

# IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

## NEW DELHI

O.A. No. 2390/89  
T.A. No.

199

DATE OF DECISION 25.1.1991.

Shri Badloo	<del>Petitioner</del> Applicant
Shri U.S. Bisht	Advocate for the <del>Petitioner(s)</del> Applicant
Versus	
Union of India through the G.M., Northern Rly. & Another	Respondent
Shri D.P. Kshatriya,	Advocate for the Respondent(s)

### CORAM

The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member.

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *No*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

(Judgement of the Bench delivered by Hon'ble  
Mr. D.K. Chakravorty, Administrative Member)

The applicant, who has worked in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the respondents be directed not to prevent him from performing his duty, and that he should be paid wages w.e.f. 14.9.89.

2. The case of the applicant in brief is that he has worked as a Khalasi in the Northern Railway in different spells as under:-

- (a) From 12th February, 1984 to 14.8.1984, continuously ..... 178 days

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- (b) From 6th February, 1985 .... 35 days  
to 12.3.1985
- (c) 15.4.1985 ..... 1 day
- (d) 3.5.1985 to 3.8.1985 ..... 93 days
- (e) 24.4.1986 to 4.8.1988 ..... 103 days.

3. The respondents issued an office order on 13.9.89 wherein it is stated that on the expiry of sanction, the applicant, along with another Khalasi who had been working on the project of "Provision of additional facilities at Atari", were being spared in the parent unit (PW1/FZR) for absorption against the existing vacancies. In the said office order, it has been mentioned that the applicant has worked from 12.9.1988 to 13.9.1989 for a period of 367 days, and that he had attained the status of C.P.C. scale.

4. The applicant was not taken on duty on his reporting for duty to PW1 Ferozepur. The applicant has produced photocopy of a letter dated 8.11.1989 written by the Headquarters Office, Baroda House, New Delhi, addressed to DSE/Coordination, Northern Railway, Ferozepur, wherein it has been stated that having been spared from New Delhi, the persons mentioned therein, including the applicant, reported to the concerned Inspector in-charge and on being not absorbed by them, they have again reported to the Headquarters office. Therefore, he was requested

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to look into the matter and it was further stated that they may be accommodated against the existing vacancies on the Ferozepur Division. The learned counsel for the applicant drew our attention to the initials of the recipient of the letter at Ferozepur on 9.11.1989 at the left-hand margin of the letter.

5. The applicant has not been paid his pay and allowances by the respondents after he was spared from New Delhi w.e.f. 14.9.1989.

6. The respondents have stated in their counter-affidavit that the applicant has worked in different spells from time to time at different places according to his own liking and left the job on his own accord from the Office of PW1, Ferozepur, on 14.8.1984. He again joined that office on 6.2.1985 and left on 15.4.1985 on his own accord. In view of this, PW1, Ferozepur, is not liable to re-employ the applicant as a Casual Labourer now. After leaving the job from the Office of the PW1, Ferozepur, the applicant took job of a temporary Waterman from 24.4.1988 to 4.8.1988 at Ferozepur Railway Station. Thereafter, he joined Atari work as Casual Labourer Khalasi on 12.9.1988. The respondents have contended that he did not work under the Northern Railway, New Delhi, from 16.4.1985

to 11.9.1988. While working at Atari Works, the applicant was medically examined for B-1 category for awarding CPC scale, when he was not found medically fit in that category, being colour blind but he was declared fit in the lower category, i.e., B-2 category. In this category, only a few posts of light job exist, i.e., Safaiwala, Waterman, Peon, Attendant, etc. These vacancies do not normally fall under the General Manager, Northern Railway, New Delhi, or SEN/BD1, Northern Railway, New Delhi.

7. The respondents have stated that after he was relieved on 13.9.1989, the applicant never reported orally or in writing at Ferozepur. This is, however, disproved by the initials on the letter dated 8.11.1989, mentioned above.

8. The respondents have contended that the applicant was engaged purely on temporary post of short duration and he was spared after the completion of work. Thereafter, he did not report orally or in writing at Ferozepur.

9. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. Admittedly, the applicant had acquired temporary status and this is borne out from the office order dated 13.9.1989, wherein it has been stated that

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he has worked for 367 days at a stretch. The services of a Casual Labourer who has acquired temporary status, cannot be dispensed with without giving a notice to him. No such notice was given to him in the instant case. On this ground alone, the non-engagement of the applicant from 14.9.1989, is not legally sustainable.

10. The contention of the respondents that the applicant abandoned the service on his own accord, is not convincing. In the case of abandonment of service, the employer is bound to give notice to the employee calling upon him to resume his duty and also to hold and inquiry before terminating his services on that ground (vide G. Krishnamurthy Vs. Union of India & Ors., 1989 (9) A.T.C. 158; Gauri Shankar Vishwakarma Vs. Eagle Industries (P) Ltd., 1988 (1) L&N, 259).

11. Consequently, we do not agree with the contention of the respondents that the applicant abandoned service at any point of time.

12. There is also intrinsic evidence on record to indicate that the authorities of the Northern Railway at Ferozepur did not accommodate the applicant against any existing vacancy at the Ferozepur Division.


13. The respondents have stated that the applicant has been found medically fit for B-2 category only. In such a case, it is incumbent on the respondents to provide

alternative employment to the applicant which is suitable to his health condition (vide Yash Pal Kohli Vs. Union of India & Others, A.T.R. 1989 (1) C.A.T. 1).

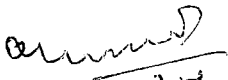
13. In the conspectus of the facts and circumstances of the case, we partly allow the application and order and direct as follows:-

- (i) The respondents are directed to engage the applicant as a Khalasi or any other suitable post in the Northern Railway in any of the available vacancies, consistent with his fitness.
- (ii) In the facts and circumstances of the case, we do not direct payment of any back wages to the applicant.
- (iii) The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

There will be no order as to costs.

  
(D.K. Chakravorty)  
Administrative Member

25/1/89

  
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(P.K. Kartha)  
Vice-Chairman(Judl.)