

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH

Original Application No. 999 of 1992

Allahabad this the 6/5 day of April 1995

Hon'ble Mr. S. Dayal, Member(A)
Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Amar Nath Dubey aged about 31 years, S/o Sri Ram Chandra Dubey at present resident of Aadarsh Nagar Colony, Roza, District Shahjehanpur.

APPLICANT

By Advocate Shri Rakesh Verma

Versus

1. Union of India through General Manager, Northern Railway, Baroda House, Northern Railway, Moradabad
2. Divisional Rail Manager, Northern Railway, Moradabad.
3. Divisional Engineer II, Northern Railway, Moradabad.
4. Assistant Engineer, Northern Railway, Shahjehanpur.
5. Permanent Way Inspector, Northern Railway, Roza Jn. Distt. Shahjehanpur.

RESPONDENTS.

By Advocate Shri D.C. Saxena

O R D E R

By Hon'ble Mr. Jasbir S. Dhaliwal, Member(J)

Shri A.M. Dubey has come to this Tribunal under Section 19 of the Administrative Tribunals Act, 1985 pleading that he was working as a Casual Khalasi under 'Permanent Way Inspector'

at Rosa Junction. He has given a chart in para 4.1 of number of days put in by him from the year 1977 to 1980. He pleads that from 01.12.1978 to 30.4.1979, he had worked for a continuous period of 149 days. He has given further period also mentioning that he had worked from the year 1981 to 1984 which period was not entered in Casual Labour Card despite his efforts. An altercation of hot words took place between him and one Shri Bhagwan Singh, Head Clerk. The applicant was disengaged without assigning any reasons and on 23.3.1984, he moved an application to the Assistant Engineer, Shri Mukesh Kumar Garg who had recommended recording of his name in the Casual Labour Register in the seniority list. He moved another application on 15.7.1984 on which he was directed to contact the D.E.N.. Thereafter, he made continuous efforts for getting job and on 10.2.1985 had submitted a representation to the Prime Minister of India (Annexure A-5). Vide letter dated 26.2.85, he was informed by the respondents that as he was found guilty during service and it was for this reason, he was removed from the Railways which is Annexure A-1. He claims that from this document, he came to know that he had been removed

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on account of mis-conduct even though no inquiry or disciplinary action was initiated against him thereafter, he kept on making efforts and approached all the authorities who made an endorsement on his application (Annexure A-6) that they have no objection on his re-engagement. Though assured of re-instatement, he was not given job. He submitted an application dated 06.3.1990 to the Minister for Railways. He claims that several persons junior to him are continuing in service and have been regularised. He filed an O.A. No. 373 of 1991 on which this Tribunal issued directions on 13.5.1991 to the respondents to dispose of his representation dated 16.8.1990 (Annexure A-8). He filed further representation dated 14.10.1991 and the respondents vide order dated 23.1.1992 (Annexure A-2) refused to re-engage him on the grounds of alleged mis-behaviour with authorities. He has, thus, prayed for a direction to the respondents for setting aside orders dated 26.2.1985 and 23.1.1992 and for holding petitioner entitled to re-engagement on the post of Gangman with all benefits of seniority, regularisation, promotion and back wages alongwith costs.

2. The respondents have pleaded that the petitioner never worked for a continuous period

of 120 days as claimed by him. They plead that on 04.3.1984, the petitioner had attempted to assault one Ram Sewak Asthana, P.W.I. at which he was called for holding a preliminary inquiry on 07.3.1984. When the verbal proceedings were in progress, the petitioner mis-behaved with one Bhagwan a senior clerk with assaulting him. A F.I.R. was lodged about this incident with the Police, Rosa Junction. It is claimed that petitioner had earlier also mis-behaved with his superiors on many - occasions, detail of which are mentioned in para 9 of the counter-reply. It is claimed that Shri Mukesh Kumar Garg was not working as Assistant Engineer at the relevant time. The name of the petitioner was struck off from the muster roll in accordance with the orders of Divisional Engineer communicated vide his letter dated 13.7.1984. It is claimed that the petitioner had been informed about these facts by P.W.I., Rosa and about his name being struck off under ~~these~~ these orders and these facts have been admitted by the petitioner in Annexure A-4. It is pleaded that provisions of Discipline and Appeal Rules do not apply on casual labour. The representation of the petitioner was considered and he was informed through letter from D.E. dated 23.1.1992 that he cannot be re-engaged due to his mis-behaviour with his

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superiors and ^{causing} obstruction in the working of the Railways. It is pleaded that the petitioner was given ample time to mend his ways but, he continued with his behaviour with his superiors and causing obstruction in the working. His name was struck off from the Muster Roll and the seniority list of the casual labour in exigencies of service. They have pleaded that the application is highly belated and should be dismissed on the grounds of laches.

