

Central Administrative Tribunal Additional Bench,
Allahabad.

Dated This The ^{4 April} 11th day, 1997.

Coram: Honble Dr. R.K. Saxena, JM.,
Honble Mr. D.S. Baweja, AM.

ORIGINAL APPLICATION No: 836 OF 1993.

Vinod son of Sri Murari, ex Safaiwal,
Birbhadra Northern Railway, district:
Haradwar, residing at Nirmal Chawani,
near Atm Niwas, Haradwar.

.. Applicant.

C/A: Sri Rajeswari Sahai,
Sri A.B.L. Srivastava.

V E R S U S :

1. Union of India through the General Manager
Northern Railway, Baroda House,
New Delhi.
2. The Divisional Railway Manager,
Northern Railway, Moradabad Division,
Moradabad.

.. Respondents.

C/R Sri Lalji Sinha.

O R D E R.

By: Hon'ble Mr D.S. Baweja. AM.

This application has been filed under section 19
of the Administrative Tribunals Act, 1985. The applicant
submits that he was engaged as Casual labour Safaiwala

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during the Kumbh Mela, Haridwar from 17.3.1986 to 09.4.86. Thereafter, he was engaged as Safaiwala at Birbhadra railway station, Northern Railway in Moradabad Division from 9.4.1986 against the vacancy occurring due to the retirement of the incumbent. The applicant worked from 9.4.1986 to 7.10.1986^{and}, thereafter, his services were terminated by an oral order without assigning any reasons or giving show cause notice. The applicant made several representations dated 10.10.1986, 6.5.1987, 18.2.1987 and 26.3.1993, but he did not get any reply. Being aggrieved, this application has been filed on 25.5.1993 with the following reliefs:-

- a). -to quash the oral termination of the services of the applicant,
- b). -to direct the respondents to appoint the applicant as Safaiwala from 8.10.1986 onwards,
- c). -the applicant be paid all back wages for the period from 8.10.1986 onwards,
- d). to allow the seniority of the applicant from 8.10.1986 in respect of the services rendered from 9.4.1986 onwards.

3. The applicant has assailed the oral termination order on the ground that he had worked for more than 205 days and therefore, his services could not be terminated without following the provisions of Section 25(F) of the Industrial Disputes Act, and also in contravention of Para 25(5) of Indian Railways Establishment Manual. The applicant also contends that he has been discriminated as the juniors to him have been engaged subsequent to his termination of services from 8.10.1986.

4. The respondents have contested the application by filing Counter reply through Sri N.K.Jain, Divisional Personnel Officer, Moradabad Division, Northern Railway. The respondents have submitted that in the certificate issued for working ^{during} at Kumbh Mela, it is specifically

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provided ~~for~~ that there will be no claim for being engaged in future. It is also submitted that he has worked as a Safaiwala only from 9.9.1986 to 2.10.1986 and not from 19.4.1986 to 7.10.1986. The respondents have further averred that the applicant ~~had~~ not been appointed by the Competent Authority on a regular basis, but only he was engaged on temporary basis for Kumbh Mela and as such, he has no claim for being engaged as Casual labour on the basis of working during the Kumbh Mela. The respondents also contend that no persons junior to the applicant who had worked during Kumbh Mela have been engaged. The respondents have also opposed this application as being barred by limitation. In view of these facts the respondents have contended ^{that} the application ^{-is} neither maintainable, nor has any merit, and deserves to be dismissed.

5. The applicant has filed rejoinder affidavit controverting the pleadings of the respondents and reiterating the grounds taken in the application. The applicant has vehemently denied the contention of the respondents with regard to the working details stating that the ~~xworking~~ details of working given by the applicant have been supported by the documentary evidence brought on record.

6. We have carefully considered the arguments advanced during the hearing and the materials brought on record.

7. We will first take up the objection raised by the respondents that the application is barred by limitation. Without going into the merits of the case

