

(AS)

CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

CIRCUIT BENCH
LUCKNOW

Original Application 99/89(L)

Nagendra Singh

...Applicant.

versus

Union of India & ors

...Respondents.

Hon. Mr. D.K. Agrawal, Judl. Member.
Hon. P.S. Habeeb Mohammad, Adm. Member.

(Hon. P.S. Habeeb Mohammad, A.M.)

Nagendra Singh, who was working as casual labour, wireman under Signal Inspector, Northern Railway, Lucknow, has filed this Application under section 19 of the Administrative Tribunals Act, 1985 with the prayer for the issue of the directions by the Tribunal to respondent No. 2 to take him back to duty, as he is a temporary railway servant and is governed by the service rules and orders of the Railways Code from time to time and has preference over his juniors, who have been engaged later on and he has further prayed for directions to the respondents to pay him his back wages from the day he had given an application to the Signal Inspector on. 5.8.87 for taking him back to duties as per his request vide Annexure A-4.

2. His case is that he was appointed as casual labour Wireman under the Signal Inspector, Northern Railway, Alambagh on 3.12.84 and worked upto 4.8.86. The total number of working days comes to 604 days vide the photo-stat copy of the casual labour card and he had acquired status

for temporary railway servant and was governed by the Railway Servants (Discipline & Appeal) Rules, 1968. He was drawing C.P.C. scale in the regular scale of pay. He had given an application on 4.8.86 for grant of leave without pay from 5.8.86 to 4.8.87, as he had been selected for training in the trade of Electrician under the Principal, Northern Railway System Technical School, Lucknow. When he reported for duty after completion of the training on 5.8.87 to respondent No.2, he refused to take him on duty. The applicant has met the authorities for redressal but he has failed to obtain any redress from the department so far.

3. The contention of the respondents, ~~as far~~ the reply, is that the petitioner was working as a casual labour and on completion of 180 days continuous service as Assistant Wireman, he was being paid minimum pay scale plus Dearness Allowances as admissible under the rules, but he did not acquire the temporary status. He had not applied for leave for the purpose of any training, nor was any application for leave received in the office and he was never granted any leave for attending any training course. He had already passed the course of Electrician from I.T.I. prior to his engagement and it was on this basis that he was engaged as casual labour Wireman. He underwent on similar training for one year from 5.8.86 to 4.8.87 in the same trade from the System Technical School, Charbagh, Lucknow but this later training from August 86 to August 87 had been undergone by him without any leave or authorization and he had ~~therefore~~, absconded from duty. In the circumstances,

the department did not consider it possible to retain him on the ~~casual~~^{pay} roll. The plea of the department is that no one ~~has~~^{can} undergo any such training ~~as to take~~^{without} leave or authorization from the department. Though, the applicant claims that he was at Dilawar Nagar on the 4th of August, 1986 to send his application, he was really present at Lucknow on that date. Therefore, their contention is that he had not acquired temporary status and he ~~is~~^{was} absconding from duty.

4. During the course of arguments of the case, the learned counsel for the applicant drew attention to the fact that he had really applied for the leave without pay for the period from 5.8.86 to 4.3.87 but since the second respondent had failed to take the application, the same was sent under certificate of posting on 4.8.86 and therefore, it was not correct that no such application was sent by him prior to going for the training, though he could not produce any record to show that the leave applied for had been granted. He re-iterated that under the rules, the applicant had become eligible for acquiring the temporary status, even though the respondents claim that he had not acquired temporary status, but the legal position being that he had acquired temporary status, any action ~~to~~^{by} be taken against him under the relevant rules, ^{and} there was no justification for failing to take him to duty when he reported in 1987, after his training, which in any case was connected with his duties and had further improved his efficiency ~~for~~ his engagement under the railways.

5. After going through the documents filed by the parties and giving our anxious consideration to the points advanced by the learned counsel for the parties, we find that there is no dispute on the fact that the applicant had completed 180 days of continuous service under the respondents. Not only 180 days then but the work card as casual labour produced by the applicant shows that he had continuously worked for the period from 3.12.84 to 4.8.86; a total period of 604 days.

