

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Allahabad this the 21st day of May 1996.

Original application No. 654 of 1988.

Hon'ble Mr. T.L. Verma, JM
Hon'ble Mr. D.S. Bawaia, AM

Shri Paras Nath, S/o Sri Badri Prasad,
aged about 28 years, R/o village Manpur,
P.O. Bampur, P.S. Manda, Tahsil Meja,
Allahabad U.P.

..... Petitioner.

C/A Sri A.K. Dwivedi

Versus

1. Union of India through the
General Manager, Northern
Railway, Baroda House, New Delhi.
2. The Divisional Rail Manager,
Northern Railway, Allahabad.
3. The Bridge Inspector (Special-1),
Northern Railway, Allahabad.
4. The Permanent Way Inspector,
Northern Railway, Mirzapur.
5. The Chief Signal Inspector (D)-I,
Northern Railway, Allahabad.

..... Respondents.

C/R Sri A.K. Gaur

O R D E R

Hon'ble Mr. D.S. Bawaia, AM

The applicant was engaged as a casual labour since 13.5.77, in Northern Railway and has worked for 585 days till 26.12.85 in various units. He worked continuously from 28.6.83 to 30.7.84 for 398 days. Having worked for 120 days continuously, he acquired temporary

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(11) (✓)

status. However the respondents stopped taking work from him without any notice. After several requests, he was reengaged on 9.7.85 and continued to work upto 26.12.1985. Casual labour card No. 194144 indicating the working details from 13.5.1977 to 26.12.1985 has been brought on record.

2. The applicant's case is that having attained temporary status after completing 120 days of continuous working, his services could not be terminated without one month's notice or pay in lieu of the notice period and ^qpayment ^{of} compensation as per rules. The applicant made a representation dated 23.3.87 to Divisional Railway Manager but did not get any reply. Subsequently applicant came to know that several juniors to him have been reengaged denying opportunity to him. He made another representation dated 14.9.87 (Annexure-3) but no reply has been received. Being aggrieved, this application has been filed on 25.5.88.

The applicant has pleaded that he has been denied opportunity of employment violating rules framed by Railway Board and the law laid down by Hon'ble Supreme Court in the case of "Dakshin Railway Employees Union Vs. General Manager. He has prayed for the reliefs of declaring the action of the respondents as illegal, inoperative and direct respondents to reinstate the applicant in service with full salary ^{and} allowances, attached to the post or from the date his juniors have been reengaged.

2. The respondents have filed the counter affidavit. It has been submitted that the services of the applicant were put to an end from 26.12.85 for want of work. Further the applicant never worked continuously for 120 days to attain temporary status requiring one month's notice for terminating of the services. It is however admitted that

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(12) (13/13)

the applicant was initially engaged under respondent No. 3. He was engaged under the Signal and Telecommunication Department from 9.7.85 under respondent No. 5. The Assistant Signal and Telecommunication Engineer ordered that all these casual labourers who have worked in other Branches must bring a verification certificate about their working from the competent authority. The applicant did not bring the same. Further from 26.12.85 there was no further sanction of the work. The applicant has not worked for 120 days under respondent No. 5. The alleged completion of 120 days under respondent No. 4 cannot be relied upon as the same is not verified by the competent authority. In this connection letter dated 22.6.88 is brought on record at Annexure -CA-I. The receipt of the representations dated 27.3.87 and 14.9.87 is also denied. In view of the above facts, the grounds taken by the applicant are not tenable in law and the application is liable to be dismissed.

4. Heard the learned counsel of the parties. Counter and rejoinder affidavits have been filed. We have carefully perused the material on record.

5. It is admitted fact by the respondents that the applicant was initially engaged by respondent No. 3 on 13.5.1977 and then from 9.7.85 to 26.12.85. For the period 28.6.83 to 30.7.84 the respondents have denied that the applicant was working as the same is not certified by the competent authority. The applicant has placed on record the copy of the casual labour card. On perusal of the card it is seen that the entries for period from 28.6.83 to 30.7.84 are not certified by any supervisor while for the other two periods, the concerned supervisors have signed. The applicant has not brought any other proof of working for this period on the record. In the rejoinder this has been not specifically refuted. In view of these facts we are unable

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to go into the merit of the claim of the applicant and inclined to accept the contention of the respondents.

6. It is noted that the applicant has worked for a period of 145 days from 9.7.85 to 26.12.85. In the original application the applicant has claimed attaining temporary service only for working 120 days during 28.6.83 to 30.7.84. However in the rejoinder, the applicant has also challenged the termination without following rules on 6.12.85 as he had worked for more than 120 days from 9.7.85 to 6.12.85. The applicant has stated that he made representation against the same on 26.3.87 i.e. after more than 15 months. He filed the present application on 25.5.88 i.e. after about 2 1/2 years of termination. If the applicant felt aggrieved by the action of the respondents terminating his services without following the rules, then he should have represented promptly and on not getting any reply could have agitated the matter for legal remedy. The applicant has declared in para 5 that the application is within limitation prescribed under Section 21 of the Administrative Tribunal Act 1985. With the crucial dates enumerated above, we are unable to appreciate as to how the averment in para 5 has been made. The respondents have however not taken the plea of application being barred by limitation. The applicant has also not made a whisper of any averment as to why the matter was not agitated in time after the services were alleged to have been terminated first in 1983 and then in 1985 without following rules as applicable after attaining the temporary status. In the absence of any satisfactory explanation for delay, we consider the claim of terminating services without following rules as stale and barred by limitation.

7. The next issue is with regard to claim of

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discrimination wherein juniors to the applicant have ^{been} re-engaged after December 1985. The applicant has stated that he represented to this effect through his application dated 14.9.87 when he came to know of the same. He has also averred that the application has been accepted in the office and has been stamped as proof of receipt. The respondents have denied the receipt of this representation in reply para 6 (8) of the applicant but have not specifically refuted the details furnished by the applicant with regard to alleged engagement of the juniors to the applicant. The applicant has only indicated sketchy details of the juniors ^{with out} giving the dates of engagement and the units where engaged. We ^{about the} do not intend to deliberate on this controversy ^{of} receipt of representation dated 15.9.87. Even if accepting the contention of the respondents of non receipt, at least while filing counter the facts in the application could have been verified by the respondents from the available records with them and specifically countered. In absence of specific denial inference can be drawn that some juniors have been engaged. In the absence of the dates of engagement of the juniors the date of cause of action arising cannot be fixed. Since the representation is made on 15.9.87, it is presumed that the engagement was earlier to this. Though in the absence of these details the prayer of relief with reference to reengagement from the date of his junior would have been also barred by limitation. However we are inclined to give the benefit of specific non denial of the engagement of the juniors by the respondents, and inclined to accept the contention of the applicant. If the juniors have been engaged then the applicant also deserves to engaged. However in view of delay in agitating the matter, we find no merit in the relief of payment of salary and allowances from the date his juniors have been employed.

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8. In the light of the decisions above, the application is partly allowed with the direction that the respondents will verify the claim of the applicant of the engagement of the juniors as detailed in his representation dated 15.9.87. If any junior has been engaged, the applicant shall be also reengaged and the benefit of the seniority from the date shall be given. In case no junior as alleged has been re-engaged, then a reply to his representation explaining the position shall be given. The compliance shall be done within three months of the date of the judgement.

No order as to costs.

Sharma
Member - A

J. Sharma
Member - J

Arvind.