

AB 14

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No. 349 of 1987

Rajendra Kumar ..... Applicant

Versus

D.R.M. Jhansi & Another ..... Respondents

Hon.S.Zaheer Hasan, V.C.

Hon. Ajay Johri, A.M.

(By Hon.S.Zaheer Hasan, V.C.)

This is an application under Section 19  
of the Administrative Tribunals Act XIII of 1985.

2. In 1983 no person could be employed as a  
Casual Labour with the Railways unless he possessed  
a Service Card certifying that he had already worked  
as such on earlier occasion. The applicant obtained  
appointment as Casual Labour on 22.6.1983 on  
production of Service Card purported to have been  
issued by PWI Moraina. In this connection an enquiry  
was made behind the back of the applicant and it  
appeared that this Service Card was forged and  
the applicant had never worked under PWI Moraina.  
On 13/17.12.86 a show cause notice was issued to  
the applicant stating therein that on the basis  
of bogus service card he obtained appointment. On  
31.12.1986 the applicant submitted his explanation  
wherein he had stated that he had worked from 1.6.86  
with some breaks. On 3.2.1987 his services were

2



terminated with the remark that he has not submitted a proper reply " Uchit Uttar " . The applicant's case is that he had acquired a temporary status and his services could be terminated only under the rules and ~~in~~ <sup>the</sup> manner in which his services were terminated is illegal. According to him the contents of notice are false, fabricated, concocted and mischievous. He had worked during the relevant period and he was not aware about the entries in the Service Card.

3. The respondents' contention is that on enquiry the Service Card was found forged. So a show cause notice was issued and since it was not denied in the explanation that the Service Card was forged so the authorities rightly terminated his service.

4. In short the services of a Casual Labour were terminated (with stigma) on the ground that he obtained appointment on the basis of forged Labour Card after issuing a show cause notice. It was contended that in the explanation the applicant did not deny the alleged forgery, ~~So~~ <sup>his</sup> explanation was rejected and his services were rightly terminated. It was alleged that the applicant was appointed on 22.6.1983 and he falsely asserted that he had worked

*W*



terminated with the remark that he has not submitted a proper reply " Uchit Uttar " . The applicant's case is that he had acquired a temporary status and his services could be terminated only under the rules and ~~in~~ <sup>the</sup> manner in which his services were terminated is illegal. According to him the contents of notice are false, fabricated, concocted and mischievous. He had worked during the relevant period and he was not aware about the entries in the Service Card.

3. The respondents' contention is that on enquiry the Service Card was found forged. So a show cause notice was issued and since it was not denied in the explanation that the Service Card was forged so the authorities rightly terminated his service.

4. In short the services of a Casual Labour were terminated (with stigma) on the ground that he obtained appointment on the basis of forged Labour Card after issuing a show cause notice. It was contended that in the explanation the applicant did not deny the alleged forgery, <sup>So</sup> his explanation was rejected and his services were rightly terminated. It was alleged that the applicant was appointed on 22.6.1983 and he falsely asserted that he had worked

*W*



APB  
B  
6

- 3 -

with PWI Moraina before 22.6.83. In his explanation the applicant has stated that from 1.6.86 to 22.6.83 he had worked there with gaps. This clearly amounts to denial of the allegations ~~to the effect~~ that he did not work before 22.6.1983. A Casual Labour is not expected to be versed in the niceties of pleadings. This explanation does not admit that he had not worked. On the other hand it asserts that he had worked during the relevant period. This explanation was rejected with a creptic order that his explanation was being rejected because the reply was not proper " Uchit Uttar ".

5. Departmental instructions were issued regarding bogus Casual Labour Card vide letter dated 13.12.85 in the following words :-

" Notice as per proforma should be issued and on receipt of explanation and other evidence they should be considered by the competent authority giving reasons of termination of service in a speaking order. "

Annexure-I to the Counter Affidavit is a letter dated 21.11.1986 from Personnel Branch to all Branch Offices etc. mentioning that instructions issued vide letter dated 13.12.85 should be observed. These instructions dated 13.12.1985 are based on principles of natural justice and are not contrary to any rule or law. These instructions were not followed by

M



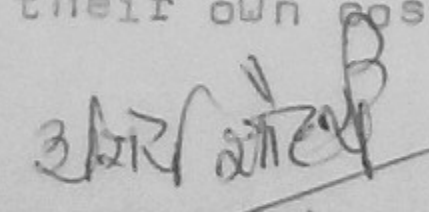
the authority concerned while terminating the applicant's services. Relying on a case reported in 1987 A.T.C. 109 Ashit Sengupta and Others Vs. Union of India & Others it was contended that if an appointment was void abinitio it was not necessary to give an opportunity of hearing etc. A precedent is a ruling on its own fact. In the aforesaid case letter sent from Employment Exchange was found to be forged. The entire relevant record was produced before the Tribunal which decided the case after hearing both the parties. This case is clearly distinguishable. In order to hold that an appointment is void it has to be first ascertained with the help of legal evidence as to whether any fraud was committed or not. Evidence obtained behind the back of the applicant is not evidence in the eye of law and the order of termination of service cannot be based on the decision arrived at with the help of aforesaid evidence. Accepting this contention would amount to putting the cart before the horse. However we need not dilate on this point and it would suffice to say that we could not relish this argument made on behalf of the Department in view of the guidelines dated 13.12.85 issued by the Department itself. As already stated the guidelines are based on principles of natural justice and are not contrary to any rule or law. The applicant was a Casual Labour. Though no regular departmental enquiry is required to be held against




such a workman, the least that is required to be done is :-

- (1) to inform him of the proposed action,
- (2) to disclose to him the material sought to be relied against him,
- (3) to afford him a reasonable opportunity to correct or to controvert such material and to place his view<sup>and lead evidence</sup> if he so desires and
- (4) to arrive at a fair and just decision supported by a reason expressed in a speaking order.

In the present case ~~the~~<sup>in</sup> basic requirements of the rules of natural justice and fair play were not complied with. ~~A~~ simple show cause notice was issued stating that Labour Card was forged. He was not told about the material sought to be relied against him in support of that charge. The finding about the fraud was arrived on the basis of the evidence taken behind the back of the applicant. ~~The~~<sup>in</sup> impugned order violates the aforesaid guidelines and the rules of natural justice and fair play. So the termination order dated 3.2.1987 is quashed. The authorities will be at liberty to issue a fresh show cause notice and to decide this matter according to law in the light of the observations just made above. In the circumstances of the case parties to bear their own costs.

  
Member (A)

  
Vice Chairman

Dated the 20 Jan., 1988