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RESERVED

CENTRAL ADMINISTRATIVE TRIBUNAL ALLAHABAD BENCH
ALLAHABAD

(THIS THE 18th DAY OF JANUARY, 2013)

Present

HON'BLE MR. JUSTICE S.S. TIWARI, MEMBER (J)
HON'BLE MR. D. C. LAKHA, MEMBER (A)

Original Application No.767 OF 2006
(U/S 19, Administrative Tribunal Act, 1985)

Radhey Shyam Mishra son of Sri Ram Abhilakh Mishra, Resident of Village
and Branch Post Office Kodila Via P.O. Rampur, Bhagan District Faizabad.

.....Applicant

VERSUS

1. Union of India, through the General Manager, Northern Railway
Baroda House, New Delhi-110001.
2. Chief Project Manager, Indian Railway Project Management Unit,
Shivaji Brij, New Delhi.
3. General Manager, Northern Central Railway, Allahabad.
4. Deputy C.S.T.E./IRPMU Northern Central Railway Zonal office
Allahabad.

.....Respondents

Advocates for the Applicant:- Shri V. K. Pandey.

Advocate for the Respondents:- Shri P. Mathur.
Shri Anil Dwivedi.

ORDER

By Hon'ble Mr. D.C. Lakha, Member-A :

Instant O.A. has been instituted for the following relief(s):-

(i). to issue a direction to the respondents to permit the applicant to join his services and to pay his arrears of salary/back wages w.e.f. 27.08.1977 (the date when his services were terminated). The respondents may further be directed to pay the salary of the applicant on month to month basis along-with all consequential benefits as like similarly situated employees to the applicant.

(ii). That this Hon'ble Tribunal further may pleased to pass any other and further order which this Hon'ble Tribunal deem fit and just in the nature and circumstances of the case to need the ends of justice.

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(iii). That this Hon'ble Tribunal may be pleased to award the cost of this application in favour of the applicant and against the respondents."

2. The brief facts of the case in capsulated form is as under:-

The applicant was initially appointed as Skilled Mechanic on 13.10.1975 on casual basis daily rated basis and was posted at Bindki Railway Station, Fatehpur, under the Telecommunication Inspector, Northern Railway, Kanpur. The applicant worked upto 27.04.1976 for 169 days, thereafter, reappointed on the same post w.e.f. 04.05.1976 on daily rated wages. On completing six months' service he was paid Rs.13.30 per day w.e.f. 04.11.1976. The applicant while performing his duties fell ill suffering from Diarrhea and became physically incapable of performance of his duties and he had to leave the office at about 04:00 P.M. for easing himself and requested his colleague Shri Maharaj Singh to perform his duties and he left the duty place at 08:00 P.M. after handing over the charge to Shri Maharaj Singh. The next very day i.e. 28.08.1977 was his rest day and as such he reported for duty at 08:00 A.M. on 29.08.1977, but he was not allowed to take charge on his duty. Thereafter, the applicant approached to the Telecommunication Inspector Shri B. Ram, and requested for his joining but he was not allowed to resume his duties. On 31.08.1977 the applicant was served with a letter from the Telecommunication Inspector Microwave, Kanpur alleging that he had absented himself for the duties at 07:05A.M. on 27.08.1977. On 02.09.1977 applicant submitted his reply denying the allegations leveled against him, but he was not allowed to join his duties. Consequently, he filed Civil Suit i.e. O.S. No.1284/1980 for the decree of declaration that the termination order dated 27.08.1977 was illegal and nullity and he was entitled to work. Vide judgment and decree dated 19.04.1983 it was declared that applicant still continues in service in his former post of Skilled



