

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
NEW BOMBAY BENCH, NEW BOMBAY.

Original Application No.261/87.

Shri Jayprakash Bihari,
C/o.T.R.Talpade,
Advocate, High Court,
Narottam Niwas, Gr. Floor,
308, Jawji Dadaji Marg,
Nana Chowk,
Bombay.400 007.

... Applicant

V/s.

1. Permanent Way Inspector
(Construction, Apta-Roha
Railway Project, Central
Railway, Pen, Dist.Raigad.
2. Dy. Chief Engineer (Constru-
ction), Apta-Roha Railway Project,
Central Railway,
Panvel.
3. Union of India through the
General Manager, Central
Railway, Bombay VT,
Bombay.400 001.

Coram: Hon'ble Vice-Chairman, Shri B.C.Gadgil,
Hon'ble Member(A), Shri P.Srinivasan.

Appearances:

Shri ~~M~~^S.Ramamurthy,
advocate for the
applicant and
Shri M.Sudame(for
Shri D.S.Chopra),
Counsel for the
respondents.

JUDGMENT:-

[Per Shri P.Srinivasan, Member(A)]

Dated: 30.8.1988

The applicant before us was appointed as a
Casual Mate under the Inspector of Works, Panvel in the
Central Railway on 11.12.1981 and was subsequently
transferred to work under the Permanent Way Inspector (PWI),
Pen w.e.f. 19.3.1984. There is no dispute that he was
in continuous employment, though as a casual employee,
upto 8.7.1985. He remained absent from 9.7.1985 to
16.7.1985. Following the usual procedure the applicant

P. Srinivasan

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was marked absent and showedⁿ as having left service. When he reported back to service on 16.7.1985, the FWI refused to allow him to join and asked him not to come for duty thereafter. There was no written order of termination of services, as the applicant was a casual labourer. The complaint in this application is that the applicant was wrongly removed from service from 9.7.1985.

2. The respondents have resisted the application by filing their reply.

3. Shri M.S. Ramamurthy, learned Counsel appearing for the applicant submitted that on 9.7.1985 the applicant developed pain in the abdomen for which he had to be treated by a Doctor. The Doctor did not allow him to resume duty till 15.7.1985 and he duly reported for duty on 16.7.1985. His absence was due to illness and he had not left service. The step taken by the respondents of terminating the services of the applicant for his absence was therefore, too drastic. The applicant had furnished a certificate from the Doctor who attended on him between 9.7.1985 and 16.7.1985 and had made representations to the authorities on 23.7.1985 and, failing to receive any response, he approached the Assistant Labour Commissioner, Bombay by a letter dt. 13.6.1986, who dismissed his representation on the ground that he had unauthorisedly absented himself from work from 9.7.1985 to 15.7.1985. The Labour Commissioner also added that the applicant's request for re-appointment had been turned down because of the dis-pleasure of the administration with his past performance. Shri M.S. Ramamurthy submitted that for absence ^{from} on duty for just one week and that too on medical grounds supported by a certificate from a Doctor, the respondents were not justified in terminating the services of the

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applicant. If they found anything unsatisfactory in his service they should have confronted him about this and taken his explanation before acting behind his back.

4. Shri Mohan Sudame (for Shri D.S.Chopra) for the respondents reiterated what was stated in the reply of the respondents viz. that when the applicant remained absent unauthorisedly from 9.7.1985 to 16.7.1985 inquiries were made, which revealed that the applicant was in the habit of leaving his house without intimation. Since he was a casual worker, according to the prevailing practice he was marked absent and treated as having left service on his own. The PWI, Pen also lodged ^M a complaint in the Police Station on 16.7.1985 that the applicant was missing. The respondents were not aware that the applicant had developed pain in the abdomen. He was to attend to duties as a Watch-man on 9.7.1985, but he did not turn up and it was ascertained from his wife that he was in the habit of absconding without intimation. His wife was also working under the PWI, Pen. Since the applicant's whereabouts were not known he was marked absent and his services terminated. There was nothing arbitrary about this action. Shri Sudame, therefore, contended that this application should be dismissed.

5. Having considered the rival contentions carefully we are of the view that the respondents did indeed act in a drastic manner by terminating the services of the applicant, even though he was a casual worker, merely because he was absent for a week. He had a plausible explanation to offer viz. that he was ill and he was advised by his Doctor not to report for duty and this explanation was given by him to the respondents in his representation dated 23.7.1985. The minimum that the respondents could have done was to inquire whether this

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was true and whether the applicant was in truth ill. If the termination was for unsatisfactory behaviour in the past, the respondents could at least have confronted him with the material and taken his explanation, but even this was not done. We can understand if the work for which the applicant was not employed was no longer required to be done and his services were terminated on that ground, because he was only a casual worker. But when this was not ~~done~~^H the case, we feel that the respondents acted too abruptly and visited what in effect was an ultimate punishment on the applicant. At worst, he had only absented himself from duty for a week for which he would not be entitled to any wage.

6. In view of the above we direct the respondents to give the applicant a fresh appointment within 3 months from the date of receipt of this order on the same terms and conditions as the one which he held on 8.7.1985 before he absented himself from duty. The applicant will not be entitled to any back wages till the date of his fresh appointment, but for the purpose of regularisation as per the scheme of the Railway Board, his service between 11.12.1981 and 8.7.1985 shall be taken into account.

7. The application is disposed of on the above terms, but in the circumstances of the case parties to bear their own costs.


(P. SRINIVASAN)
MEMBER (A)


(B.C. GADGIL)
VICE -CHAIRMAN