

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 257 of 1995

Allahabad this the 22nd day of April, 1999

Hon'ble Mr. S. Dayal, Member (A)
Hon'ble Mr. S.L. Jain, Member (J)

V.M. Phillip, aged about 47 years, s/o Shri V.P.Mathai, resident of MPEB Quarters, Opposite Railway Hostel, Kamboo Kothi, J.A. Hospital Campus, Gwalior.

Applicant

By Advocate Shri R.K. Nigam

Versus

1. Union of India through General Manager, Central Railway, Bombay V.T.
2. Divisional Railway Manager, Central Railway, Jhansi.
3. Dy.Chief Engineer(Tie Tamping) Central Railway, D.R.M.'s Office, Jhansi.

Respondents

By Advocate Shri A.K. Gaur.

O R D E R (ORAL)

By Hon'ble Mr. S. Dayal, Member (A)

This application has been filed for a direction to the respondents to take the applicant in employment on his original post of Machine Operator in the grade of Rs.950-1500 with consequential benefits of salary, interpolated seniority, intervening increments

pay fixation and promotion.

2. The facts mentioned are that the applicant joined as Casual Babour on 03.5.70 and stated to have been regularised in the end of 1981 on the post of Machine Operator. He stated to have been served with the letter dated 01.11.1989 seeking his declaration indicating his whereabouts on the intervening days of absence to which he sent the particulars of his absence and waited for duty but the respondents ^{are} alleged to have passed no order despite his reporting for duty daily. He mentioned that he sent a number of representation but to no avail. The contention of the applicant is that without his resignation or D.R. proceedings, his services cannot be terminated.

3. The arguments of Shri R.K. Nigam, for the applicant and Shri A.K. Gaur for the respondents have been heard. The pleadings have been taken into account.

4. The main arguments of the learned counsel for the applicant are that the applicant has properly explained about his period of absence by letter dated 10.11.1989 in response to letter of respondents dated 01.11.1989. No show-cause notice have been given to the applicant nor any order of termination passed in his case and still he has not been allowed to join the duty. He stated at bar that the applicant is prepared to accept the work without claiming any back-wages and seniority, intervening increments, pay fixation, promotion etc.

5. The respondents in their counter-reply have mentioned that the applicant was a casual labour who was recruited as Casual Mechanic on daily rate of pay of Rs.13/- per day. He was brought on monthly rate of pay from 19.4.1975. The applicant worked upto 10@.10.1980. Thereafter, he remained absent a number of times. The first of this was from 11.10.1980 to 20.4.1981. He again remained absent from 25.5.1981 to 19.9.1984. The third spell of absence started from 04.3.85 and lasted ^{upto} 03.8.85. Thereafter, he left on 07.10.1985 and represented to respondents ^{to the} Ministry of Railways on 19.5.89. The applicant in his letter which is annexed as A-3 to his O.A. has stated that the period of absence were from 01.3.1981 to 19.4.1984 again some date in 1981 to 18.9.1984, and 03.3.1985 to 02.8.1985 and ~~and~~ again from 19.10.1985 onwards.

6. Learned counsel for the respondents has raised the issue of limitation. Annexure A-3 is applicant's own admission that he has not worked from 19.10.1985 onwards and yet, the O.A. has been filed on 14.2.1995 which is nearly 10 years later. It has also been mentioned in the counter-reply that the applicant never attained permanent status as he had left his job number of times. It is also mentioned that the recruitment of the petitioner was arranged with Chief Foreman(IT), Bhusawal on 09.11.1989 but he did not report for the job. Learned counsel for the respondents has also mentioned that the applicant has not filed any rejoinder to contest any of the averments made in the counter-reply.

7. The main focus of contention was letter dated 01.11.1989 which has been replied to by the applicant by his letter dated 10.11.1989. The applicant claim to have report for duty on 09.11.1989 as required in letter dated 01.11.1989. The respondents have denied it and stated that the applicant did not report for duty. In view of the fact that the averment made in the counter-reply has not been controverted, we have to accept that the applicant did not report on duty.

8. In any case, since there is a gross delay coupled with unexplained joining and leaving job, we are not inclined to grant the relief asked for by the applicant in this case. The respondents are, however, directed to enter the applicant's name in the Live Register of Casual Labour and accord him benefit as a casual labour on Live Register based on his seniority on the Live Register. With these observations, the O.A. is disposed of. There shall be no order as to costs.

RS / /

Member (J)

/M.M./

Ch / /
Member (A)