

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL NEW DELHI

6

O.A. No. 1440/88
T.A. No.

199

DATE OF DECISION 11.10.1993

<u>Shri Umed Singh</u>	Petitioner
<u>Shri D.N. Goverdhan</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Ors.</u>	Respondent
<u>Shri P.S. Mahendru</u> Proxy for	Advocate for the Respondent(s)
<u>Shri D. S. Mahendru</u>	

CORAM

The Hon'ble Mr. J.P. Sharma, Member (Judl.)

The Hon'ble Mr. B.K. Singh, 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?

(ORAL) JUDGEMENT

(By Hon'ble Mr. J.P. Sharma, Member)

The applicant was engaged as a casual labourer w.e.f. 5.9.1979 in Bikaner Division of the Northern Railway and was discharging the duties in CTR work at Sirsa Sub-Division. After the completion of work, the applicant, along with 181 C.P.C. Casual Labourers, was discharged. By the order dated 4.5.1987, the DRM Office, Northern Railway, Bikaner, wrote to the Branch Secretary, N.R.M.U., that these casual labourers declared surplus,

are to be distributed to each of the AEN of Hanumangarh/
SOG/RE/Bikaner/RTGH. Another memo. was issued on 7.7.1987
by AEN, Northern Railway, Sirsa, regarding verification
of the Casual Labour Card, etc., on the subject of
absorption of C.P.C. casual labourers declared surplus
in Sirsa Sub-Division. By the letter of September, 1987
(Annexure R-3), AEN-1, Hanumangarh, was directed to
absorb the applicant, Shri Umed Singh, as a casual labourer
along with another person.

2. The case of the applicant is that in spite of
running from pillar to post after discharge from CTR, he
was not engaged. He filed the application on 3.8.1988
contending that he had acquired temporary status and that
the respondents be directed to absorb him on permanent
basis w.e.f. 1979, when he joined as a casual labourer
and further be absorbed as a Gangman in view of the letter
of October, 1987 with all benefits of arrears, pay-scale,
etc.

3. The respondents ^{contested} ~~decided~~ the application, but
admitted in the reply in para.3.1 that the applicant
did work as a casual labourer on different occasions in
different spells and the last spell was from 27.8.1984
to 14.3.1987. It is further stated that after the
completion of CTR work at Sirsa, the applicant was

discharged and in terms of Section 25 (f) of the I.D. Act, compensation was arranged, which the applicant refused to accept. He, thereafter, was directed to report to AEN, Hanumangarh on 7.7.1987. There, he was directed to report to AEN, SOG and was again directed to report to AEN, Bikaner, and was again directed to report to Bikaner by D.S.E. The applicant remained in touch with the AEN, Hanumangarh and not with AEN, Sirsa, (respondent No.4). Since the applicant was not on the rolls of respondent No.4, no pay was charged for him. A rejoinder has also been filed by the applicant, reiterating the averments made in the application. By the order dated 17.11.1988, the respondents were directed to re-engage the applicant on or before 19.12.1988.

4. We have heard the learned counsel for both the parties at length. The learned counsel for the applicant admitted that since December, 1988, the applicant has been engaged and he has no grievance now thereafter. The only relief prayed ^{is} for the grant of relief of arrears of pay etc. and in this connection, he has referred to the letter issued by the Division Office, Bikaner dated 7.6.1988. The said letter is quoted below:-

"No. 161/EE/CL/X

Divisional Office
Bikaner

- (1) DEN/RE& DE(MG)
- (ii) All AENS on BKN Dn.

dt. 07/00/88

Subject:- C.P.C. Labour made surplus by
AEN/SSA.

182 C.P.C. Labour were rendered surplus by AEN/SSA and labour was diverted to various sub-divisions. Their period from the date of surplus is decided as under:-

- (a) Period from 5.5.87 to the date of joining with respective AENS/PWIs is to be treated as on duty.
- (b) Period upto 5.5.87 will be treated as leave due.

Necessary payment as admissible be arranged to labour accordingly.

Sd/-Divisional Supdg.
Engineer, N.Rly. Bikaner

5. A perusal of the aforesaid letter undisputedly grants certain benefits to the applicant of the pay w.e.f. May, 1987 till the date of joining with respective AEN/PWI and also that the period is to be treated as period on duty. The learned counsel for the respondents, however, pointed out that in the array of respondents, the D.R.M., Bikaner has not been made a party and instead, Divisional Personnel Office, Northern Railway, has been made a party. On the face of it, the argument is plausible, but when we move to the counter filed by the respondents through the earlier counsel, Shri O.N. Moolri, we find that on behalf of the respondents, AEN, Northern Railway, Sirsa, has verified the contents at Bikaner. Though, the array of respondents appears to be irregular and not illegal

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as General Manager, Northern Railway, is already a party as respondent No.3, this irregularity stands removed by the right person coming to contest the application by filing a verified counter to the various averments and also detailing and dilating the information relevant to the issues. The circuitous manner in which the applicant was used as a shuttle cock tossed between Hanumangarh, Bikaner, SOG, and Sirsa, could only be from the records of the Office of the Divisional Engineer, Bikaner. The author of the letter referred to above and quoted in full, is the Divisional Suptg. Engineer, Northern Railway, Bikaner. Thus, the objection by the learned counsel for the respondents that DRM, Bikaner, was not made a party, has no basis and substance to non-suit the applicant from pressing the claims in the application.

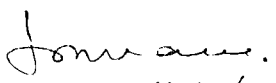
6. Regarding the payment of salary for the period from 5.5.1987 till the date the applicant joined, has already been considered and a decision arrived at by the above quoted letter and what remains is that the compliance thereof. Since this application was filed in ignorance of that letter which was issued only in June, 1988 and was not conveyed to the applicant, it does not come in the way of the applicant getting the relief of arrears of pay, etc.

7. The respondents, in their counter, also do not deny the fact that the applicant did not report for duty. In fact, it is stated that the applicant reported in July, 1987 and a perusal of para.6(vi) goes to show that illiterate persons like casual labourers within a period of two months, were directed to various Sub-Divisions, i.e., Bikaner, Hanumangarh, SOG and Sirsa. Thus, there is no fault on the part of the applicant and it cannot be concluded that the applicant did not like to join the duty, but, in fact, it is the respondents who kept him out of ^{Job} ~~run~~. In such a situation, the order passed by the Divisional Suptg. Engineer is just and fair order of allowing the wages and salary to those casual labourers who are declared surplus on account of completion of the CTR project.

8. The application, therefore, is partly allowed with a direction to the respondents to pay the applicant the due wages, etc., as a casual labourer at the same rates which he was getting earlier, from 5.5.1987 till the date of his joining. If the wages have already been paid for any period which is covered by the above direction, then the wages need not be paid and only that period for which the same remain unpaid, shall be paid to the applicant within three months from the date of communication of this.

order. The case of the applicant will also be considered for regularisation of his services in his turn. No costs.


(B.K. Singh)
Member(A)


11.10.43
(J.P. Sharma)
Member(J)