O.A. NO.   2148/90   Date of Decision 31-1-92

Shri Maheshwar Jha   Applicat

Shri S.R. Dwivedi   Counsel for the applicant,

Versus

Union of India   Respondents

Shri N.K. Aggarwal   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 Reporter or not? No

JUDGEMENT

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

        The grievance of the applicant Shri Maheshwar Jha in
this O.A. is that though some persons similarly situated
like him who had been retrenched have been re-engaged by the
respondents as casual Khalasis/Chowkidars, he has not been
taken back on duty.

2.   The applicant was employed as a Casual Khalasi/Chowkidar
by Chief Engineer (Construction), Northern Railway, New Delhi.,
and he has worked under I.O.W. (Construction)/Northern
Railway Shakur Basti from 19.9.73 to 14.7.76. He was
dischareged on the ground that there was no work available
and was given assurance that he would be called back whenever
work was resumed. He claims that under orders of the Railway
Board those persons who had worked prior to 1980 are to be

                                                    ...2/-

absorbed first and many of his colleagues s/shri
Ram Sunder, Sita Ram & Tej Bhan have been taken
back in service. He approached the authorities a
number of times and was always given oral assurances.
He made a number of written representations to authorities
and also served a legal notice under section 80 CPC on
28.4.90. No reply has so far been received. Meanwhile,
he has become overaged for any other Govt. job. He
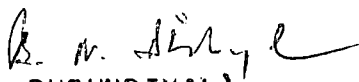prays that like his other colleagues, he be taken back
into service.

3.   The respondents have stated that the applicat left
the job of his own and was absent from 24.5.76 to 3.6.76
and after working for some time as scale rated staff
again left the job on 15.7.76. The directions of the
Supreme Court apply to the retrenched casual labour and
not to those who left their jobs at their own sweet will.
They have denied that the persons alleged to have been
re-engaged in service have ever worked for them. They
admit that the applicant had worked for them from 11.9.73
to 14.7.76 i.e. for about two years and eight months.

4.   We have gone through the records of the case and
heard the learned counsel for both the parties. The
applicant has denied that he left the job on his own will.
The respondents had not given him any notice or held any
inquiry in accordance with the provisions of the Railway
Servants (Discipline and Appeal) Rules 1968 before
terminating his services. Having worked for more than
120 days, he had already acquired temporary status
in accordance with the provisions of the Indian Railway
Establishment Manual and his services cannot be terminated
without notice or holding an enquiry, as has been observed
by this Tribunal in the case of Shri Beer Singh Vs. U.O.I.
& Ors. decided on 16.3.90 to which one of us (Shri P.K.
Kartha) is a party.

...3/-

5.   In the facts and circumstances of the case, the application is disposed of with the direction to the respondents to offer the post of Khalasi to the applicant within a period of one month from the date of receipt of this order. In case there is no vacancy in that particular office or establishment where he was engaged earlier, the respondents will be at liberty to engage him in service in any other place depending on the availability of vacancy. In the circumstances, we do not order payment of back wages for him. The period of service already rendered by him in the Railways, should, however be counted for the purpose of his seniority for regularisation when he is due for the same in accordance with the Rules.

6.   The respondents shall comply with the above directions within a period of three months from the date of receipt of this order.

7.   There will be no order as to costs.

(B.N. DHOUNDIYAL)   (P.K. KARTHA)
MEMBER(A)   31/1/92   VICE CHAIRMAN(J)

RC
27011992.