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Reserved

A Central Administrative Tribunal,
Allahabad.

Registration O.A.No. 387 of 1987

Ram Sewak ... Applicant.

Vs.

Union of India and another ... Respondents.

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

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

In this petition u/s. 19 of the Administrative Tribunals Act XIII of 1985 (hereinafter referred to as the Act), the applicant has prayed for his engagement as monthly rated casual labour w.e.f. January 1986.

2. It is alleged that the applicant was first engaged as a casual labour in the Tranship Shed of the Central Railway at Jhansi in June 1978 and worked continuously without break upto Dec.31,1978, ~~without any break~~. The applicant further worked from Jan.1979 to Dec.1984 in various departments of the Central Railway Jhansi on daily wages as and when the work was available. The applicant is further alleged to have worked from Dec.20, 1984 to Aug.15,1985 under the administrative control of Permanent Way Inspector Central Railway Jhansi on deaily wages with artificial breaks and was paid wages for more than 180 days during this period. On his having worked for more than 120 days the applicant was entitled to be absorbed as a regular railway employee under the Railway Board's letter dated 21.10.1980. One Jasrath who was appointed as casual labour on 25.12.1984 was absorbed on regular basis as monthly rated casual labour in Jan.1986 while the applicant who had acquired the status of temporary railway employee was put off duty by a verbal order dated Aug. 15,1985, which amounted to discrimination and contravention of Art.16 of the Constitution. He has accordingly prayed that he be engaged

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as monthly rated casual labour w.e.f. Jan.1986 when person junior to him was so engaged with consequential benefits.

3. The petition has been contested on behalf of the respondents and in the reply filed on their behalf by the Addl. Divisional Railway Manager Jhansi, it has been stated that the applicant left his job on his own accord w.e.f. 22.8.1985 and there was no order of terminating his services w.e.f. 15.8.1985 as wrongly alleged by him. There is no record of the applicant working in the Tranship Shed Jhansi for any period between June to Dec.1978 and his allegation to the contrary is incorrect. According to the records of the respondents, the applicant had worked as a casual Khalasi in a Project from 20.12.1984 to 21.8.1985. His claim for higher rated casual labour on the basis of his working during this period cannot be accepted till he produces the satisfactory proof of his having worked in the Railway earlier than 20.12.1984 and his appointment is established to be valid. As the applicant had himself left his job, there is no question of any discrimination against him and as he had made no representation before approaching this Tribunal, his case is premature and is liable to be dismissed.

4. In the rejoinder, the applicant denied the fact that he had himself left the job and reiterated that he had not been taken on duty w.e.f. 22.8.1985. He further stated that he did work in the Tranship Shed on Aug.8,9, and 27 in the year 1978 and on his working continuously w.e.f. 20.12.1984 to 21.8.1985, he acquired temporary status and his appointment w.e.f. 20.12.1984 was legal and valid.

5. The petition was filed on 5.5.1987 more than a year after the alleged removal or retrenchment of the applicant and a notice was issued to the respondents to show cause as to why the petition be not admitted. The applicant had also moved a separate application for condoning the delay with the allegation that after his removal from service, he had made several verbal and written representations to the Divisional Engineer (north) and Asstt. Engineers Central Railway Jhansi but did not keep any record of the same. He had, thereafter made a representation on 12.10.1986 which was duly received in the offices of the Divisional and Asstt. Engineers. When his grievance was not redressed within 6 months of his earlier representations, he had filed another petition u/s.19 of the Act before this Tribunal on 17.9.1986 which was dismissed on 2.3.1987 on the ground that the departmental remedy was not exhausted and thereafter the applicant had made a representation on 12.10.1986 and he should have moved this petition by 15.4.1987 and the delay of 2 months in this way caused in filing this petition is liable to be condoned. The applicant is a poor class IV employee and in view of the fact that the delay caused in filing the petition is of a short period, we are inclined to condone the same and his petition is accordingly admitted for disposal on merits.

6. The very short point raised on behalf of the respondents in this case is that ~~whether~~^{if} the applicant had worked in the Central Railway under the respondents on a relaying project from 20.12.1984 to 21.8.1985 and he did not do any work before 20.12.1984. According to them the appointment of the applicant from 20.12.1984 could be valid and effective only if he is able to produce the satisfactory proof of his having worked before 20.12.84. The contention is based on the ground that

the Government had banned ~~the~~ new recruitments from certain date and only such casual labours who had worked before 1.8.1978 could be appointed as such thereafter. Being conscious of it, the applicant had specifically alleged in para 6(a) of his petition that he was first engaged as casual labour in the Tranship Shed Central Railway Jhansi in June 1978 and worked continuously without any break up to Dec.31,1978 for about 6 months. This statement of the applicant was denied by the respondents and in para 4 of his rejoinder the applicant confined his case to his working on Aug.8,9 and 27,1978 i.e. for only 3 days ^{in 1978} and filed R.A.1 in support of this contention. R.A.1 is the copy of a letter addressed by the applicant to the Station Master Jhansi for issuing a certificate about his working for 6 months from June to Dec.1978. In the margin of this letter, there is a certificate that in the year 1978, in the month of August, the applicant had worked on 3 days, namely, Aug.8,9 and 27,1978 as per record. The applicant, thus, accepted the correctness of this certificate in his rejoinder and according to his own version he had worked only for 3 days in Aug. 1978 and not for any other ^{period} ~~day~~ in the year 1978. The applicant has further failed to produce any material before us to establish that he had worked from Jan.1979 to Dec.1984 in various departments of the Central Railway at Jhansi on daily wages. The allegations made by the applicant in sub-paras (a) and (b) of para 6 of his petition are, thus, incorrect.

7. We further find that according to original case of the applicant, he was allowed to work only upto 15.8.85 but when the respondents took the stand that the applicant had worked upto 21.8.1985, he accepted this position and did not dispute the allegations of the respondents

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in his rejoinder. This conduct of the applicant shows that he is not a straightforward person and much reliance cannot be placed on his mere statement in the petition. After 21.8.1987, he immediately rushed with his earlier petition without exhausting his departmental remedy and only during the pendency of that petition he had made a representation on 12.10.1986, copy annexure 2, to the Divisional Engineer Jhansi for taking him on work. The applicant has not furnished any evidence of his working as a casual labour under the respondents before 20.12.1984 except for 3 days in Aug.1978. The respondents are, therefore, right in their stand that it has to be determined whether the appointment of the applicant on 20.12.1984 was valid and it being found valid, the applicant can be considered for regularization etc. We also find it difficult to believe that the applicant was orally asked by the respondents not to do any work from 16.8.1985 and the contention of the respondents seems to have force that on his own accord the applicant had discontinued his job from 22.8.1985.

8. In view of these considerations, we leave it to the respondents to reexamine his case for his absorption in railway service on the basis of his past service according to the relevant rules. The respondents will also examine and consider the case of the applicant for absorption in the light of the decision of the Hon. Supreme Court in Inder Pal Yadav Vs. Union of India (1985(2) All India Service Law Journal-58) and other cases regarding casual labours. This should be done within 3 months from

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the date of the receipt of copy of this order.
The applicant does not seem to be entitled to any other benefits at this stage.

9. The petition is disposed of accordingly without any order as to costs.

Sharma
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MEMBER(A)

Sharma

MEMBER (J)

Dated: 3rd June 1988
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