3. Learned counsel for the respondents has taken two preliminary objections at the very outset (a) that the petitioner was dis-engaged in March, 1984 and his present petition has been filed on 21.7.1992 and, thus, the petition is highly time barred. (B) that judgement dated 13.5.91 passed by this Tribunal was passed at the admission stage without issuing notice to the respondents and, thus, the judgement is illegal and in the alternative, since the judgement has been passed against the express provisions of law and is against the principle of natural justice , it should be reviewed and be declared as bad in the ~~eyes~~ ^{force} eyes of law. We find considerable ~~force~~ in the contentions raised.

4. The pleadings shows that the ~~petitioner~~ petitioner himself was aware in the year 1984 that

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his services have been put to an end. His application annexure A-3 is mentioned to be dated 23.3.1984 in the Index of compilation no.2 mentioning the facts that there was a quarrel between him and the Senior Clerk and that due to this, his name had been struck--off. Next is annexure A-4 dated 15.7.1984 where also he has requested for regarding his name in the seniority list. On it there is an endorsement of the same date of the Railway Inspector mentioning that ---he---- is not being recruited due to order dated 13.7.1984 passed by D.E.N.-2. The pleading@shows that he was informed through Annexure A-1 dated 26.2.1985 that his application has been considered again but finding the he was found guilty during his service and he was removed, he cannot be re-engaged. All these facts show that cause of action arose to the petitioner to come to this Tribunal in the year 1984. At the most, the cause of action could be considered from 26.2.1985 where, through annexure A-1, he was informed all the reasons of his removal from the service. Counting from any angle this petition is highly time barred and liable to be dismissed on this @ground alone.

5. An attempt has been made to argue that his O.A. 373 of 1991 would give him fresh

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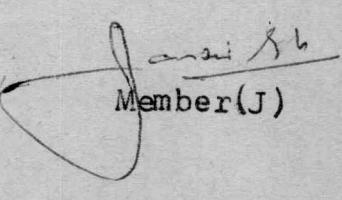
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period of limitation. It is apparent from the reading of annexure A.8 that at the stage of admission only, on the basis of the pleadings that the petitioner had filed a representation and that there was no response~~on~~ on it, without issuing notice to the respondents a direction was issued to them to consider the legal and factual position and the ~~pleading~~ raised by the applicant and to dispose of his representation within a stipulated period. Learned counsel for the respondents states that on representation of the ~~petitioner~~ petitioner, he was in writing informed through Annexure A-1 dated 26.2.1985 that his representation is being rejected. He, thus, stresses that the order passed by the Tribunal is not only passed on wrong appreciation of facts but does not take into account that his representation had already ^{been} considered and rejected in the year 1985. He has cited a judgement of the Principal Bench 'Likhi Ram Vs. Union of India 1993(25) A.T.C. page 815' to press his contention that direction ~~on~~ issued by the Tribunal without notice to the respondents without giving any opportunity to them of being heard is in gross violation of principles of ~~natural~~ natural justice. The Tribunal had set aside the ex-parte order by way of suo-moto review.

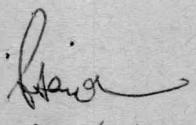
the opposite party-- of meeting this contention. It is not disputed that the directions given on 13.5.1991 were without issuing notice to the present respondents. We ~~can~~ also find that the said directions were issued on wrong facts as representation of the petitioner had already been considered and rejected as far back as in 1985. The order passed, thus, suffers from a mistake which is apparent on the face of the record. This order is, therefore, reviewed and is recalled for the same reasons as discussed in ~~DL~~ Likhi Ram's case (supra).

7. Before parting with this petition, it will not be out of place to mention that contention has not been successfully brought home by the petitioner on this file that he had worked for more than 120 days continuously. No casual labour card has been produced which is a requirement of the being rules. Onus of proving-- this on the petitioner who having failed in discharging the same, the plea cannot be accepted.

8. Cumulative effect of the reasons mentioned above is that this ~~petition~~ petition has no merit. It is dismissed as such without any order as to costs.


Member (J)

/M.M./


Member (A)