

CENTRAL ADMINISTRATIVE TRIBUNAL,
ALLAHABAD BENCH
ALLAHABAD.

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O.A. No.1058/87

Hariachandra Srivastava ::::: Applicant

Vs.

Union of India & Others ::::: Respondents

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

Hon. Mr. K. Obayya, A.M.

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

The applicant, who died during the pendency of this case, now represented by his heir and legal representative, was a clerk in the medical department in Railway, in Varanasi Division. The applicant was transferred and absorbed in the Commercial Department. He was removed from service during the Emergency period on the ground of unauthorised absence. He filed an appeal against the same and in pursuance of the same, it appears that he was given re-employment as per the Circular dated 7-7-1977. The grievance of the applicant is that, of course, the circular provides for re-in-statement and not re-employment and while other persons were re-in-stated, the applicant was given re-employment. He filed an appeal to the General Manager, N.E. Railway on 14-9-1982 and it appears that the applicant's representation was rejected. Thereafter he made continuous representations, one after another, but reply to the same were not given and that is why he approached this Tribunal praying that the respondents be directed to consider

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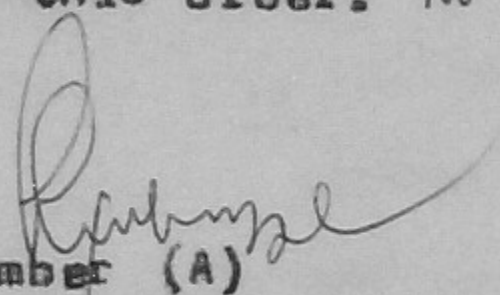
and dispose of his appeal and representations mentioned in the application.


2. The respondents opposed the application filed by the applicant and have stated that as a result of the said Circular dated 7-7-77 the applicant's case was considered and he was given re-appointment, but he did not join at that time and later on he joined on duty in pursuance of letter dated 27-4-80 for a period of one year, and later on he was regularised. The respondents claim that as the applicant has joined in the said post in response to the said letter he cannot claim other benefits. The arguments raised by the learned counsel appears to be somewhat distinct. A person who has lost his service and did not have any means of subsistence had no alternative but to join the services in any capacity for which offer was given. One can take benefit of the helplessness of the other. The employer can always take benefit from the helplessness of the employee and the observations made by the Supreme Court in the case of Central Water Line Vs. Jagnaath Ganguly (1987 S.C. p. 156) applies to this case merely because the applicant has accepted the offer of appointment, but it ^{does not mean that he} cannot challenge the same, more so when he filed representations and appeal against the same and continued to pursue the matter. The said Circular has been read before us and therein nowhere it is stated that a person can be given re-appointment and not re-in-statement.

3. The contention on behalf of the applicant is that if the respondents want to give effect to

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the said Circular faithfully, they could have done it. These matters are to be considered by the Railway Administration again. Accordingly this appeal is allowed and the respondents are directed to consider the representations filed by the applicant dated 14-9-82, 10-12-82, 8-2-84, 27-5-85, 6-12-85, 28-2-86, 9-10-86 and 10-7-87 in accordance with the circular of the Railway Board referred to above and the observations made in this judgement. They shall do it by passing a speaking order within a period of 3 months from the date of communication of this order. No order as to costs.


Member (A)


Vice-Chairman.

Dated: 29th Sept., 1992, Allahabad.

(tgk)