

16

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH: NEW DELHI

O.A.NO.331/93

New Delhi, this the 3rd day of May, 1995

Hon'ble Shri J.P. Sharma, Member (J)
Hon'ble Shri B.K. Singh, Member (A)

Shri Uma Shanker Pandit,
s/o Shri Shiv Narain Pandit,
Vill. & Post Office Ekma,
Behind Railway Station, Ekma,
Distt. Chapra (Bihar)

C/o Radha Kishan Pandit,
295-A, Street No.6,
Lalita Park, Laxmi Nagar,
New Delhi.

... Applicant

By Advocate: None

Vs.

1. The Secretary,
Ministry of Railways,
Rail Bhavan, New Delhi.

2. The Chairman,
Railway Board,
Ministry of Railways,
Rail Bhawan, New Delhi.

3. The Divisional Rail Manager (P),
North-Eastern Railways,
Varanasi (U.P.)

... Respondents

By Advocate: Shri P.S. Mahendru

O R D E R (ORAL)

Hon'ble Shri J.P. Sharma, Member (J),

The applicant claimed the grant of
temporary status on the ground that he had been
working as Sub-gateman from 19.9.81 to 19.10.91.

The grievance of the applicant is non-regulari-
sation and dis-continuing the engagement of

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6

the applicant even as a casual labour in the railways. The application was filed in February, 1993 but it was subsequently got amended on 19.5.93 and filed a copy of the amended application. The relief prayed for by the applicant in the amended application is that the casual labourers list issued by the respondents on 29.1.92 be quashed with a direction to the respondents to utilise the petitioner as Gateman.

A notice was issued to the respondents who contested this application and opposed the grant of relief on a number of grounds. The respondents in their reply did not deny that the applicant has been engaged after January, 1981 and continue to work as averred in the original application. But the engagement of the applicant after 1.1.81 has been categorised as unauthorised and illegal and that the railways are not in any way liable to continue the applicant for the mistake committed by some of the loco incharge in giving appointment to the applicant against the rules without obtaining the prior sanction of the competent authority. The applicant has also filed the rejoinder and categorically denied the contention of the respondents reiterating that the name of the applicant appears ^{at} S.No.173-C of the

list of casual/substitute labourers published on 9.9.81 which was in supersession of the earlier list of March, April and June, 1981. After September, 1981, the applicant was engaged from time to time till 19th October, 1991 and the fact has not been denied by the respondents. It is also said that the applicant has continuously worked for 775 days and the name of the applicant was deleted from the list issued on 29.1.92 against which the applicant made representation on 29.6.92 which was not replied to by the respondents.

We heard Shri P.S. Mahendru, counsel for respondents at length and none is present on behalf of the applicant. But the pleadings in this case are complete and we have gone through the pleadings of the parties and are disposing of the case on merits. The respondents did not deny that the name of the applicant appears in the seniority list of casual labourers issued by Northern Eastern Railway, office of Divisional Rail Manager(P), Varanasi dated 19.9.81. The name of the applicant appears at S.No.173-C. The applicant has also filed the certificate to show that he has served in

Ardha Kumbha Mela in Allahbad for about a month in January, 1982. He has also served in 1983 and the certificate to that effect has been filed. He has also filed a certificate signed by the competent authority that he has worked in 1985 in the months of July to October and November to December for 72 + 55 days respectively total 127 days. In 1986 in different spells from January, 1986 to December, 1986 he has worked for 65 days; in the year 1987 in January, 1987 he has worked for 7 days and from February, 1987 to September, 1987 he has worked for 242 days. Again in 1987 from October to December he has worked for 92 days. Thus the total working days in 1987 comes to 334 days. In 1988 he has worked for 366 days and in 1989 he has worked for 266 days. He has, therefore, worked as per calculation for more than 775 days. He has given a further chart of his working from 1989 to October, 1991 which is 376 days. There is also an order dated 27.1.87 issued by the DRM office, Varanasi of Northern Eastern Railway that he has put on temporary duty in the scale of Rs. 196-232 as a temporary arrangement as a substitute gateman, Ekma.

