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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration T.A. No.306 of 1986

Kamalapati Misra Plaintiff

Versus

Union of India & OthersDefendants

Hon.S.Zaheer Hasan, V.C.
Hon. Ajay Johri, A.M.

(By Hon.Ajay Johri, A.M.)

Suit No. 194 of 1984 has been received on transfer from the Court of Munsif Mirzapur. The plaintiff Kamalapati Misra was recruited and employed as a casual Khalasi on 6.12.76 and worked upto 5.2.77 at Vindhyachal. According to the plaintiff he was required to work at the Auto Exchange situated at Mirzapur Railway Station from 19.3.77 because he had the qualifications for the job. He was, there^{at}, asked to work as Telephone Operator against the permanent and regular vacancy. After completing 120 days the plaintiff alleges that he acquired temporary status on 5.9.77. The plaintiff says that the work of the Telephone Operator involved continuous duty around the clock and since there were only two operators including him he worked for more than 12 hours duty and even in

the night and on holidays. He was however not provided the due wages and other benefits as available to other temporary employees and when he insisted defendant No.4 ordered the Telecommunication Inspector not to take ~~away~~ ^{work} from the plaintiff after 26.9.79. The plaintiff further states that being aggrieved he represented the matter several times and at that time it was disclosed that ~~the~~ ^{or there were} breaks in service from 19.3.79 to 25.9.79 ^{or and then} in spite of his having served continuously, were the cause for the benefit not being given to him. The artificial breaks shown are against true facts and are fabricated. He therefore has prayed for the relief that he be declared to be a temporary railway employee as Telephone Operator and in continuous service of the defendants.

2. The defendants in their written statement have said that the plaintiff initially worked against ^{or a} ~~the~~ vacancy during the Kumbh Mela from 6.12.76 to 5.2.77 and ^{or then} at the Auto Exchange Mirzapur ^{or where} he worked as a casual labour and not as a Telephone Operator. According to the defendants at the relevant time, for which the plaintiff is seeking relief, the Auto Exchange at Mirzapur was under construction and no posts were sanctioned for the same. The plaintiff never worked continuously for 120 days and therefore he did not attain temporary status. The plaintiff was paid according to the work that

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was taken from him. Once the work on which he was employed at Mirzapur was completed the question of his being kept engaged on work did not arise. There were no artificial breaks. Work was taken from him and others in accordance with the sanctions which were available and once the sanction expired the employment used to come to an end. The plaintiff had never worked against any regular vacancy and therefore the claims made by the plaintiff are frivolous and vexatious.

3. We have heard the learned counsel for both sides. The learned counsel for the plaintiff ~~state~~ stated that during the plaintiff's service in the Auto Exchange he had worked continuously for more than 120 days but he was not given temporary status and he was also not absorbed in service. On the point of delay in agitating the matter he contended that the cause of action arose on 16.2.84 on receipt of a letter, which is placed at 26Ga, from the Divisional Personnel Officer, Allahabad and therefore there was no delay in filing the suit. The learned counsel for the defendants repelled these contentions on the point that no representations were received and that the suit is time barred and the plaintiff never attained temporary status.

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4. The Divisional Personnel Officer's letter which is placed at 26Ga refers to the request made

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by the plaintiff on 18.7.1981 regarding regular absorption addressed to the Railway Minister. He was advised by this letter, which is dated 16.2.84, that the results of his test for the post of TCM Line was not yet available and that since his number of ~~work~~ ^{34 days} for which he worked had not been certified by the competent supervisor, ~~He~~ ^{the} could not be considered for regularization. In 1977 panel he could not be called because he had not completed 120 days work ^{34 at that time}. He was also advised that whenever he was called beyond the working hours he was given compensatory leave and therefore his argument that he was called on night duties and on national holidays was not tenable. The Divisional Personnel Officer had also referred to a letter of 27.5.80 in the above connection. No other documents have been filed by the plaintiff in regard to his representations. This paper refers to his representation to the Railway Minister. According to the plaintiff's own statement he has not been given duty since 1979. He filed the suit in 1984.

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5. Even if the plaintiff had represented when he was not given work after September, 1979 his repeated representations ^{34 will} ~~can~~ not improve his case for the delay in seeking alternative remedy if he was not satisfied with the reaction of the defendants. His plea that the cause of action arose on 16.2.84 the date when his representation of 1981 sent to the Railway Minister got replied is not ³⁴ ~~reasoned~~

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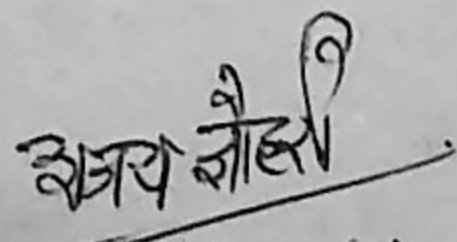
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what can be considered as adequate to cover up the delay in approaching the Court for seeking remedy. Legal remedy should have been resorted to within reasonable time. He had adequate time available to himself to seek legal remedy but he chose to take action in the matter only in 1984.

6. We do not find that the plaintiff has been able to make out a case of his having attained temporary status. The defendants have been repeatedly asserting that he never attained such a status and since he had not worked continuously he was also not called for screening when the same was done in 1977. He therefore cannot be considered to have attained temporary status. There is a vast difference between the temporary status and an employee who is temporary, *and the plaintiff had neither of these.*

7. In conclusion we find that the plaintiff has not been able to make out a case for himself. His petition (Suit No.194 of 1984) is therefore liable to be dismissed. The suit is, therefore, dismissed. Parties will bear their own costs.


Vice Chairman


Member (A)

Dated the 17th Aug., 1987

RKM