(16)

CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH

O. A. NO. 20, 21, 22, 23 & 24 OF 2008.

DATE OF ORDER : 25.2.2008.

CORAM :

HON'BLE MR. JUSTICE A.K. YOG, JUDICIAL MEMBER
HON'BLE MR. TARSEM LAL, ADMINISTRATIVE MEMBER

1. OA NO. 20/2008

Gordhan S/o Sh. Jeeva Ji aged about 55 years, working as Gangman under Inspector of Works at Sudasar, North Western Railway, Bikaner Division, Bikaner, Resident of Village and Post Office Benisar,District Bikaner (Raj).

.....Applicant.

VERSUS

1. Union of India through General Manager North Western Railway, Jaipur.

2. The Divisional Personnel Officer, North Western Railway Bikaner.

3. Assistant Divisional Engineer, North Western Railway, Bikaner Division, Bikaner.

.....Respondents.

CONNECTED WITH :

2.O.A. NO. 21/2008

Mala Ram s/o Shri Mohan Ji, aged about 49 years working as Gangman in Gang No. 27, under Inspector of Works at Sudsar, North Western Railway, Bikaner Division, Bikaner Resident of Village and Post Office Sudsar, District Bikaner Raj).

3. OA No. 22/2008

Rameshwar S/o Shri Prema Ram Ji aged about 53 years, Gangman under Permanent Way Inspector, Sudsar, North Western Railway, Bikaner Division, Bikaner Resident of V.P.O. Benisar District Bikaner (Raj.)

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4. OA No. 23/2008
Mala Ram S/o Shri Akha Ram Ji aged about 53 years working as Gangman in Gang No. 26, udner Inspector of Works at Sudsar, North Western Railway, Bikaner Division, Bkaner Resident of Village and Post Office Susar, District Bikaner (Raj.).

5. OA NO. 24/2008
Surta Ram S/o Shri Bholu Ram aged about 49 years working as Key Man under Inspector of Works at Ratangarh, North Western Railway, Bikaner Division Bikaner Resident of Village and Post Office Benisar, District Bikaner (Raj.).

.....Applicants

VERSUS

1. Union of India through General Manager North Western Railway, Jaipur.
2. The Divisional Personnel Officer, North Western Railway Bikaner.
3. Assistant Divisional Engineer, North Western Railway, Bikaner Division, Bikaner.

.....Respondents.

MR.Y.K.Sharma, Advocate, Counsel for Applicants.

केन्द्रीय प्रशासनिक अधिकरण Central Administrative Tribunal जोधपुर न्यायपीठ जोधपुर की मोहर

.....

ORDER

[PER JUSTICE A.K.YOG, JUDICIAL MEMBER]

Heard Shri Y.K. Sharma, Advocate, on behalf of the applicants.

All the above OAs are being heard and disposed of finally at admission stage without issuing notice or calling for counter reply inasmuch as all these Applications raises common issues to be adjudicated by the Tribunal and that the facts stated in counter-reply cannot be read to defend the orders impugned in

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these applications and maintain these orders which do not contain reasons for ignoring Ten Days 'break' in service of a Casual Labourer as explained by the Tribunal (Calcutta Bench) in the case of ***Rama Prosad Singh Roy Versus Union of India and Others*** - (1988) 7 ATC 399.For convenience, para 4 and 5 of this 'Order' which are self explanatory, read :

