

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

O.A. No: 625/93  
T.A. No:

DATE OF DECISION: 24.10.94

-----A. K. Bhattacharya ----- PETITIONER

-----A. K. Banerjee ----- ADVOCATE FOR THE  
PETITIONER

V E R S U S

-----G. O. T. & others ----- RESPONDENTS

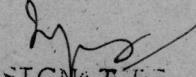
----- Jagannath Singh ----- ADVOCATE FOR THE  
C. P. Agarwal RESPONDENTS

COCKAUM

The Hon'ble Mr. T. L. Verma, J. M.

The Hon'ble Mr. K. Muthukumar, A. 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/

- 6 -

CENTRAL ADMINISTRATIVE TRIBUNAL

ALLAHABAD BENCH, ALLAHABAD

Original Application no. 625 of 1993.

This ..... 24<sup>th</sup> ..... the day of ..... October 1994

Anil Kumar Bhatnagar,

S/o Shri M.B. L. Bhatnagar,

R/o 992/F.R.B. I.

Near R.P.F. Railway Colony,

Jhansi. .... Applicant.

By Advocate Shri A.K. Banerjee.

Versus

1. Union of India,

through the General Manager,

Northern Railway,

New Delhi.

2. Executive Engineer,

Railway Electrification,

Jhansi, (Now at Kanchigag,

East, Rly. Colony, Bhopal.

..... Respondents.

By Advocate Sri Jagannath Singh.

Sri G.P. Agarwal.

Coram:

Hon'ble Mr. T.L. Verma, J.M.

Hon'ble Mr. K. Muthukumar, A.M.

JUDGEMENT

Hon'ble Mr. K. Muthukumar, Member-A

1. The applicant was engaged as a casual Labour by the Executive Engineer, Railway Electrification, Projects, Jhansi with effect from 2.5.1983. On completion of 120 days of continuous service, the applicant moved the respondents for giving him temporary status, and it is alleged in the application that the respondents did not allowrd him to continue in service and stopped his daily wages.

- 2 -

2. In his application to the Prescribed Authority under the Payment of Wages Act, 1936, the Authority ordered payment of Wages for the period from 19.7.1983 to 31.12.1985. The respondents in that case viz U.O.I and others moved this Tribunal in O.A. No. 434/1992 against the decision of the Prescribed Authority, alleging that the applicant was not their employee and his services were terminated by way of discharge with effect from 19.8.1983. The case of that he / the applicant was , however, / continued to remain in service and was disengaged and after 18.8.1983 although not allowed to do the work, he was attending to disputes. The Tribunal disposed of this application by decreeing in favour of the applicant in present O.A. for Rs 8388/- reducing the compensation amount awarded by the Tribunal and observed "it is now clear that the respondent is no longer in service of the applicant." The applicant stating has moved this application/ that as he had continuously worked in the Railways for more than 120 days, he had acquired temporary status and has prayed to this Tribunal for issue of a suitable direction to the respondent no. 2 to utilize his services after fixing his pay in the regular time scale and other consequential benefits like Railway pass, annual increments etc.

3. The respondents have strongly resisted his application on the following grounds:-

(i) The application is not maintainable under Section 21 of the Administrative Tribunal Act 1985 and is barred by limitation, as the applicant has filed the application after 10 years after his discharge in August, 1983.

8

already

(ii) The applicant had claimed ~~of~~ his reliefs before the Prescribed Authority.

(iii) That he had not represented regarding his service after 18.8.1983 when he was discharged and he was never engaged by the respondents. He had not exhausted all the other remedies Under Section 20 of the Administrative Tribunal Acts 1985.

(iv) The applicant has mischievously quoted that he had completed two years and eight months till 31st December 1985 whereas he was engaged from 2.3.1983 to 18.8.1983 i.e., ~~to day~~ for a period of  $4\frac{1}{2}$  months only and no notice ~~under~~ Section 25(F) of the Industrial Dispute Act was necessary. Besides as per rules a Project ~~on~~ the casual labourer attains the temporary status only after completion of 360 days of contiguous service in the project. Therefore, the applicant's claim is baseless and he has tried to take un due benefit from the respondents.

4. The learned counsel for the applicant stated before us that the applicant did not wish to file any rejoinder affidavit.

