

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD

O.A.No. 1050
T.A.No.

1937.

DATE OF DECISION _____

Durga Prasad & 2 others Petitioner

Sri V. B. L. Srivastava Advocate for the Petitioner(s)

Versus

U.O & others Respondent

Sri A. K. Gaur Advocate for the Respondent(s)

CORAM :

The Hon'ble Mr. D.N. Agrawal, J.M

The Hon'ble Mr. Bala Subramaniam, A.M

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other Benches ?

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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD.
Registration O.A.No.1050 of 1987

1.Durga Prasad
2.Halku Ram
3.Ram Das
4.Hardeo Singh

... Applicants.

Vs.

Union of India & 3 others ...

Respondents.

Hon.D.K.Agrawal, JM
Hon.R.Balasubramaniam, AM

(By Hon.D.K.Agrawal, JM)

The above named Applicants, four in number, have made an Application u/s.19 of the Administrative Tribunals Act XIII of 1985 challenging the validity of four separate orders dated 7.12.1986 served on them ^{on 7.1.87} individually in the wake of a circular letter of Divisional Railway Manager (P), Central Railway, Jhansi dated 21.11.1986 requiring the concerned authorities to check the bogus card holders amongst the casual labourers employed in the Railways in their respective jurisdiction. The Applicants claim that they were in continuous employment with the Respondents in the Central Railway for the period 3.10.1984 to 4.8.1984, which in each case ~~exceeded~~ existed 6 months. They allege that since the impugned order refers to a misconduct on the part of each of them that they misrepresented by producing forged casual labour card to secure employment with the Respondents, their services could not be terminated without following the procedures laid down in the Railway Servants (Discipline and Appeal)Rules, 1968 (hereinafter referred to as the DA Rules) or applying the principle of "audi alteram partem"

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i.e. giving them a chance to defend themselves.

Therefore, they pray that the order terminating their services be quashed and they be reinstated.

2. The Respondents in their Counter Affidavit have pleaded that the Applicants were not temporary employees within the meaning of Railway Establishment Code. They further pleaded that they had secured employment by misrepresentation based on forged casual labour cards. Hence they alleged that the action taken by the Railway Administration was legal and proper.

3. The first point to be taken into account in this case is as to whether the Applicants can be permitted to join together in one Application. This question was left open by a Bench of this Tribunal as indicated in the order sheet dated 30.3.1988. We are of opinion that the question has lost its importance because the Counter and the Rejoinder have already been exchanged, the parties have been heard on merit and the proceedings of the case have come to an end. In any case, all the Applicants are employed in Central Railway and their services have been terminated in the wake of the circular letter quoted above. Therefore, also, we feel that the Applicants can be permitted to join together.

4. There is no doubt that the Applicants were initially recruited as casual labourers. The Applicants have specifically mentioned the period vide Annexure 'A' to the Application during which they served the Railway Administration. It is unfortunate that the Railway Administration in its Counter Affidavit has, in a

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general manner denied the averment of the Applicants but failed to give the specific period during which the Applicants were engaged by them. In the circumstances, we have no other option but to accept the information furnished by the Applicants. If so, they would be deemed to have acquired the status of temporary employee as observed by the Hon'ble Supreme Court in the case of Inderpal Yadav Vs. Union of India (1985 (2) SCC-648) within the meaning of sub-para (b)(i) of Para 2501 of the Indian Railway Establishment Manual and as such they will be entitled to the rights and privileges laid down in Para 2511 read with Chapter XXIII of the Manual. Consequently, they would also come within the purview of DA Rules.

4. A plain reading of the impugned order/notice indicates a positive stigma on the Applicants of obtaining employment by misrepresenting and presenting forged casual labour cards. Thus a finding of misconduct on the part of the Applicants has been arrived at behind their back in violation of the principle of "audi alteram partem". We may refer to a decision of the Hon'ble Supreme Court in the case of State of Punjab Vs. Iqbal Singh (1976 (1) SLR-525) wherein their Lordships have laid emphasis on reasonable opportunity of hearing to be provided to an employee by an administrative authority on the basis of the principle of natural justice. Then, since the Applicants were engaged in the employment of the Railway Administration for a conti-

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nuous period of more than 6 months and thereby acquired a status of a temporary employee, they would also be entitled to the benefits of DA Rules, as held in the case of Mata Prasad Tewari and others Vs. Union of India (1987 A.T.L.T 546); Union of India Vs. Kartik Chand Banerjee (ATR1987 (2)CAT--218) and Sri Raj Singh Vs. Union of India (ATR 1987 (2) CAT-168). Therefore, the impugned order cannot be sustained in law.

5. Before we part with the case, we may also observe that the provision of S.25-F of the Industrial Disputes Act 1947 have also not been followed in this case which also makes the impugned order bad in law.

6. In the result, the Application is liable to be allowed. The impugned order/notice leading to the termination of the services of the Applicants are hereby set aside. The Applicants are declared to be continuing in service of the Respondents. The Respondents are directed to reinstate the Applicants within two months of this order. However, the Applicants would not be entitled to get wages for the period they have actually not worked. It will be open to the Respondents to initiate such disciplinary action as warranted by law against any of the Applicants for any alleged misconduct or misrepresentation. There will be no order as to costs.

T. Subbaramaniam
MEMBER (A)

Dated: 28-7-1989
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D.K. Agarwal
MEMBER (J) 28-7-89