

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

HON. SHRI R.K. AHOOJA, MEMBER (A)

NEW DELHI, THIS 4th DAY OF SEPTEMBER 1997.

OA NO.2626/1996

JODHA SINGH
S/o Sh. Jai Singh
Casual Gangman under PWI
Northern Railway
Hapur

...APPLICANT

(By Advocate - Shri B.S. Mainee)

versus

UNION OF INDIA, through

1. The General Manager
Northern Railway
Baroda House
New Delhi
2. The Div. Railway Manager
Northern Railway
Moradabad
3. The Divisional Engineer (HQ)
Northern Railway
Moradabad
4. The Assistant Engineer
Northern Railway
Hapur

...RESPONDENTS

(By Advocate - Shri P.S. Mahendru)

ORDER

8 To be referred to the reporter? YES/NO

(R.K. AHOOJA)
MEMBER (A)

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The applicant was originally engaged as a casual labour from 7.4.1978 but his services were not continued beyond 14.8.1985. He filed an OA No.1959/1992 before the Tribunal seeking a direction to the respondents to re-engage him in accordance with his seniority. This OA was decided vide judgement dated

contd...2/-

19.7.1993 (A-2), wherein the respondents were directed to consider the case of the applicant for re-engagement in preference to juniors and freshers. The applicant was thereafter re-engaged on 20.5.1994. However, the applicant submits that he received a letter on 7.11.1996 stating that his services would be terminated on the expiry of one month of the receipt of the letter. There is a mention in that letter of a show cause notice dated 27.3.1996 which the applicant states he never received. The applicant submits that the order of proposed action is illegal, arbitrary and discriminatory as well as actuated by mala fide and extraneous considerations, and prays that the same may be quashed. The respondents in their reply state that the show cause notice was issued and served on the applicant on 10.10.1996 and his thumb impression was also taken in token of receipt of the same in the presence of respondent No.4. As no reply was given by the applicant, his services stood discharged on the expiry of one month's notice. It has also been submitted that the applicant neither made any appeal nor any representation and in these circumstances the OA is liable to be dismissed.

2. When the matter came up on 18.3.1997, pleadings were shown to be complete and the case was listed for possible final hearing on 1.5.1997 in the presence of counsel for both the parties. The respondents were also directed to produce the relevant file in which orders were passed with relevant records at the time of final hearing. When the matter came up on 5.6.1997, the ld. counsel Shri P.S. Mahendru submitted that the relevant records could not be brought and sought further time. On 8.8.1997 when the matter was finally heard, the records were still not brought by the respondents. Considering that there were interim

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directions in the matter ordering maintenance of status quo and also because the matter had been listed for possible final hearing since 18.3.1997, arguments were concluded for disposal of the case in the absence of the relevant file. The prayer made by Shri Mahendru that he be given a fresh opportunity to file an additional and detailed affidavit was also not acceded to considering the time already taken by the respondents. The ld. counsel for the applicant Shri B.S. Mainee submitted that the applicant had been re-engaged as far back as on 20.5.1994 in pursuance of the orders of the Tribunal dated 19.7.1993. The operative part of that judgement is as follows:-

"In view of this statement, it is not necessary for us to pass any further orders in the matter. We direct the respondents to consider the case of the petitioner for re-engagement in preference to his juniors and freshers."

3. The order (A-3) of re-engagement dated 20.5.1994, Shri Mainee pointed out, was also issued in pursuance of the Tribunal's directions. The applicant continued for three years before the impugned letter (A-1) was issued to him on 7.11.1996. The material portion of this letter, as regards reasons for ordering disengagement of the applicant, reads as follows:-

"As per direction of judgement in OA No.1959/1992 you were to be re-engaged in preference to your juniors and outsiders only, but you were re-engaged erroneously ignoring the persons senior to you."

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4. Shri Mainee submitted that the records were available with the respondents and it was for them to check the relative seniority of the applicant. They did so and kept the applicant in their employment for a period of three years. Having passed an order in pursuance of the directions of this Tribunal, they could not now nullify the same. In fact, this would amount to an act of contempt of court, in the reasoning of Shri B.S. Mainee. He also argued that even if there were persons senior to the applicant, the fact remained that even today there are a number of persons who are junior to the applicant and were retained in service, and hence in terms of the order of the Tribunal, the applicant is entitled to continue in service.

5. Shri Mahendru, ld. counsel for the respondents, on the other hand took the short ground that the applicant was not the seniormost of those who were re-engaged and it was on a misunderstanding of the Tribunal's directions that he was re-engaged. Now that the mistake had been discovered, a proper show cause notice had been issued. Since the applicant had failed to reply to the show cause notice, he could not now take the plea that there were persons junior to him still in service. It was his duty to clarify the position for which the show cause notice was issued to him. Having failed to do so and having not even filed an appeal, it was no longer open to the applicant to impugn the order (Annexure A-1).

contd...5/-

6. I have carefully considered the rival contentions. The applicant claims that he never received the show cause notice, though his thumb impression was obtained on a paper. I find however no reason to doubt the version of the respondents that such a show cause notice was given to him. The question however is whether the respondents were justified in ordering the termination of services of the applicant even if no reply was given by him to the show cause notice. The orders of the Tribunal were clear that the applicant was to be engaged in preference to his juniors and freshers. The respondents say that if there were any juniors, then the applicant should have taken the opportunity of the show cause to mention their particulars. I consider that this argument is totally unacceptable. The Tribunal had given a direction to the respondents to re-engage the applicant in preference to his juniors. The burden of ensuring that the applicant was given preference to juniors was upon the respondents and they cannot shift this burden to the applicant. In any case, the service records of all those who were engaged as casual labour by the respondents were available with the respondents rather than the applicant. The respondents cannot escape their responsibility by referring to the non-reply to the show cause notice.

7. The ld. counsel for respondents in support of his case cited the case of BAL KISHAN VS. DELHI ADMINISTRATION & ANR. AIR 1990 SC 100. (Copy taken on record). I have perused this order of the Supreme Court but find that in the facts and circumstances of the present case, the ratio of that order is not applicable

here. In that case, the Constable had been given further promotions overlooking the claims of his seniors. The issue here is not of the seniors of the applicant but of complying with the directions of the Tribunal as regards his juniors.

8. It appears that the respondents are still having persons junior to the applicant in service. The order of applicant's termination of services is therefore liable to be quashed and it is so ordered. The respondents will continue the applicant in service in accordance with the directions of this Tribunal in OA No.1959/1992 so long as his juniors are kept in service. The respondents will however be free to take action to dispense with the services of the applicant in case there is no one junior still in service and in accordance with law.

9. The O.A. is accordingly disposed of as above. No order as to costs.

R.K. Ahooja
(R.K. AHOOJA)
MEMBER (A)

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