

RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH

Allahabad this the 26 day of October 1994.

Original Application No. 1218 of 1992.

Hon'ble Mr. T.L. Verma, Judicial Member
Hon'ble Mr. S. Dayal, Administrative Member.

Mohd. Iliyas S/o Shri Ismial Aged about 34 years,
R/o Railway Quarter No. 421(A), Railway Colony,
Near System Technical School, JHANSI (U.P.).
Monthly Rated Casual Labour, Diesel Loco Shed,
Central Railway Jhansi.

..... Applicant

C/A Shri H.P. Pandey

Versus

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

..... Respondents

C/R Shri G.P. Agarwal

ORDER

Hon'ble Mr. S. Dayal, Administrative Member

This is an application under section 19 of the Administrative Tribunal Act, 1985, seeking the following reliefs for the applicant:-



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- i. direct the respondents to extend benefits contained in their orders dated 17.10.89 and 21.12.89, treating termination as illegal and granting continuity of service from the date of termination,
- ii. direct the respondents to consider regularisation of service along with other employees who were called for screening by notification dated 15.10.91.
- iii. direct the respondents to pay back wages for the period of break in service and
- iv. award cost of application.

2. The facts contained in the application in brief are that the applicant was engaged as a casual labour in the Jhansi Loco Shed on 11.01.78 and was utilised intermitterly. Later he was reengaged in Jhansi Diesel Loco Shed with effect from 26.04.88 (Annexure A-10) as I.T.I. trained diesel cleaner and worked there upto 08.02.90. This work was of regular nature (Annexure A-11). The applicant attended MRCL status and was allowed benefits under Rule 2511 of the IREM. The sanctions for these posts were being issued on quarterly basis and services of 10 M.R.C.Ls were terminated by their order dated 11.12.89 (Annexure A-1) without any discharge or compliance with the provisions of Industrial Disputes Act or of the General Manager, Central Railway, contained in his letters dated 17.10.89 and 21.12.89 (Annexure A-5 and A-6). Although their services were required in the diesel shed, sanctions were not given with the ulterior motive of removing some M.R.C.Ls. The applicant and others represented on 13.02.90 for alternative employment and five including juniors

of applicant were engaged as seasonal waterman in April 1990 and continued by order dated 24.10.90 (Annexure A-2). Screening of a number of M.R.C.Ls was conducted for regularisation of their services in Group 'D' under orders dated 15.10.91 and by order dated 31.10.91, (Annexure A-3), 15 M.R.C.Ls were appointed in Group D of which nos 4 to 9, 12 and 15 were applicants' juniors. For the screening even those not in service were to be called but the applicant was not called though his name was on the live register and though persons from other seniority units were called. Some affected employees including Shri Prem Narayan approached the Tribunal in O.A. 188 of 1990 and the impugned orders dated 11.12.89 were quashed and the applicants were reinstated and their period of termination was treated as duty. They were taken back and regularised Group D employees. The applicant approached the respondents by his representation dated 22.07.91 for getting the benefits given to Shri Prem Narayan and others as he was similarly placed.

3. The arguments of Shri H.P. Pandey, learned counsel for the applicant and Shri G.P. Agarwal, learned counsel for the respondents have been heard.

4. The first ground pressed by the learned counsel for the applicant is that the impugned orders dated 11.12.89 stand quashed by virtue of the judgement of this Tribunal in O.A. No. 188/90



