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Reserved

Central Administrative Tribunal, Allahabad.

Registration T.A.No.141 of 1986.

Ghanshyam Lal Appellant

Vs.

1. Union of India

2. Divisional Superintendent, N.Railway,
Lucknow Respondents.

3. Asstt. Engineer,
Northern Railway
Sultanpur.

Hon. D.S.Misra, AM
Hon. G.S.Sharma, JM

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

This civil appeal no.43 of 1979 against the judgment and decree dated 29.11.1978 passed by the Munsif South, Sultanpur, dismissing suit no.46 of 1974 of the plaintiff for a declaration with costs, has been received by transfer from the Court of the Civil Judge, Sultanpur under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. Undisputed facts of this case are that the plaintiff- appellant was appointed as a casual labour in 1954 under the Inspector of Works (in short IOW) Northern Railway, Sultanpur and was deputed to do the painting work from time to time upto 21.3.1969. On 22.3.1969, his name was included in the list of Gang Khalasis, which was not liked by the plaintiff. The plaintiff was interested

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in painting work and his case is that despite his satisfactory performance as a Painter, there was a discrimination against him and ignoring his claim, Mohd. Iliyas and Deep Narain, Trolleymen were considered by the respondents for appointment as Painter. A ^{was} separate muster-sheet/formerly kept for the plaintiff in which he was shown as a Painter but on 3.2.1973, he came to know that the same was discontinued and his name was included in the muster-sheet of Gang Khalasis on account of which, he felt very much humiliated and in the unfavourable circumstances so created against the plaintiff, he was compelled to abstain from duty w.e.f. 5.2.1973. The aforesaid two persons considered by the respondents for painting work are inexperienced persons in comparision to the plaintiff and on 15.11.72 the plaintiff moved an application to the defendant no.2 for appointing him as a Painter but no heed was paid to it. After giving a notice under Section 80 Code of Civil Procedure, the suit giving rise to this appeal was accordingly filed by him for a declaration that he continues to be a Painter under IOW Northern Railway, Sultanpur from 22.3.1969 till the decision of the suit. During the pendency of the appeal, the plaintiff got the plaint amended to plead that there are two types of Painters - (i) Khalasi Painter and (ii) Ordinary Painter. The post of Painter is class III while the post of Khalasi Painter is class IV and the plaintiff is entitled to be appointed to the

post of Painter or atleast Khalasi Painter and he still holds the lien for the said post. He also amended his relief clause and he now seeks a declaration to the effect that he is entitled to the post of either a Painter or a Khalasi Painter or a Gang Khalasi under IOW Northern Railway Workshop, Sultanpur with all benefits of pay and emoluments and the removal of his name from the muster-sheet is illegal and ineffective.

3. The suit was contested on behalf of the defendants and they pleaded in their written statement that the plaintiff being a casual labourer Khalasi was bound to do the work assigned to him by the IOW. The plaintiff being the senior most casual labourer, was allowed to officiate as Gang Khalasi. Even a Gang Khalasi is supposed to perform the duties entrusted to him. The plaintiff was never appointed as Painter. Mohd. Iliyas was promoted as Painter on the ground of seniority-cum-suitability and there was no discrimination against the plaintiff. The name of the plaintiff neither appeared on the list of selected candidates for appointment as Painter nor he ever passed any test for his regular absorption. The question of promotion depends upon seniority-cum-suitability test and there was no humiliation of the plaintiff on account of any act of the defendants and the allegations made in this connection are imaginary and fancyful. The plaintiff is no more in service

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w.e.f.5.2.1973 as he had left the job of his own accord and he is not entitled to get any relief. It was also stated in the additional written statement that the plaintiff is junior to Mohd. Iliyas and Deep Narain ; he had no lien on the post of Gang Khalasi or any other post ; he was never appointed as a Gang Khalasi; he being a casual labourer, only temporarily worked as such for some time; despite the chances given to him, he did not pass any test for selection as Gang Khalasi. The pleas of bar of Section 80 CPC and non-joinder of necessary parties were also raised.

4. The trial Court had initially framed 5 issues in the case and held that the plaintiff is not entitled to the declaration claimed and on the basis of this finding, the suit was dismissed with costs. In the appeal preferred by him, he sought some amendment in the plaint including the relief clause, as stated above, and the learned Civil Judge, after framing 3 more issues on the basis of additional pleas, remitted the same to the trial Court. No appearance was put in on behalf of the defendant-respondents before the trial Court at this stage and on the basis of ^{and} the affidavit filed by the plaintiff before the trial Court, the trial Court held that the plaintiff continues to be in service as a Painter/Gang Khalasi and his removal from the muster sheet is illegal and ineffective and the suit

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is not barred by Section 80 GPC. After these findings, the ~~files were~~ ^{& record was} returned to the Civil Judge, Sultanpur. The respondents filed objections against the same before the Civil Judge but before they could be finally disposed of, the appeal was transferred to the Tribunal under the changed law.

