

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

ALLAHABAD.

Original Application No. 123 of 1988

Akhtar Applicant.

Versus

Union of India and others. Respondents.

Hon'ble Mr. T.L. Verma, Judicial Member

Hon'ble Mr. S. Dayal, Administrative Member.

(By Hon'ble Mr. S. Dayal, Member 'A')

This is an application under section 19 of the Administrative Tribunal Act made by Shri Akhtar son of Shri Sharif, casual Khalasi, Rail Path Nirikshak, Haridwar, seeking a writ of mandamus to the Respondents to engage the applicant on duty, give him pay from 01.06.86 till now, allow him all privileges attached to the post and grant him C.P.C. Scale according to the Departmental Rules. He has also prayed to award of costs.

2. The applicant is seeking the reliefs enumerated in the last paragraph on the grounds that he has worked continuously for 120 days and thereby attained the temporary status. Therefore, he is entitled to be placed in C.P.C. scale. He claims to have worked from 29.07.80 to 09.11.81 on the establishment of the I.O.W. Dehradun, 27.06.83 to 30.07.83 on the establishment of the I.O.W. Haridwar and from 10.01.86 to 31.05.86 in the Railways. He has said that the termination of his services was done without suspending, charge sheeting, subjecting him to



departmental enquiry and passing any order of removal or disimissal by the competent authority and thereby Article 311 (2) of the constitution has been violated. He claims that many juniors of his are working in the department of Railways while the applicant has neither been taken on duty nor paid any wages which is violative of Articles 14 and 16 of the Constitution.

2. Although the counsel for the applicant has claimed that the filing of this application beyond the period of limitation has been condoned on applicant's affidavit and medical certificate, ^{but} there is no mention in the order sheet or elsewhere of such condonation. The applicant filed his application on 25.01.88 and his affidavit including request for condonation on 29.01.88. The affidavit makes a mention of his illness from 20.11.87 to 22.01.88 but the medical certificate produced by him is of Dr. Jai Singh of Laksar Bazar Saharanpur who certifies on 22.01.88 that the applicant was suffering from typhoid from 20.10.87 to 21.01.88 without mentioning that the patient was under his treatment. Therefore, medical certificate does not help him and as we shall see, he has to explain the period after 30.07.83. However, this is a case of injustice to casual labour, the period of a little over three and a half years after 30.07.83 is condoned and the application is admitted.

3. The applicant's claim of Service from



10.08.76 onwards is based on service card for casual labour no. 7906 said to have been annexed as annexure A-1 is, however, a photo copy of card no. 7239 and shows service of the applicant from 10.08.76 to 29.08.76, 30.08.76 to 14.10.76, 15.10.76 to 14.11.76, 18.01.80 to 06.02.80, 07.02.80 to 07.03.80, 31.03.80 to 06.04.80, 07.04.80 to 06.05.80, 15.05.80 to 28.06.80 and then monthwise upto 12.07.81. 02.12.79 to 07.01.80 and 17.11.79 to 08.12.79 have been interpolated. The respondents have stated in paragraph 4 of their reply that the Casual Labour No. 7906 is incorrect and Casual Labour card No. 7239 was issued to Shri Indre Deo S/o Shri Ram Iqbal and the applicant has removed his name by applying ink remover and put his name instead. If this is so, the applicant had incurred a criminal liability and the Railway Administration must have taken action but have made no mention in their reply nor have adduced proof of it.

4. The respondents have stated in para 4 of their reply that entries from 10.08.76 to 14.11.76 have been falsely made in the Service Card to beat the complete ban on recruitment of new faces in the Railways from 01.08.78. It has also been stated that entry from 10.01.86 to 31.05.86 has been made to fall within the strength of Casual Labour frozen on 01.01.84. It is clear that the evidence contained in the casual Labour Card cannot be relied on for several reasons. Firstly, it was not issued to the applicant as stated in the reply. Secondly, it has interpolations. Thirdly, it does not show the Service claimed to have been rendered by the applicant after 12.07.81.



5. The respondents in paragraph 3 of their reply have admitted that the applicant had worked from 17.11.79 to 28.07.80 (little over eight months) in Kumbh Mela under Inspector of works Haridwar, from 29.07.80 to 12.07.81 (a little under one year) under Inspector of Works, Northern Railway, Dehradun and for 34 days from 27.06.83 to 30.07.83 under the Inspector of Works, Haridwar. It is stated in paragraph 5 that the applicant had left the work of his own accord by not turning up for duty with effect from 30.07.83.

6. The applicant has neither given the names of his **juniors** who may have been given temporary status and/or C.P.C. scale in his application nor has he given any such names in this representations annexed as Annexure A-2, A-3, A-4 and A-5. The respondents has also denied that any junior of his was regularised and given C.P.C scale at the time he had left the job. The respondents mentioned in his reply that the applicant left the work voluntarily and absented himself from duty.

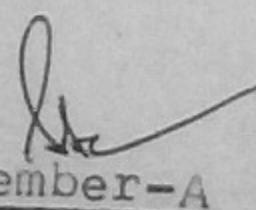
7. The issue which has to be answered now is whether the applicant had attained temporary status **before** he left the job in July, 1983. The respondents has admitted that the applicant had worked as a Casual Worker in the office of the Inspector of Works, Deharadun, from 29.07.80 to 12.07.81. This duration in days workes out to 348 days. The insturctions of the Railway Board granting temporary status to casual worker who had worked for 120 days or more on a continuous basis are contained in paragraph 2001 I.R.E.M. There is no ^{time}

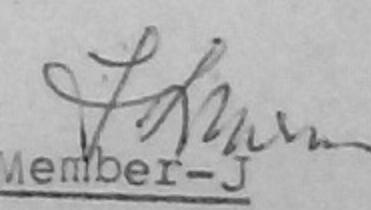
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lag envisaged in the conformat of temporary status after completion of 120 days. Therefore, the applicant is deemed to have attained the status well before 12.07.81 and he had become entitled to benifits availability to a temporary Railway Servant. Although the counsel for the applicant claimed during argument that his services were terminated verbally but in the absence of any proof to that effect it appears that he had absented himself voluntarily and he will not be entitled to any wages for the period of absence which should be treated to be unauthorised absence. But his case cannot be treated to be one of discharge simplicitor. The applicant should be allowed to join the service as a temporary khalasi and the employer will be free to take action against his unauthorised absence as per rules.

8. To sum up, the applicant having attained temporary status, the respondents are directed to reengage him forthwith. He will not be entitled to any wages for the period during which he has not worked till this reengagement under these orders. This period will, however, count towards his seniority for the purpose of regularisation and other benefits to which he may be entitled to by virtue of his seniority after his reengagement. The respondents, ~~the~~ ^{the right} will have to take action against the applicant for his unauthorised absence in accordance with law.

9. The parties should bear their own costs.


Member-A


Member-J

Allahabad Dated:- 16.9.94.

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