

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD

O.A. No:
T.A. No:

349 of 1990

DATE OF DECISION: 16/9/94

Sri Manish Chaudhary - - - - - PETITIONER

Sri B. P. Sivastava - - - - - ADVOCATE FOR THE
PETITIONER

V E R S U S

U.P. and others - - - - - RESPONDENTS

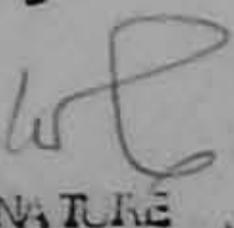
Sri Lakshmanan - - - - - ADVOCATE FOR THE
RESPONDENTS

C O R A M

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

The Hon'ble Mr. T. L. Verma, I.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 Bench ?


SIGNATURE

MANISH

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD BENCH.

By Regd

Registration O.A. No. 349 of 1990

Sri Naresh Chandra Applicant.

Versus

Union of India
and others Respondents.

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Hon. Mr. S. Das Gupta, Member (A)
Hon. Mr. T.L. Verma, Member (J)

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

The petitioner, in this case, was initially appointed as Khalasi on 29.9.1975 in the pay scale of Rs.196-230 and was deployed under the Permanent Way Inspector (P.W.I. for short) Track Depot, Subedarganj under the Divisional Railway Manager, (D.R.M. for short), Allahabad. It has been stated in the application that he became sick and took leave for 3 months w.e.f. 11.11.1977 and sent application about his illness to his department through his brother, but he was marked absent. On recovery from the illness, when the petitioner reported for duty, he was not allowed to work. It has been stated that he made a representation to the Assistant Engineer for being allowed to join duty and the Assistant Engineer is stated to have asked for a report from the P.W.I. The P.W.I. is stated to have submitted a report on 13.5.1986, a copy of which is at Annexure- A 4 to the Application. This report showed that the petitioner's services were terminated for unauthorised absence from duty. Thereupon, the Assistant Engineer sent a communication dated 22.5.1986 to the petitioner intimating

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that he cannot be reemployed, a copy of the said communication is at Annexure- A 1 to the petition in which it was mentioned that the petitioner's services were terminated due to unauthorised leave absence from duty by an order dated 16.5.1978. The petitioner, however, states that no such order dated 16.5.1978 was ever received by him.

2. The petitioner is stated to have sent an appeal to the General Manager, Northern Railway with a copy to D.R.M. Allahabad on 28.12.1986 under a registered post. There was, however, no reply to the said communication. He sent a reminder but to no avail. Thereupon, he filed an appeal dated 6.2.1986 to the Railway Board for reemployment but the appeal was rejected by the Railway Board on 27.4.1987 is at Annexure- A 2. Thereupon, the petitioner submitted a representation dated 20.2.1989 to the Director of Public Grievances, Cabinet Secretariate, New Delhi and the same was forwarded by the addressee to the Railway Board. The Railway Board sent a communication dated 22.12.1989 stating that the petitioner could not be reemployed as such. A copy of the order dated 22.12.1989 is at Annexure - A 2, to this application. This has led the petitioner to file this application under Sec. 19 of the Administrative Tribunals Act, 1985 praying that the order dated 16.5.1978 referred to in the Assistant Engineer's order dated 25.5.1986 be declared null and

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void and that the petitioner be deemed to be in continuous service and accorded all the benefits and privileges of continuity of service.

3. In their written statement, the respondents have taken a preliminary objection to the maintainability of the application on the ground of limitation. It has averred that the order by which the services of the applicant were deemed to have been terminated is dated 16.5.1978 and the same was duly communicated to the applicant and was never challenged nor any departmental remedy sought by the applicant. Since the cause of action arose in May, 1978 whereas, the present application has been filed only on 4.4.1990, the same is hit by limitation. On the merit of the case, the respondents have stated that the applicant was unauthorisedly absent from duty from 11.11.1977 to 10.2.1978 without any intimation. He was, therefore, deemed to have resigned from service in terms of extant rules. It has also been stated that the applicant did not send any information about his absence and that, infact, the applicant submitted an application on 14.5.1986 to the PWI Track Depot Subedarganj in which he has stated that he had been mentally deranged and therefore, he was unable to work from 11.11.1977 to 14.5.1986 and that it was this letter which was replied to by the communication dated 22.5.1986 (Annexure- A 1) It has also been stated by the respondents that since the applicant was only a casual labour, the rules

did not require serving any charge-sheet on those who absent themselves for more than 3 months. It has further been contended that the applicant was given full opportunity of hearing by the PWI Track Depot, Subedarganj.

