

Central Administrative Tribunal, Principal Bench

O.As.Nos.1288,1310 and 1355 of 1996

New Delhi, this the 15th day of February, 2000

Hon'ble Mrs.Lakshmi Swaminathan, Member (J)
Hon'ble Mr.R.K.Ahooja, Member (A)

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(1) O.A.No.1288 of 1996

1. Ram Gopal, Son of Shri Ganga Sahai, Gangman under P.W.I., Hapur, Northern Railway.
2. Hari Singh, Son of Shri Chet Ram, Gangman under P.W.I., Hapur, Northern Railway.- Applicants
(By Advocate - Shri H.K.Gangwani)

Versus

- Union of India through
1. General Manager, Northern Railway, Baroda House, New Delhi-3.
 2. Divisional Railway Manager, Northern Railway Moradabad, U.P.
 3. Divisional Engineer, HQ, Northern Railway, Moradabad.
- Respondents
- (By Advocate Shri R.L.Dhawan)

(2) O.A.No.1310 of 1996

1. Sh. Kacheru Singh, S/o Harban Singh
 2. Sh. Hukam Singh S/o Man Singh
 3. Sh. Jamil S/o Lal Mohammad
 4. Sh. Ant Ram S/o Sidhao
 5. Sh. Madhoban S/o Vasant Ban
 6. Meena S/o Ghasi
- Applicants
- (All are working as Gangman under P.W.I.Hapur)
(By Advocate - Shri H.K.Gangwani)

Versus

- Union of India & Ors.
1. General Manager, Northern Railway, Baroda House, New Delhi-1
 2. Divisional Railway Manager, Moradabad, U.P.
 3. Divisional Engineer, HQ, Northern Railway, Moradabad (U.P.)
- Respondents
- (By Advocate Shri R.L.Dhawan)

(3) O.A.No.1355 of 1996

1. Chhidda Singh S/o Gopal, Gangman
 2. Hukam Singh S/o Balkishan, Gangman
 3. Udal Singh S/o Ram Rattan
- (All Gangman under P.W.I. Hapur, Northern Railway under General Manager, N.Rly, New Delhi. - Applicants
(By Advocate - Shri H.K.Gangwani)

Versus

- Union of India through
1. General Manager, Northern Railway, Baroda House, New Delhi-3.
 2. Divisional Railway Manager, Northern Railway Moradabad, U.P.
 3. Divisional Engineer, HQ, Northern Railway, Moradabad.
- Respondents
- (By Advocate Shri R.L.Dhawan)

Common Order (Oral)

By Mr.R.K.Ahooja, M(A)-

The applicants in all the three OAs are

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similarly placed and have the same grievance. Accordingly, these OAs are being disposed of by a common order.

2. The applicants had been initially engaged as casual Gangmen under PWI in Moradabad Division. As their casual engagement had been terminated they had approached the Tribunal in various OAs. These were disposed of with a direction to the respondents in the following terms :

"(a) The respondents shall consider reengaging the applicant as Casual labourer in preference to those with lesser length of service and outsiders.

(b) The name of the applicant shall remain on the live Casual labour Register and he shall be considered for regularisation against any vacant post in the Group 'D' cadre, but strictly, in accordance with the Rules and his seniority on the basis of length of service."

Thereafter the respondents in compliance with the direction of the Tribunal reengaged the applicants and in due course they were also regularised. However, by a show cause notice Annexure-A-2 they were informed as follows -

"On scrutiny of the records it has been found that you have been re-engaged as casual labour w.e.f. 17.5.94 by the then AEN/HPU erroneously ignoring the persons senior to you and which is against the law as well as the direction of the Hon'ble CAT/ NDLS. The Competent Authority has thus decided to rectify the said mistake and irregularity and as such has decided to discharge you from service. However, you will be called for re-engagement in your own turn as per your seniority. Hence you are hereby called upon to show cause within 15 days as to why your services may not be discharged for the above reason."

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The applicants gave their reply to the aforesaid show cause notice stating that there was no error in their appointment and there were no seniors to them whose names figured in the live casual labour register and who were still waiting for reengagement. However, the respondents vide their order dated 24.5.1996 terminated their services on the ground that their reengagement as casual labourer in pursuance of the direction of the Tribunal were erroneous as persons senior to them had thereby been ignored.

3. The applicants submit that apart from the fact that there were no persons senior to them for reengagement, the respondents could not have terminated their service in the manner they have done since the applicants had become regular employees and their services could be terminated only after following the Railway Servants (Discipline & Appeal) Rules, 1968. They submit that not only they have been working on regular basis but they had also been earlier conferred temporary status. They also point out that the show cause notice gives no details in regard to the person or persons who were allegedly senior to them.

4. When the OAs came up for admission this Tribunal had by an interim direction ordered the maintenance of the status quo. In compliance with this interim direction the applicants are continuing in service as admitted by both the counsel.

5. We have heard the counsel and carefully perused the record.

6. According to the respondents the AEN, Moradabad Division had made a mistake while complying with the directions of this Tribunal inasmuch as he did not take

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notice of the fact that there were persons senior to the applicants waiting for reengagement. The respondents have also annexed a seniority list of the casual labours at Annexure-R-1 to their short reply. We have perused this list and find that there are persons who have worked for even less than 240 days enlisted but the names of the applicants do not figure there. On the other hand when these applicants came before the Tribunal on the earlier occasion they had stated that they had put in sufficient number of days to be entitled for grant of temporary status. In any case, the respondents should have, along with the show cause notice, given the details as to their seniority position in order to establish that their reengagement was not in accordance with their seniority. This they had not done. The applicants have also not been given a proper opportunity to explain their case and to answer the allegation of the respondents in the show cause notice that their reengagement was not in the order of seniority.

7. The learned counsel for the applicants Shri H.K.Gangwani also presses the point that the applicants having become regular employees their services cannot be terminated on the basis of a mere show cause notice but instead they have to be dealt with in terms of Railway Servants (Discipline & Appeal) Rules. We are unable to agree with this contention. As mentioned above the reengagement and regularisation of the applicants has taken place in pursuance of the directions of the Tribunal. Thus, if the mistake has been committed and the reinstatement had taken place contrary to the Tribunal's directions, no right vests in the applicants.

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It is, therefore, open to the respondents to correct their mistake but only after giving proper opportunity to show cause to the applicants to establish their claim.

8. In the result, the OAs are allowed. The impugned orders of termination of services are quashed. The respondents are, however, granted liberty to issue fresh show cause notice along with the details of the seniors who are waiting for engagement, to enable the applicants to answer the allegations against them and thereafter to proceed in accordance with law. No order as to costs.

(R.K.Ahooja)
Member (A)

(Mrs.Lakshmi Swaminathan)
Member (J)

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15/2/2000
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