

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
 Circuit Sitting at Aurangabad
 XXXXXXXX
 NEW BOMBAY BENCH

O.A. No. 198
 T.A. No. 13/87.

DATE OF DECISION 18/07/88

Shri Syed Mahmood Petitioner

Shri Mohd. Mustafa Ahmed Momin Advocate for the Petitioner(s)

Versus

General Manager, South Central Respondent
 Railway Rail-e-Nelliam, Secunderabad (A.P)

Shri S.R. Barlinge Advocate for the Respondent(s)
 (For Mr. V.G. Rege, Advocate)

CORAM :

The Hon'ble Mr. B.C. Gadgil, Vice-Chairman

The Hon'ble Mr. P. Srinivasan, Member (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Y*
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of the Judgement? *}* *No*
4. Whether it needs to be circulated to other Benches of the Tribunal?

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT SITTING AT AURANGABAD

No.Tr.13/87

Shri Syed Mahmood,
R/O Railway Station,
Near Sales Tax Office,
Jalna.

Applicant

vs.

1. South Central Railway,
through General Manager,
Rail-e-Nellian,
Secunderabad (A.P.)
2. Chief Engineer(Construction),
South Central (Aurangabad),
Secunderabad (A.P.)
3. The Labour Enforcement Officer,
Central Railway, Bhusaval Jalgaon.
4. The Divisional Engineer,
Construction, South Central
Railway, Aurangabad.

Respondents

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

Appearances:

1. Shri Mohd. Mustafa Ahmed Momin,
for the Applicant.
2. Shri S.R. Barlinge (For Mr. V.G. Rege,
Advocate) for the respondents.

Date: 18-7-88

ORAL JUDGEMENT

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

This is a transferred application which originated as a Writ Petition before the High Court of Bombay, Aurangabad Bench. The applicant complains that though he was working as a Literate Khalasi in the post of Store Chaser in the South Central Railway at Aurangabad from 3.1.1979 he was kept out of work after 11-8-83, for no fault of his. He had been working as a Temporary Literate Khalasi on a monthly salary for over 4 years from 3-1-79 to 3-5-1983 after which he was reverted to the post of a daily wage labourer. This was an act of injustice against him. Shri Momin, learned counsel for the applicant submitted that the applicant had been illtreated by the authorities because he did not submit to the wishes of his superior officers.

P. Srinivasan

He was unfairly reverted to the rank of a daily wager from 4-5-83 and was posted by oral order to Bridge No.94. After joining at Bridge No.94, he approached the Divisional Engineer requesting that he should be restored to the post of Literate Khalasi. The Divisional Engineer refused to do so and when he reported back to Bridge No.94 the authority there did not allow him to work without a formal letter of posting and that was why he was out of employment from 11.8.1983. It was not his fault that he could not work after that date. Shri Momin submitted that the respondents should be directed to give the applicant temporary status from the date he completed 6 months of service and consequential seniority and back wages as if he had continued in employment without a break from 3.1.1979 till date. Shri Momin drew our attention to a number of Supreme Court judgements wherein the Supreme Court has held that Casual workers should be screened for regularisation after completion of a minimum number of months of service. Shri Momin also pointed out that even where a Railway official had produced a forged employment card for obtaining employment, he had been ordered to be taken ^{back} in service by the Jabalpur Bench of this Tribunal. That being so the applicant who had worked continuously for over four years from 3.1.1979 to 3.5.1983 as a Literate Khalasi should not have been summarily thrown out of employment due to the whims of his superior officer.

3. Shri S.R. Barlinge, learned counsel for the respondents submitted that the applicant was working as a Casual Labourer daily wages in August 1983 having been reverted to that position in May 1983 as he was found unfit to be continued in employment on monthly salary from 3.5.1983. As a Casual Labourer he had no right to continue in employment. He had absented himself unauthorisedly after 11-8-83 for a long period. He had addressed a letter dated 18-4-1987 to the Standing Counsel for the Railways, Shri Rege admitting that he had submitted false letters to show that he had wantonly been kept out of work by his superiors, though he had absented himself from duty on his own. On this ground itself, the applicant did not deserve any relief, because a person who seeks justice must come with clean hands. Moreover, even in his application, he had made baseless allegations against his superior officer which showed that he was an irresponsible person who was not entitled to any relief.

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4. We have considered the rival contentions carefully. This is a case in which even the basic facts are the subject of controversy. We have referred to the letter said to have been written by the applicant to the railway counsel, Shri Rege. Shri Momin denies that any such letter was written. The respondents have categorically denied the allegations of the applicant that he was harassed because he did not submit to the wishes of his immediate superior. The applicant contends that he was kept out of employment after August'83 by the respondents for no fault of his. The respondents' in their reply have asserted that the applicant had unauthorisedly stayed away from duty after 11-8-1983. On a consideration of all the material before us we are not inclined to place much reliance on the word of the applicant. It is difficult for us to hold that the letter said to have been written by the applicant to Shri Rege and attached as an enclosure to the reply of the respondents filed before us is a fabrication. Even if some officials of the respondents ~~were~~ ^{could be} prejudiced against the applicant, we do not think we should disbelieve their Counsel. In that letter the applicant has admitted that he has fabricated letters to blame the respondents. We are also unable to accept the applicant's word without any supporting evidence that he was deliberately prevented from joining duty by the respondents after August'83. This being so and the applicant not having reported for duty from August'83 till the present application was filed in March 1986, we do not see how he can draw support from judgements of the Supreme Court. These decisions refer to persons who were initially employed as Casual Labourers or as temporary employees for long periods without regularisation but not to persons who absented themselves from duty for long periods on their own. When the applicant himself stayed away from duty for over 2 years, he cannot claim temporary status merely because he had worked as a casual labourer prior to such absence. On the other hand, ~~merely because~~ ^{merely because} the letter dated 18-4-87 addressed by the applicant to Shri Rege learned Advocate, the genuineness of which we have no reason to doubt, does indeed support the contention of the learned counsel for the respondents that the applicant has not approached the Court with clean hands and therefore does not deserve any sympathy.

5. In view of the above, we do not see any merit in this application. We therefore dismiss this application. But in the circumstances of the case, we direct the parties to bear their own cost.

B.C.Gadgil
(B.C.Gadgil)
Vice-Chairman.

P.Srinivasan
(P.Srinivasan)
Member (A).