

CENTRAL ADMINISTRATIVE TRIBUNAL : PRINCIPAL BENCH

O.A. NO.2625/1996

New Delhi, this the 12<sup>th</sup> day of August, 2004

HON'BLE MR. SARWESHWAR JHA, MEMBER (A)

53

Shri Ishak

S/o Shri Mahmood, Casual Gangman,  
Under P.W.I.

Northern Railway, Hapur

(By Advocate : Shri B.S. Mainee)

.... Applicant

Versus

Union of India

1. The General Manager,  
Northern Railway,  
Baroda House, New Delhi.

2. The Divisional Railway Manager,  
Northern Railway, Moradabad

3. The Divisional Engineer (HQ)  
Northern Railway, Moradabad

4. The Asstt. Engineer,  
Northern Railway,  
Hapur

.... Respondents

(By Advocate : Shri Rajinder Khattar)

ORDER

Heard.

2. The applicant has impugned the order of the respondents dated 7.11.1996 whereby it has been decided to terminate the services of the applicant who has been in their service since 16.4.1994 under the orders of this Tribunal and who has rendered 1683 days of service and has acquired temporary status. It has already been claimed that he has rendered 120 days of continuous service in the year 1984. Earlier, the applicant had filed OA 246/1993 with this Tribunal for directions to be given to the respondents to regularize his services after reinstating him. The same was decided on 17.8.1993 with a direction that the "respondents shall, if and when a situation arises, consider the case of the petitioner for re-engagement on merits and in accordance with law. While doing so, they shall give preference to the petitioner over freshers and juniors". Accordingly, the

2. Mr

54

applicant was reinstated, as a large number of vacancies were available and also ask persons junior to the applicant were working in the respondent's organization. He has claimed that he has been rendering satisfactory service to the respondents. In support of his contention he has referred to the decisions of this Tribunal in OA No.2626/1996 as decided on 4.9.1997 in which similar directions had been given to the respondents.

3. The applicant has alleged that the decision to terminate his services has been taken by the respondents without affording him an opportunity to show cause. The question of giving any reply to the show cause, therefore, did not arise. Apart from this, he has emphatically contended that he is one of the senior-most casual labourers of Moradabad Division of the respondents and further that the juniors have been continuing in the service of the respondents. He has argued that, after having rendered two and a half years of service, it cannot be held that he is junior to others. He has, therefore, submitted that the impugned order of the respondents, being arbitrary and discriminatory, the respondents be restrained from giving effect to them.
4. The respondents in their counter reply have, however, maintained that the decision to terminate the services of the petitioner has been taken to rectify the mistake and irregularity which had been committed by them in the past when they had re-engaged the applicant without there being permanent vacancies as per approved sanctioned strength for their Unit. In other words, they have submitted that the applicant had been re-engaged erroneously. They have reported no vacancy at present in their unit. They have, however, undertaken to re-engage the applicant as per his seniority as and when a vacancy arises in their Unit. They have categorically stated that no junior to the applicant is presently working except one Shri Sheeraj Singh who has also been issued show cause termination notice. He is, however, working as per the stay order granted by the Hon'ble Allahabad Bench of the Tribunal in OA 1143/1998 till the decision of the O.A (Annexure R-II).
5. Having regard to the facts as submitted by both the sides, it is thus observed that there is hardly any dispute in this case. The respondents

S. Me

55

having maintained that no junior to the applicant is presently in their employment and also that he was re-engaged earlier on the orders of the Hon'ble Tribunal without there being a vacancy for him erroneously, I do not as such see any infirmity or deficiency in the action of the respondents in their taking a decision to terminate his services. In any case, in compliance of the orders of the Tribunal as given earlier in the case of the applicant, the respondents have undertaken to re-engage him if any junior to him is employed by them. The respondents shall keep the decisions of the Allahabad Bench of the Tribunal in OA No.1143/1998 in mind while taking a view in the case of the applicant as and when it becomes due. The respondents shall also keep in view the decisions of the Tribunal in OA No.2626/1996 passed on 4.9.1997 as relied upon by the applicant while taking action in the case of the applicant when it is due.

6. Thus, in consideration of the facts and circumstances of the case and also keeping in view the submissions made by the learned counsel for the parties, this OA is disposed of with the above directions to the respondents. No order as to costs.



(SARWESHWAR JHA)  
Member (A)

/gkk/