

(4) (A22/1)

CENTRAL ADMINISTRATIVE TRIBUNAL JAIPUR BENCH JAIPUR

Original Application No. 985 of 1987

connected with 986/87 and O.A. NO. 987/87

Matloob Husain Applicant

Versus

Divisional Railway Manager, North Eastern
Railway, Izzat Nagar, Division Bareilly.

. Respondents.

Hon'ble Mr. Justice U.C. Srivastava, V.C.

Hon'ble Mr. K. Chavva, Member (A)

(By Hon'ble Mr. Justice U.C. Srivastava, V.C.)

The applicant was initially appointed as a casual labourer in the Sleeper Creosoting Plant, North Eastern Railway, Clutterbuckganj, Bareilly on 15.5.1982. and he was appointed as welder and continued to work as such. With effect from 20.1.1984 he was promoted as time scale welder and placed in the pay-scale of Rs. 260 -400., and in July 1984 he was reverted as time scale Khalasi and transferred to work under the Assistant Engineer, Filibhit, and in April, 1985 he was transferred in the same capacity to work under the Assistant Engineer, (Special), Izzat Nagar, Bareilly. In April, 1987 he was transferred in the same capacity as time scale Khalasi to work under the Sleeper Creosoting Plant, Bareilly. With effect from 1.7.1987 he was posted as substitute welder Khalasi in the Sleeper Creosoting plant against the clear vacancy in existence in the plant.

2. Thus, according to the applicant he has continuously worked upto the year 1987 and on 4.7.1987 he was posted A B Khalasi in the pay-scale of Rs. 750-940 on Edging Boring Machine in temporary capacity. By working of 6 months continuously according to him he has acquired temporary status long ago. But the services of the applicant were

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terminated vide a retrenchment notice dated 25.9.1987 and according to the applicant, persons junior ^{like} ~~like~~ him, Hari Lal who was granted a temporary status ~~much~~ subsequent to November, 1982, that is after the grant of temporary status to the applicant were allowed to continue in service and the applicant has been ~~th~~rown out.

3. In the other application which are also being heard and disposed of along with this application, the question raised in which ~~of~~ the same, the names of two more persons have been given.

4. The respondents have opposed the applications generally, and have stated that the applicants recruitment in Railway was directly in derogation of the G.M.(F)'s circular dated 31.12.1980/C1.C1.1981. The appointment was given conditionally for a specific period and subsequently he continued functioning without approval which dis-entitled him for any sort of claim., and he is not entitled to any preference, ~~being~~ ^{being} his appointment after 31.12.80 without the required approval of the General Manager. The screening Committee objected and that's why he was discharged from service in pursuance with the D.O. dated 22.6.1987. According to the respondents the case of Hari Lal was different as he was granted temporary status keeping in view his services in the Railway prior to 31.12.1980 & hence the case of the applicant could never be compared with Hari Lal. Whereas the applicant entered in service after 1981. The position that appears to be that the applicant was only a casual labour and was not regularly appointed and after working ^{for} a particular period he attained a temporary status, but the applicant was allowed to work and grade and promotion have been transferred, have affected, which would mean that so far the condition of approval ~~has been~~

is concerned, the same was waived and no longer open for the respondents to contend that because in the year 1980 the approval of G.M. was not given as such these casual labour who only subsequently attained the temporary status was not entitled to any benefit. The applicant was appointed after the G.M.'s letter in the year 1980 and as such the question of approval was necessary, it was fault of the departmental authority, because of the failure and lapses on the part of the departmental authority, the applicant can not be made to suffer and can not be thrown-out of the service. The respondents should have considered the same before throwing him out of the service. Accordingly, the respondents are directed to consider this position ignoring the fact that the approval was not given to the applicant and consider his case again and in case, it is found that he is entitled for continuation in service or regularisation, the same may be done in accordance with law taking into consideration the position of the persons who are in waiting list and are senior to him. However, this consideration is to be done within a period of three months and not beyond that. The applicant may not be paid back wages, though he may be entitled for continuation in service and other benefits also except back wages.

Original Application No. 986 of 1987

Har Prasad

... Vs. DRM/N.E.Rly. & others

The applicant was initially appointed as casual labourer in the Sleeper Creosoting Plant, North Eastern Railway, Bareilly on 12.7.81 and he continued to work till the fateful day, When a retrenchment

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notice on 25.9.1987 was issued to him. According to the applicant it is illegal and moreso, so many juniors whose names have been given by him were allowed to continue in service. We have today allowed the connected case O.A. No. 985/87, in which we have taken a particular view that the order of G.M. of 1980/81 could not have been relied on and a retrenchment notice which has been issued, is illegal and invalid, as even if an approval was required, the same should be deemed to have been made. Accordingly, this application is also allowed on the same terms. The judgement of said case shall form part of this judgement.

Original Application No. 987 of 1987

Pratap Naraiian ... Vs. .. DRM/M.E.Rly. & others

The applicant was initially appointed as a Casual Labourer in the Sleeper Creosoting Plant, North Eastern Railway, Bareilly on 21.1.1981, and he continued to work till the ~~fatal~~ day. When a retrenchment notice on 25.9.1987 was issued to him. According to the applicant it is illegal and moreso, so many juniors whose names have been given by him were allowed to continue in service. We have today allowed the connected case O.A. No. 985/87 in which we have taken a particular view that the order of the G.M. of 1980/81 could not have been relied on and a retrenchment notice which has been issued is illegal and invalid, as even if an approval was

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required, the same should be deemed to have been made. Accordingly, this application is also allowed on the same term. The judgement of said case shall form part of this judgement.

Sd/-
Member (A)

Sd/-
Vice-Chairman

Allahabad Dated 2.9.1992.

(RKA)

prepared by
Asingh
3/11/92