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

5. On the question of limitation, the applicant has contended in his rejoinder affidavit that the application is not barred by limitation since, he had started representing against the termination of service as soon as the same came to his knowledge. He has stated that the order dated 16.5.1978 was never received by him and as such, it was only in 1986 that he could submit his representation on being made aware of this fact by the communication dated 22.5.1986 (Annexure- A 1). Thereafter, he says he had been continuously representing ^{until} ~~against~~ the final rejection of his appeal by the Railway Boards communication dated 22.12.1989 (Annexure- A 3); as such, his application, which was filed on 4.4.1990 was well within the period of limitation.

6. We have given our anxious considerations to the contention of the applicant on the point of limitation. The respondents have categorically stated that the impugned order of termination dated 16.5.1978 was communicated to the petitioner which

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is, however, denied by the latter. However, by the applicant's own admission his first representation for reinstating him in service was in 1986 i.e. about 8 years after he claims to have reported for duty on recovery from illness and was ~~refused~~ ^{not allowed} to rejoin. There was no explanation whatever for the time lack in representing the matter to the competent authorities. In these circumstances, the statement of the respondents that the applicant had himself stated in his representation, to which the communication dated 22.5.1986 (Annexure- A 1) is a reply, that he suffered from mental illness from 11.11.1977 to 14.5.1986 appears to be plausible. In that case, the applicant has not come with clean hands and the application would deserve to be dismissed on that ground alone. If, however, we accept the applicant's version that he tried to resume his duties after 10.2.1978, it would be quite clear that there have been laches and delay in seeking redressal of his grievance and the present application is also clearly time barred.

7. Even on merit, we find that by the applicant's own admission, he had sent an intimation about his illness through his brother, in the absence of any document whatever, there is no evidence that he really sent intimation about his hilness to the department in which he was working. The respondents, however, should normally have issued a charge-sheet or given him an opportunity to show cause before

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terminating his service, but here again we find that the applicant had suppressed in his application the fact that he was a casual labour and not a regular Khalasi. This fact has come out from the submissions made by the respondents in the written statement. It is well-settled that only those casual workers to the Railways who have attained temporary status would be entitled to the proceedings under Disciplinary and Appeal Rules, ~~such~~ privilege is not available to the ^{casual} Industrial Labourers who have not so attend temporary status. It is only in the rejoinder affidavit, the applicant has come out with a plea that he had attained temporary status and was entitled to a regular disciplinary proceedings before his services were terminated. This plea he could have taken in the original application itself. Having come out in the rejoinder affidavit only after respondents have stated that he ~~is~~ was a casual worker and was, therefore, not entitled to the proceedings under Disciplinary & Appeal Rules, the applicant's contention that he was so entitled loses considerable ground. On the other hand, the respondents have stated categorically in their written statement that the applicant was given full opportunity of hearing by P.W.I. Track Depot before his services were terminated, and that he was given notice by P.W.I. Track Depot by his letter dated 29.3.1978. There is no specific denial of this fact in the rejoinder affidavit. It has only

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been stated in para 21 of the Rejoinder Affidavit that the contents of paragraphs of the written statement in which the aforesaid contentions have been made are not 'visible' and, therefore, the petitioner was ~~reserving his right to the same," as~~ ^{rely} and when the proper contents of the paragraph under reply will be supplied to the petitioner". Neither in the interlocutory stages nor at the time of hearing, the petitioner raised this matter and asked for ~~eligible~~ reproduction of the relevant paragraph and given a categorical denial of the contentions made by the respondents. We are, therefore, of the view that the applicant's plea that he was not given any opportunity of showing cause before his services were terminated and thus, there has been violation of principles of natural justice has no force.

8. In view of the foregoing, we find that the application has no merit and the same is, therefore, dismissed without any order as to costs.

J.L. Verma

Member (J)

W.R.
Member (A)

Dated: 16 September, 1994.

(n.u.)