

CENTRAL ADMINISTRATIVE TRIBUNAL
CALCUTTA BENCH, CALCUTTA

O.A.No. 262/1992

with

M.A.No. 72/2000

Present: Hon'ble Mr. S.K. Ghosal, Admin. Member
Hon'ble Mr. P.C. Kannan, Judicial Member

MURALIDHAR SHAW

V/s.

UNION OF INDIA & ORS.

For the applicant : Ms. B. Banerjee, Counsel

For the respondents: Mr. P.K. Arora, Counsel

Heard on 12.5.2000

Order on : 17.5.2000

JUDGMENT

Hon'ble Mr. P.C. Kannan, Judicial Member

We have heard learned counsel for both sides.

2. The applicant who had been engaged as hot weather staff (casual labour) under the respondents is aggrieved with the action of the respondents in not including his name in the list of hot weather staff. The applicant has prayed for the following relief:

"The order directing the respondents to grant employment to the applicant as hot weather staff immediately and grant all facilities and/or benefits of the said post."

3. The case of the applicant is that he had worked as hot weather staff (casual labour) in 1981, '82, '83, '86, 1987 and 1988. The applicant was enlisted in the list of New Farakka Station but he worked at Barharwa Station as per the instruction of the respondents. The applicant further states that in 1988, he was enlisted in the Gr.'B' list of Barharwa with the remarks that he would be engaged after due verification. The applicant states that his

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name was removed without any further enquiry and he was not given any opportunity of being heard. He, therefore, submits that the action of the respondents in removing his name from the aforesaid list is arbitrary, invalid and bad in law. He submitted a representation on 25.3.91 and on 10.1.92 (Annexure 'A' & 'B') and the respondents did not furnish any reply.

4. The respondents in their reply admitted that at the time of formation of Malda Division on bifurcation of Howrah Division, a list of approved hot weather persons was received from D.R. M. Howrah vide letter dated 21.2.86 wherein the name of the applicant appeared as working under SS/B HW but no such name was found in the hot weather list of Howrah Division published in the year 1984 & 85. The list published by DRM/MLDT vide letter dated 27.3.86 for utilisation of hot weather staff in 1986 included the name of the applicant under SS/New Farakka Station (NFK) but the applicant did not report to SS/NFK. It is also found that the applicant was utilised at Barharaun unauthorisedly. Due to certain confusion created in the engagement of staff in 1986 and 1987, a verification committee enquired into the matter and after due verification, a list of approved hot weather staff was prepared in 1988 in which the name of applicant was included subject to further verification. As subsequent verification found that the applicant was not a genuine person, he was not engaged and his name was not enlisted in the subsequent years.

5. We have considered the submission of both counsel and examined the pleadings.

6. The main grounds urged by the respondents for rejecting the claim of the applicant are that, (i) the hot weather list of Howrah Division published in 1984 & 85 did not contain the name of the applicant; and (ii) the

applicant's name was enlisted for 1986 under SS/New Farakka (NFK) but he was not engaged by SS/New Farakka (NFK). In the circumstances, a verification was conducted and his name was removed. Our examination of pleadings show that the applicant did not report for engagement in the years 1984 & 85 even though he was worked in the years 1981, '82 & '83. With regard to the second allegation that he did not report to SS/NFK in the year 1986 but was unauthorisedly utilised at Barharwa, the applicant in his rejoinder categorically stated that it is as per the instructions of the respondents, he reported to SS/Barharwa. As the applicant is only a casual labour, he cannot, on his own and without any orders of the respondents, unauthorisedly report to SS/Barharwa. We, therefore, find force in the submission of the learned counsel for the applicant. We also find that the name of the applicant was included by the verification committee after due enquiry in the year 1988. However, it is stated that subsequent verification found that the applicant's name was not found to be a genuine one and therefore not included. No records of such enquiry were produced before us at the time of hearing. It is also found that no opportunity of hearing was given to the applicant in the said enquiry before removing his name from the said list. In the facts and circumstances, we hold that the action of the respondents in removing the name of the applicant from the list of approved hot weather persons as arbitrary and violative of articles 14 & 16 of the Constitution. We, therefore, direct the respondents to include the name of the applicant in the list of approved hot weather persons against SS/Barharwa. As the hot weather season 2000 is coming to an end, we direct that the applicant shall be reengaged as hot weather workman during the next hot weather season in 2001.

ADM