

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
A L L A H A B A D

O.A. ~~F.N.~~ No. 574 of 1989

DATE OF DECISION 27-3-96

K. G. Sharma ----- PETITIONER(S).

Sri R. K. Nigam ----- ADVOCATE FOR
THE PETITIONER(S)

VERSUS

U.O.I. & Ors. ----- RESPONDENTS


Sri D. C. Saxena ----- ADVOCATE FOR THE
RESPONDENT(S)

C O R A M :-

The Hon'ble Mr. Dr R. K. Saxena Member (J)

The Hon'ble Mr. S. Dayal Member (A)

1. Whether Reporters of local papers may be allowed to see the judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to all other Bench ?


(SIGNATURE)

VKF/-

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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH,
ALLAHABAD

Dated: Allahabad this 27th day of March 1996

ORIGINAL APPLICATION NO. 574 OF 1989

CORAM: Hon.'ble Dr. R.K. Saxena, JM
Hon.'ble Mr S. Dayal, AM

Sri Krishna Gopal,
son Sri Ambika Prasad,
276-OH Outhouse, Company Bagh,
Tundla - Applicant
(By Advocate Sri K.K. Niagam)

Versus

Union of India & Others - Respondent
(By Advocate Sri D.C. Saxena)

ORDER

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

(V)

1. This is an application under section 19 of the Administrative Tribunal Act. The applicant seeks following reliefs:-

(i) A direction to the Respondent to take the applicant on duty as Khalasi immediately and to regularise his services in accordance with the Railway Board Circulars and the Supreme Court observations.

(ii) The above direction may be given in a time bound manner.

2 The applicant claims to be a Casual Labour in the Railways, who had worked under Respondents No. 2 and No.3 in Tundla. The applicant has invited the attention to Railway Board's Circular dated 8.8.1979 (ANNEXURE-I) in which there was a prohibition of engagement of Casual Labour except those, who were engaged prior to 1.8.1978. The averments in Paragraph No. 6(ii) that those Casual Labour recruited prior to 1.10.1978 were to be retained is not correct in the light of the above provisions of the Circulars dated 8.8.1979. The applicant claims to have joined under the Respondents at Tundla in pursuance of this Circular along with other Counter-Part, who were all designated as Substitute Khalasi. The applicant claims that later on a Junior Counter-Part were regularised by the Respondents. The applicant claims that he was ceased without any speaking order from the post of Substitute Khalasi". The applicant claims that he made several representations to the Respondents but he received the reply dated 11.4.1986 from Respondent No.2 in response to the representation dated 10.2.1984 asking him to contact the Personnel Branch and to execute papers for his retention as Substitute Khalasi and subsequent regularisation.

(Signature)

(13)

3. The applicant claims to ^{have} executed Affidavit asked for by the Respondent on 18.10.1986 but was not re-engaged although he claims that several counter - parts were taken as substitute khalasi. The applicant's case went to P.N.M. and it was agreed between the parties that the case would be settled within a period of ten days. It came out from the decision of the P.N.M. that there was some enquiry against the applicant which according to the applicant was continuing for the last five years but he was not aware of the subject matter or any details of this enquiry. The applicant claims that his Juniors counter - parts, who were borne on the Register of Casual Labour prior to 10.1978 have been retained as substitutes. The applicant has submitted as ANNEXURE-2, the recruitment discharge list in which some names of 18 persons including the applicant are given. However, the applicant and 8 others were recruited on 27.8.1984 while the remaining were recruited on 27.7.1984 and they were shown to have been discharged on 27.10.1984. The applicant in his Representation dated 16.10.1986 has claimed that he worked from 12.7.78 to 21.7.78 and 27.8.1984 to 27.10.1984.

4. THAT the Respondent in their Counter Affidavit have stated that the applicant was engaged as Casual Labour from 27.8.1984 to 27.10.1984 without the approval of the Competent Authority, therefore, the applicant was discharged on 27.10.1984. It is also stated that the applicant never worked in Loco-Shed in Tundla. The Respondents stated that some 10 persons were found to have worked prior to 1.8.1978 out of the list of 18 persons and they were engaged with the approval of the Competent Authority. It is also stated that the applicant did not produce any record of having worked

(14)

prior to 1-8-78 in the Railways.

5. That the applicant in his Rejoinder-Affidavit had said that 17 persons out of 18 mentioned in ANNEXURE-2 of his application were re-engaged and only he was left out.

The applicant has denied that he was appointed by the Loco Foreman without approval of the competent authority. It has been reiterated that the applicant served the Railways as Khalasi in the Loco Shed, Tundla for the period 1-7-78 to 21-7-78. It has been alleged that out of 18 the petitioner alone has not been regularised and the respondents have practised discrimination in doing this. If there was any enquiry or vigilance proceeding all of them should have remained unemployed till the proceedings were over. The petitioner has pointed out that if the working period of 10 persons prior to 1-7-78 has been verified as per averment of respondents, his working in July 1978 could have similarly been verified. He has drawn attention to proceedings of PNB meetings. The applicant has stated on oath that his work in the Loco Shed Tundla prior to 1-7-78 was verified vide Sr. DME/ALD letter no.S/Confid./ dated 20-6-84 and IE/DRM letter/IAF/TDF/SR/84 dated 16-10-84 and that these letters were kept in the records of the DRM Office, Allahabad. The applicant has alleged that the so called vigilance enquiry was still continuing and applicant was kept out of job because of that. If vigilance enquiry came in the way of the applicant it should also have come in the way of 17 others.