in Prem Narain and others vs. Union of India. The applicant admits that he was not a party in this case but claims relief on the ground that he was also removed along with the persons who were applicants. The applicants in this case are said to have been engaged as casual labour on 01.01.88 and were made MRCL with effect from 13.04.88. They worked on their jobs continuously for 23 months although some artificial breaks were given though the work remained available during the breaks. The applicants had got temporary status and their services could not be terminated in the manner as has been done. The applicants were treated as having temporary status and were taken back in service and they agreed to claim only half of the back wages. In this case the applicant has shown that he worked as casual labour for loadings of boxes etc for 21 days during the period from January to April 1978 and another 13 days between 18.07.78 to 17.09.78 for loading coal boxes under Loco Foreman Jhansi in Locoshed. (Annexure A-8). He was again engaged from 26.04.88 onwards by Loco Foreman (Diesel) in Diesel shed. It appears that the services of the applicant and other 9 monthly rated casual labour were extended from time to time (Annexure A-10) and were terminated on 08.02.90 by notice dated 11.12.89 as sanction for the posts came to an end. The applicants worked as casual labour for a little more than one year and ten months^{which} has been confirmed by the respondents in paragraph 4 of their counter reply. It is proved that the applicant worked for more than 120 days continuously and



attained temporary status. The contention of the applicant that his case is pari materia with the case of Prem Narain Vs. Union of India for the purpose of being taken back in service and given back wages is accepted.


5. The respondent's in paragraph thirteenth of their reply have sought to distinguish the case of the applicant from case of monthly rated casual labour on the ground of non furnishing of service casual labour ^{card} due to short duration of service and that's why the applicant did not have such card (Paragraph 16 of their reply). However, in view of their own admission that the applicant was engaged in Jhansi Diesel Loco Shed in Jhansi Division of Central Railway on 26.04.88 was discharged on 09.02.90 (Paragraph 4 of their reply), the contention of the respondents can not be accepted.

6. The applicant has contended that reengagement of 5 MRCLs against 9 posts sanctioned was discriminatory. The applicant has not shown that exact number of days he was engaged for by the Railways against the days for which others, whom he considers to be his juniors, were engaged. It was the discretion of the respondents to fill up a few or all of the nine vacancies and the applicant cannot have any claim against the vacancies not filled up by the respondents. The counsel for the applicant mentioned during arguments that one vacancy has been shown in shed in a statement for the month of January, 1990 (Annexure XII). This appears to be a list of regular vacancies to which the applicant can not have any claim till he

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is selected for the post. The counsel for the applicant also contended that the impugned order (Annexure A-1) is a list of MRCLs according to their seniority and states that Shri Ganesh Prasad who was selected as Diesel Cleaner (at Sl. No. 5 in Annexure A-3 and No. 10 in Annexure A-5) was junior to the applicant. However, in the absence of any proof regarding the number of days worked by Shri Ganesh Prasad and No. of days worked by the applicant, the contention of the applicant that he was senior can not be accepted.


7. The applicant has contended that in filling up de-casualised posts in his case, the respondents have violated their own orders dated 17.10.89 and 21.12.89. He mentioned that the paragraph 3.3 of the letter dated 17.10.89 was violated in his case. Paragraph 3.3 stipulates that in screening for filling up de-casualised posts, the senior most casual labour based on aggregate service shall be called irrespective of the fact whether he was in service or out of it at that time. As seen earlier, the applicant has not shown that he was senior to any person who was either selected or called. However, it does appear from letter dated 21.12.89 (Annexure A-6) that ~~the~~ information ^{about} casual labour on live register but not in service was not properly furnished and contrary to the intention of this letter, the casual labour were discharged.




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8. We find that the service of the applicant could not have been dispensed with summarily as he had already attained the temporary status. We, therefore, hold that the termination of service of the applicant on 08.02.90 was against the instruction of the Railway Board. The applicant, therefore, be treated to have been continuing in service from 08.09.90 onwards. He shall not be entitled to any back wages as he did not perform any duty. But he shall be entitled the benefits which have been given to monthly rated casual labours who joined along with him or later and were junior to him. The regularisation of his service on a regular post shall be considered with effect from the date from which his juniors were given promotion after scrutiny as per extant rules and instruction and he shall be appointed in case he is considered fit for appointment on a regular post after such scrutiny with effect from the earliest date on which any of his juniors was appointed.

9. There shall be no order as to costs.


(S. Dayal)
Member 'A'


(T.L. Verma)
Member 'J'

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