

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 506/90
T.A. No.

199

DATE OF DECISION 23.8.1991

Shri Narender Singh

Petitioner Applicant

Shri R.L. Sethi

Advocate for the Petitioner(s) Applicant

Union of India & Others Versus

Respondent

Shri P.S. Mehta

Advocate for the Respondent(s)

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The Hon'ble Mr. P.K. Kartha, Vice-Chairman (Judl.)

The Hon'ble Mr. D.K. Chakravorty, Administrative Member

1. Whether Reporters of local papers may be allowed to see the Judgement? Yes
2. To be referred to the Reporter or not? Yes
3. Whether their Lordships wish to see the fair copy of the Judgement? / No
4. Whether it needs to be circulated to other Benches of the Tribunal?

(Judgement of the Bench delivered by Hon'ble Mr. P.K. Kartha, Vice-Chairman)

The applicant, who has worked as Gang Khalasi in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, seeking the following reliefs:-

(i) That respondents be directed to allow the applicant to join back duty and to perform his official duties in a peaceful manner unobstructively.

(ii) That respondents should be directed to regularise his services, grant him

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temporary status and equal pay for equal work immediately on completion of 120 continuous working days; and

(iii) that responsibility be fixed and apportioned upon respondent No.3 for wilfully and maliciously obstructing applicant to join and perform his duties from 3rd May, 1988 and the applicant be given full wages from this date.

2. The applicant has stated that he was recruited as Casual Labourer Khalasi Gangman under P.W.1, Najibabad on 19.12.1976. His name appeared at the top as serial No.1 with 1371 working days to his credit in the Live Register-cum-Seniority List as on 1.1.1981 prepared by Respondent No.2 - D.R.M., Moradabad for absorption on permanent basis.

3. The applicant has alleged that in 1984, when the seniormost daily-wage Khalasis were to be absorbed on permanent basis, Respondent No.3 (PW1, Najibabad), with ulterior motive to deny applicant the benefit of regularisation, disfigured and mutilated applicant's casual labour card so as to read 'Mohinder Singh' instead of 'Narender Singh'. He did not furnish applicant's name to Respondent No.2 (the D.R.M., Moradabad) for regularisation.

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4. On his appeals and interference by the local union, the applicant's claim was admitted and ultimately the applicant was sent for medical examination, where he paid the prescribed fee of Rs.8/- and after medical examination, was declared medically fit on 2.5.1988. It has been alleged that instead of allowing applicant regularisation on being declared medically fit on 2.5.1988, the applicant was not allowed to join duty.

5. The respondents have stated in their counter-affidavit that the actual number of days the applicant worked under respondent No.2 was 1296 days and not 1371 days. They have submitted that the applicant was sent for medical examination to AEN, Najibabad but his case was not considered vide his letter dated 3.9.1984 as in the first page of the Casual Labour Card the name of the applicant appeared to be tampered as Mohinder Singh and the applicant also purchased the stamp papers in the name of Mohinder Singh, s/o Bindra Singh. However, the matter was duly clarified by respondent No.3 that the man is actually named Narendra Singh, s/o Bindra Singh and this fact can be checked from the Pay Sheet Register. Since the Casual Labour Card always remained in the custody of the employee, no responsibility could be fixed as to the person tampering with the first page of the Casual Labour Card. In the meantime, the decasualisation of Casual Labour was

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stooped and the case of Narender Singh was held in abeyance along with other Casual Labour Gangmen senior to him vide letter dated 18th March, 1988 of A.E.N., Najibabad.

6. The case of the applicant was duly represented by Uttariya Railway Mazdoor Union and the applicant was sent for medical examination for decasualisation and declared fit. As soon as respondent No.3 came to know about the medical examination and absorption of the applicant vide letter dated 24th May, 1988 of the Assistant Engineer, Najibabad, respondent No.3 referred back the case with the remarks that there are other 12 persons senior to the applicant who were also denied absorption and in case the applicant is absorbed, there is bound to be more representations and discontentment.

7. In view of the above, the respondents have stated that the matter was reconsidered by the Divisional Railway Manager, Moradabad, who vide his letter of 8th June, 1988, ordered that the applicant cannot be taken on job ignoring his seniors in view of the above facts. The applicant was, therefore, not allowed duty.

8. The respondents have stated that the matter is under consideration for decasualisation of all Casual Labourers of the Moradabad Division and specific policy has not yet been issued.

9. We have carefully gone through the records of the case and have heard the learned counsel of both the parties. There is nothing on record to indicate that the respondents have regularised any Casual Labourer junior to the applicant. There is also nothing on record to indicate that the applicant is the seniormost person to be considered for regularisation.

10. The respondents have not, however, indicated as to why they stopped giving work to the applicant as a Casual Labourer. Admittedly, he has worked for 1296 days, according to the version of the respondents. That being so, he must be deemed to have acquired temporary status in accordance with the provisions of the Indian Railway Establishment Manual. Not allowing him to perform his duty amounts to termination of his services. No notice was issued or any inquiry held against him in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules before discontinuing him from service as Casual Labourer.

11. In the conspectus of the facts and circumstances of the case, the application is disposed of with the following directions to the respondents:-

(i) The respondents shall engage the applicant as a Casual Labourer where he had worked earlier in an available vacancy, failing which, he should be accommodated in any other post, depending on

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the availability of the vacancy. The respondents shall comply with this direction within a period of two months of the communication of this order;

(ii) In the facts and circumstances of the case, we do not pass any order regarding payment of back wages to the applicant; and

(iii) the respondents should also consider regularisation of the applicant in accordance with his seniority after taking into account the period of service already rendered by him as Casual Labourer in the Office of the respondents.

There will be no order as to costs.

D. K. Chakravorty 28/8/91
(D. K. Chakravorty)
Administrative Member

P. K. Kartha 23/8/91
(P. K. Kartha)
Vice-Chairman (Judl.)