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CENTRAL ADMINISTRATIVE TRIBUNAL: PRINCIPAL BENCH

O.A.No.2716/97

New Delhi, this the 5th day of November, 1998

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

Arun Kumar Pathak,
S/o Shri Sahdev Pathak,
R/o T-30/24, Railway Colony,
Minto Bridge, MDLS-II,
New Delhi.

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....Applicant

(By Advocate: Shri U.Srivastava)

Versus

1. Union of India through:
The General Manager,
Northern Railway, Baroda House,
New Delhi.

2. The Dy.C.P.O. (HQ).
Northern Railway, Hq. Officer,
Baroda House, New Delhi.

....Respondents

(By Advocate: Shri P.S.Mahendru)

O R D E R (ORAL)

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

Heard Shri U.Srivastava, ld. counsel for
applicant and Shri P.S.Mahendru, ld. counsel for
respondents.

2. Prayer in this O.A. is for a direction to the
respondents to consider the applicant for his
re-engagement as casual labour in preference to juniors
who have got lesser number of working days as well as for
a direction of regularisation. The second direction
sought is that the name of the applicant be included in
the Casual Labour Live Register.

3. After notice, the respondents admitted that
the applicant had worked as a substitute Bungalow
Khallasi from 1.12.92 to 30.1.94. On the advise of the
Bungalow Officer that he did not work satisfactorily, his

Amended

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services were dispensed with. He was stated to have 'absconded'. It is further submitted that the applicant was not eligible for temporary status on 30.1.94 and he should have completed two years of continuous service and then he was eligible for consideration for temporary status.

4. Ld. counsel for respondents Shri Mahendru urged three further points. First he stated that the order of termination was on 30.1.94 and this O.A. was filed on 17.11.97. The O.A. is clearly barred by limitation. The second point mentioned by him is that the applicant is a resident of Bihar and thus Principal Bench has no jurisdiction. The third point mentioned is that a substitute is only engaged till the regular employee joins and as such, a substitute has no rights.

5. Ld. counsel for applicant on the other hand stated that the applicant is residing in Quarter No.T-30/24, Railway Colony, Minto Bridge, New Delhi. The averment being what it is, both in the preamble to the O.A. as well as in the verification portion, without evidence from the respondent's side, we cannot dispute the factum of residence in Delhi. He might be resident of Bihar but the alleged termination having taken place in Delhi and as he is staying in Delhi, the jurisdiction of this Bench cannot be questioned. With regard to the third point, ld. counsel for applicant has filed the following instructions of the Railway Board:-

Benefits:

- 4.1 Substitutes engaged should be paid regular scales of pay and allowances admissible to the post

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against which they have been appointed irrespective of the nature or duration of the vacancy.

- 4.2 They should be allowed all the rights and privileges as are admissible to temporary Railway employees on completion of four months continuous service.
- 4.4 The conferment of temporary status after completion of four months continuous service in the case of others and three months continuous service in the case of substitute teachers mentioned in paras 4.2 and 3 above does not entitle them to automatic absorption/appointment to Railway service unless they are selected in the approved manner for appointment or absorption to regular posts.

Re-engagement of Substitutes:

- 8.2 When forming panels, Substitutes in question should be allotted seniority by reckoning their previous spells of employment and on the basis of such cumulative aggregate service.
- 8.3 The substitutes who have not been engaged so far will also be considered based on the length of their employment prior to their discharge.

Service Register:

- 9.3 A Register should be maintained for recording the names of all "Substitutes" whenever employed according to the Unit of recruitment e.g., taking Divisions, Workshops, etc. strictly in the order of their taking up employment at the time of their initial engagement. The names of such of those Casual Labours/Substitutes who were discharged from employment at any time after January, 1981 on completion of work or for want of further productive work, can continue to be borne on the Live Casual Labour Register.
- 9.4 If a substitute who was earlier discharged from service on completion of work or on return of the person against whose post

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he/she was engaged as Substitute has not booked again in the preceding two complete calendar years, his/her name should be struck off from the Register." 17

6. On the question of limitation, this Bench has repeatedly held that the right to be enrolled in the Casual Labour Register is conferred under the Rules of the Railway Board. This right enables him to be considered for employment. Whenever a vacancy arises, right to be considered for employment also arises and therefore it is a perennial right and provision of limitation would not apply. Secondly, the right to work and therefore the right to life is a fundamental right and where the infraction of a fundamental right is involved, limitation does not apply. For this reason, I do not agree with the ld. counsel's objections on preliminary grounds. With regard to the main ground, on 13.10.98, on the question whether it was a case of desertion or not, we wanted the original files to be produced. The file is not available today. When an allegation is made of absconding, respondents should prove that by some evidence.

7. The facts are not in dispute. The rules categorically emphasise that a substitute be engaged on regular scale of pay and is allowed all the rights and privileges as are admissible to a temporary railway employee on completion of four months of service. These substitutes, therefore, are even elevated to a higher pedestal than a daily wage labourer in a work charged establishment. The Railway Board's instructions have status and force of law and accordingly the applicant's

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counsel is perfectly in his rights to seek directions in the manner he has prayed for. The argument of the ld. counsel for respondents is that as and when the substitute is discharged on the return of a regular person, his name should be struck off from the register is no doubt part of the rules but that has not happened here. Engaging a substitute for well over one year is not a case of temporarily putting in a person and waiting for the regular incumbent. It is not also part of the pleadings as to who was the regular employee in whose place the applicant had been put in.

8. In this view of the matter and in the absence of records, I am not in a position to give any weight to the contention of the ld. counsel for respondents. In view of the above discussion, I direct the respondents -

- (i) To confer temporary status on the applicant within a period of four weeks from the date of receipt of a copy of this order.
- (ii) To enroll the applicant in the live casual labour register and indicate to him the serial number.

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(iii) Whenever a vacancy arises, he would be considered for engagement in preference to juniors and outsiders.

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

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

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