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CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

....

August , 1989

Registration D.A. No. 204 of 1988

Bharat Singh

....

Applicant

Vs.

Union of India & ors

....

Respondents

Hon' Mr. K.J. Raman, A.M.

Hon' Mr. D.K. Agrawal, J.M.

(By Hon' Mr. D.K. Agrawal, J.M.)

This is an application under section 19 of the Administrative Tribunals Act, 1985. The applicant's claim is that, he has worked as casual labour in the year 1986 at Dehradun, for 250 days for the period from 2-5-86 to 14-9-86. It has also been urged by him in para 3 of the application that he has worked with interruption in the years of 1981, 1982, 1984 and 1985. The applicant's contention is that having worked for more than 240 days continuously, he acquired the status of a temporary employee within the meaning of sub para (b)(i) of para 2501 of the Indian Railway Establishment Manual and as such, he is entitled to the rights and privileges laid-down in para 2511 read with Chapter XXIII of the Manual, and consequently he will come within the purview of D.A. Rules. It is alleged that he has been put off duty with effect from 15/9/1986.

2. The respondents in their counter affidavit pleaded that the applicant was not a temporary employee within the meaning of Railway Establishment Code. They have further pleaded that he has secured employment by mis-representation based on forged casual labour card.

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They also pleaded that they had not put off the applicant from duty, but, he had on his own accord stopped discharging his duties.

3. We have heard the learned counsel for the parties and perused the record. The first question which calls for adjudication is, as to whether the applicant had worked for a period of 250 days as alleged by him in para 3 in his application and disputed by the respondents in para 5 of their counter affidavit. The contention of the respondents is that, the applicant had worked only for 220 ^{1/2} ~~and~~ ~~half~~ days and not 250 days as alleged by him. They have further pleaded that an entry accordingly has been made on his card. However, the card has not been produced by the Railway Administration. In the absence of the card, which is in the possession of the Railway Administration, the presumption is that the statement made by the applicant in para 3 of the application is correct. In the circumstances, the applicant would be deemed to have acquired the status of a temporary employee as observed by the Hon'ble Supreme Court in the case of Indra Pal Yadav Vs. Union of India, 1985 (2) SCC 648. The contention of the respondents that, the applicant had obtained employment by mis-representing and presenting forged casual labour card, has not been established. They have drawn a conclusion behind the back of the applicant in violation of principle of "audi alteram partem". It has been consistently held by various Benches of the Central Administrative Tribunal that a decision taken behind the back of an employee about the mis-

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conduct on his part is bad in law. Such a finding was recorded by Jabalpur Bench in the case of Hardayal and others Vs. Union of India and others A.T.R. 1988 (1) C.A.T. 207, Sathir Singh Vs. Union of India and ors A.T.R. 1988 (1) C.A.T. 464 Principal Bench, Sanjeev Kumar Agrawal Vs. Union of India and ors 1987 (3) A.T.C. 990 Principal Bench and many others unreported cases.

4. It may also be mentioned that once an employee acquires the status of a temporary employee, he becomes entitled to the benefit of Discipline and Appeal Rules as held in the case of Mata Prasad Tewari and ors Vs. Union of India, 1987 A.T.L.T. 546, Union of India Vs. Kartik Chand Banerjee A.T.R. 1987 (2) C.A.T. 218 and Shri Raj Singh Vs. Union of India A.T.R. 1987 (2) C.A.T. 168. Therefore, if there was an allegation of mis-conduct on the part of the applicant, it was mandatory for the employer to draw the disciplinary proceedings against him.

5. In the result the application is liable to be allowed. The applicant is declared to be continuing in service of the respondents. The respondents are directed to reinstate the applicant within two months of this order. However, the applicant will not be entitled to get wages for the period he has actually not worked. It will be open to the respondents to initiate such disciplinary action as warranted by law against the applicant for any alleged misconduct or misrepresentation. There will be no order as to costs.

[Signature]
MEMBER (J)

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MEMBER (A)

(sns)

August 4th, 1989

Allahabad.