

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

C. A. No. 147 of 1990 DATE OF DECISION : 17.11.95

C. A. No.

Harpal Singh ----- APPLICANT(S)

S. P. K. Kashyap ----- ADVOCATE FOR THE
APPLICANT(S)

V E R S U S

The C.O.I. Secy. ----- RESPONDENT(S)

S. D. C. Saxena ----- ADVOCATE OF THE
RESPONDENT(S)

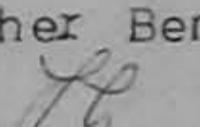
C O R A M

The Hon'ble Mr. S. Das Gupta (Member - A)

The Hon'ble Mr. I. L. Verma (Member - I)

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

VKP/-


(SIGNATURE)

(14) (6)

CENTRAL ADMINISTRATIVE TRIBUNAL ALIABAD BENCH
ALIABAD.

Dated : Allahabad this... 11th day of November 1995.

Original Application No. 147 of 1995

QUORUM :- Hon'ble Mr. S. Das Gupta, Member-A
Hon'ble Mr. T. L. Verma, Member-J.

Harpal S/o. Lallu Singh,
R/o. Mathedi, Pargana and Tehsil
Naqina, District Bijnore..... Petitioner.
(By Advocate Sri P.K. Kashyap)

Versus

1. Union of India through General Manager
Northern Railway, Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway,
Allahabad.
3. P.W.I. (Special), Roorkee, Northern Railway.

----- Respondents.

(By Advocate Sri D. C. Saxena)

ORDER (By Hon. Mr. T. L. Verma, J.M.)

This application under Section 19 of the
Administrative Tribunals Act, 1985 has been filed for
issuing a direction to the respondents to maintain/
retain the name of the applicant on the Live Casual
Labour Register to re-engage him as Casual Labour from
the date his juniors have been given appointment.

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2. The facts of the case as set out in the application, briefly stated are that the applicant was initially appointed as Gangman in Northern Railway on 15.12.1978. He worked as such till 14.11.1979. He was again engaged on 3.3.1979 and worked till 20.4.1986 in different spells. He was re-engaged on 23.3.1986 and continued to work as such till 20.4.1986 in Kumbh Mela in 1986. The respondents are stated to have terminated his service by oral order with effect from 20.4.1986 though several persons junior to him have been retained in service. He claims to have acquired temporary status by virtue of his having worked for more than 120 days continuously and as such termination of his service and retention of juniors in preference to the applicant, it is alleged, is illegal, arbitrary and violative of Articles 14 and 16 of the Constitution of India. Hence, this application for the relief mentioned above.

3. The respondents have appeared and contested the claim of the applicant. The respondents have, in their written reply, contended that the application is barred by limitation and also that the applicant has not worked for 120 days continuously. It has further been contended that the applicant, of his own, discontinued to work. As such, his right, if any, stands defeated automatically.

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4. We have heard the learned counsels for both the parties and perused the record. The respondents have admitted that the applicant had worked as Casual Labour from 15.12.1978 to 2.4.1979, 16.2.80 to

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15.4.1980, ~~and~~ 5.2.1983 to 31.3.1983 and 4.4.1983 to
14.9.1983. There is no denial to the claim of the
applicant that he had worked from 23.3.1986 to
20.4.1986 for 28 days in Kumbh Mela 1986 at Hardwar.
Even according to the reckoning of the respondents, the
applicant had worked from 4.4.1983 to 14.9.1983 continu-
ously which comes to more than 120 days. There is thus,
no substance in the contention of the respondents that
the applicant had not acquired temporary status because
he had not ^{worked} continuously for 120 days. According to
para 2001 of the Indian Railway Establishment Manual
Volume -II, read with para 2003, a casual labour in the
~~open~~ ^{open} line acquires temporary status on completion of
120 days working. The aforesaid facts therefore, are
sufficient to confer temporary status on the applicant.

5. A casual labour who acquires temporary
status is entitled to all the privileges as are admissi-
ble to a temporary Railway Servant. The applicant,
thus, ^{become} on completing 120 days continuous work as Casual
Labour had entitled to such benefits. Therefore, he
was entitled to one month's notice or one month's pay
in lieu of notice before his services were dispensed with.
The grievance of the applicant is that his services were
terminated by oral order with effect from 20.4.1986,
contrary to the provisions of the extant Rules.

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6. The pleadings of the parties and the annexures on record, indicate that the applicant had worked till 14.9.1983 under P.W.I. (Special), Northern Railway, Roorkee and thereafter he was not re-engaged till 22.3.1986. On 23.3.1986, he was engaged under P.W.I. Kumbh Mela, Northern Railway, Hardwar. The engagement under P.W.I. Roorke and P.W.I. Kumbh Mela Northern Railway, Hardwar are all together different, therefore, in our opinion employment in Kumbh Mela can not be said to be in continuation of the engagement under P.W.I. Roorke, though, the said period of 28 days during which he was engaged under P.W.I. Kumbh Mela may be admissible for the purposes of determining his seniority on the basis of number of working days. According to the applicant, his service was orally terminated with effect from 21.4.1986 contrary to the provisions of extant rules. This contention of the learned counsel for the applicant has no merit because the engagement ~~which~~ during Kumbh Mela was adhoc and temporary in nature inasmuch as it automatically came to an end ~~after~~ after Kumbh Mela was over.

7. It has been averred in para 7 of the application that the applicant had submitted representation against oral termination of his service with effect from 21.4.1986 but, there is absolutely no material on record to show that such a representation had been made. The respondents have also, in para 9 of the counter-affidavit very specifically stated that no representation was received by the respondents. It would, thus, appear that the applicant had not done anything after he was disengaged in 1983 and also after his disengagement with effect from 21.4.1986. It is no doubt true that by virtue of his having worked for more than 120, the applicant had acquired

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a right to be conferred with temporary status and to continue to work as casual labour subject to availability of work, in preference to his juniors. There is nothing on record to show that after his dis-engagement with effect from 16.6.1983, work was available for continuing the engagement of the applicant under P.W.I.Roorkee or that persons junior to the applicant were retained and regularised as Casual Labours, except the vague and general averment that persons junior to the applicant have been retained in service. There is thus, absolutely no material on record to show that the persons junior to the applicant were engaged under P.W.I. Roorkee after 16.06.1983 to give cause of action to the applicant to file a case on the ground of discrimination and arbitrariness. The main plank of the applicant's case is that termination of his service by oral order dated 20.4.1986 is contrary to extent rules. The contention of the respondents is that the applicant had on his own discontinued to work and so the question of termination of his services does not arise. Assuming for the sake of argument, that the services of the applicant were finally terminated by the respondents with effect from 21.4.1986, then also, we are of the view, that the relief as claimed by him can not be allowed because the claim is barred by limitation. There is not even a chit of papers to show that the applicant had, at any point of time, before filing this application, taken any step to agitate or move the appropriate authority against alleged termination or supersession of his claim for re-engagement in preference to his junior or new faces. Delay on the part of the applicant to

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agitate his alleged termination of service within the period of limitation in our opinion has deprived him of the remedy available in law.

8. In the result this application fails and accordingly dismissed. There will be no order as to costs.

Alwin
Member-J.

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Member-A.

VKF/-