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**CENTRAL ADMINISTRATIVE TRIBUNAL**

**JODHPUR BENCH.**

O.A.No. 213 of 2003

July 28, 2004.

**CORAM : HON'BLE MR.J.K.KAUSHIK, MEMBER (JUDL.) &  
HON'BLE MR.M.K.MISRA, MEMBER (ADM.)**

Tej Pal Balmiki S/o Sh.Ramjilal, Aged 41 years, C/o Shri R.D.Verma, Vice-President, Uttar Railway Karamchari Union, 592/38, Gali No.1, Rampura Basti, Lalgargh, Bikaner-334004, Ex-Casual Labour, N.W. Railway, Ratangarh.

..... Applicant

By : Mr.Y.K.Sharma, Advocate. : Counsel for the applicant.

Versus

Union of India through :-

1. General Manager, North-West Railway, H.Q. office, Jaipur.
2. Divisional Railway Manager, North-West Railway, Bikaner.
3. Divisional Personnel Officer, North-West Railway, Bikaner.
4. Divisional Medical Officer, North-West Railway, Ratangarh.

By : Mr.Manoj Bhandari, Advocate. : Counsel for respondents 1 to 4

5. Asstt. Labour Commissioner (Central) Raghu Dev Bhawan, Opp. E.S.I. Hospital, Ajmer Road, Jaipur.
6. Desk Officer, T.No.3001150, Ministry of Labour, Shram Shakti Bhawan, Rafi Marg, New Delhi-110001.

..... Respondents

By : Mr.Vinit Mathur, Advocate. : Counsel for respondents 5 & 6

**O R D E R (ORAL)**

**[by Hon'ble Mr.M.K.Misra, Member(A).]**

The facts in brief as culled out from the pleadings are that applicant joined as Casual Labour under Permanent Way inspector (for short 'PWI'), Bhiwani, w.e.f.29.1.1978. He worked as Safaiwala under

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Health Inspector, Hissar for 500 days. Thereafter, he joined as Saifaiwala in the office of Health Inspector, Ratangarh. Under the instructions of the Railways, he should have been treated as temporary after the expiry of four months continuous service, with authorised scale of pay. Even under rule 2001 of Indian Railway Establishment manual, Vol. II, he was entitled to be treated as temporary employee having completed 120 days of work. He was issued a Casual Labour Card No.205419. The respondents screened him in 1988 for regularisation and absorption against regular post. The respondents took his casual labour card. The respondents found that the applicant was engaged on 31.8.1980, on the basis of a forged casual labour card. Thus, with effect from 30.11.1989, the respondents did not allow him to join his duties.



2. The applicant filed an Original Application No.81/92 before the Central Administrative Tribunal, Principal Bench, New Delhi, which was disposed of on 14.1.1992 (Annexure A-2), with directions that it would be fair and just to give an opportunity to applicant to prove his contention that he has worked with them since 1978. The respondents were directed to act, as expeditiously as possible and preferably within a period of three months from the date of receipt of the order. It was further directed that if applicant is found to have worked for more than 120 days, he should be considered for engagement as casual labour, if vacancy exists and in preference to persons with lesser length of service and outsiders. His name should also be entered in the live casual labour register. It is his claim that once there was allegation on the part of the respondents, they were

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under an obligation to conduct an enquiry and prove that the certificate was forged one. Since the respondents did not conduct any enquiry, he got served a legal notice dated 26.7.1997 (Annexure A-3) followed by a personal interview and representations dated 8.7.1998 and 15.9.1998 (Annexures A-4 and A-5). His claim is that even if earlier working from 1978 is ignored, he has worked for two years under health Inspector, Ratangarh.

3. The applicant raised an industrial dispute under Industrial Disputes At, 1947, which resulted in failure vide order-dated 28.6.2002 (Annexure A-9). The Government of India, Ministry of Labour, New Delhi, by order dated 27.8.2002 (Annexure A-1), has informed that since the dispute is belated, without any valid reasons for the delay; it has no merit and thus cannot be referred for adjudication. The applicant has filed the present Original Application under section 19 of the Administrative Tribunals Act, 1985, with a prayer to quash the order-dated 27.8.2002 (Annexure A-1).