6. In Chapter XXV on casual labour in the Railway Establishment Manual (Second Edition), 1968, published by the Railway Board, defines the casual labour and states that the periods after which they will acquire temporary status. Rule 2501 states as follows:

"(a) Casual labour refers to labour whose employment is seasonal, intermittent, sporadic or extends over short periods. Labour of this kind is normally recruited from the nearest available source. It is not liable to transfer, and the conditions applicable to permanent and temporary staff do not apply to such labour.

(b) The casual labour on railways should be employed only in the following types of cases, namely:

(i) Staff paid from contingencies except those retained for more than six months continuously: Such of those persons who continue to do the same work for which they were engaged or other work of the same type for more than six months without a break will be treated as temporary after the expiry of the six months of continuous employment.

(ii) Labour on projects, irrespective of duration, except those transferred from other temporary or permanent employment.

(iii) Seasonal labour who are sanctioned for specific works of less than six months duration. If such labour is shifted from one work to another of the same type e.g. relaying and the total continuous period of such work at any one time is more than six months' duration they should be treated as temporary after the expiry

of six months of continuous employment. For the purpose of determining the eligibility of labour to be treated as temporary, the criterion should be the period of continuous work put in by each individual labour on the same type of work and not the period put in collectively by any particular gang or group of labourers.

Note-1. A project should capacity of/railway

2. Once any individual acquires temporary status, after fulfilling the conditions indicated in (i) or (iii) above, he retains that status so long as he is in continuous employment on the railways. In other words, even if he is transferred by the administration to work of a different nature, he does not lose his temporary status.

3. Labour employed against regular vacancies whether permanent or temporary shall not be employed on casual labour terms. Casual labour should not be employed for work on construction of wagons and similar other work of a regular nature.

4. Casual labour should not be deliberately discharged with a view to causing an artificial break in their service and thus prevent their attaining the temporary status.

5. The term "same type of work" should not be too rigidly interpreted so as to cause undue suffering to casual by way of break in service because of a slight change in the type of work in the same unit. The various types of work to be considered as same type of work may be grouped as under."

7. It is therefore, clear that such casual labour who have been engaged for the six months' period, will be treated as temporary. In this case the applicant had not only worked for 180 days but he had worked for more than 600 days. Even if a formal order had not been issued treating him as temporary, the rules entitle him to be treated as temporary, as the six months' period has been completed, and therefore, we have to negative the contention of the respondents that he had not acquired the temporary status. As per rules, Rule 2511 in the same Establishment Manual, ^{1/2} are entitled to the rights and privileges admissible to temporary railway servants as laid down in Rule XXV of the Railway Establishment Manual and the rights and

privileges admissible to such labour also applies to Discipline & Appeal Rules, 1968. Therefore, while it was open to the respondents to take disciplinary action, if he went for training without proper authority or without the leave being sanctioned, it was not in order, if they refused to take him on duty when he reported after undergoing the training. Matters like whether he had applied for leave and other incidental matters, can be gone into as per the provisions of Railway Servants (Discipline & Appeal) Rules, 1968. Therefore, a model employer like the Railways, instead of treating him as ~~an~~ absconding, should have, while taking action for breach of the rules, ~~should~~ have dealt with him only under the rules. In the circumstances, since he has acquired the temporary status, there is no escape from the fact that he is an employee of the railway who has not been taken back to duty when he reported after the training, however, ~~is~~ ^{is} unauthorised and without permission, his absence might have been. This does not mean that breach of discipline should be looked upon leniently. ^{As} ~~At~~ that is said is that since he ^{had} acquired temporary status under the rules, it is open to the respondents to proceed against the applicant under the Railway Servants (Discipline & Appeal) Rules, 1968. However, since he ~~had~~ applied for leave without pay for one year and has not subsequently worked upto date, he is not entitled to any back wages for the period till he is taken back to duty.

8. The respondents are directed accordingly, to take him back on duty and if they want to proceed against him under

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the Railway Servants (Discipline & Appeal)Rules, 1968, they are at liberty to do so. However, as the previous mentioned in/paragraph, he will not be entitled to any back wages. The order will be complied with within a period of one month from the date of receipt of the copy of this Order. There will be no order as to costs.

ADM. MEMBER. 114 1990

JUDL. MEMBER.

Lucknow dated the

April, 1990.