

(6) 12/1

Court No.2

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Registration O.A.No.796 of 1987

Hori Lal and Others ..... Applicants

Versus

Union of India & Others..... Respondents

Hon.Mr.D.K.Agrawal, J.M.

Hon.Mr.K.Obayya, Member (A)

(By Hon.Mr.D.K.Agrawal, J.M.)

This application under Section 19 of the Administrative Tribunals Act, 1985 is for quashing the orders contained in Annexures 5 to 7 dated 20.7.87 whereby the applicants services as Token Porters were terminated on one month's notice and for a direction to 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. This is a covered case by the judgement and order dated 25.7.91 passed in O.A. No.765 of 1987 Ganesh Singh and 3 others Vs. Union of India & Others. In short the facts are that there existed a non statutory canteen for the welfare of the Railway employees in Moradabad Division of Northern Railway. The applicants 1 to 3 (applicant No.1 has since died on 30.5.90 and his widow substituted vide orders dated 10.9.90 on Misc.Appln. No.992/90) were engaged as Casual Labours in the said Canteen and were made to work for several years. In the year 1985 they were called for screening for absorption as Token Porters and having been found fit they were engaged as Token Porters individually under different Station Masters at different stations. In consequence

*D.K. Agrawal*

of their selection the applicants as well as 4 others i.e. Ganesh Singh and 3 others (applicants of O.A. No.765/87) gave up their Canteen jobs and started working as Token Porters with effect from 5.4.86. The services of all the seven persons were terminated by an order dated 20.7.87.

3. The respondents plea is that since the Moradabad Canteen was a non statutory body, the applicants could not be called for screening and in any case they could be considered for 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".

4. A Bench of this Tribunal consisting of Hon.Mr.Justice K.Nath, V.C. and Hon.Mr.A.B.Gorthi, AM in O.A. No.765/87 Ganesh Singh and 3 others Vs.Union of India have held that notwithstanding the fact that the applicants were not entitled to be called for screening or to be absorbed in preference to other substitutes/ Casual Labours and that there was an administrative error, the appointments having been given effect to, it was not equitable to term those appointments as illegal or arbitrary. In view of this finding, the termination of the services of Ganesh Singh and 3 others was held to be illegal and consequently set aside. The applicants are similarly placed persons. We do not find any reason to differ from the judgement rendered by a Bench of this Tribunal (supra). Consequently, the applicants are also

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entitled to the same benefits.

5. Before we part, we may mention that in the peculiar circumstances of the case the Bench in the aforesaid case had not granted salary for the period the termination order remained in force. The learned counsel for the applicants Shri Sudhir Agarwal strenuously contended before us that once the termination order was held to be illegal, the applicants should be held entitled to the salary for the period for which they have actually not worked. We have given our anxious consideration to the pleas raised by the learned counsel. It remains the fact that there was an administrative error. The applicants were not employees of the Railway Administration. They were not entitled to be called for screening. However, once they were called for screening and finally selected, it was not considered equitable to deny the advantage to them. It was in this view of the matter that the termination order was set aside and the applicants directed to be reinstated. For these reasons we are also of the view that the respondents should not be saddled with the payment of salary to the applicants for the period they have actually not worked.

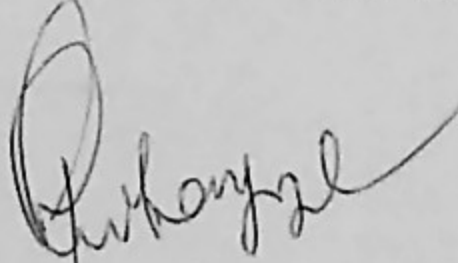
6. We may also make a mention of the fact that applicant No.1 Hori Lal died during the pendency of the proceedings on 30.5.90. His widow has been substituted in his place.

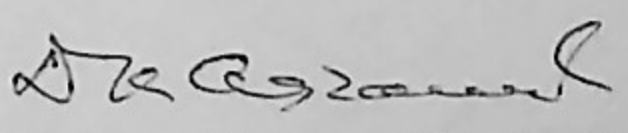
7. For reasons stated above, the application is partly allowed and the order of termination of the

*Dr Agarwal*

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applicants' services contained in letters dated 20.7.87, Annexures 5 to 7 are quashed. The respondents are directed to reinstate the applicants No.2 & 3 within one month from the date of receipt of a copy of this judgement. We further direct that while the applicants No.2 & 3 or heirs of applicant No.1 shall not be given arrears of salary, they will be treated to have continued in service under the appointment orders and their notional pay be fixed in the scale according to the appointment orders on the date of their reinstatement. We further direct that the respondents shall consider the case of applicants No.2 & 3 for regularization in accordance with applicable rules. We further direct that the widow of applicant No.1 shall be entitled to such terminal benefits or other pecuniary benefits as may be found due in accordance with the rules to the deceased applicant No.1. Parties shall bear their own costs.

  
Member (A)

  
Member (J) 23.X.91

Dated the 23rd October, 1991.

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