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and granting the version of the applicant that his services were terminated orally on 7.10.1986, then this termination has been challenged by filing this application on 24.3.93 i.e after a period of 6½ years. The applicant has repelled this objection of limitation on the argument that this issue had been considered before admitting the application and once the application has been admitted, this plea cannot be raised by the respondents. On going through the order sheet, we find that this contention of the applicant is not tenable. Though, the case had been listed first time on 16.7.1993, but till the hearing of the case, it had not been admitted. In view of this, the issue of limitation had not been examined. There is also no application praying for condoning of delay in case the applicant was aware that the application had been filed late. The question of limitation is closely linked with the relief prayed for^{and} it is imperative to go into this aspect. The cause of action arose on termination of service from 8.10.1986 as averred by the applicant. The applicant has challenged the termination being in violation of the provisions of Industrial Disputes Act, as well as, in violation of the provisions of Indian Railway Establishment Manual as he had worked for more than 205 days. The applicant has submitted that he had made several representations starting with dated 10.10.1986 followed by dated 6.5.1987, 18.2.1987, and finally 26.3.1993. The respondents have denied the receipt of any of these representations. Leaving aside this aspect, even if the version of the applicant is believed, the applicant has been silent for almost six years after sending his last representation on 18.2.1987. and finally

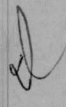
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No explanation for delay has been furnished. Repeated representations will not extend the period of limitation. If the applicant was aggrieved that the termination was illegal as contended, then he should have agitated the matter for legal remedy at the appropriate time, if the representations did not receive any response. Further, the applicant has also contended that juniors to him had been engaged subsequently. If it was so, even then, the applicant did not challenge his non-engagement ^{as} and the cause of action ^{again} arose when his juniors were engaged leaving the applicant. However, the applicant has chosen just to make a bald statement without giving any details of the juniors and the date of their engagement. In consideration of these submissions, the cause of action arose on 8.10.1986 and with this, the application is barred by limitation. We, therefore, ^{hold that} accept the submission of the respondents and the application is not maintainable on this account alone.

8. Now we will go into the merits of the reliefs prayed for. As per submissions in application, the applicant worked for Kumbh Mela from 17.3.1986 to 9.4.1986 and thereafter he was engaged as Safaiwala at Bir-bhadra railway station and claimed to have worked from 9.4.1986 to 7.10.1986. The applicant has brought on record said to be supporting evidence; A-3 indicating engagement for Kumbh Mela, and A-5, certificate issued by the Station Master for engagement from 9.4.1986 to 7.10.1986. The respondents have however, rebutted these details of working. In respect of Kumbh Mela engagement, the respondents have not specifically controverted but for the other period from 9.4.86 to 7.10.86 the respondents have

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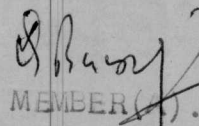
said that he had worked only for the period from 3.9.86 to 2.10.1986 for which payment was made to him. However, on going through the averments made in the rejoinder reply, the details of engagement furnished by the applicant in the O.A. appear to be doubtful. In the O.A., he has mentioned that he was first engaged for Kumbh Mela and subsequently at the station. In para 10 of the rejoinder, the applicant has averred " it is stated that the petitioner was initially engaged as Safaiwala at the station and he subsequently worked at Kumbh Mela. Therefore, he should not be denied his lien." Similar averment has been made in para 3 of the rejoinder " it may be stated that he worked in place of Mansoor, Safaiwala against regular vacancy caused due to his retirement but the working in Kumbh Mela will not debar him from the post he held earlier at the time of his appointment." These averments are in total contradiction of what has been stated in the O.A. It is also significant to note that the applicant worked for Kumbh Mela upto 9.4.1986 and was also engaged at Bir Bhadra Station from 9.4.86 meaning thereby, that the applicant was engaged simultaneously at two places. This is not understandable. With these contradictory averments in the original application and the rejoinder reply, we are inclined to infer that the applicant has not come out with the true facts with regards to his engagement as casual Safaiwala. If the applicant's version in the rejoinder reply controverting the counter reply is taken as valid, then he was engaged for Kumbh Mela subsequent to being engaged at the station. In such an event, the question of termination of service did not arise as the termination

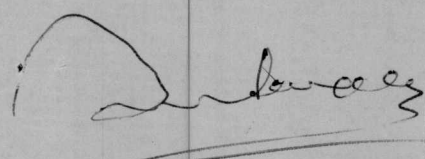


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was inherent in the engagement conditions and the applicant was not to have any claim for any engagement in future because ^{of} having worked in Kumbh Mela in terms of certificate at A-3. In view of the facts and circumstances emerging above, we are unable to find any merit in the relief prayed for by the applicant.

10. In view of the above facts, the application is neither maintainable being barred by limitation nor has any merit and hence, dismissed. No order as to the costs.


MEMBER(A).


MEMBER(J).

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