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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,  
PRINCIPAL BENCH,  
NEW DELHI.

Date of Decision: 27th February, 1992.

OA 2176/90

BABU LAL

... APPLICANT.

VS.

UNION OF INDIA & ORS.

... RESPONDENTS.

For the applicant

... Shri V.P. Sharma, Counsel.

For the respondents

... Shri Rajesh, Counsel.

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

CORAM:

THE HON'BLE MR. P.K. KARTHA...VICE CHAIRMAN.

THE HON'BLE MR.D.K. CHAKRAVORTY...MEMBER(A).

JUDGEMENT (ORAL)

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

We have heard the learned counsel for both parties.

The grievance of the applicant, who has worked as Gangman on daily wage basis during the period from 18.7.84 to 17.4.85, is that he has not been regularised in a suitable post by way of interim relief. He has sought a direction to the respondents to re-engage the applicant as casual labour in an available vacancy.

The version of the applicant is that he worked continuously from 18.7.84 to 19.5.85. This has been disputed by the respondents in their counter-affidavit. According to the respondents, he worked only upto 14.5.85

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and thereafter he abandoned service. The learned counsel for the respondents stated that on 10.7.85 when the casual labour card produced by the applicant was verified, it came to light that the card produced by <sup>him</sup> ~~the applicant~~ was bogus. It was to avoid prosecution in a criminal court that the applicant abandoned service.

The learned counsel for the respondents has raised two preliminary objections regarding the maintainability of this application. The first objection raised by him is that the application is barred by limitation, as the cause of action arose as early as in 1985. He has relied upon the decision of the Supreme Court in State of Punjab Vs. Gurudev Singh and Ashok Kumar, AIR 1982 SC 111, and S.S. AIR Rathore Vs. State of Madhya Pradesh/1989(2) SC 510. As against this the learned counsel for the applicant stated that there is no termination order which has been challenged in the present application and that the applicant had been verbally told by the respondents that as and when vacancy arises he would be engaged. In 1989 when he came to know <sup>afterward</sup> that ~~junior~~ to him has been engaged, he had given a representation to the respondents and thereafter he filed the present application. The second preliminary objection raised by the learned counsel for the respondents is that as the applicant is relying upon the provisions of Industrial Disputes Act, 1947, the applicant should have exhausted <sup>the</sup> ~~his~~ remedy available to him under the said enactment before approaching this Tribunal. In this context he relied upon the decision of the Full Bench of this Tribunal in A. Padmavalli Vs. CPWD 1990 (3) SLJ (CAT) 544.

The learned counsel for the applicant has, however, contended that the relief sought by him for regularisation

is based upon the judgement of the Supreme Court in Inderpal Yadav's case, Surinder Singh's case and the policy of the Railway Board contained in their letter dated 11.9.86 (Annexure A/1).

Having worked for more than 120 days, the applicant has acquired temporary status in accordance with the provisions of the Indian Railway Establishment Manual. This has not been disputed by the respondents in their counter-affidavit.

The applicant is not seeking any relief under the provisions of the Industrial Disputes Act. His basic contention is that, persons junior to him have been retained in service while his services were dis-engaged. This is stated in para 4.3 of the application. The respondents have not contradicted the statement, that the persons junior to him have been retained in service when the applicant abandoned service.

In our opinion the preliminary objections raised by the respondents are not legally tenable. <sup>The</sup> Two decisions of the Supreme Court relied upon by the learned counsel for the respondents are clearly distinguishable <sup>from the</sup> <sub>from</sub> the instant case. The applicant alleges violation of the Articles 14 and 16 of the Constitution. In such a case, the bar of limitation will not be applicable. In Mohd. Salim Akhtar Vs. Union of India, 1992(1) ATJ 202, to which one of us (Mr. D.K. Chakravorty) was a party, the Principal Bench of this Tribunal has held that in a case where the provisions of Articles 14 and 16 of the Constitution have been invoked, the bar of limitation will not be applicable.

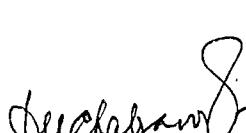
On <sup>the</sup> merits, the applicant having acquired temporary status, the respondents should <sup>have</sup> <sub>acted</sub> in accordance with the

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provisions of Railway Service (Discipline and Appeal) Rules, 1968 before dis-engaging the services of the applicant. In the case of abandonment of service it is incumbent on the employee to serve a notice on the employee to serve a notice on the employee to report for duty and in case he does not do so, his service could be terminated. No notice was issued to the applicant in this case.

In the light of foregoing discussion, we partly allow this application and direct the respondents to re-instate the applicant as a Gangman within a period of three months from the date of communication of this order. In the circumstances of the case, we do not direct payment of backwages to him. After re-instanting him as Gangman, the respondents will be at liberty to appropriate <sup>appropriate</sup> take ~~disciplinary~~ disciplinary action against the applicant for any alleged misconduct in accordance with the law, if so advised.

The application is disposed of accordingly.

  
(D.K. CHAKRAVORTY)

MEMBER (A)

  
( P.K. KARTHA )

VICE CHAIRMAN