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6. The applicant filed a supplementary affidavit alongwith Misc. Application no.409 of 1994 with which he has enclosed the agenda notes of the proceedings of the PNB meeting which was held on 26-5-88. In Item no.168 it has been mentioned that 17 Khalasis under Loco Foreman, Tundla, were terminated alongwith the applicant but 14 had been reappointed. The office agenda note states that applicant and 17 others were terminated because they had been engaged by the Loco Foreman, Tundla, without approval of DRM Office. It was also mentioned that there was a case going on for regularisation of these persons who were working before 1-8-78. The applicant's name was not included in this case because he was not employed prior to 1-8-78. It was also mentioned that there was some correspondence with Viligance and after completion of vigilance enquiry the case of the applicant would be reconsidered. Therefore, no reply could be given to this query. The Annexures to the Supplementary-affidavit show that this item was repeated in the meetings held on 18-8-88 and 17-3-89. It is mentioned in the agenda notes of the meeting of 17-3-89 that this case would be decided by the Sr. Divisional Mechanical Engineer and proper action will be taken. It is mentioned in the agenda notes of the meeting to be held on 8/9-8-89 that the case would be decided by Sr. DME in 10 days and proper action would be taken. It is also mentioned that in spite of sending a number of letters to Vigilance Department regarding this case, no reply has been received and, therefore, the office of DRM could not appoint him.

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7. The respondents have mentioned in their supplementary counter reply that the question of regularisation of applicant's engagement was raised through various meetings but the same could not be finalised for want of necessary materials and orders of competent authority. It is said that the applicant should produce service card to prove his work prior to 1-8-78. It is also stated that the working period upto 1-8-78 is not available in the records of the Railway Station and the applicant also could not produce any record. It is also stated that only 10 persons out of 18 were re-engaged. It is also stated that the enquiry of Vigilance/Intelligen could not be produced at this stage by the applicant.

8. The applicant in his supplementary rejoinder-affidavit has alleged that there was favouritism shown in re-engaging and regularising other workers engaged alongwith the applicant in July/August 1984 and terminated in December 1984. The applicant has stated that others who have been regularised have been so treated because the respondents considered secondary evidence about their engagement prior to 1-8-78. The applicant demanded that Inquiry/Investigation report should be produced before the Tribunal.

The order-sheet of 12-9-95 reads as follows :

(B)

"Shri R.K. Nigam, counsel for the applicant and Shri D.C. Saxena, counsel for the respondents are present. The Tribunal had directed the respondents on 18-4-95 to produce vigilance/intelligence report and other documents which were mentioned in Misc. application no.2204/94 but they have not been produced as yet. Shri Saxena informs that the letter was written to the department but no reply has been received. He, however, seeks one more chance. Allowed. It shall be the last opportunity. In case the respondents fail to produce the documents, the necessary inference under law shall be drawn against them. Let the matter be fixed for final hearing because the pleadings are complete, on 21-11-95. Copy of the order be given to the parties."

9.

Civil Misc. Application no.2204 of 1994 prays that the respondents be directed to produce vigilance/intelligence report and relevant records on the basis of which 10 of the 18 persons had been verified. The Bench of the Tribunal had directed the respondents to produce these records by way of last opportunity and also provided for an adverse inference in case of non-production of records. The learned counsel for the respondents stated that no vigilance report was available.

10.

In view of the above facts, we have no option but to accept the contention of the applicant. His case was similar to that of 17 others who were terminated in October 1984. Annexure-2 to the O.A. shows applicant at Sl. no.6 and the Ticket no. of the applicant was 396 while other 12 persons below him have Ticket nos. which come after the Ticket no. of the applicant. Therefore the contention of the applicant that juniors to him have been regularised because respondents have themselves admitted that 10 persons have been regularised

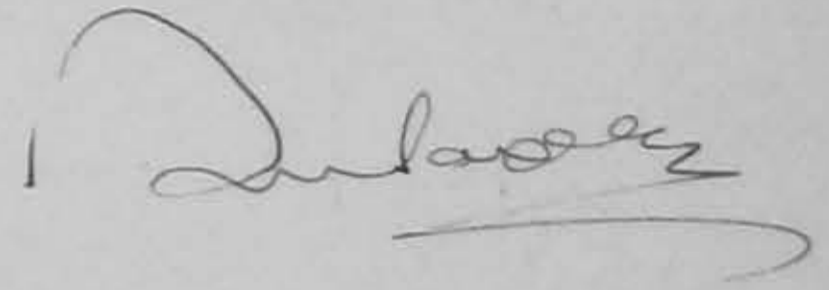
is also accepted. The respondents have not come up clean with the facts in their counter-reply.

11. The respondents are directed to give the same treatment to the applicant as they have given to any person below him from Sl.no.7 to Sl.no.18. The names of the persons in Annexure-2 are given below for ready reference :-

<u>Sl.no.</u>	<u>Ticket no.</u>	<u>Name</u>
7-	428	Waid Hussain
8-	441	Munawwar Abbas
9-	456	Dilawar Khan
10-	398	Fateh Mohammad
11-	407	Nizamuddin
12-	418	Ali Ram
13-	440	Mohd. Faim
14-	467	Bahadur Singh
15-	468	Madan Mohan
16-	462	Shamsuddin
17-	446	Kanti Prasad
18-	465	Shamshad

12. The directions shall be complied with within a period of four months from the date of the communication of a copy of the judgment by the applicant. There shall be no orders as to costs.


AM


JM