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CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH, LUCKNOW.

T.A.No.150 of 1992(L)

(O.A.No.573/90)

Union of India .....Applicant.

Versus

Wazi Ahmad .....Respondent.

Hon'ble Mr.Justice U.C.Srivastava,V.C.

Hon'ble Mr.K.Obayya,A.M.

(By Hon'ble Mr.Justice U.C.Srivastava,V.C.)

Feeling aggrieved by the award dated 7.1.90 given by the Central Government Industrial Tribunal holding that the termination of the services of the applicant w.e.f. 18.9.85 is illegal and un-justified and he was entitled to reinstatment with full back wages and all consequential benefits, the Union of India has filed this application. The case of the Union of India is that the respondent absented himself on several occasions and he was only a casual substitute and consequently no right was vested in him. The principle of 'no work-no pay' was applicable in this case but even then the same was ignored. The respondsnt was declared medicelly fit by the Railway Doctor vide memo dated 11.3.83. Thereafter he worked under the Station Superintendent, Lucknow upto 15.9.84 and subsequently on his request he was transferred to Barabanki totwork as Porter where he worked from 17.9.85 whereafter his services were terminated. The Union of India opposed the application before the Labour Court stating that the applicant worked as a Substitute Porter at Lucknow Station for 137 days during the period from 16.1.84 to 13.8.84 and since the appointment of substitute porter at that time was banned, his appointment was not legal and the same

was fraudulently obtained. The applicant reported for duty on 3.8.84 and he was directed to work as casual substitute w.e.f. 18.9.84 . He worked as such upto 17.9.85 and thereafter he absented himself and as an another person was already appointed, no vacancy of porter remained to be filled up and the applicant was discharged w.e.f. 18.9.85 due to his continued absence.

2. The respondent refuted these allegations. The Labour Court after taking into consideration the oral and documentary evidence of record, came to the conclusion that as a matter of fact, the respondent had worked continuously and from the statement of witnasses, it was concluded that the applicant worked for more than 240 days. The Labour Court in its exhaustive judgment has dealt with entire evidence and thereafter arrived at a particular conclusion. The tribunal cannot sit in appeal over the assessment of the evidence .The judgment of the labour Court is based on the assessment of the evidence and it cannot be said that there was no material before the Labour Court or that it is based on no evidence. Accordingly, it came to the conclusion that as the applicant had worked for more than 240 days, his services were unjustifiably terminated and that is why he was directed to be reinstated in service with back wages. However, the Labour Court has allowed back wages to the respondent without taking any proof of it that he was not in any gainful employment as in that event, the respondent would not have been entitled to wages for the said period because he had got an employment. Accordingly, this

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application is allowed only to the extent that so far as the back wages are concerned, an enquiry shall be made by the applicant in accordance with law calling upon the respondent to furnish a proof that during this period he was not in any gainful employment and if it was so, after deducting the amount, the same will be paid to him. It is not a case in which there was a refusal on the part of respondent but it is a case in which the respondent was not allowed to work by the applicant. With the above observations, the application is partly allowed. No order as to costs.

MEMBER(A) VICE CHAIRMAN.

DATED: JAUNARY 7,1993.

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