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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.

Registration (T.A.) No. 520 of 1987

Union of India Defendant-Appellant-Applicant.

Versus

Aqil Ahmad Plaintiff-Respondent.

Hon'ble Justice A. Banerji, Chairman (J.)
Hon'ble A. Johri, Member (A).

(Delivered by Hon. A. Johri, A.M.)

This appeal, received under Section 29 of the Administrative Tribunals Act, 1985 on transfer from the court of District Judge, Gorakhpur, arises out of a judgment and decree dated 28.9.1985 passed by the Munsif VI, Gorakhpur in Suit No. 349 of 1983 decreeing the suit of the plaintiff.

2. The grounds of appeal are that the trial court had erred in holding that the plaintiff was appointed against a permanent post and his service will be governed by the terms and conditions of permanent employees while as a matter of fact the plaintiff was only a trainee and was never appointed against any post. Also the finding that the plaintiff was on leave without pay is incorrect as he was not entitled to any leave, as a matter of fact the plaintiff was absconding from the place of duty.

3. ^{as narrated by the plaintiff} The facts of the case are that after his appointment as Trade Apprentice in the North-Eastern Railway at Gorakhpur on 2.2.1966 and after completion of his training from 2.2.1966 to 23.7.1969 the plaintiff was sent for reorientation training to Izatnagar and

remained under training from 8.12.1969 to 19.2.1970.

Thereafter he proceeded on leave without pay due to illness of his mother. When he reported back for training ^{as alleged by him} on 19.5.1970, he was not allowed to join duty. He represented against the same and ultimately on the directions of the Railway Minister certain enquiries were made from him on 3.5.1976. He replied to the querries but, ultimately on 6.12.1982 his request for being taken back on duty was rejected. Then he filed the suit. The defendants had opposed the suit on the grounds that the plaintiff absented himself from 22.2.1970 to 18.5.1970 and absconded thereafter. He was intimated at his home address on 24.2.1974 that his services stood terminated as he was deemed to have resigned. The trial court, on the issue whether the appointment was against a permanent post and he was entitled to be admitted for training on 19.5.1970, had held that on the basis/exhibit Ka-1 it was clear that the plaintiff was appointed against a permanent post on the condition that he should pass a trade test after completion of his reorientation training. On the absence for the period 19.2.1970 to 18.5.1970, after observing that the defendant's reply was silent on the point, the trial court held that since nothing has been shown to support the version that the plaintiff did not report for training on 19.5.1970 and ^{as defendants} have failed to produce relevant files it has to be accepted that he reported for duty on 19.5.1970 and so he did not abscond and the defendant's action to deem the plaintiff to have resigned would be bad in law. Again since the defendant failed to produce the papers regarding querries made by them in 1976 and action taken on the reply to the same the learned trial court held that the defendant failed to

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take decision on the plaintiff's agreeing to accept the terms laid down in the 1976 letter. So this issue was decided in favour of the plaintiff.

4. We have heard the learned counsel for the parties. Sri Ratnakar Chowdhary, learned counsel for the plaintiff, contended that the plaintiff had to go to his home town to attend to his mother and when he came back to join duty he was not allowed ^{34 to join} the same. Ultimately a querry was made from him in 1976 about ^{34 possibility of} his agreeing to certain conditions to which he had replied. But his request for reengagement was rejected in 1982. The learned counsel submitted that justice should always be tempered by human approach and the decree of the trial court may be allowed to stand. On behalf of the defendant the submissions made while opposing the petition were that the plaintiff was governed by Rule 732(i) exception (ii) of the Indian Railway Establishment Code, Vol. I. There was no provision for leave during training period and actually the plaintiff was treated as an absconder and was not appointed against a permanent post. We have perused the suit file and documents filed in the suit.

