

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

DA No. 2039/93

(Signature)

New Delhi, This the 14th day of September, 1994

Hon'ble Mr Justice S. K. Dhaon, Acting Chairman

Hon'ble Mr B. N. Dhoundiyal, Member(A)

Sh. Suresh Chand
S/o Sh. Hotilal
Ex-Temporary Status Khallasi
under Executive Engineer
North Eastern Railway
Collector Bukanj.

... Applicant

(By Advocate : Mr. B. S. Mainee)

Vs.

Union of India : through

1. The General Manager
North Eastern Railway
Gorakhpur.

2. The Divisional Railway Manager
North Eastern Railway
Izatnagar.

... Respondents

(By Advocate : Mr. B. K. Aggarwal)

ORDER

JUSTICE S. K. DHAON, ACTING CHAIRMAN(oral)

A counter-affidavit has been filed on behalf of the respondents. Though this application has not been formally admitted as yet, we have heard the same with the consent of the parties with a view to dispose it of finally. Accordingly, we are doing so.

2. Admittedly, the applicant was discharged from service on 31.5.1990, on which date, he was employed as a Casual Worker. There is a prayer to quash the said order of discharge. On the face of it, this application is barred by time so far as the relief with respect to quashing of the order of termination or discharge is concerned.

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3. From the exchange of affidavits, it is clear and is also admitted to the respondents that the applicant in fact rendered service to them from 1.8.1989 to 31.5.1990. This period, if counted as a whole, exceeds 120 days. As a natural corollary to this, the applicant acquired a temporary status. If that be so, one of the legal consequences would be that his name should have been included in the live casual register. To controvert this part of the case, the respondents have come out with an allegation that the applicant entered into service by producing a bogus card. It is averred that an inquiry was held wherein it was found that the card produced by the applicant at the time of recruitment was not genuine. However, the averment is absolutely silent on the question as to whether an inquiry was held behind the back of the applicant or not. In other words, it is not stated that the decision^{was} taken after giving an opportunity of hearing to the applicant. Failure to comply with the principles of natural justice on the part of the respondents, vitiates the decision which is adverse to the interest of the applicant. In the counter affidavit, the respondents have very fairly stated that this Tribunal may direct the respondents to hold an inquiry after affording an opportunity of hearing to the applicant. We propose to do so.

4. It is urged that the applicant having slept over his rights from 1990 onwards can not be now heard even with respect to the grievance of being denied a temporary status and the entry of his name in the live Casual Register as a consequence thereto.

5. It appears that the applicant was at no stage informed by the respondents that his name had not been included in the Live Casual Register even though he had

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rendered 120 days of service, on account of the fact that he has entered into the service by producing a bogus card. In law, the respondents were under an obligation to place the name of the applicant in the Live Casual Register and thereafter give him appointment in accordance with the placement in that register. The petitioner, therefore, had no occasion to come to this Tribunal with the grievance that his name has not been included in the said register. No cause of action, therefore, accrued to him for approaching this Tribunal under Section 19 of the Administrative Tribunals Act, 1985. It is to be noted that the respondents for the first time set up the case in the counter filed to this O.A. that the applicant's name was not included in the Live Casual Register because he entered into service by producing a bogus card. The plea of limitation is, therefore, not available to the respondents.

6. Counsel for the respondents has drawn our attention to a copy of a letter dated 12.12.1992 annexed to the counter, from the Works Inspector, Muzaffarpur to the Divisional Railway Manager(Personnel), Izatnagar, in which it is stated that the applicant had entered into service by producing a bogus card. There is no indication in this document, that a copy of the said communication was ever sent to the applicant. This document is, therefore, of no assistance to the respondents as far as the plea of limitation is concerned.

7. The respondents shall now hold a proper inquiry after giving an opportunity of a hearing to the applicant on the question whether the applicant entered into service by producing a bogus card. If it is found in the inquiry that the card produced by the applicant was not bogus, they shall enter the name of the applicant in the Live Casual Register from the date on

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which it should have been entered. Thereafter, the applicant shall be considered for being given a suitable appointment on the basis of the ranking in that register if and when the respondents recruit a casual worker.

8. With these directions, the O.A. is finally disposed of leaving the parties to bear their own costs.

B. N. Dholiyal

(B. N. Dholiyal)

Member (A)

S. K. Dhaon

Acting Chairman

14th day of September, 1994.

(SOS)