"4. Undisputedly, the applicant was appointed as a casual labourer in 1972 or 1973, as the case may be. The applicant contends that he was appointed as a casual Khalasi inJune, 1972 whereas it is the case of the respondents that he was first engaged on 7.5.1973. We are not very much troubled with the date of his appointment. The fact remains that being appointed as a casual Khalasi in June, 1972 or in Maym, 1973 the applicant joined his work under the Inspector of Works, Howrah. It is the further case of the applicant that after joining his service was utilized as a Peon in the office of the Senior Divisional Engineer, Howrah. The respondents deny that emphatically. But from a card produced by the applicant which is to be maintained for a casual labourer, we find that the Senior Divisional Engineer, Eastern Railway, Howrah certified his service as a casual Khalasi in some part of 1972. Be that as it may, the question that arises for determination in this case is whether the applicant has acquired temporary status after working as a casual labourer for more than six months and whether he is entitled to absorption in a permanent post and the benefits available to a temporary railway servant. It is his case that after working for more than 120 days he acquired temporary status, but in spite of his repeated representations his service was not regularized and he was not given the benefits available to a temporary railway servant. In reply to it, the respondents state that the applicant had never rendered continuous service for 120 days at a stretch and as such he had not acquired temporary status. It is significant that in their reply the respondents have simply stated that the applicant had worked for certain period but with breaks. The applicant, in his turn, produced before us a statement duly certified by the Chief Inspector of Works, Eastern Railway, Howrah, showing his working particulars. In this statement hehas shown the periods when he worked as a casual labourer starting from 1973. It is true that in this statement the applicant does not appear to have worked for a period of 120 days continuously. During some period there were some breaks for a day or two or for some more days. From the nature of breaks appearing from the statement we are constrained to hold that such breaks were caused to his

service by the respondent officers intentionally. Under para 2504 of the Railway Establishment Manual certain kinds of absence from duty of a casual labourer shall not be treated as breaks in service for the purpose of determining six months' continuous employment as contemplated in para 2501 of the said Manual. Some such breaks are medical treatment in connection with injuries sustained on duty, authorised absence not exceeding 15 days during the preceeding six months, non performance of work on rest given under the Hours of Employment Regulations or under the Minimum Wages (Central) Rules, 1950, etc., etc., Now we refer a particular period from the statement furnished by the applicant. From 18.5.1976 the applicant worked continuously upto 15.8.1976. With an absence for a day, i.e. on 16.8.1976 he again started working from 17.8.1976 and worked upto 14.11.1976. Again with an absence for a day, i.e. on 15.11.1976 he worked continuously up to 13.2.1977. So, what we get is that from 18.5.1976 to 13.2.1977 the applicant worked as a casual labourer with the absence for two days, i.e. 16.8.1976 and 15.11.1976. The respondents have not been able to explain as to why the absence for those two days wold be treated as his break in service. We have every reason to hold that by causing such break in his service intentionally the respondents wold not be able to take away the benefit of his continuous service for 120 days. Considering this we are of opinion that treating the applicant as a casual labourer serving for more than 120 days continuously he acquired temporary status and as such he should get the benefit available to a temporary railway servant.

5. *From the record we find that the applicant submitted various representations to the concerned authority for regularization of his service and for giving him the benefits of a temproary railway servant. It is curious to not that no rely to any of his letters was ever given. Now, it is the admitted position that the applicant in March, 1978 was medically examined. It is applicant's contention that pursuant to his prayer he was directed for medical examination before screening and although he was found fit in such medical examination in March, 1978 his case has not hyetbeen regularized and he has not yet been paid the benefits available to a temporary railway servant. In their reply the respondents have admitted the applicant's medical examination. But according to them such medical examination would not entitle the applicant to claim absorption against a permanent vacancy. We are unable to accept the respondents' version. When admittedly the applicant had worked as a casual labourer from 1973 it is not understood as to why after about five years of his service as casual labourer he was sent for medical examination and after he was found fit in the said examination his case was not considered for his absorption. Annexure 'D' to the writ application shows that the applicant was medically examined on 18.3.1978 and he was found fit. It is the respondents' own case that after a*

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casual labourer has completed his 120 days of continuous service he is screened after medical examination for consideration of his absorption against a permanent post according to his seniority position. From Annexure 'D' we have every reason to hold that the applicant was called for medical test only after taking into account his service for a continuous period of 120 days and that was so done for consideration of his regularization of service and absorption against a permanent vacancy. It is applicant's case that with effect from 6.4.1978 he was not permitted to perform his duties. It is the case of the respondents that with effect from that date it was the applicant who had not performed his duty because of his unauthorised absence. It is curious to note that a person who had rendered more than 120 days of continuous service and who had been called for medical test for the above-mentioned considerations was not given a single letter by the respondent calling upon him to join his duty. In the absence of any such documentary evidence being available from the side of the respondents we have every reason to disbelieve their contention and believe the contention of the applicant. We hold that it was not for the fault of the applicant he could not perform his duty from 6.4.1978. Be that as it may, we hold that the applicant after working for 120 days continuously had acquired temporary status and that entitled him to get all the benefits available to a temporary railway servant. We also hold that the respondnets should have regularized the service of the applicant after he was found medically fit in March, 1978. Considering all this we are of opinion that this application shall succeed."

