

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI.

(14)

OA.No.164/90

Date of Decision:01.10.1992

Shri Hari Om

Applicant

Shri B.S. Mainee

Counsel for the applicant.

Versus

Union of India & Others

Respondents

Shri S.N. Sikka

Counsel for the respondents.

CORAM:

The Hon'ble Mr. P.K. KARTHA, Vice Chairman(J)

The Hon'ble Mr. B.N. DHOUNDIYAL, Member(A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporters, or not? *Yes*

J U D G E M E N T

(of the Bench delivered by
Hon'ble Member Shri B.N.Dhoundiyal)

This OA has been filed by Shri Hari Om, Ex-Flagman, challenging the impugned order dated 23.11.89, passed by the Divisional Electrical Engineer (RE) Mathura, intimating his removal from service w.e.f. 8.7.86.

2. According to the applicant, he was appointed as Casual

Labour Khalasi on 8.12.82 under Deputy Chief Electrical

Engineer (DHE) (RE) Mathura. During the course of his employ-
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ment, he had made complaint against anti-social elements indulging in dishonest and corrupt practices. These elements ^{by} falsely implicated him in a case of theft of one bag of cement. The applicant was arrested by the Railway Protection Force(RPF) on 6.6.86 and was bailed out on 11.6.86. The respondents refused to take him back on duty and did not reply to, as many as 14 of his representations, submitted by him between 1986-89. Ultimately, he served a notice on the respondents through his advocate on 16.10.89. It was from the impugned letter dated 23.11.89 issued by the Divisional Electrical Engineer, Mathura, that he came to know for the first time that he had been removed from service w.e.f. 8.7.86. He claims to have acquired temporary status and protection of Railway Servants (Discipline and Appeal) Rules, 1968. The relevant rules provide that if a person is arrested and remains in custody for more than 48 hours, he should be deemed to have been suspended. His services could have been terminated only after following the prescribed procedure. He has prayed that the impugned order of removal from service be set aside and the respondents be directed to take the applicant back on duty with all consequential benefits.

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3. The respondents have contended that the applicant is not a holder of the casual labour card, and as such, he is not entitled to temporary status. As admitted by himself, he was arrested by the Railway Protection Force on 6.6.86 for theft and was released on bail only on 11.6.86. He was removed from service on account of his arrest and pendency of a criminal case against him. They have denied that any representations were received from him. The learned counsel for the respondents also stated that the Mathura project has since been wound up and there is no possibility of providing employment to the applicant there.

4. We have gone through the records of the case and heard the learned counsel for both parties. The applicant had worked as casual labourer from 8.12.82 to 6.6.86, when he was arrested. Admittedly, he had acquired temporary status as envisaged in Rule 2551 of the Railway Establishment Manual. That being so, he could have been suspended after his arrest and the prescribed procedure of giving him notice and opportunity to defend himself should have been followed before passing orders for his removal. The mere arrest and pendency of a criminal case against the Railway servant, do not enable the authorities to dispense with his service, without complying with the principles of natural justice. *Sw*

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5. In the conspectus of the facts and circumstances of the case, we hold that the impugned order of removal from service is not legally sustainable. The respondents are directed to reinstate the applicant as casual labourer in any of the projects currently under way in the zone, in which, he was employed, or wherever vacancies exist. Under the circumstances of the case, he will not be entitled to any back wages for the period he remained out of work, but this period will count for his seniority as a casual worker and his case for regularisation will be considered on this basis. We make it clear that after reinstating him in service, the respondents will be at liberty to proceed against him in accordance with the provisions of the Railway Servants(Discipline and Appeal) Rules, 1968, if so advised.

6. There will be no order as to costs.

B.N. Dhoundiyal
(B.N. DHOUNDIYAL) 1/10/82
MEMBER(A)

P.K. Kartha
1/10/82
(P.K. KARTHA)
VICE CHAIRMAN(J)

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