

CENTRAL ADMINISTRATIVE TRIBUNAL  
ALLAHABAD BENCH  
ALLAHABAD.

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Allahabad this the 14th day of November 1996.

Original application No. 1037 of 1987.

Hon'ble Dr. R.K. Saxena, JM  
Hon'ble Mr. D.S. Baweja, AM

Sri Narendra Kumar, S/o Late  
Sri Jagdish Prasad Gupta,  
R/o Fatehganj (West), Bareilly.

..... Applicant.

C/A Sri B.P. Srivastava  
Sri R.K. Pandey

Versus

1. Divisional Railway Manager,  
North Eastern Railway, Izzat Nagar,  
Division, Izzat Nagar, Bareilly.
2. Executive Engineer, Sleeper  
Creosorting Plant, North Eastern  
Railway, Collector Buk Ganj, Bareilly.
3. Union of India through the General  
Manager, NE. Railway, Gorakhpur.

..... Respondents.

C/R Sri G.P. Agarwal

ORDER

Hon'ble Mr. D.S. Baweja, AM

Prayer through this application has been made for quashing the order dated 25.9.87 terminating the services of the applicant.

2. The applicant was initially engaged on 21.1.81 as a casual labour in the skilled category in Sleeper Creosoting Plant, North Eastern Railway, Collector Buk Ganj Bareilly. He was granted temporary status vide

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order dated 25.1.82 as a substitute Khalasi. This appointment was extended by another three months by order dated 27.4.82. Subsequently vide order dated 26.7.82 of Executive Engineer, he was appointed as a substitute Khalasi in the scale Rs. 196-232 against the vacancy of Khalasi. Vide letter dated 28.11.82 from personal Assistant to Chief Engineer, General Manager's approval for engagement of four fresh casual labourers was conveyed with the stipulation that these posts are to be filled up by engaging the retrenched casual labourers of the Construction organisation. The applicant was not permitted to work for 7 to 8 days on receipt of this letter but thereafter the applicant was allowed to work as a substitute Khalasi. Vide order dated 1.6.87, the applicant was posted in the pay scale of Rs. 750-940 on the Bearing machine in temporary capacity. However a retrenchment notice dated 25.9.87 (Annexure-A-7) was issued by the Executive Engineer terminating the services of the applicant after tendering the retrenchment compensation and salary in lieu of notice period under Section 25 F of Industrial Disputes Act 1947. Being aggrieved by this action of the respondents, the present application was filed on 29.10.87.

3. The applicant has assailed the termination order as illegal, arbitrary and violative of Article 14 of Constitution of India as services of the applicant have been terminated while retaining juniors to him in service. Large number of vacancies are also existing including the vacancy against which the applicant had

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been posted and inspite of this fact, his services have been terminated. In the impugned notice of termination, no reasons for retrenchment have been disclosed which is mandatory as per the provisions of Railway Establishment Mannual and the Industrial Disputes Act.

4. The respondents have contested the application by filing counter affidavit. It is submitted by the respondents that as per the extant instructions of Railway Board dated 18.12.80, no fresh face casual labourer was to be engaged without the prior personal approval of General Manager. The applicant was engaged on 1.8.81 without the prior approval of the General Manager. Since approval for the engagement of the applicant as fresh face was not accorded, accordingly the services were terminated. The impugned order is <sup>thus</sup> justified and there is no merit in the application.

5. The applicant has filed the rejoinder affidavit. Countering the averments of the respondents and reiterating the grounds taken in the application.

6. Heard the learned counsel for the parties. We have given careful thought to the material brought on the record in the application, counter and rejoinder affidavits.

7. From the averments of the applicant, it is noted that he was engaged as a casual labour on 21.1.81 and then appointed as substitute Khalasi in the regular scale of Rs. 196-232 from 26.7.1982. The applicant was discontinued from 9.12.82 and then reengaged after a few days and thereafter continued till the retrenchment