Annex. A/4 to the leading O.A. No. 20/2008 gives details of 'break' in service in the case of Gordhan / applicant. From the aforesaid details, it is clear that there is a 'break of 10 days only'; i.e. between 4.6.1977 to 15.6.1977. Applicants referring to O.M./Circular dated 21st March, 1994 / Annex.A/3 which requiried 'four months continuous employment/service' pointed out that this O.M. categorically – directed "officers not to prevent a Casual Labour from working on job as to deprive him of earning status of Temporary Status'. The relevant portion of the Circular reads :-

"..... *The officers concerned should also be instructed that no Casual Labour is prevented from working on such jobs so*

as to deprive him of earning the status of a temporary railway servant on the expiry of his continuous employment for a period beyond 4 months."

It is to be noted that vide Railway Board's letter dated 12.7.1973 (Annex.A/2 to the O.A. 20/2008) requirement of six months service was reduced to four months.

A perusal of the impugned order dated 3rd December, 2007 (Annex.A/1) shows that in the instant case, there is no dispute that applicant/Gordhan was employed w.e.f. 24.4.1977 . Claim of the applciant for getting temporary status has been denied on the ground that he failed to work continuously for 120 days in the year 1977. The impugned order also shows that the applicant was extended 'temporary status' w.e.f. 25th June, 1983.

The only dispute is - 'whether the applicant/Gordhan, is entitled for his temporary status as claimed by him i.e. w.e.f. 29th August, 1977?'.

We have carefully perused the impugned order but, we are unable to find an 'explanation / reason' as to why said break of ten days (as noted above) should not have been ignored. Ratio - descen di as laid down in the case of *Rama Prosad Singh Roy* (supra) , is that insignificant break/s have to be ignored, if, it was intentional on the part of the employee or on the ground of medical treatment connected with injuries sustained on duty, or

due to *authorised absence not exceeding 15 days during the preceeding six months or non performance of work on rest given under the Hours of Employment Regulations or under the Minimum Wages (Central) Rules, 1950, etc.*

It is well settled now by the Apex Court / High Courts that artificial breaks in service, deserve to be ignored. Apparently, it is to ensure that authorities do not act arbitrarily and deprive a Casual Labour from taking benefit of "Temporary Status' under relevant Circulars /Rules. It is also so in view of the working schedule of the applicant Gordhan (It is interesting to note on perusing Annex. A/4 to the O.A. that after ten days of break (in question) he was again allowed to work for 90 days i.e. from 15th June, 1977 to 14th September, 1977.

It is to be appreciated that no explanation or counter reply can improve the situation now. 'Reasons' must appear in the order, and the impugned order cannot be sustained on the basis of 'reasons' disclosed in the counter reply. Impugned order does not show application of mind and thus, in breach of principles of natural justice.

Non-speaking impugned order dated 3rd December, 2007 (Annex.A/1) in the leading O.A. and other connected OAs

(noted above). In view of the above the impugned roder(s) in the above noted OAs, are liable to be ignored.

Consequently, we direct the concerned authority / respondent No. 3 – Assistant Divisional Engineer, North Western Railway, Bikaner Division, Ratangarh, to decide the representation(s) of the applicant(s) afresh in the light of the directions / observations made hereinabove as well as in the case of *Rama Prosad Singh Roy* (supra) within two months of receipt of a certified copy of this order.

All the above noted OA Nos. 20/08, 21/08,22/08, 23/2008 and 24/08 are finally disposed of subject to the above directions.Copy of this order shall be placed in the record of each O.A.- noted above.

No costs.

(Tarsem lal)
Member(A)

(A.K.Yog)
Member (J)

R/COPY

3/3/08

NO. 17

DoB:-10.3.88 (7.3.08)

Part II and III destroyed in my presence on 01/12/14 under the supervision of section officer (J) as per order dated 19/8/14

Section officer (Record)