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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW
.....

Original Application No. 135 of 1992
this the 4th day of February 2000.

HON'BLE MR A.V. HARIDASAN, Vice-Chairman
Hon'ble Mr. J.L. Negi, Admn. Member

Sunil Kumar, S/o Sri Dwarika Lal Srivastava, Resident
of 568 Kha/171 Geeta Palli, Alambagh, Lucknow

Applicant

By Advocate : None.

Versus.

Union of India through the Secretary to Government,
Ministry of Railways, New Delhi.

2. Railway Board, through the General Manager,
Northern Railway, New Delhi.

3. Divisional Railway Manager, Northern Railway,
Hazratganj, Lucknow.

4. Asstt. Mechanical Engineer, Northern Railway,
Hazratganj, Lucknow.

Respondents.

By Advocate : Sri Anil Srivastava.

O R D E R

A.V. HARIDASAN, V.C.

The applicant was appointed as a casual labour
Cleaner in Running Shed, Alambagh, Lucknow in the month
of May '72. While he was working, he was prosecuted for an
offence under Armed Act and was arrested and bailed-out
on 21.5.76. The applicant, thereafter, according to him,
was not taken back on duty till 2.6.81. On his acquittal
in the criminal case, the applicant was re-engaged and
his services were regularised as a Cleaner in the year

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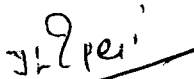
1986. The present claim of the applicant is that as persons who were junior to him and were empanelled in the year 1978 alongwith him, have been regularised earlier, he having been acquitted by the criminal court is entitled to be reinstated with continuity of service, paid full back wages and promoted to the post of Fireman. The applicant has filed the present Original Application for the following relief :-

"In view of above facts in para 4 above it is most respectfully prayed that this Hon'ble Tribunal be pleased to direct the respondents to treat the applicant in continuous service, pay salary upto date by preparing seniority of the applicant on the post of Clearer since May'72 and after preparing the same the may give notional promotion and pay at par to the junior person promoted on the post of Fireman Gr. I & II amongst other post."

2. The respondents contend that as the applicant did not report for duty after he was arrested till the year 1981 when he was re-engaged his claim at this belated time for back wages, seniority and promotion, is ^{being} unsustainable as barred by limitation as also he himself has refused from reporting for duty.
3. When the application came-up for hearing, none appeared for the applicant. The case was passed-over twice. Even when the case was taken-up the third time neither the applicant nor his counsel appeared. This being very old case and as the counsel and the applicant did not appear, we perused the pleadings and records and heard the learned counsel for the respondents.
4. The applicant has claimed seniority on the basis of his service from the year 1972, promotion on that basis and back wages for the period he was out of service i.e. from 21.5.76 till he was reinstated in the year 1981. The case of the applicant is that when he reported for duty after being released on bail, he was not permitted to join duty and was allowed to join duty only in 1981 when he was acquitted

by the criminal court whereas the respondents' case is that the applicant himself absented from duty. If as a matter of fact, the applicant was prevented from performing duties without any order, one could expect him to represent the matter to higher officials or to seek relief before the competent forum. There is nothing on record to show that the applicant has done anything like that. It is seen that on acquittal from the Magistrate Court, the applicant and one Sirajul Haque were allowed to rejoin as Substitute Cleaners. The applicant accepted that. The applicant was thereafter, screened in the year 1992-93 and being found suitable was regularly appointed as regular loco cleaner. The applicant did not raise any dispute at that time. It was only long after that he has made claim for earlier promotion. Even in the representation made in the year 1990, no claim is made for back wages. Under these circumstances, we do not find that the applicant has any ~~claim~~ legitimate grievance or subsisting cause of action. Unless the applicant establishes that he was kept out of service by the respondents, he cannot successfully claim back wages. He has failed to do that. We, therefore, do not find any merit at all in the application.

5. In the result, in the light of what is discussed above, the application is dismissed leaving the parties to bear their own costs.


Member (A)

Lucknow: Dated : 4.2.2000.
Girish/-


Vice-Chairman