

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

OA NO. 2350/90

Date of decision: 04.09.92

Sh. Roop Chand

.. Applicant

Sh. V.P. Sharma with
Sh. A.K. Bhardwaj

.. Counsel for the applicant

Versus

U.O.I. & Others.

.. Respondents

Sh. M.L. Verma with
Sh. Arvind Sinha and
Sh. Rajesh

.. Counsel for the respondents

CORAM

Hon'ble Sh. P.K. Kartha, Vice Chairman (J)

Hon'ble Sh. B.N. Dheundiyal, Member (A)

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

JUDGEMENT

(Of the Bench delivered by Sh. B.N.Dheundiyal,
Member (A)

This OA has been filed by Shri Roop Chand, a casual labour working with the Assistant Engineer, Northern Railway, Rewari, under Section 19 of the Administrative Tribunals Act, 1985, against the action of the respondents in not allowing him to perform his duties after 20.4.88. The applicant has stated that he has completed 860 days of service as Casual Labourer from 1.11.80 to 14.5.87 and has acquired the status of CPC on completion on 120 days continuous working, on the basis of Railway Board circular. *An*

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dated 8.6.81. He could not be removed from service without adopting the procedure as prescribed in the Railway Servants (Discipline and Appeal) Rules, 1968. He has also worked from 2.6.85 to 29.9.85 for 106 days. He was also called for screening vide order dated 24.12.87 by the Loco Foreman, Rewari. In 1987, while working as Casual Labourer Gangman, a chargesheet for major penalty was issued to him on 17.9.87 with the following allegations :-

"You have misbehaved with Sh. Hoshiar Singh, PWI-III on 12/15 hrs. in the office of SM-BWK and gave a slap on the face of Sh. Hoshiar Singh in presence of Sh. Man Singh Trolley-man on 9.7.87. As such you are not loyal with the Railway and obedient also".

2. On 13.10.87, the applicant requested for supply of copies of relevant documents. The respondents instead of supplying the documents, did not allow the applicant to perform his duties after 20.4.88 without passing an order of suspension or termination. His numerous representations to the respondents did not bear any fruit. He has prayed that the respondents be directed to take him on duty with retrospective effect with all consequential benefits.

3. The respondents have stated that the applicant while working as a casual labourer, was charge sheeted vide memorandum dated 17.9.87 on serious charge of misbehaviour with the Permanent Way Inspector and slapping

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him on 9.7.87. This charge was admitted by the applicant in writing and in order to evade major punishment, he absconded from 17.4.88 and the respondents removed him from service under Rule 732R-II vide letter No.P-4/Roop Chand dated 27.11.89 treating him as deemed to have retired on account of his prolonged unauthorised absence. They have also stated that prior to issuing him charge sheet for a major penalty, he had been placed under suspension on 9.7.87 vide letter date 10.7.87. He never made any representation against his being treated as 'deemed to have resigned' and has directly come to the Tribunal without exhausting the departmental remedies.

4. We have heard the arguments addressed at the Bar and perused the documents placed on record. In the case of Shri Beer Singh Vs. Union of India and Others, decided by the Principal Bench of this Tribunal on 16.3.90 (OA.78/87), to which one of us (Shri P.K. Kartha) was a party, whereby, relying upon the judgement of the Supreme Court in G.T.Lal Vs. Chemicals and Fibres of India Ltd. 1979 SCC (L&S) 76 at 80, it was held that abandonment of service must be voluntary relinquishment and that it must be total and under such circumstances as clearly to indicate an absolute relinquishment. There is nothing on record to indicate that the applicant admitted the charge. In the case of G. Krishnamurthy Vs. Union of India & Ors. 1989(9) ATC 158, the Madras Bench of this Tribunal observed that in the case of abandonment of
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service, the employer is bound to give notice to the employee calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. It was also held by the Principal Bench of this Tribunal in the case of Shri Beer Singh mentioned above, that after completing continuous working of about 120 days, an employee became eligible for temporary status. This means that after serving him the charge-sheet, a proper enquiry should have been conducted and the copies of the documents required by the applicant should have been applied to him. There is no evidence that the respondents have done so.

5. In the facts and circumstances of the case, we are of the opinion that the disengagement of the services of the applicant is not legally sustainable. The respondents did not give an opportunity to the applicant who had acquired temporary status either to properly defend himself against the charges nor was he served with a Show Cause Notice for abandonment of service. We, therefore, order and direct that the respondents shall appoint the applicant as casual labourer in the zone in which he was working, failing which, anywhere else, in India, depending upon availability of the vacancy and that he should be given all the benefits and privileges, to which, a casual labourer who has acquired temporary status is entitled to. We do not make any order as regards payment of back wages to the applicant. However, the services put in by him will count for his seniority as casual labourer. The respondents shall comply with the above orders within a period of three months from the date of communication of this order.

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2. It will be open to the respondents to proceed with the departmental enquiry based on the charge sheet issued on 17.4.88 after giving proper opportunity to the applicant to defend himself.

3. The parties will bear their own costs.

B.N. Jhunjhul
(B.N. DHUNDIYAL) 4/192
MEMBER(A)

Arun
(P.K. KARTHA) 4/192
VICE CHAIRMAN(J)

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