

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI.

OA.1946/87

Date of Decision:12.05.1993

Shri Ishak Applicant

Versus

Union of India Respondents

Shri B.S. Mainee Counsel for the applicant

Shri O.P. Kshatriya Counsel for the respondents

CORAM: The Hon. Mr. A.B. GORTHI, Member(A)

The Hon. Mr. C.J. ROY, Member(J)

J U D G E M E N T (Oral)

(delivered by Hon. Member(A) Shri A.B. GORTHI)

The applicant, who was working as a casual labourer in the Northern Railway, has alleged in this application that his services were terminated without any justification.

2. The applicant has stated that he worked initially for a period of 175 days under the Permanent Way Inspector (PWI), Bhatinda. A certificate purporting to have been issued by the said PWI is at Annexure-I to the application. Later, keeping in view, the fact that he worked in the Railways in 1978, he was reengaged in January 1981. Ever since, he worked continuously till November 1986, when he was not allowed to perform duties any more. The

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contention of the applicant is that, having worked for more than 4 years continuously, he acquired temporary status, and that the respondents were not justified in terminating the services of the applicant in the manner, in which they did.

3. The respondents in their reply affidavit have disputed most of the facts stated by the applicant. According to the respondents, the applicant never worked under PWI, Bhatinda in 1978. This fact, however, came to their knowledge much later. In the meantime, based on the casual labour card, produced by the applicant, he was reengaged as a casual worker on 23.6.82 and not in January 1981, as stated in the application. The applicant, having worked continuously for more than 4 years, the respondents initiated action to screen the applicant for regular absorption. It was at that time, when the casual labour card submitted by the applicant, was sent for verification, it came to their knowledge, that the said card was fictitious and that the applicant had never worked under PWI, Bhatinda in 1978. The respondents stated that suddenly w.e.f. 23.11.86, the applicant himself, stopped reporting for work. The respondents have further stated that the applicant was not accorded the scale of pay of a temporary servant but admittedly the applicant was receiving the pay at the rate of 1/30 of the pay scale. Finally, the

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respondents took the plea that the application filed in Delhi was without jurisdiction, as the applicant was employed in Hathras(U.P.)

4. We have heard the learned counsel for both parties and perused the documents placed on record. At the very outset, we would like to state that on the question of jurisdiction, Rule-6 of the Central Administrative Tribunal (Procedure) Rules, 1985, as it stood prior to its amendment in 1988, allowed filing of the application either with the Registrar of the additional Bench, within whose jurisdiction the applicant is posted for the time being or with the Registrar of the Principal Bench. As this application was filed prior to the date of amendment, it was rightly admitted for adjudication before the Principal Bench.

5. Shri B.S. Mainee, learned counsel for the applicant vehemently contended that if the allegation of the respondents is that the applicant was guilty of mis-conduct, his services could have been terminated only after an enquiry under the Railway Servant (Disciplinary and Appeal) Rules. In the instant case, neither the enquiry was held nor even a prior notice was given to the applicant, calling upon him to show cause, as to why, his services should not be terminated. The learned counsel for the applicants further disputed the contention of the respondents that the applicant himself stopped reporting for work.

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We are of the view, that the applicant having worked continuously for more than 4 years, would have no reason, whatsoever, to stop reporting for work and keeping in view, the facts of the case, it is more probable that the services of the applicant were orally terminated on the ground of his producing a bogus casual labour card. Admittedly, the applicant acquired temporary status for worked with the Railways for over 4 years. As to the significance of acquisition of temporary status by an employee, the law is well settled. We may refer to the case of Ram Kumar Versus Union of India, 1987(5) ATC 404, wherein, it was spelt out clearly, that the services of such an employee could be terminated, only after a notice and not otherwise. In the instant case, the so called enquiry held to ascertain whether the casual labour card produced by the applicant was genuine or not, was done behind the back of the applicant and that too in a very casual manner. Some official has merely endorsed a note on the casual labour card to the effect that the signature of the PWI and the stamp on the casual labour card were both fictitious.

6. In these circumstances, there can be no doubt that the respondents' action in terminating the services of the applicant w.e.f. 23.11.86 cannot be said to be legally in order.

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7. As regards the contention of the respondents that the applicant remained absent without leave even in such a contingency, the circumstances of his absence should have been enquired into, before taking any action against the applicant.

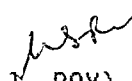
8. It has been held by the Hon. Supreme Court in Jai Shankar versus State of Rajasthan AIR 1966 (SC) 492, that there cannot be any automatic termination of service on account of absence without leave or over-stayal of leave.

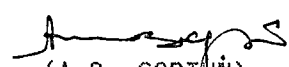
9. On 19.5.88, this Tribunal granted an interim relief to the applicant with a direction to the respondents to take him back in service on a provisional basis. Consequently, he reported for duty and is continuing in service. However, between the period 23.11.86 to 19.5.88, he did not work with the respondents. Whether he was absent or whether his services were terminated, is a matter, which could be established after an enquiry. As the applicant is already taken in service, this application is disposed of, with a direction to the respondents to retain him in service. It is open to them to initiate disciplinary action for the alleged misconduct of producing bogus casual labour card or for the alleged absence without leave in accordance with the rules. We, further, direct that the applicant will not be entitled to back wages for the period when he did not perform any duty i.e. from 23.11.86 to 19.5.88. We, may make it clear that the services rendered by the

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applicant from the date of his engagement on 23.6.82 will reckon for the purpose of seniority and regularisation, if any. There will be no order as to costs.

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(C.J. ROY)  
MEMBER(J)  
12.05.1993

  
(A.B. GORTY)  
MEMBER(A)  
12.05.1993