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

Original Application No.466/89.

Shri R.R.Nishad. ... Applicant.

V/s.

Divisional Railway Manager,
Central Railway,B
Bombay V.T. ... Respondent.

Coram: Hon'ble Member(A), Shri M.Y.Priolkar,
Hon'ble Member(J), Shri T.C.Reddy.

Appearances:-

Applicant by Mr.L.M.Nerlekar,
Respondents by Mr.J.G.Sawant.

JUDGMENT:-

(Per Shri T.C.Reddy, Member(J)) Dated: 19-3-1991.

The applicant herein is a casual labourer in the Railways. He has filed the present application under section 19 of the Administrative Tribunals Act, 1985 on 5.7.1987 for the reliefs viz. (1) to direct the respondent Divisional Railway Manager, Central Railway, Bombay V.T. to reinstate him in the post held by the applicant as Casual Labourer with full back wages and continuity of service. (2) to award him damages for illegally keeping him out of employment without following the procedures due at law.

2. The facts giving rise to this application in brief may be stated as follows:- The applicant was employed as Khalasi as daily rated casual labourer on 21.9.1987 by the Central Railway for a period of 3 months in terms of the respondents sanctioned letter dt.1.9.1987.

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The applicant attended work for little over 2 months and did not attend work from 27.11.1987 to 6.12.1987. The applicant was again engaged on 7.12.1987 to 31.1.1988 by the Central Railway.

3. From 1.2.1988, it is contended by the applicant, that he was not engaged by the Central Railways and as such it must be deemed that his services were terminated by the respondents. So he has filed the present application for the above said reliefs as already pointed out.

4. The respondents in their reply maintain (1) that the applicant has not exhausted all the remedies available to him before approaching this Tribunal. (2) that the filing of the present application is barred by limitation (3) that this Tribunal does not have jurisdiction to entertain this application so it is contended on behalf of the respondents that this application is liable to be dismissed on the said grounds.

5. It is pleaded by the applicant that he sent representations to the Chief Catering Inspector, Central Railway, Bombay on 15.2.1988, 1.7.1988 and 1.9.1988 so as to inform him as to why the applicant was not employed and that he might be given a chance to work. Copies of the representations said to have been sent to the said Catering Inspector are appended to the paper book. On the other hand it is the contention of the counsel for the respondents that the said representations were never received by the said Catering Inspector and that there is

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no proof also by way of postal receipt or otherwise as the applicant having sent the said representations to the said Catering Inspector and that the applicant has directly approached this Tribunal without exhausting the departmental remedies, and so this application is liable to be dismissed. Even though there is no proof to show that the said representations on the said dates viz. 15.2.1988, 1.7.1988 and 1.9.1988 were sent by the applicant to the concerned Chief Catering Inspector, we do not intend to deny to the applicant the opportunity of hearing this application, as this is a case, where the applicant without being retrenched, is denied engagement by the Railway authorities and as there is violation of right of the applicant to work and as there is every need for the issue of an appropriate direction as relief against infringement of his right.

6. The next point contended by the learned counsel for the respondent is that the applicant has not approached this Tribunal within the limitation period as prescribed under section 21 of the Administrative Tribunals Act and so the filing of the present application is barred by time and hence the application is liable to be dismissed. There appears to be delay of less than 6 months in filing this application by the applicant before this Tribunal. As seen there is no enormous delay in filing this application by the applicant, so as to attribute any negligence to the applicant as to disentitle him the relief that is prayed for by him.

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So we condone the said delay in filing this application by the applicant and hold that this application is in time.

7. It is the contention of the learned counsel for the respondent that the applicant should have pursued his remedy before the Industrial Tribunal, which Industrial Tribunal alone had jurisdiction to entertain this application and grant relief to the applicant and that this Tribunal has no jurisdiction to entertain the matter and hence this application is liable to be dismissed. In A.Padmavalley etc. etc. v. C.P.W.D. - 1991(1) SLR 145 a full bench of CAT has held as follows:— "The first question is whether the term 'service matter' contained in Section 14(1) covers matters provided not only in the service rules but also matters provided under the I.D.Act. Section 3(q) of the A.T.Act which defines the term 'service matter' has already been extracted above. It provides that service matters means all matters relating to conditions of service and any other matter whatsoever. In view of this very wide definition of service matter, it follows that there can be no dispute that the expression service matters covers not only matters provided for in the service rules, but also matters provided for in other laws and statutes including the I.D. Act. The observations made by the Full Bench in Sisodia's case in this regard cannot therefore, be disputed. It follows that service matters must encompass not only matters provided for under service rules but matters provided under other laws, like the I.D. Act." Again at page 251 it has

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laid down as follows:

