

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

~~CCP No.~~ CCP No. 33/89
~~OA No.~~ in
 OA 1614/88

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DATE OF DECISION 05.06.1990

<u>Shri Sunil Kumar</u>	Petitioner
<u>Shri V.P. Sharma</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India & Another</u>	Respondent
<u>None</u>	Advocate for the Respondent(s)

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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 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*

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

The petitioner (hereinafter referred to as the applicant) has filed this petition alleging that the respondents did not comply with the directions of this Tribunal in its judgment dated 16.11.1988 in OA 1614/88. In the said OA, he had prayed for a declaration that the threat of the respondents on 17.8.1988 to remove him from service is illegal and that he should be deemed to be in service. After hearing the counsel of both parties and going through the records of the case, the Tribunal directed the respondents "to confront the applicant with the preliminary findings arrived at by them regarding the service card produced by him, obtain his explanation therefor either in person or in writing as he may choose to do, and then take a decision about

his continuance in service. This process should be completed as expeditiously as possible, but not later than 31.12.1988. If the charge of production of bogus card is found to be proved the termination of the applicant's service can be confirmed and if the applicant proves otherwise, he should be taken back to duty within one month thereafter on the same terms and conditions on which he was working earlier".

2. The aforesaid order was passed in view of the following factual background. The applicant's case was that he was engaged as a casual labourer in the office of the Inspector of Works, Delhi Division, Northern Railway and that he was regularised as Khalasi with effect from 10.4.1988. He had worked as Khalasi since then till he was informed on 17.8.1988 that he could not be continued in service thereafter. The case of the respondents was that he had only been given provisional appointment vide letter dated 5.4.1988, that it was subject to screening and final verification of his casual labour card, that the respondents verified the casual labour card produced by him and found that it was a fictitious one. In view of this, the respondents informed him vide letter dated 12.8.1988 that he was not a fit person to be retained in service.

3. The respondents have filed a reply to the CCP wherein they have stated that in accordance with the judgment of the Tribunal they have served a show cause notice on the applicant on 22.12.1988, received his

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reply dated 29.12.1988 to the said notice and thereafter decided that there was no justification for reinstating him. According to them, they have complied with the directions contained in our judgment dated 16.11.1988.

4. The case was listed for hearing on 28.5.1990 when the learned counsel of the applicant was present but none was present for the respondents. We have heard him and have also gone through the records of the case. The learned counsel of the applicant submitted that while the respondents cannot be said to have committed contempt of court in the technical sense, they have not complied with the spirit of the judgment of the Tribunal. He further submitted that while the CCP may be dismissed and the notice of contempt discharged, clear directions may be issued to the respondents to hold a formal inquiry against the petitioner for the alleged act of misconduct which was ^{the} ~~very~~ foundation of the impugned order of termination.

5. In our opinion, passing of directions as submitted by the learned counsel of the applicant will not fall within the purview of the CCP. At the same time, we are of the opinion that the applicant, who was a low paid employee, should not be directed to file a fresh original application in the Tribunal for redressal of his grievances. In the interest of justice and fair play, we have treated the present petition filed by him as a review petition.

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6. Admittedly, the petitioner has worked from 5.4.1988 to 12.8.1988. He had worked for more than 4 months continuously as a casual labourer. It is also a fact that his termination was due to the alleged misconduct of having secured employment by fraudulent means. In a batch of cases decided on 6.4.1990 (OA 305/89 and connected matters - Ratti Ram & Others Vs. Union of India & Others through the General Manager, Northern Railway), this Tribunal has held that in the cases where the respondents allege a charge of misconduct against a Railway employee and terminate his services on that ground, it amounts to the imposition of penalty by way of disciplinary action. In case he has acquired temporary status, even though the respondents allege that his initial engagement was by fraud or misrepresentation, his services cannot be terminated without following the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968.

7. Following the ratio in the aforesaid judgment of the Tribunal in Ratti Ram's case and treating the present petition as a review petition filed by the petitioner/we order and direct as follows:-

(1) We hold that the respondents have not wilfully disobeyed the directions of this Tribunal in its judgment dated 16.11.1988^{and, *A*} therefore, the notice of contempt issued to them is discharged.

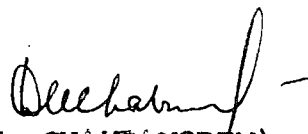
(2) The respondents shall reinstate the applicant

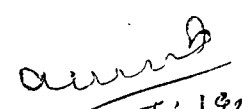
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as a casual labourer and thereafter hold a formal inquiry against him in accordance with the provisions of the Railway Servants' (Discipline & Appeal) Rules, 1968². The petitioner will not be entitled to any back wages.

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

The parties will bear their own costs.


(D.K. CHAKRAVORTY)
MEMBER (A)
5/6/90


5/6/90
(P.K. KARTHA)
VICE CHAIRMAN (J)