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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

O.A. No.1557 of 1990

New Delhi this the 3rd of January, 1994

Mr. Justice S.K. Dhaon, Vice-Chairman
Mr. B.N. Dhoundiyal, Member(A)

1. Shri Bhagwan Das
S/o Shri Hari Chand
R/o House No.RZ-69A,
Bindapur Extension,
New Delhi.
2. Shri Raj Kumar
S/o Shri Moti Ram
R/o House No..RZ-69A,
Bindapur Extension,
New Delhi.
3. Shri Sudarshan Kumar
S/o Shri Birbal
R/o House No.RZ-69A,
Bindapur Extension,
New Delhi.
4. Shri Durga Dass
S/o Shri Bangali Ram
R/o House No.RZ-69A,
Bindapur Extension,
New Delhi.

...Petitioners

By Advocate Shri B.S. Mainee

Versus

1. The General Manager,
Northern Railway,
Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway,
State Entry Road,
New Delhi.
3. The Permanent Way Inspector,
Northern Railway,
Lohian Khas.

...Respondents

By Advocate Shri B.K. Aggarwal

ORDER (ORAL)

Mr. Justice S.K. Dhaon, Vice-Chairman

The four petitioners who are before us have come out with a specific case that they were working as casual labourers on an open line under the PWI, Northern Railway, Lohian Khas and they worked in that capacity for more than 120 days and, therefore, acquired a temporary status. Their case further is that they were directed by the aforesaid PWI to go to Ferozepur and work there under the Assistant Engineer. They have stated that they went to Ferozepur but were not

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allotted any work by the Assistant Engineer there and their services were illegally terminated.

2. A counter-affidavit has been filed on behalf of the respondents. Counsel for the parties have been heard. It is not denied by the respondents that the petitioner No.1, Shri Bhagwan Das completed a service of 289 days beginning from 21.2.1989 to 15.12.1989 under PWI Lohian Khas, the petitioner No.2, Shri Raj Kumar completed a service of 281 days beginning from 25.2.1989 and ending on 15.12.1989 under PWI Lohian Khas, the petitioner No.3, Shri Sudarshan Kumar rendered service for 296 days beginning from 21.2.1989 to 15.12.1989 under PWI Lohian Khas and the petitioner No.4, Shri Durga Dass completed 293 days of service for the period 21.2.1989 to 15.2.1989 under the aforesaid PWI:

3. The crucial question of fact to be decided is as to whether the case set up by respondents that the petitioners were not working in an open line but were really working on a project, is correct. It is an admitted position that the petitioners were employed as Gangmen. According to the petitioners, they were assigned the duty ^{of} night patrolling of the railway line in their capacity as Gangmen. The respondents have not been able to place before us any material to show that, in fact, the petitioners were assigned some work on a project. The fact that the petitioners were working under the PWI is indicative of the fact that they were working on an open line. It appears that on account of abnormal situation ^{were} created by terrorism, the PWIs directed to assign duties of night patrolling to Gangmen, who were working under them. We record the finding that the petitioners were, in fact, working on an open lone. In view of this finding, it follows that the petitioners acquired

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temporary status. Once this is held, certain legal consequences follow and one of them is that the service of a person who has acquired temporary status cannot be done away with without following the prescribed procedure.

4. Learned counsel for the respondents has vehemently urged that instead of going to Ferozepur and reporting to the Assistant Engineer, the petitioners went to their respective homes and that is how they abandoned their respective service. This argument is not plausible. Admittedly, no notice was issued to them by the respondents directing them to report to duty. We have already held that the petitioners had acquired a temporary status and, therefore, the argument of abandonment is not available to the respondents merely on the saying that they absented themselves from duty.

5. The technical submission raised on behalf of the respondents is that the petitioners had earlier approached this Tribunal and the O.A. was dismissed as withdrawn. The argument is that the second O.A. is not maintainable as the petitioners withdrew their earlier O.A. without seeking the permission of the Tribunal to present the subsequent O.A. In the rejoinder-affidavit it is stated on behalf of the petitioners that this question was considered by the learned Members who constituted the Bench and the learned Members observed that since the matter was being disposed of at the admission stage it was not necessary to make any reservation entitling the petitioners to file a fresh O.A. According to the rejoinder-affidavit it was made clear to the petitioners that under the law they could prefer a fresh O.A. It is also submitted at the Bar that in the absence of a permission from the Hon'ble Chairman to present

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the earlier O.A. before the Principal Bench, that O.A. could not be entertained as neither any cause of action or part of it had arisen between the jurisdiction of the Principal Bench. That is why, according to the learned counsel, the O.A. was dismissed as withdrawn. It may be noted that the present O.A. has been filed in the Principal Bench with the permission of the Hon'ble Chairman. In these circumstances, the objection raised by the learned counsel for the respondents is untenable.

6. This application succeeds and is allowed. The respondents are directed to treat the petitioners as having acquired temporary status. The respondents shall treat the petitioners to be in continued service. However, under the circumstances of the case we do not consider it appropriate that the petitioners should get back wages. The respondents shall give employment to the petitioners within a period of one month from the date of production of a certified copy of this order by any of the petitioners before them.

7. There shall be no order as to costs.

B. N. Dhoondiyal
(B.N. DHOUNDIYAL)
MEMBER (A)
03.01.1994

S. K. Dhaon
(S.K. DHAON)
VICE CHAIRMAN
03.01.1994

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