

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW DELHI

O.A. No. 1339/
T.A. No.

1988.

DATE OF DECISION July 3, 1989.

Shri Kanwar Pal

Petitioner

Shri B.S. Mainee,

Advocate for the Petitioner(s)

Versus

Union of India & Ors

Respondent s

Shri P.S. Mahendru,

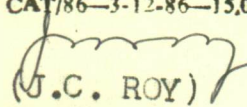
Advocate for the Respondent(s)


CORAM :

The Hon'ble Mr. Justice Amitav Banerji, Chairman.

The Hon'ble Mr. J.C. Roy, Member (A).

1. Whether Reporters of local papers may be allowed to see the Judgement?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement?
4. Whether it needs to be circulated to other Benches of the Tribunal?


(J.C. ROY)
MEMBER (A)


(AMITAV BANERJI)
CHAIRMAN

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH

Regn. No. OA 1339/88

Date of Decision July 3, 1989.

Shri Kanwar Pal

.. Applicant

vs.

Union of India & Ors

.. Respondents

Coram

Hon'ble Mr. Justice Amitav Banerji, Chairman

Hon'ble Mr. J.C. Roy, Member (A)

For the Applicant

.. Shri B.S. Mainee, counsel

For the Respondents

.. Shri P.S. Mahendru, counsel

Judgement of the Bench delivered by Hon'ble
Mr. Amitav Banerji, Chairman.

The short question in this Application is whether the Applicant is entitled to be reinstated in Railway Service Grade 'D' post.

The Applicant's case in brief is that he was working intermittently from 1971 as a casual labour but was paid regularly from 10th April, 1986. He had passed the Medical Examination and Fitness Certificate was issued to him. He thus acquired 'temporary status'. On 25th May, 1986, he had been transferred from Hathras to Aligarh under the Permanent Way Inspector, Northern Railway. He was discharged from service on or about 22.12.1986 by the Permanent Way Inspector. He was neither given any notice nor were any retrenchment benefits given to him. He claimed that he was not liable to be discharged from service without holding disciplinary proceedings under the Discipline and Appeal Rules and his termination was bad in law. He

has, therefore, prayed for the following reliefs:

- (i) to quash the impugned verbal order and to direct the respondents to take the Applicant back in service, treating him in continuous service from the date of his discharge with all the consequential benefits.
- (ii) to direct the respondents to give the arrears of the salary, seniority, promotion, etc. as if the Applicant had not been discharged from service.
- (iii) to grant other reliefs that may be deemed fit.

The respondent Railways have taken the stand that the Applicant was never discharged nor removed from service by any written or verbal order. He had simply deserted the post and did not report for work. Secondly, he has not been able to give the date of termination and has made a vague allegation that on or about 22.12.86 the Permanent Way Inspector called the Applicant in his office and discharged him from service. Thirdly, the Applicant had not made any representation and the allegation to the contrary in paragraph 6.10 was denied as incorrect. It was stated that he had not exhausted all the remedies approaching before the Tribunal. He had not filed any statutory appeal against the impugned order of termination either. On this ground too, the Application was barred under Section 20 of the Administrative Tribunals Act.

We have heard Shri B.S. Mainee, learned counsel for the Applicant and Shri P.S. Mahendru for the Respondents.

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According to the learned counsel for the Applicant, a railway servant in Group 'D' who has acquired the 'temporary status' cannot be discharged at will. He is entitled to be considered for selection as a substitute and ultimately to be confirmed as Group 'D' railway servant. The Applicant had acquired that status and was, therefore, not liable to be discharged either orally or by a written order of the Permanent Way Inspector. He had reported for work subsequently but had always been asked to wait. This amounted to discharging him from service which was not permissible in his case. As far as the stand taken by the respondents that he had not made any representation, the learned counsel referred to two papers at Annexures A2 and A3. The first one (Annexure A-2) was addressed to the Assistant Engineer, Northern Railway, Aligarh and copies to the Divisional Engineer, Northern Railway, Tundla and the Divisional Railway Manager, Northern Railway, Allahabad. The second letter (Annexure A-3) ~~was~~ dated 4.2.1988 was addressed to the Minister for Railways and copies to the GM, Northern Railway, Baroda House, New Delhi and the Divisional Railway Manager, Northern Railway, Allahabad (UP). In this letter the Applicant had pointed out that he was receiving regular pay scale and temporary status and still no notice or inquiry was made and he was removed from service. The learned counsel urged that he did not receive any acknowledgement or reply to these letters.

