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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
NEW DELHI.

O.A.No-569/91

Date of Decision: 1.10.91

Shri Nand Kishore                   ...   Applicant  
Shri V.P. Sharma                   ...   Advocate for the Applicant  
  Vs.  
Union of India                   ...   Respondents  
Shri P.S. Mohindru               ...   Advocate for the Respondents

FOR AM:

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'ble  
Shri B.N. Dhoundiyal, Member(A)).

This application has been filed by Shri Nand Kishore, Casual Labour, against his disengagement from December 1983 by the respondents, Northern Railway.

2. The applicant joined the Railways as Casual Labour after being found fit in the medical examination on 20.5.83 and served upto December, 1983, when he was told that whenever there will be any vacancy, he would be informed at his home address for re-engagement. He has contended that the action of the Railways is arbitrary and illegal on the following grounds:-

- (a) Casual Labourers working in the Railway are workmen as defined in the Industrial Disputes Act, 1947, entitled to the protection under Section-25 'F' & 25 'G' of the said Act.

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- (b) In accordance with the instructions issued by the Supreme Court in the case of Inder Pal Yadav Vs. U.O.I. & Others, the Ministry of Railway had prepared a scheme of regularisation of Casual Labourers and in term of Railway Board letter dated 4.9.80, those who have already worked before as Casual Labourers, should be given preference over their juniors and outsiders on open line as well as on projects.
- (c) It was held by the Supreme Court in the case of Shri Inder Pal Yadav, that persons who could not approach the Court cannot be deprived of their right of re-engagement. The applicant has also mentioned that as a result of the decision of this Tribunal dated 17.4.90 in O.A.No.1591/89, Lila Ram & Others Vs. U.O.I. & Others, similarly situated persons who are his juniors have been engaged vide DRM Office, Jaipur vide their order No.615:1/CTR/Court dated 10.7.90. The applicant is also entitled for regularisation of his service on the basis of Railway Board's circular No.E(NG)II/84/CL/41 dated 11.9.86, which is based on the decision of Inder Pal Yadav's case. The applicant has also relied on the Judgements given in cases of Beer Singh Vs.U.O.I. decided by Principal Bench, New Delhi on 16.3.90, (1990(1) ATJ 576), and Basant Lal & Others Vs. U.O.I. & Others, O.A.2467/88, decided on 16.3.90, (SLJ 1990(3) 1).

3. The applicant has prayed that directions be issued to the respondents to absorb him on regular basis from the date of completion of the period of 120 days with back wages.

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The Bench passed an interim order on 5.3.91 to consider engaging the applicant as Casual Labour, if vacancy is available, in preference to his juniors and outsiders and this interim order has been extended from time to time.

4. The respondents have contended that though the applicant was engaged as Casual Labour on 20.5.83 and worked upto December, 1983, he left his employment as a Casual Labour of his own accord and did not report back at any time. He obtained service on production of false and bogus service card and <sup>a</sup> show cause notice dated 26.12.1983 was issued to him. The applicant cannot get the benefit of the Judgement given by the Supreme Court, in the case of Inder Pal Yadav Vs. U.O.I. and he is also not entitled to any benefit under the regularisation scheme framed by the Ministry of Railway.

5. We have gone through the records of the case and heard the learned counsel for both the parties. In accordance with the Railway Board's letter No.E(NG)11-77/CL/46 dated 8.6.81, Casual Labourers are to be treated as temporary after completion of 120 days of continuous service and become eligible for all the entitlements and privileges admissible to temporary Railway servants as laid down in Chapter XXXIII of the Indian Railways Establishment Manual. This includes application of the Discipline and Appeal Rules. As the applicant has already served continuously more than 120 days, it was incumbent on the respondents to have followed the prescribed procedure for termination of his service, in case of alleged prolonged absence without any reason. The question as to whether casual labourers are entitled to any relief on this ground has been examined in detail in case of Shri Beer Singh, Vs. U.O.I. by a Bench of

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this Tribunal, of which one of us (Hon'ble Mr. P.K. Kartha) was a party. Referring to a number of Judgements on the subject holding that the question whether a casual labourer has abandoned service or not would depend on the facts and circumstances of each case, it was held that the employer was bound to give notice to the employee calling upon him to resume his duty. In case, the employer intends to terminate his services on the ground of abandonment of service, he should hold an inquiry before doing so. Admittedly, the applicant had acquired temporary status after he had put in 120 days of continuous service. The respondents have not produced any evidence to support their contention; neither a notice calling upon him to resume his duties nor a notice of termination was issued to him.

6. In the light of the foregoing discussion, we are of the opinion that the disengagement of the service of the applicant is not legally sustainable. The applicant did not voluntarily abandon the service as alleged by the respondents. We, therefore, order and direct that the respondents shall engage the applicant as Casual Labourer in the zone in which he was working, failing which anywhere else in India, depending on the availability of vacancy and that he shall be given all the benefits and privileges to which a Casual Labourer acquiring temporary status is entitled to.

7. In the facts and circumstances of the case, we do not make any order as regards payment of back wages to the applicant. The service put in by him from 20.5.83 will count for his seniority as Casual Labourer. The respondents shall comply with the said instructions within a period of three months from the date of communication of this order.

8. The parties will bear their own costs.

*B.N. Dhoundiyal*  
(B.N. DHOUNDIYAL) 1/10/81  
MEMBER (A)

*P.K. Kartha*  
(P.K. KARTHA) 1/10/81  
VICE CHAIRMAN (J)