> "A resume of the above decisions would go to establish that administrative authorities also are required to act fairly and in accordance with the principal of natural justice when determining rights of parties. If the authority acts contrary to law or the statute, the action of the authority can be set aside by the superior courts, exercising jurisdiction under Article 226 of the Constitution of India. Alternatively, it is open to the employee to plead violation of Article 14 of the Constitution and thereby seeks redress without approaching the Industrial Tribunal for a adjudication of rights vested under the provisions of the I.D. Act. The decisions relied upon by the learned Standing Counsel for the Central Government, Sri Madan Mohan Rao do not militate against the view that if an order of termination is passed in violation of statutory requirement, it cannot be declared invalid or a nullity. None of the decisions cited namely Premier Automobiles or Rohtas Industries case or Basant Kumar's case or the Full Bench of the Patna High Court rendered in Dinesh Prasad v. State of Bihar, lay down that where an employer has terminated the services of an employee contravening the statutory requirements contained in the I.D. Act, the High Courts cannot interfere under Article 226 of the Constitution. It has nowhere been held that the High Court cannot declare the act or the order sought to be impugned either a nullity or as invalid and to direct reinstatement in the case of termination from service."

It is the case of the applicant herein that he is very much discriminated against, in comparison with similar other employees who are his juniors and that are promoted and that he had been denied engagement by the Railways without any reason, whatsoever, even though he has right to be engaged. So in view of the facts of this case and in view of the "observations" made in the above said Judgement there cannot be any doubt

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about the fact that this Tribunal has jurisdiction to entertain this application. So accordingly we hold that this Tribunal has jurisdiction to entertain this application.

8. As seen from the reply of the respondents it is clear that the applicant had been employed as casual labourer by the respondents and that he had worked for about 2 months from 1.9.1987 onwards and that he was again engaged from 7.12.1987 till 31.1.1988. The fact that the casual labourers also come within the definition of 'workman' as contemplated under section 2(s) of the Industrial Tribunals Act is not in dispute in this case. This is a case where the services of the applicant are not terminated. It is so because in the reply of the respondents it is pleaded that he will be considered for employment along with others of his class according to his turn. It is also pleaded that casual labourers are employed as per requirement according to their seniority and turn and applicant also will be considered as per his turn. So this appears to be a clear case where the applicant is denied engagement w.e.f. 1.2.1988 even though his services are not terminated. The learned counsel appearing for the applicant cited a decision reported in 1988(1) CLR - 39 where it is laid down "even in case of abandonment of service, employer has to give notice to workman calling upon him to resume duty and also to hold inquiry before terminating his service on that ground."

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As already pointed out this is not a case where the services of the applicant are terminated by the respondent. Even though the applicant had not reported for duty as contended by the respondent from 1.2.1988 the applicant must be presumed to be in service even by today. As it has to be inferred in law that the applicant is in service, providing no work to the applicant by denial of engagement, is certainly bad in law. So it would be fit and proper to give an appropriate direction to the respondent to engage the applicant as the services of the applicant are not terminated with a view to provide him work. As already pointed out it is the contention of the learned counsel for the applicant that the applicant is entitled for all back wages from 1.2.1988 and also compensation. To support his plea that applicant is entitled for back wages the learned counsel for the applicant relied on the very same Bombay Judgment referred to above wherein the Bombay High Court after directing the respondent Company therein to reinstate the petitioner workman in service also awarded full back wages from that date. The petitioner referred to in the said decision had been retrenched. The facts of the said Bombay decision will go to show that retrenched workman had worked for about 6 or 7 years in the respondent Company. But with regard to the case on hand the applicant has worked only for a few months So the said decision does not apply to the facts of this case.

9. The learned counsel for the applicant relied on some other decisions in support of this plea that the

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applicant is entitled for full back wages w.e.f. 1.2.1988. We have gone through the said decisions and the said decisions are not on the point and do not apply to the facts of this case.

10. It is possible from 1.2.1988 the applicant might have been gainfully employed elsewhere. So it may not be fit and proper to award any back wages to the applicant in this case. Besides, having regard to the nature of engagement of the applicant in the capacity of Casual Labour, we do not consider it proper to award back wages as prayed for by the applicant w.e.f. 1.2.1988. Hence the claim of the applicant for the back wages and also with regard to damages for allegedly keeping him out of employment is liable to be rejected.

11. In the result we hereby direct the respondents to engage the applicant forthwith in the capacity in which he was engaged prior to 1.2.1988 without detriment to his seniority if any. The claim for payment of back wages and compensation and damages is hereby disallowed. The parties shall bear their own costs of this application. This application is ordered accordingly.

(T.C.REDDY)
MEMBER(J)

(M.Y.PRIOLKAR)
MEMBER (A).