

~~A3~~
RESERVED (8)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A. No.765 of 1987.

Ganesh Singh & 3 Others Applicants

Versus

Asstt. Personnel Officer (II)
N.R. Moradabad and Others Respondents

Hon. Mr. Justice K. Nath, V.C.

Hon. Mr. A.B. Gorthi, Member (A)

(By Hon. Mr. Justice K. Nath, V.C.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing the orders contained in Annexures 6 to 9 dated 20.7.87 whereby the applicants services were terminated on one month's notice and for a direction to the respondents to consider the case of the applicants for absorption as class IV employees with benefits of salary etc. as if their services have never been terminated.

2. In Moradabad Division of the Northern Railway, there was a non statutory canteen for the welfare of the employees of the railway which, according to the respondents, was run on a Cooperative basis with its own independent organisation. According to the applicants, it was run by the Cooperative before 1978, but after 1978 its management was in the hands of the Committee of Management constituted in the supervision of the Railway Administration. However, it is not clearly stated by the applicants that it was an Institution of the Railway itself. Be that as it may, the applicants were engaged as Casual Labours in that canteen and continued to work for several years when

(A3)
2

6

- 2 -

they were called for screening for absorption in the year 1985. They were found fit for absorption and were engaged as Substitute Token Porters individually under different Station Masters at different stations by letters dated 4.4.86, Annexures 1 to 4 in the scale of Rs. 196-232 at the initial stage of Rs.196/- for working in the Kumbh Mela. Each of the letters stipulated that after the Kumbh Mela, they would be relieved to work under their respective Station Masters. The letters mentioned that they were declared medically fit on 2.4.86 for category A2. In consequence of those appointment letters the applicants gave up their canteen jobs and started working as Substitute Token Porters from 5.4.86.

3. All the applicants worked continuously as Substitute Token Porters ever since then for more than 15 months till their services were terminated on 20.7.87 by the impugned orders contained in Annexures 6 to 9.

4. The applicants' case is that having been duly screened, they took up appointment as Substitute Token Porters with effect from 5.4.86 and had been continuously working for more than 240 days in a year and therefore had acquired temporary status. They complained that although under para 2318 of the Indian Railway Establishment Manual they had acquired all rights and privileges of temporary railway servants, their services had been terminated in violation of Section 25-F of the Industrial Disputes Act, and therefore is void.

5. They pointed out that the termination order proceeded on the basis that their appointment was provisional and was subject to the orders of the General Manager

8

(A3
3)

(10)

at the HQrs but no such condition was attached to their appointment orders, Annexures 1 to 4.

6. It was next said that on the basis of the appointment orders, Annexures 1 to 4 they had given up their canteen jobs which were filled up by others in course of time, and therefore the respondents action in terminating their services violates the principles of Promissory Estoppel.

7. The stand of the respondents is that since the Moradabad Canteen was non-statutory, there was no question of calling the applicants for screening for absorption. It was said that by mistake the applicants were called for screening and were approved for appointment as Substitute Token Porters of which mistake the applicants cannot get any benefit. It was next said that the appointment of the applicants as Substitute Token Porters was subject to the orders of the General Manager at the HQrs and the General Manager informed by letter dated 6.4.87, Annexure-9A that as intimated in an earlier letter of 21.10.83 P.S. No.6846 did not apply to Moradabad Canteen as it had not been approved by the Railway Administration. In this situation, according to the respondents, the applicants were not even railway servants and consequently their services were terminated with one month's notice. It was said that the applicants were not entitled to the benefits of the Industrial Dispute Act.

8. We have heard Shri Sudhir Agarwal, the learned counsel for the applicant and Shri G.P. Agarwal, the learned counsel for the respondents and have gone through the material on record.

S

(A3)
(11)

9. It appears to us that the question whether or not the Moradabad Canteen was a non statutory canteen loses its importance on account of subsequent developments. Assuming that the respondents committed a mistake in inviting the applicants for screening, it could not nullify the act of screening and the appointments given in consequence thereof. Even as Casual Labours they could have been screened and appointments could have been given; all that could be expected was to screen them in accordance with their proper seniority. The upshot is that while screening may have been improper or erroneous, it could not be said to be illegal for want of competence or jurisdiction. It is not said that the screening was done by a body which had no jurisdiction or did not possess the necessary competence or powers. Moreover, even if it could be open to question on account of some error, fairness and justice demanded that the applicants should have been given an opportunity before termination of service.

10. The next important feature is that there is no basis for the respondents' case that the applicants have been temporarily absorbed subject to the orders of the General Manager at HQrs. As pointed out by the learned counsel for the applicant, the appointment letters, Annexures 1 to 4 do not contain any such stipulation. The learned counsel for the respondents has not produced any record before us to show that the process of screening was made subject to the orders of the General Manager at HQrs. The appointment orders, Annexures 1 to 4 were not even endorsed to the General Manager for approval. We hold that the applicants' appointment as Substitute Token Porters, given in a regular

R

scale at the initial stage of the scale and after medical fitness, was an unconditional appointment.

