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CENTRAL ADMINISTRATIVE TRIBUNAL, ALLAHABAD

Review Appln.No.52/B/T/89 of 1989

In

T.A. No.793 of 1986

(O.S.No.97 of 1982)

Amarjeet Singh ..... Plaintiff-Applicant

. Versus

Union of India & Others ..... Defendants-Respondents

Hon.Mr.Justice K.Nath, V.C.

Hon.Mr.A.B. Gorthi, Member (A)

(By Hon.Mr.Justice K.Nath, V.C.)

Q. O. P. Gupta

This is an application for review of a judgement dated 13.7.89 in the case described above on the ground of an error apparent on the face of the record. The applicant was working as a Call Man as stated in para 2 of the plaint and <sup>claimed</sup> that he had worked continuously without any break since February, 1981. In para 3 it is stated that on 3.10.81 he was ceased to work. His grievance was that between February, 1981 and 3.10.81 he had worked continuously for more than 240 days and therefore being a workman he was entitled to the protection of Section 25-F of the Industrial Disputes Act inasmuch as his services were not terminated by a notice nor he was paid any compensation as required thereunder. He therefore sought a declaration in the Suit that he was in continuous employment of the respondents without any break.

2. During the pendency of the Suit he was re-engaged on 4.8.83. He then got the plaint amended, added paras 17 and 18 to the plaint and sought an additional declaration that he was in continuous employment since

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February, 1981 and was entitled to his full salary and emoluments etc.

3. The Railway Administration defended the case and in para 2 of the written statement admitted the facts stated in para 2 of the plaint. It was however added that since the engagement of Casual Labour and substitute were banned from 4.10.81 in Loco Shed except the persons <sup>who</sup> ~~these~~ were employed prior to 1.6.78, he was asked not to work after 3.10.1981.

4. During the pendency of the Suit, the Administrative Tribunals Act, 1985 came into force and the case was transferred to this Tribunal under Section 29 of that Act. It appears that thereupon the defendants-respondents filed a fresh written statement in which they denied the applicant's claim.

5. The Bench which heard the case observed in para 8 of the judgement that the plaintiff-applicant case that he had a continuous service from February, 1981 till his dis-engagement from 3.10.1981 was admitted by the respondents. The Bench however took the view that the period of continuous service claimed by the applicant was too short inasmuch as he was expected to put in continuous service (as defined in 25-B of the I.D. Act) of not less than one year. It was observed that it was abundantly clear that this pre-requisite had not been fulfilled. On that basis the Original Application was dismissed.

6. In this Review Application as pointed out by the applicant, there is apparent error on the face of the

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record in so far as the Bench having accepted the applicant's case that he had a continuous service from February, 1981 <sup>and</sup> his dis-engagement from 3.10.1981 thought that the period was too short because it was less than one year as defined under Section 25-B of that Act.

7. It is quite clear that the period from 1.2.81 to 3.10.81 when he was ceased to work counts to 244 days. It is futile for the respondents to contend that the applicant had not stated the particular date of the month of February, 1981 when his working commenced. The applicant having clearly stated that he had worked continuously from February, 1981, the defendants-respondents cannot be heard to say otherwise after having admitted so in the original written statement.

8. Shri G.P. Agarwal appearing on behalf of the respondents has laid emphasis on para 7 of the later written statement signed on 13.4.87 and filed before this Tribunal. In this written statement, it was stated that according to the paid vouchers of February, 1982 (which seems to be a mistake for February, 1981), the applicant was absent on 28th and 29th of January, 1981 and again from 20th to 22nd February, 1981 and lastly he was absent from 30.9.81 to 2.10.1981. These figures cannot be taken into account for two reasons. Firstly, the Bench which decided the case proceeded on the basis of admission contained in para 2 of the original written statement. Secondly, the new written statement contained inherent mistakes. Thus in para 2 of the new written statement it is mentioned that the plaintiff-applicant was engaged as substitute casual labour on 4.10.81; in para 6 it was stated that he had not worked continuously

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without break since 4.10.81 and only worked monthwise with effect from 4.10.1981. This is contrary to the entire case which has figured in the Suit. The case of the plaintiff-applicant was that he had been dis-engaged from 4.10.1981. There is no question of his being engaged on 4.10.1981 or of having worked continuously or otherwise from that date onwards.

9. Under Section 25-B(2) of the Industrial Disputes Act, it is stated that where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service for a period of one year, if the workman during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days. The period between February, 81 and 4.10.81 is not one complete calendar year. But that period immediately preceding 4.10.81 is undoubtedly a period of continuous work for 240 days and more within twelve calendar months immediately preceding the relevant date i.e. 4.10.81. The Bench appears to have fallen in error in expecting the period of work itself to be spread over ~~the~~<sup>the</sup> entire period of not less than one year. The judgement therefore suffers from error apparent on the face of the record and must be set aside in this Review Application.

10. We have also heard the learned counsel for the parties on the merits of this case and we are of the opinion that on the facts found and established the applicant was certainly entitled to be benefit under Section 25-F of the I.D. Act and the termination of his services without notice and payment of compensation as

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required by that Section is ab initio void and the applicant must be held to have continued in employment.

11. In the result, the Review Application is allowed. The order dated 13.7.89 in the original case is set aside and T.A. No.793 of 1986 is allowed with a declaration that the plaintiff-applicant Amarjeet Singh shall be deemed to have continued in service of the respondents from 4.10.81 in continuation of his previous employment and the respondents shall pay his back wages from 4.10.81 till the period he was re-engaged within a period of three months from the date of receipt of a copy of this judgement.

Sd/-  
Member (A)

Sd/-  
Vice Chairman

/ Dated the 12th Feb., 1991.

RKM

Prepared on 14.2.91

14/2/91

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(SHARAD KUMAR)  
SECTION OFFICER  
Central Administrative Tribunal  
Allahabad.