

6

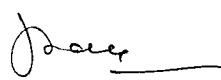
CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

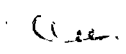
Regn. No. O.A. 1119/1988. DATE OF DECISION: 9-11-1990.

Shri Ram Asrey Applicant.
Shri Ashok Agarwal Counsel for the applicant.
V/s.
Northern Railway Respondent.
Shri P.S. Mehandru Counsel for the Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

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.*


(J.P. SHARMA)
Member (J)


(P.C. JAIN)
Member (A)

11

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

Regn. No. C.A . 1119/1988.

DATE OF DECISION: November 9, 1990.

Shri Ram Asrey	Applicant.
Shri Ashok Agarwal	Counsel for the Applicant.
	V/s.	
Northern Railway	Respondent.
Shri P.S. Mehandru	Counsel for the Respondent.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).)

JUDGEMENT

The applicant, who was employed as a Gangman sometime in 1985/1986 and ~~was~~ ^{was} ~~presently~~ posted at Safdarjang Railway Shed, Hazrat Nizamuddin Railway Station, New Delhi, has filed this application under Section 19 of the Administrative Tribunals Act, 1985, on the plea that his services have been terminated by way of refusal of duties since 27.4.1988, though no written order of termination of his services has been issued by the respondent. He has prayed for (1) that the action of the respondent be declared illegal, invalid and unconstitutional; and (2) that he be deemed to be in continuous employment and is entitled to all the consequential benefits.

2. The facts and the issues involved in this case fall in a very small compass. The applicant has stated in para 6.B that he is a permanent employee. This fact has been admitted in corresponding para of the counter-affidavit of the respondent. The issue is that, according to the applicant, he has not been allowed to perform his duties while, according to the respondent, the applicant is absenting from duty unauthorisedly since 28.4.1988. It is also stated in the counter-affidavit that the applicant never reported for duty since 28.4.88 when he deserted.

Cia.

12

his duties unauthorisedly. It is admitted by the respondent that there is no termination of the service of the applicant. It is also stated by the respondent that the applicant has not availed^{of} the departmental remedies in accordance with the provisions of Section 20 of the Act *ibid*. According to the applicant, he was called by Mr. Massie and Mr. Singh, PWIs of Nizamuddin Railway Station on 27.4.1988 in their office and he was given a letter to be handed over to the officials at Tuklakabad Railway Station. It is further stated that he was told that this letter was in regard to his transfer from Nizamuddin Railway Station to some other place like Paharganj. He went to Tuklakabad Railway Station with the said letter, but no official was found there and he accordingly came back to Nizamuddin Railway Station and complained to the above two officials that the letter was not in connection with his transfer but related to one Shri Ram Sumer. It is further pleaded that on hearing this, these two officials became annoyed with him and started abusing him and badly manhandling him. He was also refused duties since then and whenever he approached them, these officials started threatening him of dire consequences. It is also stated that since 27.4.1988, he has been reporting for duty on each working day, but he has not been allowed to mark his attendance and to perform his usual duties. In these circumstances, it amounts to termination of his services.

3. We have perused the material on record and have also heard the learned counsel for the parties. The material before us in this case is far from adequate to enable us to come to any conclusion whether the contention of the applicant that he continued to report daily for work but was neither allowed to mark attendance nor to perform his duties is correct, or the contention of the respondent

Q.L.

that the applicant has been absenting himself unauthorised is correct. The respondents admit in their counter-affidavit that no order of termination of services of the applicant has been passed by them. Further, there is neither any averment in the counter-affidavit nor in oral statement at the bar that the respondent had issued any show cause notice to the applicant or initiated any disciplinary proceedings against him for the alleged unauthorised absence from duty. On the other hand, the applicant has filed two letters dated 3.5.1988 and 17.5.88 (Annexures 'A' and 'B' to the O.A.) from his Advocate in which apart from referring to the averments in the application, it is stated that the applicant should be allowed to perform his usual duties. Admittedly, there is no reply to these two letters. These two letters which are in the nature of legal notices, cannot be said, as has been argued by the learned counsel for the respondent to be availment of departmental remedies available to the applicant under the rules. However the fact remains that immediately after 27.4.88, the applicant did convey to the Divisional Personnel Officer and the General Manager, Northern Railway, vide Annexures 'A' and 'B' respectively that he was not being allowed to perform his duties and he be allowed to do so. If it were a case of unauthorised absence, as stated by the respondent, in all fairness, the respondent should have replied to these two letters and in the public interest also initiated necessary disciplinary action against him. In the absence of any such action, it is difficult for us to hold that the applicant was deliberately absenting himself from his duties. For determining the correct position on this account, and for taking appropriate action, a proper inquiry under the Railway Servants (Discipline & Appeal) Rules would appear necessary. In view of what has been stated

Uia.

above, it cannot be taken to be a case of desertion / abandonment of service.

4. Even a casual worker under the employment of Railways is accorded temporary status after he puts in continuous service on the same or similar work for a period of 120 days under the Ministry of Railways (Railway Board) circular No.E(NG)II-77/CL/46, dated 8.6.81. In this case, the respondents have admitted that the applicant was a permanent employee. He cannot, therefore, be removed from service without taking action in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968. Unless it is done, it would be violation of Article 311 (2) of the Constitution.

5. In view of the foregoing discussion, the application is disposed of in terms of the following directions: -

The applicant shall report to his appointing authority within 15 days of the date of this order and the respondents shall allow him to join duty on the post on which he was appointed on the conditions hitherto applicable. Respondents would be free to initiate, if they so wish, within a period of two months from the date of the order, appropriate disciplinary action for the alleged misconduct of unauthorised absence from duty in accordance with the rules. Such proceedings, if initiated, shall be completed within a further period of four months. However the period of absence from 27.4.88 / 28.4.88 till the date the applicant rejoins his appointment, will be regulated in accordance with the orders which may be passed in the aforesaid proceedings. However, if the respondents choose not to initiate any disciplinary action, as aforesaid, the applicant shall be treated as on

On

duty during the aforesaid period and he shall be entitled to pay and allowances for the above period minus what he might have earned elsewhere during this period, as also to the seniority.

6. In the facts and circumstances of the case, the parties are left to bear their own costs.

J. Sharma
(J.P. SHARMA)
Member (J)

P.C. Jain 5/11/94
(P.C. JAIN)
Member (A)