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42

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

Original Application No: 1148 of 1988

Amar Nath Applicant.

Versus

Divisional Engineer, N.Rly, Respondents.
Mirzapur.

Hon'ble Mr. S.Das Gupta, Member-A

Hon'ble Mr. T.L.Verma, Member-J

(By Hon'ble Mr. T.L.Verma, J.M.)

This application has been filed for quashing the order dated 29.12.1987 (Annexure-2) whereby the services of the applicant have been terminated and direction to the respondents to reinstate the applicant with consequential benefits.

2. The short facts leading to the filing of this application are that the applicant was appointed as Gangman w.e.f. 31.8.1972. He acquired temporary status w.e.f. 3.12.1983. At the relevant time (29.10.1986) he was employed as Khalasi under the Assistant Engineer, Northern Railway Mirzapur division. It is said that the applicant on receiving information that his wife was seriously ill left for his village on 29.10.1986. He could not, for that reason, attend his office from 19.10.1986 to 25.8.1987. On his return, he filed an application for permission to join duty along with medical certificate in proof of his wife's illness (Annexure-1). The respondents in place of permitting the applicant to join duty passed the following order;

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"You are absent from duty w.e.f. 29.10.1986 without any information and authority, as such your period of unauthorised absence from duty w.e.f. 29.10.1986 is commuted into extraordinary leave without pay and you are deemed to have resigned your appointment from Railway Service on expiry of 3 months extraordinary leave without pay!"

Sd/Iligible

Divl. Engineer N.Rly.
Mirzapur.

The above order was passed without either serving a notice on the applicant or giving him opportunity to represent.

The main question that arises for consideration is whether the applicant's services could have been terminated without notice/inquiry on the allegation of unauthorised absence from 29.10.1986 to 25.8.2987. It is admitted that the applicant was working as Gangman and had acquired temporary status. A Casual Labour with temporary status is entitled to all the rights and preveleges of chapter 12 of the Indian Railway Establishment Manual.

3. The Madras Bench of the Central Administrative Tribunal in its decision reported in 1989 Administrative Cases Vol. 9 page 883 has, after analysing the relevant rules, held that a Casual Labour who has acquired temporary status is entitled to 14 days notice before termination if unauthorised absence in his case is more than 6 months and that before invoking provisions of deemed resignation, opportunity of representation must be given.

4. As has already been stated above, the applicant had acquired temporary status. That being so and having regard to the principle enunciated by the Madras Bench of the Central Administrative Tribunal referred to above the applicant was entitled to 14 days notice before termination of his service and that before invoking provisions of deemed resignation opportunity of representation.

5. The learned counsel for the respondent has stated that a Railway servant, according to rule, is required to get himself or the members of his family treated in a Railway hospital and as such medical certificate if any should have been obtained from such a Doctor. The certificate produced from a private medical practitioner therefore had no sanctity, ^{it was submitted}. We are unable to accept this argument because the wife of the applicant was residing in her village home and as such was treated by a Doctor available there. That being so for the purpose of obtaining medical certificate only the applicant was not supposed to bring his wife to Mirzahpur for being treated in a railway hospital. It was next argued that before passing impugned order of termination, notice was sent to the applicant at his residential address which he refused to receive. The respondents have not filed either copy of the notice sent to the applicant nor the notice said to have been returned after refusal by him. That being so no reliance can be placed on this contention of the learned counsel for the respondents. We therefore find that no notice before termination of his service was given to the applicant.

6. Admittedly, no inquiry before terminating the services of the applicant has been held. There is nothing on the record to show that the respondents had at any time, before the applicant returned on 25.8.1987 and made prayer (Annexure, A-2) for permission to join duties, initiated any action against the applicant for his unauthorised absence. The impugned order has been passed about 4 months after the applicant made prayer to permit him to join duty.

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7. On a careful consideration of the facts and circumstances of the case discussed above, we find and hold that the impugned order has been passed without giving notice as required and without holding any inquiry and as such the same cannot be sustained. In the result, we allow this application and direct the respondents to reinstate the applicant in service forthwith without any backwages. It will however, be open to the respondents to take action against the applicant for unauthorised absence according to law. The pay of the applicant will be fixed on reinstatement as if he had been in service but without any monetary benefit. There will be no order as to costs.

Chhunawat

Member-A

W.P.

Member-A

Allahabad Dated: 24.3.1994.

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