

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

Regn. No. OA 1684/87

Date of decision: 30.3.1990.

Shri Jagir Ram

....Applicant

Vs.

Union of India through its
Secretary, Ministry of
Railways & Others

....Respondents

For the Applicant

....Shri Sanjeev Madan,
Counsel

For the Respondents

....Shri O.N. Moolri,
Counsel

CORAM:

THE HON'BLE MR. P.K. KARTHA, VICE CHAIRMAN(J)

THE HON'BLE MR. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the judgment? Yes
2. To be referred to the Reporters or not? No

(The judgment of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice Chairman(J))

The applicant, who had worked as a casual labourer in the Northern Railway filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying for the following reliefs:-

- (i) to direct the respondents to include his name in the live casual register;
- (ii) to engage him in accordance with his longevity of service;
- (iii) to treat him on duty on the dates he was not employed due to artificial breaks;

(iv) to reinstate him with full back wages and continuity of service; and

(v) to treat him as regular from the date of his joining.

2. The facts of the case in brief are that the applicant was employed as a casual labourer on 15.4.1978 and he continuously worked till June, 1985 for a total period of 319 working days. Thereafter, he has not been engaged. He has also produced the original service card issued to him to substantiate the period of service put in by him as claimed in the application (vide pages 26 to 30 of the Paper-Book).

3. The respondents have stated in their counter-affidavit that the applicant has not worked continuously during the above mentioned period. They have also stated that they are not making any fresh recruitment and as such, the applicant cannot be appointed. His name appears in the live casual register of the P.W.I., Chandigarh. According to them, his services were not dispensed with. Instead, he left the service of his own accord and he did not turn up to do the duty.

4. We have carefully gone through the records of the case and have heard the learned counsel of both parties. The fact that the applicant has worked for 319 days from 15.4.1978 to June, 1985 is borne out from the photocopy of the casual labour card produced by him. The stand of the respondents is that the applicant abandoned service.

5. In our judgment dated 16.3.1990 in OA 78/87 (Beer Singh Vs. Union of India & Others) we have considered the legal position in regard to abandonment of service as enunciated by the Supreme Court in various decisions. The question whether a casual labourer has abandoned the service or not would depend on the facts and circumstances of each case. The employer is bound to give notice to the employee in such cases calling upon him to resume his duty. In case the employer intends to terminate his services on the ground of abandonment of service, he should hold an inquiry before doing so.

6. There is nothing on record to indicate that the applicant voluntarily abandoned the service, as alleged by the respondents. No notice was issued to him calling upon him to resume duty. No notice was issued to him before terminating his service. No inquiry was held against him.

7. In the light of the forgoing, we hold that disengagement of the service of the applicant is not legally sustainable. We, therefore, order and direct as follows:-

(i) The respondents shall appoint the applicant as casual labourer in the zone in which he was working, failing which anywhere else in India depending on the availability of work.

(ii) The applicant would be entitled to the benefits and privileges to which a casual labourer acquiring temporary status is entitled to.

(iii) In the facts and circumstances of the case, we do not make any order as regards payment of backwages to the applicant. We, however, direct that the service put in by him from 15.4.1978 onwards will count for his seniority as casual labourer.

(iv) The respondents shall comply with the above directions within a period of three months from the date of communication of this order.

(v) The parties will bear their own costs.

Dikshen
(D.K. CHAKRABORTY)

MEMBER (A)

30/2/1980

Bennur
30/3/90

(P.K. KARTHA)
VICE CHAIRMAN (J)