

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 26th day of Nov., 1996. (9)

O.A. No. 410/90(L)

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C. VERMA, MEMBER(J)

Gaya Prasad, aged about 30 years, son of Sri Ram Khelawan, resident of village Bargaura, Post office Bikapur, District Faizabad.

Applicant.

By Advocate Shri Anil Kumar.

versus

1. Union of India through Secretary, Railwaway Board, Rail Bhawan, New Delhi.
2. Union of India through Secretary, Ministry of Labour, New Delhi.
3. Divisional Personnel officer, Lucknow Division, Northern Railway, Hazratganj, Lucknow.
4. Assistant Engineer, II, Northern Railway, Charbagh, Lucknow.
5. The Permanent Way Inspector, Northern Railway, Barabanki.

Respondents.

By Advocate Shri B.K. Shukla.

O R D E R (ORAL)

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicant has prayed for quashing of the order dated 19.9.89 (Annexure 3 to the O.A.) passed by the respondents to the effect that a decision has been taken not to refer the dispute raised for adjudication as there has been delay of 9 years in raising the dispute without adequate reason. The applicant has also prayed for quashing of the

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termination order if any with effect from 15.6.81 and to reinstate him with full back wages and other consequential benefits.

2. The claim of the applicant has been resisted by the respondents and pleadings have been exchanged between the two sides which we have perused. We have also given thought to the submissions of the learned counsel made during the course of hearing.

3. A brief resume of facts would be in order. As per the averments in the O.A. the applicant was appointed as Gangman on 26.7.1978 under P.W.I., Northern Railway Barbanki, and he continued to work upto 14.6.1981 with breaks. It is alleged that the services of the applicant were terminated through oral order with effect from 15.6.1981. The applicant claims that he completed 120 days of continuous service and thereby attained temporary status. As a sequel the Uttar Railway karmchari Union served strike notice on D.P.O. and A.E.N-2, Northern Railway and the matter was referred to the Assistant Labour Commissioner, who gave his finding vide his order dated 15.3.1989 (Annexure-2 to the O.A.). This order interalia mentions that since there was not any possibility of settlement, the dispute ended in failure. With reference to this order of Assistant Labour Commissioner, the respondents have passed the impugned order dated 19th September, 1989.

4. During the course of arguments emphasis was laid by the learned counsel for the applicant on the legal issue involved in the matter. It was urged by him that section 10 of the I.D. Act 1947

does not lay down any time limit for reference to be made by the appropriate government. He however, fairly conceded that in case the government makes a reference of the dispute to the appropriate judicial forum, the question of grant of second part of the relief prayed for by him viz. his reinstatement by this Tribunal does not arise at this stage.

5. We find force and merit in the contention of the learned counsel for the applicant. The clause I of section 10 of the I.D. Act reads:

"Where appropriate government is of the opinion that any Industrial Dispute exists or is apprehended, it may at any time (emphasis supplied by us) by order in writing:

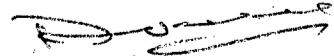
- (a).....
- (b).....
- (c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication."

The wording of this clause makes it clear that there is no time limit set for making reference. The only point of discussion was whether the expression 'it may' makes it obligatory for the government or it is left to the discretion of the government to make such a reference. The learned counsel for the applicant in support of his

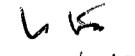
contention stated that there is no discretion and with the government in the matter/cited for our benefit the judgment in the case of 'Jai Pratap Singh vs. State of U.P. and others' passed by Lucknow Bench of the Allahabad High Court on 25.11.92, reported in S.C.D. 1994(1), 148. The observations of the High Court contained in para 4 are relevant for our purposes. These are:

"The words 'at any time' are very material. They make it abundantly clear that the Legislature has fixed no time limit for making reference. The State Government has only opinion making power.The petitioner workman should move application for condonation of delay. This aspect of the matter should have been left in the Labour Court or Industrial Tribunal to be judged. The impugned order of the State Government is thus apparently illegal."

6. We are inclined to agree with the above view and therefore, hold that the impugned order of the respondents is illegal and unsustainable. The same is hereby quashed and we direct that the respondents shall refer the Industrial Dispute which forms the subject matter of the impugned order, to the appropriate Labour court/Industrial Tribunal in accordance with the provisions of section 10 of the I.D. Act. This decision shall be complied with by the respondents within 3 months from the date of communication of this judgment and order. The O.A. is disposed of in the above terms. No order as to costs.


MEMBER (J)

Lucknow; Dated: 26.11.96.


MEMBER (A)

Shakeel/