

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD.

Original Application No. 1215 of 1992

Allahabad this the 21st day of Nov. 1996

Coram-Hon'ble Dr. R.K. Saxena, J.M.
Hon'ble Mr. D.S. Baweja, A.M.

Malkhan Singh S/o Sri Majboot Singh aged about 33 years,
r/o Q.No. 489 J, Behind D.R.M.'s Office, Jhansi working
as I.T.I. Trained Diesel Cleaner, M.h.C.L. under D.M.E.
(Diesel) Central Railway, Jhansi.

Applicant.

By Advocate Sri H.P. Pandey

Vs.

1. Union of India through the General Manager, Central Railway, G.M.'s office, Bombay V.T.
2. The Divisional Railway Manager, Central Railway, D.R.M. Office, Jhansi.
3. The Divisional Mechanical Engineer (Diesel), Central Railway, Jhansi.

Respondents.

By Advocate Sri G.P. Agrawal.

Judgment

By Hon'ble Dr. R.K. Saxena, Judicial Member

This application (O.A.) has been moved by Sri Malkhan Singh seeking directions to the respondents to reinstate the applicant and to regularise his services as was done in the cases of his juniors, to make payment of back wages and to give such relief as may be deemed fit.

2. The brief facts of the case are that the applicant was initially appointed as casual labour on 1.4.77 at Kunch. He was transferred to Jhansi on 1.1.88 after he was declared monthly rated casual labour. He

was involved in a false case of theft Railway property on 16.6.89. The respondent no.4, without holding any inquiry, terminated the services of the applicant vide order dated 16.8.89. The applicant, therefore, filed an O.A. 712/89 challenging the said order of termination. An interim stay was granted.

3. On the plea that the sanction of the posts of M.R.C.L. lapsed, the respondents terminated services of ten persons including the applicant vide order dated 11.12.89. The applicant approached the Tribunal probably by way of Misc.Application in O.A. 712/89 in which an order restraining the respondents was passed on 29.3.90. Despite the stay order, the applicant was not allowed to resume duties.

4. It is averred that Sarva Sri Prem Narain, Katar Singh, Moti Lal, Sushil Kumar, Mohd.Iftekhar, Bhupendra Singh, Inderjeet Singh and Ganesh Prasad were juniors to the applicant. Their services were also terminated vide order dated 11.12.89. Of them, Prem Narain, Iftekhar and others had instituted the cases before the Tribunal and after the cases were decided in their favour, they were taken back but not the applicant.

5. The applicant also contends that he was acquitted of the charge under Section 3 of Railway Property (unlawful possession) Act on 3.2.92 and he approached to resume duties but all in vain. According to the applicant, The O.A. 712/89 was decided in his

favour, yet he was not taken on job. Hence this O.A. with the reliefs already mentioned.

6. Sri Manoj Pandey, Senior D.P.O., Central Railway, Jhansi has filed counter-affidavit on behalf of all the respondents. It is contended that the applicant was implicated in the case of theft but no comment was made about his dismissal on that ground. Again no comment was made about the applicant having approached the Tribunal. It was, however, admitted that the applicant along with nine others was terminated on 9.2.90. It was also stated that the compliance of the judgment of the Tribunal was done and a cheque of Rs. 14,515-00 was given to the applicant. The respondents have also come with the plea that the applicant could not be considered for re-engagement because he was implicated in a criminal case and was not cleared off the same by that time.

7. The applicant filed rejoinder giving those very facts which were stated in the O.A.

8. We have heard the learned counsel for the parties and have perused the record.

9. The applicant had approached the Tribunal in O.A. 712/89, when his services were terminated because of the criminal case. At that time, the order under challenge was that of termination. The Tribunal had directed the respondents to keep his name in the register for future absorption as ^{and} ~~and~~ when vacancy

may arise. Because the applicant was facing criminal trial, the direction of immediate absorption could not be given. Now the applicant claims that he should have been given regular appointment in the same manner in which it was offered to his juniors as is disclosed in paras 4.4., 4.18 and 4.19 of the O.A. The respondents admitted the contents of para 4.4 but made no comments about paras 4.18 and 4.19. It was, however, disclosed in para 16 of the counter-affidavit that the name of the applicant could not be considered because he was facing criminal trial. It emerges from these facts that the respondents are prepared to consider the engagement of the applicant in regular manner. The applicant has filed the copy of judgment of Judicial Magistrate, Jhansi to show that he was acquitted of the criminal charge.

10. We find from the facts as are disclosed in the pleadings of the respondents that they could not re-engage the applicant for the reason of his involvement in criminal case, and there being no vacancy. The first hurdle is over because the applicant stands acquitted of the charge. The plea of no vacancy was taken in the year 1993 when the counter-reply was filed. By the efflux of time, the vacancy may have occurred. Thus, the case of the applicant may now be considered.

11. In view of these facts and circumstances, we direct the respondents to consider the applicant for re-engagement on regular basis within a period of six months. The O.A. is disposed of accordingly. No order as to cost.

*Typed and
checked
A.M.M./*

(D. S. Baweja)
Administrative Member

(Dr. R.K. Saxena)
Judicial Member

Central Administrative Tribunal,
Allahabad Bench, Allahabad.

Allahabad the this 21st day of Nov 1996.

Corum - Honble Dr. R. K. Saxena, J.M.
Honble Mr D.S. Bawajia, A.M.

O.A. 1215 of 1992

Malkhan Singh s/o Sri Majboot Singh aged
about 33 years, s/o Q. No 489 J, Behind
D.R.M.'s office, Thansi working as
I.T.I. Trained Diesel Change, M.R.C.L.
under D.M.E. (Diesel) Central Railway,
Thansi.

