

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

D.A. No: 898 of 1990 of 199

T.A. No: of 199

DATE OF DECISION:

12/5/94

Prabhu Nath Yadav

PETITIONER.

Sri O.P. Gupta

ADVOCATE FOR THE
PETITIONER

VERSUS

Union of India and Others

RESPONDENTS

Sri Ashok Mohiley

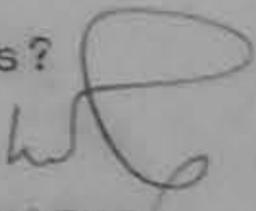
ADVOCATES FOR THE
RESPONDENTS

CORAM:-

The Hon'ble Mr. S. Das Gupta - A.M

The Hon'ble Mr. T. L. Verma J.M

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 Benches?


SIGNATURE

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Reserved

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

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Registration O.A. No. 898 of 1990

Prabhu Nath Yadav Applicant.

Versus

Union of India
and others Respondents.

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Hon. Mr. S. Das Gupta, A.M.
Hon. Mr. T.L. Verma, J.M.

(By Hon. Mr. S. Das Gupta, Member(A))

This Original application has been filed under Section 19 of the Administrative Tribunal Act, 1985 seeking a relief of a direction to the respondents to take the applicant back in service and treat his service without break with payment of back wages.

It has also been prayed that the respondents be directed to treat the applicant as a regular Craftsman or Instructor since 1.1.1986 and to pay the arrears of salary in accordance with the new scale of pay with interest thereon.

2. The brief facts of the case are that the applicant was working as Assistant Craftsman which is a post with the Carpet Weaving Training Centre, Nirmali District Saharas (Bihar), under the development Commissioner for handicrafts. The post is presently in the pay scale of Rs. 1200-2040 since 1.1.1986 and the designation has been changed to Instructor. The applicant was appointed on December, 1979, had completed merely 10 years continuous service as

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Assistant Craftsman when he ~~has~~ stated to have fallen seriously ill and remained absent from duty from 25.11.1988 to 30.4.1990. On 1.5.1989, when the applicant came back to rejoin his duties along with an application for leave and medical certificate/fitness certificate, the respondent no. 4 did not allow him to join his duties. The applicant states that after several oral requests, he sent a letter on 31.8.1989 to the respondent no. 2 but neither was he allowed to join his duty nor given any reply. He gave a reminder to the respondent no. 3 on 9.11.1989 on which, the latter recorded that he had not received any paper from F.A.C.Varanasi. A copy of the letters ~~dated~~ dated 31.8.1989 and 9.11.1989 are at Annexures- A 5 and A 6 to the application.

3. The applicant claims that on completion of 240 days of continuous service, he was entitled to be regularised on the basis of the judgment and order dated 9.8.1988 of this Tribunal in O.A. No.545 of 1986. A copy of the judgment was also made available to us by Sri O.P. Gupta, learned counsel for the applicant during the course of argument. It is ~~000000~~ stated that in compliance with the same order, number of persons who were engaged as Assistant Craftsman were regularised in service by the Government Order dated 24.4.1990, a copy of which is at Annexure-A 7. The applicant claims that he would have been entitled

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to be similarly regularised, had he not been dis-engaged from service and that he has been denied such regularisation by being dis-allowed to rejoin his duties without indicating any reasons.

4. In the counter affidavit, the respondents have averred that the petitioner remained absent from his duty without any intimation and proper leave application. It has also been stated that the petitioner failed to furnish medical certificate from the competent medical authority i.e. Chief Medical Officer in support of his illness. They have denied having received any representation from the applicant. The respondents submit that since the applicant was absenting from duty without any intimation, he is not entitled to be regularised in service.

5. In rejoinder affidavit, apart from reiterating the contentions made in the application, ^{The applicant} has averred that he sent a letter dated 27.11.1988 by registered post to inform the respondents of his illness seeking permission to remain on leave till he became fit. In proof of this, he has enclosed postal receipt dated 27.11.1988 at Annexure-R.A. 1. He has further claimed that he again sent an application on 12.1.1989 under registered post to inform the respondents that the applicant is still under medical treatment and was not in position to attend duty praying for permission to continue on leave. He has enclosed postal receipt dated 12.1.1989 at Annexure-R.A.2 in support of

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his contentions.

6. We have heard the learned counsel for both the parties and carefully gone through the records of the case.

7. On a careful perusal of the pleadings and also after hearing the counsel of both the parties, we are of the view that there is force in the contentions of the respondents that the applicant did not intimate the authorities about his illness nor did he apply for leave. In the application, the applicant has only stated that on his return, he submitted leave application along with medical certificates but did not state that he had not sent any intimation during the period of his absence. It is only in the rejoinder affidavit that he has stated about his sending intimation to the respondents. This would appear to be an after thought and cannot be accepted even though two postal registration certificates have been enclosed by him in proof thereof, since the registration certificates do not indicate that the letters claimed to have been sent, were actually sent under such postal receipts.

Infact, the applicant has not even enclosed copies of the letters dated 27.11.1988 and 12.1.1989 claimed to have been sent by him to the respondents during the period of his ~~be~~ illness.

8. There is, however, no denying the fact that

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the applicant had put in nearly 10 years of service under the respondents and in compliance of this Tribunals judgment and order dated 9.8.1988, he was also entitled to ~~be~~ regularised in service. Notwithstanding the terms and conditions set out in his letter of appointment, a copy of which is at Annexure- A 1, he certainly had acquired atleast the right of being given an opportunity to be heard before his services were terminated. Admittedly, such an opportunity was not given to the applicant. This is a clear violation of principles of natural justice and as such, the termination of the services of the applicant cannot be sustained. A similar view was taken by this Tribunal in the case of Lal Man Pal Vs. Union of India and others in O.A. No. 500 of 1991 which was decided by the order dated 14.1.1993, a copy of this order was also made available to us by the learned counsel for the applicant. The respondents, however, do have a right to ~~take~~ appropriate proceedings against the applicant for the alleged unauthorised absence from duty.

9. In the result, the petition is partly allowed. The applicant shall be reinstated in service forthwith and in any case, not later than a month from the date of communication of this order. The respondents, however, shall be at liberty to take appropriate action in accordance ~~to~~ with law for the alleged unauthorised absence on the part of the

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applicant. On completion of the proceedings, the respondents shall consider the regularisation of the services of the applicant in compliance with the judgment and order dated 9.8.1988 of this Tribunal. We, do not, however, order payment of any back wages.

10. The application is disposed of with the above directions. There will be no order as to costs.

Y. S. Kumar
Member (J)

h.s
Member (A)

Dated: 12 May, 1994.
(n.u.)