

CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.No.519/98

New Delhi, this the 6th day of November, 1998

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

Shri Suresh Chander,
S/o Shri Lala Ram,
Ex.Casual Labour,
Under Chief Inspector of Works,
N.E.Railway,
Fatehgarh.
R/o Jhuggi No.253,
Tea Railway Hatts, Shakurbasti,
New Delhi-110 034.

....Applicant

(By Advocate: Shri B.S.Mainee)

Versus

Union of India, through

1. The General Manager,
North Eastern Railway,
Gorakhpur.
2. The Divisional Railway Manager,
North Eastern Railway,
Izamnagar.
3. The Assistant Engineer,
North Eastern Railway,
Fatehgarh.

....Respondents

(By Advocate: Shri B.S.Jain)

O R D E R (ORAL)

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

Heard Shri B.S.Mainee, ld. counsel for
applicant and Shri B.S.Jain, ld. counsel for
respondents.

2. The reliefs claimed in this O.A. are as
under:-

"8.1 That this Hon'ble Tribunal may be
pleased to allow this application
and direct the respondents to
register the name of the Applicant
on the Live Casual Labour Register
and to re-engage him in accordance
with his seniority with all
consequential benefits.

8.2 That any other or further relief
which this Hon'ble Tribunal may
deem fit and proper on the facts

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and circumstances of the case may kindly be granted in favour of the Applicant.

8.3 That the cost of the proceedings may please be granted in favour of the Applicant."

3. Para 4.3 of the counter states as under:-

"4.3 The averments are wrong and denied. The name of the applicant exists on casual labour live register, page 37, Sl.No.31. It is submitted that no person senior/junior from the register, has been engaged after April,1987."

4. In view of the averment of the ld. counsel for respondents, the grievance is met and accordingly this O.A. has become infructuous. *A* Ld. counsel for applicant thereafter has drawn my attention to the statement at para 4.4 of the counter that the applicant left the service of his own accord and would not be entitled to re-engagement. For this purpose, he cited the decision in the case of Buckingham & Carnatic Company vs. Venkatiah - AIR 1964 SC 1272. The apex court observed that:-

"abandonment or relinquishment of service is always a question of intention, and, normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrine of common law or considerations of equity, would not be relevant. Whether there has been any voluntary abandonment of service or not is to be determined in the light of the surrounding circumstances of each case."

5. Ld. counsel for respondents, on the other hand, relied on a decision of the Hon'ble Supreme Court in the case of Punjab State Electricity Board and anr.

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vs. Baldev Singh - 1998 SCC (L&S) 1369 wherein on reversion from ad-hoc promotion on the directions of higher authority, the Supreme Court held that reversion was not punitive and hence the question of giving any opportunity to respondents would not arise. A general observation has been made by the apex court that a show-cause notice would not be necessary where there is no subsisting right which is affected because of the administrative action. The very purpose of entering a person's name in the Live Casual Labour Register is to consider his engagement as and when any vacancy in any work situation arises. There should not be indiscriminate engagement, disregarding seniority. It would follow that persons would be engaged in a consecutive order as per their seniority in the Live Casual Labour Register. A junior cannot be engaged at the expense of a senior. If the applicant's turn comes, he should be engaged if work is available. The respondents cannot at this stage say after entering his name in the live casual labour register that he has left the service of his own accord. There is no such observation by the competent authority in the record of service of casual labour. We cannot give credence at this distance of time that he had left the service of his own, on the ipse dixit statement of the respondents. There is no other material to prove this claim. The

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observations cannot come in the way of re-engagement of the applicant as and when vacancy arises.

6. The O.A. is disposed of as above. No costs.

N. Sahu
(N. Sahu)
Member (A)

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