5. The learned counsel for the applicant forcefully argued that the application did not suffer from limitation Under Section 21 of the Act, as there was a continuing cause of action. He supported his argument with reference to the decisions contended in the following cases :-

i) V.K.D. Rajya Lakshmi Versus Regional Director E.S.I.C. Hyderabad (1993) 25 ATC 653.

ii) Bankim Chaudhary Versus U.O.I. (1991) 16 ATC 658.

iii) K. Guruswamy IPS Versus U.O.I. (1991) 18 ATC 524.

iv) A. Mani Bhooshan Rao Versus G.M. S.E. Railway (1993) 24 ATC 716.

v) R.N. Ray Chaudhary Versus U.O.I. (1992) 22 ATC 37.

6. The learned counsel for the respondents ~~xxx~~ reiterated the averments made in the counter affidavit.

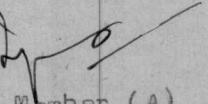
7. We have heard the learned counsel for the parties. All the above cases cited by the learned counsel for the applicant no doubt deal with question of limitation and the ratio of application of Section 21 of the ~~xxxxxxxx~~ of Administrative Tribunal Act, 1985 but they are not directly of any help to the applicant's case. In the case of the applicant it is undisputed that he was a Casual Labourer in the Railway and he was engaged from 2.5.1983. It is also undisputed that certain claim for non payment of Wages was decided by the Prescribed Authority for a compensation amount of Rs 16,777/- which was reduced by this Tribunal on application by the official respondents and ~~xxx~~ decreed in the favour of the applicant in that case to Rs 8,388/-, observing that the applicant was no longer in service of the respondents. It was pointed out that the Prescribed Authority had merely relied on the statement and of the applicant, / in the absence of proper evidence adduced by the respondents ~~xxx~~ had decreed in his favour for wages upto 31.12.1985 and the Tribunal reduced the compensation as mentioned above. To adjudicate on the question of limitation the relevant point would be whether there is a continuing ~~the~~ cause of action. By the Tribunal's own ~~or~~ order/observation that the applicant was no longer in service, it is evident that no continuance of cause of action exists. Even otherwise the claim of the applicant that he was never <sup>ed</sup> disengaged and was on duty although no work was assigned to him,

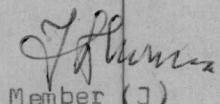
is not ~~int~~ tenable. Admittedly, the casual labour on Muster Roll can not assume to be on duty unless his name is entered in the Muster Roll by the responsible supervisory official in token of his having been engaged. The respondents have clearly averred that his services were terminated by way of discharge w.e.f. 19.8.1983. The cause of action and clearly arose at that time the applicant had not sought any departmental remedy by a representation etc. He had the remedy of filing the application disputing his alleged disengagement from Casual Employment in 1983 before the appropriate court at that time which had not done on his own admission. Even when the Prescribed Authority's decision in September 1991 was available in regard to his wages, the question of his continuance in service could have been agitated by him by a separate application before this Tribunal within ~~the~~ period of limitation, as he had by know that time come to / that the respondents had everred before Prescribed Authority that his engagement as Casual Labour had come to an end w.e.f. 18.8.1983 itself. The applicant, instead, had chosen to come to this Tribunal only in April 1993 and, therefore, the application was clearly barred by limitation. Further the applicant can not reckon the period of limitation from the date of Tribunal's order as the question of continuance in service was not a matter for adjudication, as the Tribunal itself had observed that it was clear that ~~he~~ was no longer in service of the respondents even at that time and, therefore, can not seek to claim the advantage of this order in so far as it relates to the relief he is seeking in his present appeal application.

8. In the case of Achala Ram Versus U.O.I

and others (1992) 21 ATC 297 cited by the learned counsel for the applicant, the question that was considered <sup>was</sup> applicability of Section 28 (F) of the Industrial Dispute Act. In that case, the fact that the applicant worked from 30.7.1985 to 9.4.1986 was not disputed and it was held, therefore, that he was entitled to notice Under Section 25 (F). This is of no relevance in the present case, as the respondents have maintained that the applicant had worked only from 2.5.1983 to 19.8.1983 whereas the applicant had disputed this and has claimed that he had continued in service. The learned counsel for the applicant cited certain other cases which in our opinion are not ~~parimateria~~ with ~~the~~ issues relevant in this case and, therefore, we do not wish to dilate on them.

9. Taking all these aspects into account, we are of opinion that the application ~~prima facie~~ is barred by limitation and is not maintainable. Even on merits the applicant has not placed any material before us to substantiate his claim that he was continued in service. In the conspectus of the matter we find there is no merit in the application. The application is accordingly dismissed. There shall be no order as to costs.

  
Member (A)

  
Member (J)

Allahabad Dated: Oct 24, 1994,

am/