23

He has also been medically examined and found fit. Now ~~seeing to the~~ number of days it is evident that the applicant has acquired a temporary status. The Miabhai Award of Tribunal 1974 which has been accepted by the Railways lays down that after working for 4 months i.e. 120 days the casual labour acquires a temporary status and for all purposes he will be governed by the same service conditions which governed a temporary employee except the grant of the pension benefits. The respondents, therefore, cannot abruptly issue an order dated 29.1.92 without giving prior hearing to the persons who are effected by alleged illegal appointment after 10 years having been put in more than 775 days in different spells with the respondents. This letter shows that certain appointments have been made in clear violation of the directives and substitutes have been appointed in violation of the clear instructions. Alongwith this letter, a list has also been annexed who have passed the selection test and the name of the applicant is missing. This annexure contains 236 names.

The case of the applicant is that even the list does not disclose the name of the applicant, the junior to the applicant Shri Vashist Singh at S.No.218-B of 1981 list has been retained in the list declared on 29.1.92 and two other persons whose names do not appear in the senioritylist of casual labourers of 1981 have been included. The respondents in their counter do not say even a single word that the applicant in any point of time was put to trade test or that he was not qualified for the grant of a vacancy in Group 'D' post. In fact when the casual labour panel was finally prepared after screening, the persons on the basis of seniority are given job in different disciplines by appointment as Khalasi. No further pre-appointment test for Khalasi is required unless he is shifted to a technical side for which a trade test is mandatory. The applicant, it appears in the record, was often engaged as a waterman and in 1987 he was also engaged as Substitute Gateman. The number of days to his credit are also not denied being 775 days.

The applicant has never been given a memo, or show cause to point out his shortcomings or that he has not been able to pull his weight. The only contention of the respondents in their reply is that the initial engagement of the applicant as a casual labour was dehors the instructions issued and further his posting as Substitute Sub-Gateman was also against the directives issued. The officer who posted him as Substitute Gateman in order to save his own skin dropped the name of the applicant or was instrumental in getting the name dropped from the select list for Group 'D' employees circulated by the order dated 29.1.92. The omission of the name of the applicant is totally arbitrary, unfair and unjustified as he had already attained the temporary status.

The copy of the D.O. letter of 16th May, 1980 issued by General Manager, Gorakhpur of Northern Eastern Railway lays down certain conditions for engagement of casual labourers in the Railways. It was, therefore, reiterated subsequently that the engagement of the casual labour is resorted to only in the circumstances and that too after obtaining prior personal

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approval of the General Manager and that authorisation was not delegated to the lower level. The Railways have issued another letter on 19.5.86 for screening and empanelment of casual labour and substitutes, maintenance of casual labour registers. We find that when the name of the applicant has once been shown in the seniority list of casual labourers of 1981, he cannot be omitted in the list finally prepared or giving regularisation in Group 'D' post issued on 29.1.92. Besides the omission of the name of the applicant from the list, he was also discontinued from the job which is unfair and unjust. The services of the applicant cannot be dispensed with even though he was casual labour retaining his junior as he had already been granted the temporary status. In the aforesaid circumstances, the applicant is entitled to the relief as follows:

The application is partly allowed with the direction to the respondents to re-engage the applicant within three months from the date of receipt of copy of the judgement and be engaged on Group 'D' post from the date

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any of the juniors having been put lesser number of days has been engaged and after verifying from the record regarding the juniors mentioned by the applicant Vashist Singh at S.No.218-B in 1981 list while the name of the applicant appears at S.No.173-C of that list. The applicant shall be paid after reinstatement the wages from the date he joins the service but for the purpose of seniority he shall be given the seniority from the date any of the juniors has been appointed to Group 'D' post and regularised as such or the applicant be given benefit from the date when two new persons i.e.

Om Prakash Sharma at S.No.152 and Shri Pradeep Kumar Mishra at S.No.156 were inducted in the list of 29.1.92 while they were not in the casual labourers senioritylist of 1981.

It is also made clear that the applicant shall be entitled to all benefits ^{as if} he has put in as casual labour ^{service} according to Railway Rules for the computation of the qualifying service for grant of pension, if the occasion arise.

The application is disposed of with no order as to costs.

(B.K. SINGH)
MEMBER(A)

(J.P. SHARMA)
MEMBER(J)