11. It is also clear that from 5.4.86 to 20.7.87 the applicants had worked as Substitute Token Porters continuously for more than 240 days in a year and therefore they were not only entitled to the benefits of a temporary status under para 231B of the Indian Railway Establishment Manual but were also entitled to the benefits of Section 25-F of the Industrial Disputes Act. Admittedly they were not given compensation under that provision.

12. The learned counsel for the applicants has invited our attention to the so called letter dated 6.4.87, Annexure-9A which is the basis of the impugned termination orders dated 20.7.87 and contends that the said letter does not say that P.S. No.6846 would not apply to the Canteen at Moradabad. The contention is not quite correct. Annexure-9A invites reference to a letter dated 21.10.83 and mentions that the decision there was that P.S. No.6846 would ^{not} apply to Moradabad Division at Moradabad hence there was no question of screening the staff of the canteen at Moradabad. Annexure-10 is P.S. No.6846 of 17.9.77 which, nevertheless, says that staff of Cooperative Societies, Canteens etc., could be considered for regular absorption alongwith Casual Labours/ Substitutes but only "after eligible Casual Labours and Substitutes have been considered, i.e. in the list of screening they will be below all Casual Labours and Substitutes". The learned counsel for the applicants says that the expression 'Canteen' used in P.S. No.6846 is not classified as either statutory or non statutory and therefore the view of the respondents that since the

(b)
6

(b)

Moradabad Canteen was non statutory, the applicants could not be considered for screening is erroneous. We are not in a position to express any final opinion upon this subject because the various classes of staff set out in P.S. No.6846, Annexure-10 have not been elucidated before us. In any case, the General Manager's letter Annexure-9A specifically mentions that P.S. No.6846 could not be applied to the Moradabad Division because it had no approved canteen, is a decision from a competent authority and cannot be ruled out merely by guess. We have already mentioned that the applicants have not been able to show that the canteen in question was managed or controlled by the Railway Administration. According to the respondents, it had an independent management of a Cooperative Society. It is quite likely therefore that in the circumstances the authorities concerned fell into error in calling the applicants for screening and giving them appointment contained in Annexures 1 to 4; but the fact remains that they were given appointment, that they took charge of the assignment, that they continued to work for adequate length of time to entitle them to a temporary status and ultimately to the benefit of Section 25-F of the Industrial Disputes Act. Above all, we should agree with the applicants' learned counsel that having regard to the particulars facts and circumstances of the case the respondents should be stopped from challenging the appointment of the applicants. We hold therefore that the termination of the services of the applicants by the impugned orders was illegal and must be set aside.

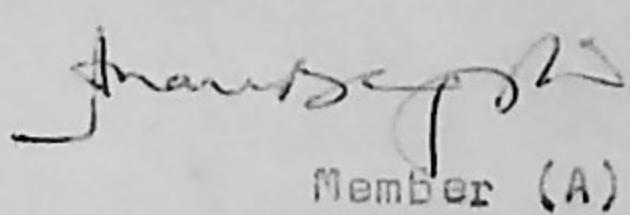
13. However, having regard to the facts and circumstances of the case, specially the benefit of the respondents

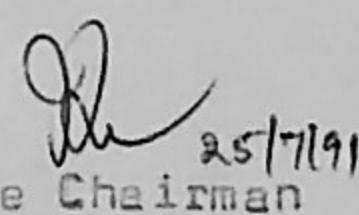
(AB)
2

(4)

in giving appointment
error to the applicants, which perhaps they may not
have got in the manner they did get, and for which they
might have had to wait in accordance with the roll of
seniority of the Casual Labours, fairness and justice
demands that the respondents may not be saddled with
the arrears of the applicants' salary although the
applicants must be reinstated immediately.

14. For reasons stated above, the application is
partly allowed and the order of termination of the
applicants' services contained in letters dated 20.7.87,
Annexures 6 to 9 are quashed. The respondents are
directed to reinstate the applicants within one month
from the date of receipt of a copy of this judgement.
We further direct that while the applicants shall not
be given arrears of salary, they will be treated to have
continued in service under the appointment orders,
Annexures 1 to 4 and their notional pay shall be fixed
in the scale contained in those orders on the date of
their reinstatement. We further direct that the
respondents shall consider the applicants' case for
regularisation in accordance with the applicable rules
bearing in mind the observations contained in the body
of this judgement. Parties shall bear their costs.


Member (A)


25/7/91
Vice Chairman

Dated the 25th July, 1991.

RKM