5. The documents filed in the suit file bring out these important facts. The plaintiff was given training under the Apprentices Act, 1961. He was appointed by an order dated 2.2.1966 (paper 16-Ga). No guarantee of appointment was given after successful completion of the training but efforts were to be made to absorb the apprentices after due trade test. After completion of his training the plaintiff was directed to report to Loco Foreman, Kasganj for reorientation training for six months. He was to be absorbed against a regular post on successful completion of this training (paper 13-Ga). Paper 20-Ga is

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an application by the plaintiff, sent by him on 28.11.73, to the Chief Mechanical Engineer. The plaintiff has said that since 20.2.1970 he had been on leave on account of his mother's sickness and then his own which continued upto 24.11.1973. He had also submitted a PMC in support of this. According to this application the plaintiff had claimed that he was posted to Kasganj as a Fitter on completion of his training. This claim is belied by the order given for reorientation training (paper 13-Ga). During this period he was still to get only a stipend. It was only after completion of the training at Kasganj and ^{by passing of a} trade test that he was to be appointed against a regular post in the grade of Rs.110-180. There is no consistency in the plaintiff's admissions regarding his absence. In paper 22-Ga he has said that he reported for duty on 19.5.1970 while by his own application he had said that he was away from 20.2.1970 to 24.11.1973 firstly, on account of sickness of his mother, then his own. The defendant's version is that he had absconded. So we are of opinion that the learned trial court's conclusions that the plaintiff was away only upto 19.5.1970 and that he was appointed against a permanent post are both not based on facts and are erroneous and liable to ignored.

6. Paper 23-Ga is a letter clarifying the contents of the Board's letter No. E(NG)I/70 RR 1/29 of 29.1.1971. The Board's letter indicates that Act Apprentices can only be absorbed against regular posts after passing the ^{by reorientation} test after necessary training in the Railway Trade. So the plaintiff who was yet to be submitted to such a trade test could have never been appointed against a permanent post as concluded by the learned trial court.

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7. In respect of leave Para 732(1) of the Indian Railway Establishment Code, Vol.I reads as follows :

"732. Other staff. - (1) Except where otherwise provided in his contract, leave may be granted to any other railway servant without a lien on a permanent post, while officiating in a post or holding a temporary post on a monthly rate of pay, as shown below :-

(a) extraordinary leave without leave-salary for not more than 3 months at any one time;

(b) provided he has completed one year's total service, 10 days leave on full pay per calender year, subject to the condition that such leave may not be accumulated for more than 20 days.

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Exception II. - The General Manager or the Chief Personnel Officer of a Railway may grant extraordinary leave without leave-salary for not more than one year at a time on grounds of the railway servant's own illness, other than that mentioned in Exception I.

Note 1. - The concession under this sub-rule will be admissible only to those railway servants who had been in continuous railway service for a period exceeding one year.

Note 2. - Where a temporary railway servant fails to resume duty on the expiry of the maximum period of extra-ordinary leave granted to him or where he is granted a lesser amount of extra-ordinary leave than the maximum amount admissible, and remains absent from duty for period which together with the period of extra-ordinary leave granted exceeds the limit upto which he could have been granted such leave under sub-rule (1) above, he shall, unless the President in view of the exceptional circumstances of the case otherwise determines, be deemed to have resigned his appointment and shall, accordingly, cease to be in railway employ.".

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The plaintiff was away from work for nearly 3 years as his own application (paper 20-Ga) shows. So according to this para which has statutory backing he was correctly deemed to have resigned from service. Any subsequent querry made in 1976 will not be material. The administration was the best judge to take a decision on any reference received from the Railway Minister if there was one because neither the plaintiff nor the defendants have produced any such document in support of the contention that there was any such direction to consider his case for appointment in 1976. The plaintiff's date of birth according to paper 24-Ga is 10.7.1946. So he was already 30 years old in 1976 and it would look absurd to consider such a person for appointment as an apprentice at that age. Perhaps this was the reason that weighed in the mind of the General Manager when he rejected the offer in 1982, as alleged by the plaintiff. In any case the plaintiff had no right to get a regular appointment by virtue of his Act Apprenticeship. Under the Apprentices Act, 1961 the Industrial Establishments have to train skilled man power in designated trades but no guarantee of employment is available. The apprenticeship contract terminates on the expiry of the period of training.

8. In the above view, the appeal has to succeed. We, therefore, allow the appeal and set aside the decree and judgment of the trial court and dismiss Suit No. 349 of 1983. We further order that parties will bear their own costs throughout.

SPRI

MEMBER (A).

Dated: December 1988.

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CHAIRMAN (J).