

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

LUCKNOW

O.A. No. 56/89

K.S. Gaur

Applicant

versus

Union of India & others

Respondents.

Hon. Mr. Justice U.C. Srivastava, V.C.  
Hon. Mr. K. Obayya, Adm. Member.

(Hon. Mr. Justice U.C. Srivastava, V.C.)

The applicant was a Substitute Cleaner and his services were put to an end to vide order dated 12.3.76 and vide order dated 28.4.76 he was reinstated in service with the benefit of past service. Subsequently, the order of reinstatement was substituted by the order of re-engagement, which has been challenged in this application.

2. The applicant was appointed as Substitute cleaner on 3.12.73 but according to the applicant he was appointed on 1.1.71 and the services of the applicant were terminated under Rule 149 of R.I. He was re-engaged as a substitute cleaner on 28.4.76 and on 19/21.10.1976 it is said that because of his absence it was treated as a deemed resignation. The applicant protested against the same and filed representation on 20.11.1976. He was reappointed as Substitute Cleaner and thereafter with the stipulation that his past services will not be counted for any purposes. On 22.9.90 the applicant was ordered to be re-engaged as Substitute Cleaner. The

applicant submitted a representation ~~on~~ regarding the benefit of past service and vide order dated 16.7.85 he was reinstated and the order of reinstatement reads as follows:

".....

who was re-engaged as Sub-cleaner vide this

office letter No. 220E/1-5/Cleaner dt. 22.9.80

addressed to the then DME/DSL MGS is reinstated instead of re-engaged allowing the benefit of his

past services. This has the approval of D.R.M."

Subsequently some two months thereafter on 30.7.85 on the application of the applicant Loco Foreman informed him that he is reinstated as Cleaner instead of re-engaged and he was reinstated and refixation of pay may be issued and he may be considered for promotion. Subsequently vide impugned order dated 9.10.85 orders of the reinstatement of the applicant were cancelled and the applicant was treated as re-engaged w.e.f. from 29.2.80 and this also had got approval of the D.R.M.

3. On behalf of the applicant it was contended that the applicant was reinstated in service, the orders could not have been changed thereafter, as the applicant was reinstated in services and the benefits of past services were given to him, and the benefit cannot be taken away without opportunity of hearing.

4. The respondents contended that it was an administrative error and he can only be re-engaged and not reinstated and it has been also stated that subsequently the applicant vide order dated 19.11.89 has been temporarily promoted as Second Foreman and his services have also been regularised. Now, the question which remains for consideration is that whether it is reappointment or re-engagement. A substitute Cleaner cannot be reinstated and he can be regularised. In this case it appears that these words were used by mistake. The opportunity should have been given. His re-engagement will date back when he was reinstated with the result the applicant will be entitled to all the benefits taking it as if he was re-engaged since then and because of this continuous service if the applicant is entitled to promotion that too to be given but without any back wages. A decision in this behalf be taken within 3 months of the receipt of this order. Application is disposed of with the above directions with no order as to costs.

A.M.

V.C.

Shakeel/

Lucknow: Dated: 22.5.92.