

(6) (14)

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

.....

Registration O.A. No. 520 of 1988

Kishan Lal Applicant

versus

Union of India and ors ... Respondents

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

Hon' K. Obayya, A.M.

(BY Hon' D.K. Agrawal, J.M.)

This application under section 19 of the Administrative Tribunals' Act, 1985, has been filed by a temporary employee of the Railway Administration aggrieved with the arbitrariness on the part of the authorities concerned.

2. The facts are very simple. The applicant was employed as casual labour on 13-5-85 and by November, 1985, he completed 180 days of continuous service as admitted in para 6 of the counter affidavit. Thereafter, according to the applicant, he was taken ill on 17-5-86 and remained ill up to 4-6-86. The applicant's contention is that he has not been allowed duty thereafter. The Railway Administration, surprisingly, does not deny this fact, but support its action by pleading that the applicant was not entitled to medical leave for such a long spell. If so, Railway Administration was free to pass an order for treating the period of absence ^{as} ~~of~~ period without pay or otherwise. The authorities concerned, however, did not care to pass any order in respect of the applicant, on the other hand the applicant was

Disappointed

made to run from pillar to post. We have also before us a document numbered Annexure-6 which contains an order of the rank of an Officer of Assistant General Manager and Deputy Chief Engineer to the effect that the applicant be taken back on duty immediately. The learned counsel for the Railway Administration has contended before us that the said order was passed by the authority having no jurisdiction to pass the same. We fail to understand how the Assistant General Manager was not authorised to pass such an order. In any case, we have not been shown any order of any other competent authority, in respect of the applicant i.e. whether the applicant was not entitled to be taken back on duty for some reasons or under some provisions of the rules of the Railway Administration. We may also refer to the arguments raised by the counsel of the Railway Administration in this case. The first argument advanced before us was that the applicant was duty bound under section 140 of the Indian Railways Acts to send a registered notice to the Railway Administration. The second argument was that the applicant himself was not interested for the job, therefore, the job was not given. We are constrained² to say that neither of these arguments are relevant, whether or not the applicant gave a registered notice to the Railway Administration under section 140 of the Railways Act, the fact remains that the applicant was making fervent^v appeals to the Railway Administration for taking him back on duty. Thus, it was within the knowledge of the Railway Authorities that the applicant^{was} aggrieved with their inaction. In such circumstances, the Railway Administration ought to have passed a speaking order as to why the applicant was not entitled to be taken back on

Deeyam

merely
duty, to say that the applicant was not interested in the
job provokes comments. The documents on record
clearly indicated that the applicant has been making
appeal after appeal for taking him back on duty.
The mere fact that the applicant approached the
Prescribed Authority under the Payment of Wages Act
for payment of wages, is also a positive indication
of the fact that the applicant was keen for enforcement
of his rights. The submission of the learned counsel
for the respondents that the fact that the applicant
was litigating before the Prescribed Authority under
the Payment of Wages Act raises an inference that
he was not interested in the job, to say the least
is against the facts on record. Taking into account
all these facts, we are unable to agree with the
submissions made by the learned counsel for the
respondents.

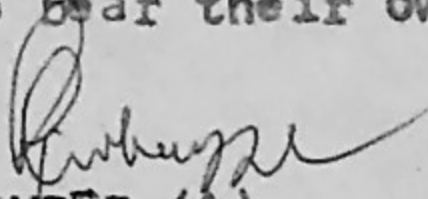
3. As regards the status of the applicant, we have
already referred to above that he had acquired the
status of a temporary railway servant in November, 1985.
If so, it was open to the Railway Administration to
draw proceedings against the applicant under Railway
Servants (Disciplinary & Appeal) Rules, 1968, for his
unauthorised absence for the period from 17-5-86 to
4-6-1986. Further, if the Railway Authorities chose
not to take any disciplinary action against the
applicant, it was their own action. In any case,
it was not open to them to arbitrarily refuse and
not allow the applicant to join duty. We are also
of the opinion that in the circumstances, it is not
proper to permit them now to take disciplinary action
against the applicant. We are making this observation.

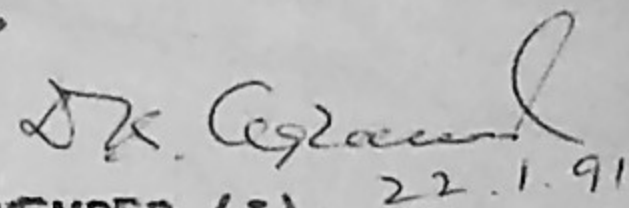
J.K. Aggarwal

:: 4 ::

because we consider that the lapses if any committed by the Railway Authorities concerned should not be condoned at this stage.

4. In the result, we allow this claim petition and direct the applicant to be reinstated forthwith having the same status as he had in November, 1988 with benefit of his seniority or future regularisation except that he will not be entitled to back wages for the period he has not actually worked. The parties are left to bear their own costs.


MEMBER (A)


MEMBER (J) 22.1.91

(sns)

January 22, 1991

Allahabad.