been complied with and the fact that the applicant had left the service voluntarily is a statement which has come on record without being rebutted. This fact distinguishes this case from all cases cited by the learned counsel for the applicant. The case of Chunni Lal cited by the applicant's counsel, an order passed by me, is based on materially different facts and, therefore, that case cannot be of assistance to him.

10. The O.A. is dismissed. No costs.


(N. L. SAHU)
MEMBER(A)

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