4. The respondents 1 to 4 have filed a detailed reply while respondents 5 and 6 have not filed any reply. The plea taken by respondents is that O.A. is barred by the principles of constructive resjudicata. It is highly belated seen under the provisions of Section 21 of the A.T. Act 1985, as the cause of action, if any, arose to the applicant in 1989, whereas the O.A. has been filed in 2003. In pursuance of directions of this Tribunal dated 14.8.1992, the applicant never approached the respondents to prove his case. The applicant remained unauthorisedly absent w.e.f. 30.11.1989 and, thus, it is a

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case of voluntary abandonment of service. The applicant has got forged entries in his casual labour card, as has been verified by Permanent Way Inspector (Construction), Northern Railway Shakurbasti, Delhi, vide letter-dated 30.9.1988 (Annexure R-1). Thus, the applicant obtained employment through forged and bogus card by fraudulent means and thus, a person who has been appointed de hors the rules, has no right to continue in service. Despite number of opportunities having been afforded to applicant, he has failed to prove his case that he was working since 1978. Once the applicant himself did not show any interest, he cannot blame the respondents for non-conduct of an enquiry. They deny that any representation was submitted to them.



5. We have heard Mr. Y.K.Sharma for the applicant and Mr. Manoj Bhandari for Respondents No.1 to 4 and Mr. Vinit Mathur, Senior Central Government Standing Counsel, for the respondents No.5 and 6 and waded through the records.

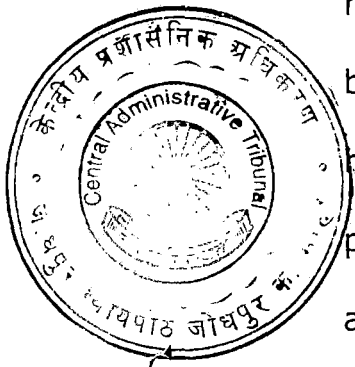
6. During the course of arguments on 10.5.2004, the Bench had expressed an opinion that this Tribunal may not be having jurisdiction to entertain this O.A. However, learned counsel for the applicant sought adjournment to cite some case law to prove that this Tribunal has jurisdiction. However, despite number of opportunities having been given, the learned counsel for the applicant has not been able to cite any judgment to indicate that this Tribunal has jurisdiction to adjudicate over the issue. Thus, we proceed to examine the

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question of jurisdiction of this Tribunal relating to the subject matter of this O.A. first.

7. It is undisputed fact that the applicant proceeded to vindicate his grievances under the provisions of Industrial Disputes Act, 1947, and raised a dispute before the Assistant Labour commissioner (Central), Jaipur, which ultimately resulted into failure of conciliation proceedings on 19.4.2002 and the report as required under section 12 (4) of the I.D.Act, 1947, was forwarded to the Government for taking further necessary action, by letter dated 28<sup>th</sup> July, 2002 (Annexure A-9). In reply to this reference, the appropriate Government by order-dated 27.8.2002 (annexure A-1), has refused to refer the dispute for adjudication on the grounds that the same is belated and there is no valid reason for the delay and thus the dispute has no merit. Indubitably, this order has been passed under the provisions of the Industrial Disputes Act, 1947. This Tribunal has no appellate jurisdiction over the orders passed by various authorities under the Industrial Disputes Act, 1947. Since we have no jurisdiction to entertain this O.A., we would not like to express any opinion on the merits or otherwise, on the claim of the applicant. A Full Bench decision in the case of **Bhim Singh & Others Vs. Union of India & Others**, 2000(3) SLJ -CAT, 277, supports the above view inasmuch as it has been held that for any relief sought under the provisions of the Industrial Disputes Act, 1947, the workman can avail of machinery only under the Industrial Disputes Act and the C.A.T. has no jurisdiction. Similarly, the Apex Court in the case of **Krishna Prasad Gupta Vs. Contractor, Printing & Stationery** (1996) 32 ATC (SC)

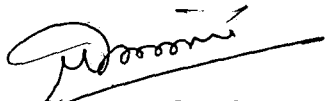


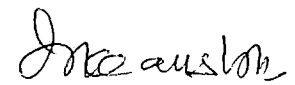
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211 and in the case of **Chandrakant Tuka Ram Nikam & Others Vs. Municipal Corporation of Ahmedabad & Another**, [ 2002 (1) Supreme 529 ] has supported the above view but in a different context.



8. Having regard to the aforesaid discussion and proposition of law, we reach to an inescapable conclusion that this Tribunal has no jurisdiction to entertain this OA. The OA is therefore dismissed for want of jurisdiction without any adjudication on merits. The applicant shall be at liberty to approach the competent court of law having jurisdiction over the matter as may be available to him. The original records of the case may be returned as per rules to the applicant in case an application to this effect is made. No costs.

  
(M.K. MISRA)  
Member (A)

  
(J.K. KAUSHIK)  
Member (J)

July 28, 2004.

HC\*

copy of order and  
original file  
received  
5/13/04  
5/18/04

copy  
5/18/04

RICOPM.

PI  
5/18/04.

Part II and III destroyed  
in my presence on 25/10/13  
under the supervision of  
section officer (1) as per  
order dated 18/11/13

Section officer (Record)