

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 6th day of November 2003.

QUORUM : HON. MR. A. K. BHATNAGAR, J.M.

HON. MR. D. R. TIWARI, A.M.

O.A. No. 328 of 1997

Durga Prasad S/O Late Babu Nandan R/O Kakarmatta (North)

Post Diesel Locomotive Works, Varanasi.....Applicant.

Counsel for applicant : Sri S.K. Om.

Versus

1. Union of India through its General Manager, Diesel Locomotive Works, Varanasi.
2. Chief Mechanical Engineer (P), Diesel Locomotive Works, Varanasi.
3. Assistant Personal Officer, Diesel Locomotive Works, Varanasi..... Respondents.

Counsel for respondents : Sri A. Sthalekar.

O R D E R

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of A.T. Act, 1985, the applicant prayed for direction to respondents to regularise the services of the petitioner as Khalasi from the date his juniors were regularised and to assign the seniority accordingly. He has further prayed for direction to quash the letter dated 18.1.96 and 20.5.96 to the extent it grants only temporary status to the applicant.

2. This O.A. has a checkered history behind it. On 3.4.97, the Division Bench of this Tribunal decided that the relief claimed by the applicant for temporary status w.e.f. 1971 was beyond jurisdiction of this Tribunal. However, the other relief regarding quashing letter dated 18.1.96 and 20.5.96 putting the applicant on probation for two years after conferring temporary status, was taken to be within the jurisdiction of the Tribunal. The applicant thereafter approached Hon'ble High Court in writ petition No.21682 of 97

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who observed that the Tribunal had issued the notice only with regard to one relief, It was open to the Tribunal to decide the other points arising in the matter on merit. It is in this circumstances that the O.A. is being decided on merit also.

3. The facts of the case, in short, are that the applicant was appointed as a casual labour on 2.6.1964 in the Mill Wright Workshop, Diesel Locomotive Works (D.L.W.), Varanasi. The claim of the applicant is that after completing 180 days continuous work, the petitioner was granted temporary status. However, on 14.5.1965, he was implicated in a criminal case and was acquitted on 2.6.1966. The applicant has stated that his services were terminated without assigning him any show cause while the proceedings of his criminal case was in progress. He filed a suit in the court of Munsif, Varanasi which was dismissed on 7.12.71. He filed an appeal before the IVth Additional Civil Judge and the appeal was contested by the respondents on the ground that he had not continuously worked nor he was granted any temporary status.

4. After going through the pleadings and hearing counsel for the parties, learned Civil Judge held that the petitioner had worked continuously and he was granted temporary status as such the termination of services of the petitioner without any show cause is illegal and is liable to be quashed. The learned Judge on 22.8.72 allowed the appeal and quashed the order of termination and directed that petitioner shall continue to work as temporary Khalasi (Annexure-1)

5. The applicant contends that in view of the dismissal of the appeal in High Court, the order of the Civil Judge became final and he was entitled for his appointment as temporary Khalasi. However, the respondents re-engaged the petitioner as a substitute Khalasi instead of temporary Khalasi. (Annexure-3). He was given the temporary status by

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letter dated 18.1.96 with stipulation that he would be for probation for two years. The applicant represented that it was wrong to give him temporary status after more than 30 years of his service as Khalasi. (Annexure-7). He has further stated that some other persons engaged along with petitioner as temporary Khalasi in the year 1964 had been regularised in the year 1966-67 except that of the applicant because his services were illegally terminated.

6. The contention of the applicant has been strongly opposed by the respondents. It is stated that the applicant was in employment as casual labour. He absented from duty from 14.5.65 without giving any intimation to the administration. Later on it came to the light of the administration that the applicant was involved in a murder case and consequently his services were dispensed with on 28.5.65. The applicant was acquitted by the court of law on 2.6.66. After acquittal he made representation for his reinstatement in the service and against the order of dispensing with from service he filed suit No.420 of 1970 in the Court of Munsif, Varanasi which was dismissed. Against the judgment of the court of Munsif, the applicant filed appeal No.55 of 1972. The Appellate Court vide judgment dated 22.8.72 allowed the appeal and ordered that he be continued in service as a temporary employee by virtue of his acquiring temporary status on completion of six month continuous service as casual Khalasi. The respondents filed second appeal No.37 of 1973 in Hon'ble High Court, Allahabad. The respondents have also stated that they did not press the determination of the appeal as the applicant had made a representation to the DLW administration to the effect that he was a poor man and had not means of livelihood and his case may be considered sympathetically. Respondents have stated that they did not press the appeal in High Court in view of the representation made by the applicant and the case was dismissed as not pressed. *The fact remains that the writ was dismissed as not pressed.*

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7. The applicant was engaged as substitute Khalasi on 2.9.77 after the acceptance of offer of respondents (Annexure CA-1 and CA-2) to work as substitute Khalasi. His claim for regularisation could be considered as per rules contained in para 2006 of IREM Vol.II and instructions issued by the Railway Board from time to time. It is stated that casual labour/substitute on confirmation of temporary status does not entitle them to automatic absorption/appointment to Railway service on regular basis but subject to availability of vacancies and suitability and eligibility of the individual. In accordance with these rules for the purpose of considering the applicant for appointment on regular basis, the applicant was called to appear before a Committee for screening test on 26.5.78 and later on also but the applicant did not appear (Annexure CA-4 and CA-5). However, he was appointed as Khalasi on regular basis vide office order No.472 dated 20.5.96 (Annexure CA-6).

8. The main contention of the respondents is that the applicant did not cooperate with the DLW administration despite their several request for the applicant to appear in the screening test. They have further denied that the ^{Br} probation for two years for applicant was ~~not~~ necessary. They have stated that para 104 of IREM Vol-I clearly provides that all appointment in Railway are made on probation for two years.

9. We have carefully considered the rival contention of the parties and perused the pleadings.

10. The basic question, which falls for consideration, is whether the applicant is entitled to be regularised w.e.f. the date his juniors were regularised. The undisputed fact is that he was involved in criminal case which resulted in termination of his services by DLW administration and his final acquittal and the order of Civil Judge compelled the DLW administration to engage him as a substitute Khalasi and

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it is wrong on the part of the DLW administration to engage him as a substitute Khalasi and then to give him temporary status later on and to regularise him even thereafter. The reinstatement in service if it means anything it means that he will be reinstated with all the benefits. It is true that his involvement in criminal case was the main cause of his termination and once he is acquitted and put back in service, the administration has no right to take him as a new comer in the service and wipe out all his previous service.

II. In view of the facts and circumstances, mentioned above, the O.A. succeeds on merit and is allowed. The orders dated 18.1.96 and 20.5.96 are quashed. The respondents are directed to regularise the service of the applicant from the date his juniors were regularised within a period of three months from the date a copy of this order is filed.

No order as to costs.

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A.M.

J.M.
J.M.

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