

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH
NEW DELHI.

REGN.NO. O.A. 956/87.

DATE OF DECISION: 2.11.1992.

Ved Prakash.

..Petitioner.

Versus

Union of India & Ors.

..Respondents.

CORAM:

THE HON'BLE MR. JUSTICE V.S. MALIMATH, CHAIRMAN.
THE HON'BLE MR. I.K. RASGOTRA, MEMBER(A).

For the Petitioner.. Shri B.S. Maine, Counsel.

For the Respondents. None.

JUDGEMENT (ORAL)

(By Hon'ble Mr. Justice V.S. Malimath,)
Chairman

This petition was filed by the petitioner on 2.7.1987 complaining about the termination of his service and praying for his reinstatement as a Khalasi. The petitioner's case is that he was appointed as a casual labourer and was granted temporary status w.e.f. 28.8.1982. According to the respondents, he acquired temporary status on 15.9.1982. The petitioner appears to have been absent on the ground of illness from 24.10.1983. He reported to duty after he became well on - 30.11.1983 on the strength of certificate issued by a private medical practitioner. This was not acceptable to the authority and he was called upon to produce the medical certificate by the concerned Railway doctor. This was also produced by the petitioner whereby he was declared fit for duty. However, he was not allowed to resume duty by the Supdt/C&W having regard to the fact that the period of absence was more than 30 days. Whereas the petitioner says that he reported for duty, but he was not given an order of posting, the stand

taken by the respondents is that he did not report to duty and as such did not avail of the opportunity that was given to him to resume duty. The matter also appears to have been taken up by the labour union. The minutes of the meeting dated 19th and 20th February, 1987 shows that the petitioner remained unauthorisedly absent from 24.10.1983 to 2.12.1983 and that he was subsequently declared fit by the concerned Railway medical authority whereupon he was directed to secure the posting from DRM as the period of absence exceeded 30 days. Such a letter was given in favour of the petitioner. He did not turn up till date nor was any appeal made by him so far. It is further stated that he was appointed as casual labour and he did not turn up being not interested in service and so he was deemed to have resigned. The clear indication is that the petitioner himself was not interested and did not avail of the opportunity given to him to resume duty. The same question was again a subject matter of subsequent meetings held on 22nd and 23rd April, 1987 wherein it is stated that the appeal filed by the petitioner was barred by time. It is further noted that the petitioner was involved in getting the employment by producing bogus labour card which was detected by the vigilance. Having regard to this statement, Shri Maine learned counsel for the petitioner, submitted that the authorities have been shifting their stand from time to time. He maintained that the petitioner having been accorded temporary status in the year 1982, his services could not have been terminated merely on the ground of absence without holding a proper disciplinary inquiry in this behalf. As no such inquiry was held, it was submitted that the authorities could not treat the petitioner as having lost his service.

2. In the reply filed by the respondents, the stand taken is that the authority has terminated his service on the ground that

the petitioner himself did not report to duty. It is stated in paragraphs 'G' and 'H' of the reply that after the papers were given to the petitioner for reporting to duty, he did not report to the Divisional Railway Manager. It is further stated that he continued to be absent wilfully and thereafter the vacancy ceased to exist.

3. So far as cause of action for the petitioner's right to reinstatement is concerned, that arose when the petitioner reported to duty in December, 1983. If he was denied the right to come back to duty, he ought to have made a grievance and instituted the proceedings well in time. That not having been done, the petitioner has the problem of limitation in this behalf. But as the petitioner appears to have a reasonably good case on the other questions, this problem need not detain us any further.

4. In the reply filed by the respondents, they have stated that an order of absorbing the petitioner in service along with 10 others was made on 1.1.1984 as per Annexure R-5. It is further stated that the petitioner never reported to duty. It is necessary to notice that on their own showing the respondents were willing to absorb the petitioner in service in spite of his alleged absence. At any rate, as per the order dated 1.1.1984, the petitioner became entitled to have the benefit of absorption in service. The stand taken by the respondents is that the petitioner has to thank himself for not availing the offer made as per Annexure R-V. The petitioner has, in his rejoinder, specifically taken the stand that the offer as per Annexure R-V was never served on the petitioner. The question for consideration is as to whether the order Annexure R-V was duly served on the petitioner and as to whether the petitioner in the circumstances failed or refused to avail of the offer of absorption given to him. It is difficult to believe having regard to the context and the consistent efforts made by the

petitioner to get the job that he did not avail the opportunity for absorption if the order dated 1.1.1984 was served on him. The respondents have not produced any material before us to show that the copy of the said order was served on the petitioner and he failed to take advantage of the same. What is more interesting to notice is that there is absolutely no mention about the order of absorption (Annexure R-V) having been made in favour of the petitioner in the minutes with the labour union held on 19 and 20 February, 1987 and 22 and 23 April, 1987. It should have been easy for the respondents to have mentioned to the Labour Union that they have made an order of absorption and it is the petitioner who failed to avail of that opportunity. Having regard to these circumstances, we are inclined to believe the statement of the petitioner that the order of absorption made as per Annexure RV was not served on the petitioner. The respondents who made an order of absorption should have served a copy of the same to the petitioner to enable him to take further steps for reporting to duty. That not having been done, we are inclined to allow this petition on this short ground. Having regard to the fact that the offer of absorption has not been given effect to so far and in the circumstances, we are inclined to disallow the backwages. If, however, the petitioner is not absorbed within the time to be specified by us, the petitioner would be justified to claim the back wages for the delay in implementation. It is obvious that having regard to the offer of absorption made by the respondents, the question of age bar would not apply.

5. For the reasons stated above, this petition is allowed. The respondents are directed to absorb the petitioner in service in pursuance of the order (Annexure R-V) filed along with the reply dated 1.1.1984. They shall take the petitioner in service within three months from the date of receipt of a copy of this judgement. If, however, the respondents fail to take the

petitioner on duty, as directed, within the specified period, we direct that the petitioner shall be entitled to all the emoluments from this date until he is actually taken back to duty. No costs.

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(I.K. RASGOTRA)

MEMBER(A)

Malimath
(V.S. MALIMATH)

CHAIRMAN

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