

## CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration T.A.No.626 of 1986 (C.A.No.170 of 1984)

Union of India ... Applicant

Vs.

Hem Raj ... Respondent

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

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

This civil appeal against the judgment and decree dated 21.9.1984 passed by the Munsif Court No. IX Jhansi in suit no. 191 of 1982 has been received by transfer from the Court of IV Additional District Judge, Jhansi under Section 29 of the Administrative Tribunals Act XIII of 1985.

2. The respondent Hem Raj (hereinafter referred to as the plaintiff) was appointed as casual Khalasi in the Central Railway on 4.11.1977. It is alleged that he continuously worked since then upto 27.11.1981 on the open line under the administrative control of Signal Inspector, Chief Telecommunication Inspector (for short CTI) and PWI Jhansi but on account of personal prejudices and displeasure, the Sr. D.S.T.E. Jhansi wrongly discharged him from service and after issuing a notice under Section 80 Civil Procedure Code, he filed the suit giving rise to this appeal for a declaration that he is legally entitled to be regularised in service as Khalasi on the completion of minimum period of service as casual labour upto 27.11.1981. The suit was contested on behalf of the Union of India and in the written statement filed on its behalf it was stated that the allegation of the plaintiff that he was discharged from service w.e.f 27.11.1981 is incorrect. The fact is that the plaintiff himself, of his own accord, left the service of the defendant and did not turn up on duty from that date and he is unauthorisedly absent from duty since then. The

plaintiff did not work on open line and as he left the service of the Railway administration of his own accord, he is not entitled to regularization in service. The allegations made by the plaintiff against the Sr.D.S.T.E. are false and concocted and he is not entitled to any relief. Some other legal and technical pleas were also taken in the written statement which do not appear to be material in this appeal.

3. The learned trial Court after considering the evidence of both the parties came to the conclusion that after serving the Railway administration for more than 180 days, the plaintiff acquired temporary status and is entitled to get the pay as permanent employee under rule 2303 of the Railway Establishment Code. The plaintiff had not left the service of his own accord but he was not allowed to function after 27.11.1981 and he continues to be in service. With these findings the suit was decreed and it was declared that from 27.11.1981, the plaintiff is entitled to get the regular pay of casual khalasi.

4. Aggrieved by these findings of the trial Court, the defendant preferred this appeal and it has been contended before us that the plaintiff himself had absented from duty and for regularization, a screening test is necessary under the rules and the trial Court committed an error in giving a declaration that the plaintiff is entitled to get the pay and allowances as a regular khalasi. It was also contended that the plaintiff could not prove his case and his suit was wrongly decreed by the trial Court. The appeal has been contested on behalf of the plaintiff.

5. The parties have led both oral and documentary evidence in this case. It was stated by the plaintiff Hem Raj in his statement as P.W.1 that he had joined the Central Railway as a casual labour on 4.11.1977 and Ram Prakash and Ram Prasad who had

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joined as such after him in 1978 are still working. He was working on open line. He did not leave the job of his own accord w.e.f. 27.11.1981 but as a matter of fact, he was not allowed to work thereafter by the Sr. D.S.T.E. due to personal reasons. There is nothing in his cross-examination to throw any doubt about his testimony. On the other hand, from the side of the defendant, one Heera Lal Yadav, D.W.1 posted in the office of the D.S.T.E. Jhansi was examined and it was stated by him that the plaintiff did not turn up for duty from 27.11.1981. Had he come on the duty, he would have been allowed to work. In his cross-examination, he showed his ignorance about the fact that the plaintiff had gone to attend his duty and was not allowed to do so by the Sr.D.S.T.E. He, therefore, does not appear to have any personal knowledge about the real fact in controversy. The trial Court has rightly pointed out that the plaintiff gave ~~the~~ notice under Section 80 CPC on 4.1.1982 and immediately after the expiry of the statutory period of notice, he filed the suit on 8.3.82 and if he had abandoned his job of his own accord from 27.11.1981 as alleged by the defendant, he would not have made so much hurry in giving the notice and filing the suit. We fully agree with the view taken by the trial Court and see no reason to disbelieve the testimony of the plaintiff. It is not in dispute in this case that before 27.11.1981, the plaintiff had completed the required service of more than 120 days as casual labour and thereby acquired the temporary status and he is entitled to continue in service and to be regularised as a railway employee in due course after screening. The provisions of Railway Servants (Discipline and Appeal) Rules, 1968 become applicable to a casual labour on his acquiring the temporary status. The defedant-appellant did not take any step against the plaintiff on his allegedly abandoning his post nor terminated his services by giving any statutory notice. We are, therefore, of the

view that the plaintiff did not lose his status of temporary railway employee by his not getting any duty from 27.11.1981 in any manner and his suit was rightly decreed by the trial Court. We will, however, like to point out that for his regularization in service the plaintiff has to pass the screening test like other casual labour enjoying temporary status on his turn. The decree passed by the trial Court requires modification to this extent.

6. The appeal is disposed of accordingly without any order as to costs.

MEMBER (A)

*Sharma*  
4/1/88

MEMBER (J)

*Sharma*  
4/1/88

Dated: January, 4, 1988  
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