5. The main question arising for determination in this appeal is whether the plaintiff had acquired any status as a railway servant by serving the department for a period of about 19 years and if so, what ? It has not been disputed before us on behalf of the plaintiff that he was initially appointed as a casual labour. On his own showing, he expressed a lot of resentment and also relinquished his job, may be temporarily, on his name being included in the list of Gang Khalasis as it appeared to be insulting and below dignity to him. He now seems to have realised the correct position and he now claims a declaration even as a Gang Khalasi by virtue of an amendment in the plaint. The plaintiff Ghanshyam Lal had appeared in the witness box as P.W.1 and it was stated by him that he was appointed as a Painter in the railway in 1954 temporarily and he worked as such upto 1969. When the post of Painter fell vacant, } he had applied for his appointment as Painter but no action was taken in the application and his name was included in the list of Gang Khalasis. He had

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never worked as Gangman and had worked as Painter for about 16 years. His separate muster-sheet was discontinued and the inclusion of his name in the list of Gang Khalasis was shocking to him and he had addressed an impressive letter on 5.2.1973 to his department but no action on it was taken. He gave a notice under Section 80 CPC and thereafter also gave one reminder. In his cross-examination, it was stated by him that the facts stated by him in the plaint are correct and he did not do any work w.e.f.5.2.1973 because he was asked to do a wrong work and as such, he went to his house. On further cross-examination, he stated that even formerly, his name was in the list of Gang Khalasis but from the very beginning, he was doing the work as a Painter. According to him, Mohd. Iliyas was junior to him. One Kishore, an ex-railway employee was also examined as P.W.2 by the plaintiff and it was stated by him that he had seen plaintiff doing the painting work and he never worked as a Gang Khalasi.

6. On behalf of the respondents, the IOW Jagdish Chand Chaddha was examined as D.W.1 and it was stated by him that from 1970 to 25.3.1976, he was posted as IOW Sultanpur and the plaintiff was working under him. He was working as a substitute casual labour on the post of Gang Khalasi. On account of his being a casual labour, he was not

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called for selection to a promotional post but he was called for selection for his regular absorption in service but he did not succeed in it. He further stated that the plaintiff did not report on duty of his own accord w.e.f.5.2.1973 and he did not do any official work thereafter.

7. The service record of the plaintiff is also available before us and it appears from the notice dated 21.3.1969 issued by the IOW Sultanpur that the plaintiff was posted as a substitute Gang Khalasi in a clear vacancy created due to the death of Sore Chaukidar and his posting was purely temporary. In this notice, the plaintiff has been described as a Painter. The plaintiff was thus, neither a permanent employee nor a temporary employee of the Railway department but on account of his working as a casual labour for more than the required period, he had acquired the status of a temporary employee. A temporary employee does not acquire any lien on any post. He, however, becomes eligible to get some service benefits and the provisions of Railway Servants (Discipline and Appeal) Rules, 1968 also become applicable to him and his services cannot be terminated without complying with the requirements of the said rules.

8. In the instant case, neither the defendant-respondents terminated the services of the plaintiff nor there is such allegation on behalf

of the plaintiff against them. Ex.Arl is the letter dated 5.2.1973 of the plaintiff about which there was a mention in his statement, in which it was stated by him that he should either be appointed as a Painter or Painter Khalasi or his dues be settled after dismissing him from service. Admittedly, the plaintiff did not turn up to do any job after this date.

9. Rule 2504 of the Railway Establishment Manual (hereinafter referred to as the Manual) provides that a casual labour shall not absent himself from duty for more than 15 days during a period of 6 months. The various directions of the Railway Board printed at page 769 of the 'Railway Establishment Manual by M.L.Jand, 1985 Ed.' show that a casual labour, who acquires the status of a temporary employee, shall be entitled to 20 days authorised break, which will not be counted while determining continuous service. It thus follows that the plaintiff could absent himself for 15 days without any leave and his absence for more than 20 days, therefore, created a break in his service. Para 1301 of the Manual provides that a break in service entails forfeiture of the service of a railway servant before the break unless condoned by the competent authority. We are, therefore, of the view that on account of the break in service of the plaintiff as a Gangman/Khalasi, all the rights acquired by him by serving the Railway Department

for a period of about 19 years came to an end. As the respondents did not take any action against him for his unauthorised continuous absence w.e.f.5.2.1973, ^{if approached,} they may still condone the break in service with necessary conditions ~~in~~ ^{at} their sweet will and may allow the plaintiff to join his duty, if there be any vacancy for him. But so far as this Tribunal is concerned, we do not find his any subsisting right on the basis of which he can be granted any relief.

10. Regarding the notice under Section 80 CPC given by the plaintiff, we find that it does not contain the necessary ingredients of Section 80 CPC. The copy of notice, Ex.6 on record, mentions that the 'plaintiff shall seek proper suit for declaration, remedy of fundamental right and then you all shall be liable for the cost of the suit, damages and all amount of the period from 22.3.1969 to the end of the suit! The plaintiff should have specifically stated the relief he wanted to seek, specially in view of the fact that he himself had abandoned his job. His notice, thus, does not meet the requirement of Section 80 CPC and is not a valid notice.

11. In view of the above considerations, we feel that on 5.2.1973 when the plaintiff decided to abandon his job, he had acquired the status of a temporary employee only and on account of break in his service due to unauthorised absence, he has forfeited all his rights to continue on this job and

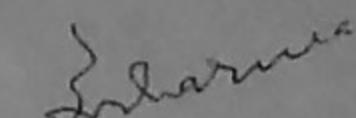
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what to say of his promotion or appointment as Painter or Painter Khalasi, he is not entitled to a declaration even as a temporary Khalasi. The suit was, therefore, rightly dismissed by the trial Court and the amendment sought in the appeal as well as findings given by the trial Court on the additional issues have in no way improved his case and the appeal merits dismissal.

12. The appeal is accordingly dismissed and the parties are directed to bear their own costs.



Member (A)
5.1.1987


Member (J)
5.1.1987

Dated 5.1.1987
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