The Applicant has not stated whether these letters were sent by registered post or in any other way. The respondents have denied having received these letters. Learned counsel for the respondents urged that the Applicant had not been inflicted any penalty of punishment. It was a case in which the Applicant had absconded and had not reported for duty from 13.9.1986. Even the representation (Annexure A-2) is dated 13.9.1987 i.e. exactly the same date a year earlier when the Applicant started being away from service.

The first question to be considered is whether the Applicant had acquired the status of a temporary railway servant. The answer to this is that if he was given the pay scale of a temporary railway servant and also sent for medical examination for fitness, it indicates that he had been granted 'temporary status'. That being so, he could only be discharged after a proper enquiry i.e. by following the Railway Servants (Discipline & Appeal) Rules, 1968. There is nothing on the record to show that any such inquiry was ever held. As a matter of fact, the stand taken by the respondents is that there was no order of discharge for the termination of the employee and he had himself absconded and, therefore, was struck off the rolls.

A point that arises for consideration is can the services of a railway servant who has acquired 'temporary status' be terminated for his continuous absence without following the procedure of law? Would it not be necessary

to inquire into the matter, formally at least, before striking off his name? In the case of a casual labour, his absence is sufficient to terminate his services without giving him any order in writing or holding any inquiry but when the casual labourer in the railways works either for 120 days or 180 days or 360 days on 'open line' or 'on a project' or as a general casual labourer, he acquires 'temporary status' i.e. he is granted certain privileges of a temporary railway servant under the provisions of Railway Servants (Discipline and Appeal) Rules. Once a person acquires the status of a temporary railway servant, his services cannot be terminated without holding a formal inquiry. It is clear that no such proceedings were held.

The respondents' stand is that the Applicant had absconded and absented himself continuously from 13.9.86 and as such, there was no question of taking him back. That may be a good ground for discharging him from the railway service but after a formal enquiry. That would require a notice to be sent to the Applicant. This has not been done in the present case.

It is not possible on the basis of the material on the record to arrive at a conclusion whether the Applicant had sent the representations (Annexures A-2 & A-3) as claimed by him. It is also not certain whether he sent them by registered post for he has neither made a reference

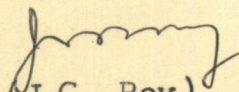
to the mode of despatch of those representations nor has he given any evidence of their being sent by registered post. If the representations had been correctly addressed and sent under registered post, a presumption of having mailed the representations and their receipt by the respondents would be presumed under Section 27 of the General Clauses Act subject to the rebuttal by the respondents. In the present case, no such material had been placed before us. In regard to the question of no appeal having been filed by the Applicant, it is pertinent to mention that there is no written order of his discharge or termination which would give rise to a right of appeal. Secondly, it cannot be said that since the right of appeal having not been availed, the Applicant is stopped from claiming any relief from the Tribunal in view of the provisions of the Section 20 of the Act.


However, considering all the facts and circumstances of the case and the nature of dispute, we are of the view that justice demands that we direct the respondents to consider his two alleged representations (Annexures A2 & A3) and then pass appropriate orders, as may be deemed fit and proper. We say this because we feel that if the above representations were received by the railway authorities, they should have proceeded to consider them and pass some orders. If the representations were sent and received, and admittedly there was no reply to it, it would mean

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that the Applicant had approached the Railways by way of representations and after waiting sufficiently for a long time, he had approached the Tribunal. The consideration and the disposal of the aforesaid representations would constitute exhaustion of all possible remedies and the bar of section 20 of the Act will not come into play. We further feel, in a matter where the Applicant who has been granted 'temporary status' in Group 'D', the respondent railways must provide for rules as to how their services can be terminated in case they absent themselves from service for a sufficiently long period of time.

For the reasons indicated above, without passing any order on the merits, we direct the respondents to consider the representations and proceed in accordance with law. There will be no order as to costs.


(J.C. Roy)
Member (A)
3.7.1989.


(Amitav Banerji)
Chairman
3.7.1989.

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