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Central Administrative Tribunal, Allahabad.

Registration O.A.No.664 of 1986

Ravindra Chandra Misra ... Applicant

Vs.

General Manager, Northern
Railway and 3 others ... Respondents.

Hon.G.S.Sharma, JM

Hon.K.J.Raman, AM

(By Hon.G.S.Sharma, JM)

In this petition under section 19 of the Administrative Tribunals Act XIII of 1985 the applicant has prayed to pay him Rs.14000 as his pay from 17.11.1983 to 28.6.1985 with a prayer to treat this period on duty for the purposes of seniority and promotion etc.

2. It is alleged by the applicant that he was appointed as a substitute Cleaner by the Divisional Railway Manager Northern Railway Moradabad on 10.3.1981. From 15.2.1983 the applicant had worked as substitute Khalasi. The applicant thus claims the benefit of his acquiring the status of temporary employee. He was removed by the respondent no.4 Loco Foreman Rosa by serving a notice dated 17.11.1983. The validity of the said notice was challenged by the applicant by filing a writ petition no.15096 of 1983 before the Allahabad High Court which is still stated to be pending. In the meantime, the applicant was reinstated vide letter dated 27.6.85 by the respondent no.3- the A.P.O. Moradabad and ^{it was} further ordered that his case for treating the intervening period be put up before the competent authority for decision. The applicant accordingly joined his duty on 29.6.1985 and is working as a Khalasi since then. Despite his representations, notices and interviews, he has not been paid the salaries for the period 17.11.1983 to 28.6.1985. It is further alleged by him that 6 persons mentioned in para 14 of his petition, who were junior to him, have been regularised on the post of Khalasi but the case of the applicant has not been taken up for regularisation so far and in view of the provisions of Articles 14 and 16 of the Constitution, the applicant is entitled to be treated equally and he should ~~have~~ have been reinstated with all consequential benefits

3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the APO Moradabad it has been stated that the services of the plaintiff were terminated as the casual labour card submitted by him was found to be forged and suspicious and the notice of termination served on him was thus in accordance with law. The applicant did not make any representation for the salary of the intervening period and his contention to the contrary is not correct. The screening of the applicant has taken place and his name has already been included in the list in the meantime. As the petition has been filed without exhausting the departmental remedies, it is liable to be dismissed and it is also barred by time.

4. In his rejoinder, it was stated by the applicant that his case was not barred by limitation and as the removal order dated 11.11.1983 of the applicant stands withdrawn, the applicant is entitled to the reliefs claimed.

5. From the pleadings of the parties, as stated above, it is apparent on the own showing of the applicant that his services were terminated by the respondent no.4 vide notice dated 17.11.1983. The validity of this termination order is still subjudice as the writ petition filed by the applicant for quashing the order of termination is still pending. In view of the pendency of the said writ petition we refrain from expressing any opinion about the validity or otherwise of the notice dated 17.11.1983 of the termination of the applicant's services. We are further of the view that the copy of the said notice is not on the record and some other documents which could be relevant for examining the validity of the said notice have also not been placed on the record by the parties as the same were not considered relevant by them for the purposes of this case. Annexure 1 to the petition filed by the applicant is the order dated 27.6.1985 of the DRM Moradabad stating that the DPO has decided that the applicant may be taken back in service with immediate effect and his case for treating the intervening period may be put

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before the competent authority for decision. The competent authority thus has not taken any decision for regularising the intervening period of the applicant from the date of the termination of his services till the date of resuming the duty. It is alleged in the reply that the attention of the DRM was drawn to this fact by the Loco Foreman Rosa but no reply has been received so far. It is also alleged that the applicant did not make any application or representation for the pay of the intervening period before filing this petition. Though the applicant has contended otherwise, he has not furnished any proof to show that the notice, copy annexures 2 and 3, shown to have been given on behalf of the applicant by his counsel were actually despatched and received by the respondents. Thus respondents have not applied their mind to the question regarding the intervening period. The pendency of the writ petition may not be a bar to them for taking the required decision but this Tribunal is unable to take a proper decision in the absence of the necessary material on record and the pendency of the writ petition for adjudging the validity of the order of termination of the applicant.

6. We, however, do not feel convinced regarding the plea of limitation raised on behalf of the respondents as the applicant could claim the pay of the intervening period either on his reinstatement in the writ petition or under the orders of the respondents. As the order of taking the applicant on duty was passed on 27.6.1985 and the applicant is shown to have made representations and given notice thereafter, the petition is treated within time and even

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if the question of representations and notice is excluded from consideration, we will like to condone the delay in filing this petition on 13.11.1986.

7. Regarding the relief claimed by the applicant, we are of the view that the same cannot be granted to him in this petition as the order of termination has not yet been withdrawn by the respondents and the order dated 27.6.1985 was passed merely to take him back on duty. On 12.5.1988 a statement was made on behalf of the applicant before this Tribunal that he will either get his writ petition dismissed in the High Court or will get the same transferred to this Tribunal. Nothing is known about the action taken by the applicant in this connection and we are of the view that the applicant should get the writ petition, if still pending, decided first and in case he succeeds to get the order of the termination set aside the necessary relief (consequential benefits) can be granted to him in that writ petition. In case, the said petition is no more pending, we will direct the respondents to take a decision for passing suitable order for treating the intervening period of the applicant within a period of 4 months from the date of the receipt of the copy of this order.

8. The petition is disposed of accordingly without any order as to costs.

[Signature]

MEMBER (A)

[Signature]

MEMBER (J)

Dated: Feb. 14, 1989
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