

A-2
2
5

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

O.A. No. 1105 of 1987

Nand Lal Applicant.

Versus

Union of India & others Respondents.

Hon'ble Mr. A. B. Gorthi, A.M.
Hon'ble Mr. S. N. Prasad, J.M.

(By Hon'ble Mr. A. B. Gorthi, A.M.)

In this application under section 19 of the Administrative Tribunals Act, 1985 the applicant has challenged the order dated 10.11.1984 by which his services were terminated. Accordingly, the applicant has prayed that the said order be quashed and that he be reinstated in service with all consequential benefits.

2. The applicant joined as a Casual Labourer in the Concrete Sleeper Plant, Allahabad on 6.3.83 and worked continuously in that assignment upto 16.11.84 and thus acquired the status of temporary employee. Thereafter, he was sent for medical test to regularize his services. The applicant's allegation is that though he was found medically fit but he was stopped from working without any order with effect from 29.5.84. The authorities, however, allowed him to resume duties on 7.8.84. Within a few days thereafter a show-cause notice was issued to him on 29.8.84 calling upon him to explain as to why his services should not be terminated as he had furnished a false Work-Certificate for the purpose of securing employment in the Concrete Sleeper Plant. The applicant explained that he did work under the P.W.I, Northern Railway, Fatehpur as alleged in the Work Certificate. The respondents did not accept his ^{explanation} application but terminated his

services with effect from 10.11.84 vide the impugned order. The applicant thereafter represented on 19.2.87 and on a number of occasions thereafter without any success.

3. Refuting the claim of the applicant, the respondents at the very outset objected to the application on the ground that it is barred by time. Further, it was stated that when he was sent for medical examination, he was found unfit. The Work-Certificate that he furnished was also found to be fake and forged one when his case was considered for the grant of C.P.C scale of pay. In view of the said circumstances, he was given due notice and after considering his reply, his services were terminated.

4. Learned counsel for the respondents Shri A.K. Gaur referred to the judgment of the Hon'ble Supreme Court in the case of ^{S.S. Ratan} ~~R.R. Mathur~~ Vs. State of M.P. ² (AIR 1990 Supreme Court page 10) and contended that the mere fact that the applicant, kept on representing, would not bring his present application within limitation. There can be no doubt that although the services of the applicant were terminated on 16.11.84, he approached this Tribunal on 16.11.87. Keeping in view the fact that the applicant is mere a casual labourer and that he was representing his grievance to certain authorities, rightly or wrongly, we may not reject his case on this technical ground. In this context, we are supported from the judgment in 'Collector Land Acquisition Vs. Mst. Katiji' (A.I.R. 1987 Supreme Court 1353) which lays down

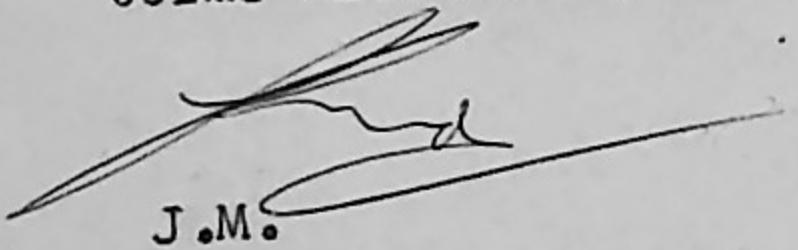
the principle that a meritorious matter should not be thrown out at the very threshold and cause of justice ^{should not be} being defeated on the technical plea of limitation. When substantial justice and technical considerations are pitted against each other, the cause of substantial justice may deserve prior consideration. We are, therefore, of the view that the case may be decided on merits.

5. The fact remains that the services of the applicant were terminated on the ground that he furnished a fake and forged Work-Certificate. This clearly amounted to mis-conduct for which the applicant was liable to be punished under the Railway Servants (Discipline & Appeal) Rules, 1968. Admittedly, the applicant had acquired temporary status as he worked for more than 24 months in the Concrete Sleeper Plant, Allahabad. Accordingly, he acquired certain rights as a temporary employee and his services are, therefore, liable to be terminated for mis-conduct only by taking recourse to the Discipline & Appeal Rules. It has been held in the case of 'Ganeshi Lal Vs. Union of India' (1991 (16) A.T.C. 45) that where there is allegation of mis-conduct, the services of an employee can be terminated only after a proper enquiry by way of disciplinary action where the employee has acquired temporary status. Even if he obtained employment by fraud, proper course of action would be to initiate the disciplinary action. Under the circumstances, the termination order, passed on

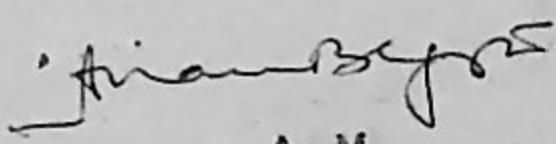
10.11.84 cannot be upheld.

6. In the result, the termination order is set aside and the respondents are directed to take back the applicant in service within one month from the date of communication of this judgment. As regards the payment of back wages, we would like to make it clear that the applicant himself was responsible for delay in approaching this Tribunal. No back wages shall be paid to him for this intervening period. It is also open to the authorities concerned to proceed against the applicant in accordance with law. The past services shall be reckoned for other purposes.

7. The application is disposed of in the above terms without any order as to cost.



J.M.



A.M.

Dated: February 11, 1992

(ug)