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notice dated 25.9.87 without any break. These facts are not denied by the respondents and are also confirmed from the documents brought on record with the counter. The whole case of the respondents is that the initial engagement of the applicant as a fresh face was done without the approval of the General Manager as per the extant rules. From the documents brought on record, we observe that approval of the General Manager for engagement of four new faces had been conveyed vide letter dated 20.11.82 (Annexure-A-4). However it was also directed to disengage the new faces and replace them by those who had been retrenched earlier and waiting for engagement. As per letter at Annexure-I of the counter reply, it is indicated by Sr. DEN (I) that notification was issued to nearby open line as well as construction units but no old casual labour turned up. In view of this, four casual labourers who were discontinued (which included the applicant) were re-engaged. The matter was also referred to Headquarter. The Headquarter vide letter dated 1.1.85 from Personal Assistant/Chief Engineer (Annexure-I of the rejoinder) advised that since the approval of General Manager had been obtained for their initial engagement, as new face, fresh approval again is not necessary for re-engagement being old faces. On this position, the applicant alongwith other three employees were continued. Their names were also included in the seniority list of the casual labour (Annexure-A-6). From para 3 of the counter, it is noted that at the time of screening for absorption against Group D vacancies, the screening committee raised an objection that General Manager's approval was for engagement ~~was~~ for a specific period only. It appears that reference was again made to

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Headquarter with these observations of the Screening committee when Chief Track Engineer vide letter dated 22.6.87 at Annexure-A-3 of the counter reply opined that for continuing these four casual labour in service will require General Manager's approval and in view of this they should be discharged. This is how the services of the applicant were terminated. From the foregoing background, we are inclined to infer that for the engagement of the applicant as a fresh face in 1981 initially ~~was~~ post facto approval <sup>was</sup> given by the General Manager. However they were disengaged as per the directions of Headquarter but were reengaged as the old faces were not available to replace the applicant alongwith other three other employees. In view of these facts, the version of the respondents cannot be accepted. However for a moment <sup>even if</sup> the respondents' submission is accepted, then the re-engagement of the applicant without prior approval of the General Manager would at the best constitute an irregularity and not an illegality making the appointment ab-initio void. This irregularity could have been regularised. It is not the fault of the applicant that he was engaged without prior approval of the General Manager. There ~~are~~ <sup>is</sup> ~~however~~ <sup>no</sup> averments to the effect that the applicant secured engagement by fraudulent means. The re-engagement in 1982 could have been regularised by obtaining post-facto approval of the competent authority. From the letter of Chief Track Engineer at Annexure-A-3 of the counter reply, it is not clear whether the matter for regularisation of the engagement was at all put up to General Manager. There <sup>is</sup> ~~is~~ no averment to this effect in the counter reply and it seems that this decision had been taken by Chief Track Engineer. In view of these facts the ~~termination~~ <sup>termination</sup> could not be sustained.



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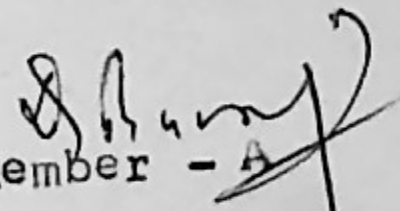
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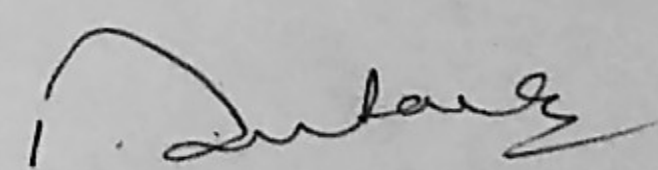
8. In this connection we also refer to the judgement dated 2.9.92 of this Bench in O.A. 985/87 alongwith O.A. 986/87 and 987/87 wherein the same issue has been adjudicated on an application filed by Sh. Matloob Hussain, Pratap Narain and Har Prasad respectively who were three out of the four employees engaged in 1981 and whose services were terminated alongwith that of the applicant as is clear from the letter dated 29.6.87 (Annexure-4) of the counter reply. These applications were allowed and the relevant portion from the judgement <sup>dated 2.9.92</sup> in O.A. 985/1987 is reproduced as under:-

"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 <sup>or regularisation</sup>, the same may be done in accordance with 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.

We are <sup>in</sup> respectful agreement with this judgement and the applicant similarly placed is entitled for the same benefits.

9. Keeping in view the discussion above, we allow the application with same directions as detailed above in para 8 <sup>46</sup> from the judgement in O.A. 985/1987 of this Bench. No order as to costs.

  
Member - A

  
Member - J

Arvind.