———— Applicant

vs

1. Union of India through the General
Manager, Central Railway, G.M.'s
office, Bombay VT.
2. The Divisional Railway Manager,
Central Railway, D.R.M. office,
Thansi.
3. The Divisional Mechanical
Engineer (Diesel), Central
Railway, Thansi.

———— Respondents.

Counsel — Sri H.P. Pandey Advocate,
For Applicant.
Sri G.P. Agrawal Advocate
For Respondents.

Judgment

By Honble Dr. R.K. Saxena - Judicial Member

This application (O.A.) has
been moved by Sri Malkhan Singh
seeking directions to the respondents

to reinstate the applicant and to regularise his services as was done in the cases of his juniors, to make payment of back wages and to give such relief as may be deemed fit.

The brief facts of the case are that the applicant was initially appointed as casual labour on 1.4.77 at Kouch. He was transferred to Thansi on 1.1.88 after he was declared monthly rated casual labour. He was involved in a false case of theft Railway property on 16.6.89. The respondent no 4, without holding any inquiry, terminated the services of the applicant vide order dated 16.8.89. The applicant, therefore, filed an O.A. 712/89 challenging the said order of termination. An interim stay was granted.

On the plea that the sanction of the posts of M.R.C.L lapsed, the respondents terminated services of ten persons including the applicant vide order dated 11.12.89. The applicant approached the Tribunal probably by way of Misc. Application in O.A. 712/89 in which an order restraining the respondents was passed on 29.3.90. Despite the stay order, the applicant was not allowed to resume duties.

It is averred that Sarva Sri Prem Narain, Katar Singh, Motilal, Sushil Kumar, Mohd Iftikhar, Bhupendra Singh, Indrajeet Singh, and Gaurish Prasad were juniors to the applicant. Their services

were also terminated vide order dated 11.12.89. Of them Ben Narain, Iftikhar and others had instituted the cases before the Tribunal and after the cases were decided in their favour, they were taken back but not the applicant.

The applicant also contends that he was acquitted of the charge under Section 3 of Railway Property (unlawful possession) Act on 3.2.92 and he approached to resume duties but all in vain. According to the applicant the O.A. 712/89 was decided in his favour, yet he was not taken on job. Hence this O.A. with the reliefs already mentioned.

Sri Manoj Pandey, Senior D.P.O. Central Railway Thansi has filed Counter-affidavit on behalf of all the respondents. It is contended that the applicant was implicated in the case of theft but no comment was made about his dismissal on that ground. Again no comment was made about the applicant having approached the Tribunal. It was, however, admitted that the applicant along with nine others was terminated on 9.2.90. It was also stated that the compliance of the judgment of the Tribunal was done and a cheque of Rs 14,515-00 was given to the applicant. The respondents have also come with the plea that the applicant could not be

considered for re-engagement because he was implicated in a criminal case and was not cleared off the same by that time.

The applicant filed rejoinder giving those very facts which were stated in the O.A.

We have heard the learned counsel for the parties and have perused the record.

The applicant had approached the Tribunal in OA 712/89 when his services were terminated because of the criminal case. At that time, the order under challenge was that of termination. The Tribunal had directed the respondents to keep his name in the register for future absorption as and when vacancy may arise. Because the applicant was facing criminal trial, the direction of immediate absorption could not be given. Now the applicant claims that he should have been given regular appointment in the same manner in which it was offered to his juniors as is disclosed in paras 4.4, 4.18 and 4.19 of the O.A. The respondents admitted the contents of para 4.4 but made no comments about paras 4.18 and 4.19. It was, however, disclosed in para 16 of the

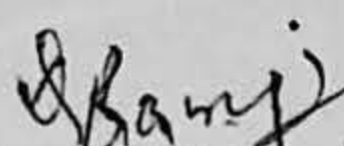
counter affidavit that the name of the applicant could not be considered because he was facing criminal trial. It emerges from these facts that the respondents are prepared to consider the engagement of the applicant in regular manner. The applicant has filed the copy of judgment of Judicial Magistrate Thansi to show that he was acquitted of the criminal charge.

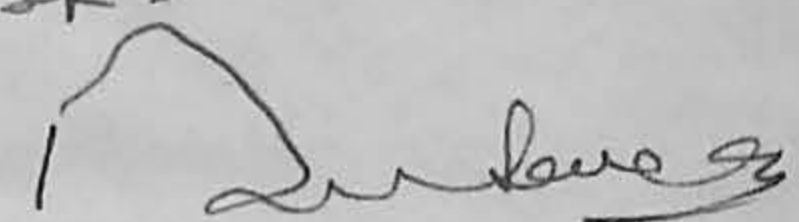
We find from the facts as are disclosed in the pleadings of the respondents that they could not re-engage the applicant for the reason of his involvement in criminal case, and there being no vacancy. The first hurdle is over because the applicant stands acquitted of the charge. The plea of no vacancy was taken in the year 1993 when the counter reply was filed. By the efflux of time, the vacancy may have occurred. Thus the case of the applicant may now be considered.

In view of these facts and circumstances, we direct the respondents to consider

- 6 -

the applicant for re-engagement
on regular basis within a
period of six months. The O.A.
is disposed of accordingly.
No order as to cost.


(D. S. Bawey)
Administrative
Member.


(Dr. R. K. Saxena)
Judicial Member

26/9/1997

Hon'ble Mr. S. Dayal, A.M.

Shri H.P. Pandey for the applicant. None for the respondents. Shri H.P. Pandey appears for the applicant in O.A. no. 1215/97.

Misc. application no. 3275/97 has been filed for grant of three months for compliance of the direction of the Hon'ble Court.

Shri H.P. Pandey appears on behalf of the applicant mentioned that the judgement has been complied with. Misc. Application in view of this fact is allowed and the case closed and consigned to the records.


A.M.

am/