Mechanic and he was entitled to continue on the same post (Annexure-1). The Opposite Party No.1 (General Manager, Northern Railway, Baroda House, New Delhi) filed civil appeal No.482/1983 against the order dated 19.04.1983 passed by Munsif Hawali, Kanpur. The abovementioned appeal was allowed by the appellate court vide order dated 28.01.1985 setting aside the decree dated 19.04.1983 (Annexure-2). Aggrieved applicant filed second appeal No.894/1985 against the order dated 28.01.1985 passed by the Addl. District Judge XIIth Kanpur, before the Hon. High Court which was allowed vide order dated 30.09.2005 whereby the Hon'ble High Court allowed the second appeal and set aside the judgment passed by XIIth Addl. District Judge in Civil Appeal No.482/1983 dated 28.01.1981 and the decree dated 23.02.1985 the suit in terms of the directions issued by the Trial Court (Annexure-3) was set aside. The applicant sent a letter dated 22.11.2005 to the Opposite Parties requesting for his joining and his back wages/arrears of salary along-with certified copy of the order passed by the Hon'ble High Court (Annexure-4). On 22.12.2005 & 19.01.2006 again applicant sent reminder letter (Annexure-5 & 6 respectively). and met several times to the opposite parties, but all in vain. Thereafter, applicant filed contempt petition No.1385/2006, but the same was rejected (Annexure-7). Aggrieved against the above, applicant filed writ petition No.25275/2006 seeking writ of mandamus which too was dismissed on the ground of alternate remedy to seek redressal of grievance by the Hon. High Court vide order dated 10.05.2006 (Annexure-8). The applicant was illegally prevented by the respondents to resume his duty and he was dragged in a long drawn litigation and he is still not permitted to join his duties, hence this O.A.



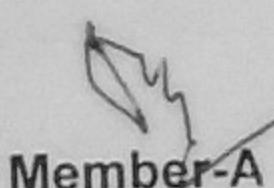
3. Pursuant to notice respondents appeared and resisted the claim of the applicant by filing the detailed Counter Affidavit. It is submitted that the engagement of the applicant with the organization was purely on casual and daily rated basis. However, merely granting temporary status will not entitle him to any benefit as per provisions contained in Railway Establishment Manual para 2511-13, which specifically contemplates that such casual labourers, who acquire such temporary status, will not however, be brought on the roll of permanent establishment, unless they are selected through regular selection process for class IV staff. It is submitted by the respondents that much water has been flown since then as the Hon. Supreme Court had an occasion by constituting Full Bench in the matter for regularization of persons employed on temporary/casual or on contractual basis by granting the leave in the matter of Secretary, State of Karnataka & Ors. Vs. Smt. Uma Devi decided on 10.04.2006 and the Railway Board. On the strength of the said judgment of the Constitution Bench has issued a consolidated instruction dated 23.06.2006 to the Zonal Railway for its compliance (Annexure-CA-2). Lastly, it is submitted that the very claim of the applicant is vague, misconceived and without merit and as such the O.A. is liable to be dismissed. The respondents have also taken the plea of limitation stating that the application is time barred as provided under Section 21 of the A.T. Act because the applicant was disengaged on 27.8.1977.

4. Applicant filed Rejoinder Affidavit denying the averments made in Counter Affidavit and highlighted Para 2511 of Railway Establishment Manual, which contemplates that casual labour treated as Temporary are entitled to all rights and privileges admissible to temporary railway servants as laid down in chapter XXIII of the I.R.E.M.

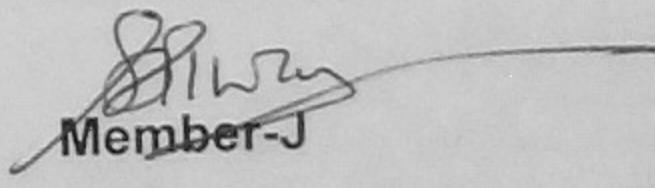


5. We have heard learned counsel for the parties and perused the record. Learned counsel for the applicant has argued that the case of the applicant was decreed by Munsif court Hawali, Kanpur in his favour and the Hon'ble High Court upheld that order. The respondents should have complied with the order of the Munsif Court and allowed the applicant to join his service and pay arrears of salary and backwages etc. The respondents counsel has on the other hand argued that the OA is barred by limitation and the judgment of Hon'ble High Court is per incuriam. Referring to Railway Establishment Manual para 25.11 to 25.13 and the case of Uma Devi (supra), he has argued that the casual labours even after acquiring temporary status and will not be brought on the roll of permanent establishment, unless they are selected through regular selection process for class IV staff.

6. Having heard the learned counsel for the parties and on perusal of record especially a decree from the court of Munsif Hawali, we find that the various issues had been decided by the Munsif court and the order of Munsif was upheld by the Hon'ble High Court in Second Appeal. Consequently, there is not much scope for us to adjudicate the matter. The OA has merit and can be disposed of with the direction to the respondents to engage the applicant if otherwise found suitable and is not over age. The respondents are therefore directed to consider the applicant for reengagement if otherwise found suitable. No costs.



Member-A



Member-J

RKM/