

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD.

Original Application No.483 of 1988. (3)

Abdul Malik Khan ... Applicant.

Vs.

Addl.Chief Mechanical ... Respondents.
Engineer, N.Rly., Lucknow.

Hon'ble G.S. Sharma, J.M.

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

(BY HON. K.J.RAMAN)

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This is an application filed under section 19 of the Administrative Tribunals Act, 1985 by the applicant who had been working as unskilled casual - labourer (Khalasi) from 24.10.1974 to 8.12.1976 in the Loco Shed Workshop, Lucknow. It is stated that with effect from 8.12.1976, the applicant was retrenched from service due to non-availability of sanction. It is claimed that the applicant made a representation for regularisation of his services, to the respondents but they did not pay any heed. In the impugned order dated 16.1.1988 passed by the Chief Works Manager, the applicant's representation dated 31.8.1987 has been rejected. The applicant has submitted a copy of his Service Card (Annexure-1). The applicant states that he has served for more than 550 days in the Loco - Workshop. The applicant claims to have more than once pointed out to the Railway authorities that casual - labourers having less number of working days than the applicant have been taken on the work, and that as such,

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the applicant also should be considered for the job. The applicant has stated that one Sri Kailash Prasad and one Sri Becha Lal who were appointed as casual labourers along with the applicant, have been retrenched along with the applicant, but their services have now been regularised by the respondent. Similarly, Sarvasri S.M. Razi, Nagendra Kumar, Dina Nath, Girdhari and Satish Chandra Yadav have all been regularised on the post of Khalasi in similar circumstances. It is stated that Sri Dina Nath is junior to the applicant. It is argued that the applicant has been discriminated against, in violation of Articles 14 and 16 of the Constitution of India. The applicant has sought relief by way of setting aside the order dated 16.1.1988 passed by the Chief Works Manager and regularisation of the services of the applicant as Khalasi from 24.10.1974 with salary to be paid up-to-date.

2. In the reply filed on behalf of the respondents, it is argued that the application is time-barred. It is further contended that granting the relief claimed by the applicant (giving employment) is not within the jurisdiction of the Tribunal and that the jurisdiction of the Tribunal is to set right illegality. The factual information furnished by the applicant regarding his period of service is denied "for want of record". It is stated that the unit consisting of persons who were working as casual labourers was abolished and a "live - register" was maintained in 1980 with a view to give employment to the persons who were working as casual labourers. It is stated :- "Since the petitioner's name was not found in that very live register he also

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did not get himself enrolled in that very register hence he has not been given job, so the entire right whatever the petitioner secured has finally came to an end in 1980". It is denied that there were any representations made by the applicant other than one in August, 1987. It is further stated that Sri Kailash Prasad was available on the "live register" at the time of screening in 1980 and that the applicant's name does not appear on the live register. It is stated that Sri Becha Lal was considered later as he fulfilled the minimum requirement for engagement as Khalasi. In the rejoinder filed by the applicant, the original contentions are reiterated. It is further stated that the applicant was again employed from 10-6-1988 to 3-8-1988 as casual worker in the Northern Railway, Alam Bagh, Lucknow. It is stated that as the petitioner was in employment for more than 550 days, his name ought to have been mentioned in "live - register". "It was not the fault of the petitioner, but it was the arbitrary Act of the respondents, to strike down the name of the petitioner from the live register." The applicant has reiterated that other persons in similar position as the applicant, and even his junior, have been taken on the job, ignoring the applicant.

3. In view of the order passed by the Chief Works-Manager on 16.1.1988, the application cannot be held to be time-barred in regard to the question of regularisation as Khalasi. It appears that the applicant had been working for, ^{about} 550 days as Khalasi as claimed by him, vide copy of Record of Service as Casual Labour (Annexure-I to the Application), the veracity of which has not been disproved by the respondent by any evidence. It has also emerged from the facts stated earlier that the other persons mentioned by the applicant who were in similar position to the applicant, had been first retrenched and then taken

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back. The reason for not regularising or re-employing the applicant as given by the respondents is ~~quite~~ ^{very} ~~strange~~ ^{and vague}. It is stated that the applicant was not considered because his name was not in the "live - register". Admittedly, the live register was maintained by the respondents. They ought to have taken care not to omit any eligible person from the register as it was specifically meant for giving employment to the retrenched casual labourers like the applicant. The applicant rightly contends that it was not his fault if the Railways omitted to include his name in the register. It is obvious that an injustice has been done to the applicant and he has been discriminated against, vis-a-vis persons similarly placed as the applicant. There has been a violation of Articles 14 and 16 of the Constitution of India, in as much as the applicant was not considered for re-employment along with his colleagues and junior who were similarly placed. This Tribunal has jurisdiction to interfere in such cases of denial of equality.

4. Consequently, the impugned order dated 16.1.88 of the Chief Works Manager, Northern Railway Workshop, Lucknow is quashed and the appropriate Railway authorities are directed to consider the case of the applicant for re-employment and regularisation, in accordance with the ~~rules~~ ^{rules}, and if found eligible, re-employ and regularise the services of the applicant. The applicant shall also be informed of the reasoned decision by the appropriate authority. We further direct

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that the foregoing shall done within three months from the date of this order. There will be no order as to costs.

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Swanson

MEMBER (A)

MEMBER (J)

Dt. February 27, 1989.

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