

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL  
BOMBAY BENCH, 'GULESTAN' BUILDING NO.6  
PRESOCOT ROAD, MUMBAI-1

O.A. No. 216 of 1996

DATED : THIS 1<sup>st</sup> DAY OF August 1996

Coram: Hon. Shri B S Hegde, Member (J)  
Hon. Shri P P Srivastava, Member (A)

Irshad Ahmed

..Applicant

V/s.

Union of India & Ors.

..Respondents

O R D E R

Heard Mr. G.S. Walia, counsel for the Applicant and Mr. V.S. Masurkar, counsel for the Respondents.

2. The applicant is challenging in this O.A. the impugned order passed by the respondents dated 16.2.96 without following due process of law. He has also prayed for interim direction, pending disposal of the O.A. the respondents be restrained from terminating the services of the applicant. On the basis of the submission made by the Ld. Counsel for the Applicant, the Tribunal vide its order dated 4.3.96 granted interim relief till 25.3.96 and the respondents have filed their reply on 17.6.96 and the applicant had sought time for filing rejoinder and the rejoinder was filed on 15.7.96. Accordingly the interim order continued till to-day.

3. The matter came up for admission and for vacation of interim relief on 30.7.96. The contention of the Ld. Counsel for the applicant is as per the letter issued by the Respondents dated 20.11.1995 the applicant has been appointed as substitute Khalashi in the scale Rs.750-940 and DA as admissible under the rules. He had passed his medical fitness examination in B one category and he has completed all the

*IRV*

pre-appointment formalities of recruitment and is granted lien which is maintained in Carshed Unit. He also draws our attention to the impugned notice issued by the Respondents vide letter dated 16.2.96 wherein it is stated that on a detailed investigation it has come to light that no such letter was issued from Headquarter Officer, Western Railway, Churchgate, nor the Competent Authority & General Manager has approved the engagement as a substitute as per extant letter rules. Since the very basis of engagement is forged and a fake document the engagement offered is treated as cancelled and services terminated. Accordingly the applicant has been directed to furnish his written explanation to the above charge within 8 days from service of the show cause notice. Against this the applicant has filed this O.A. The contention of the Ld. Counsel for the applicant is that since the applicant has a lien in Carshed Unit his services cannot be terminated without due compliance of the procedure laid down under the Disciplinary and Appeal Rules 1968. In support of his contention he cited decisions of the Supreme Court in HARIBANS MISRA & ORS Vs. RAILWAY BOARD & ORS, 1989 SCC (L&S) 273 and J.C.YADAV & ORS Vs. STATE OF HARYANA & ORS, 1990 SCC (L&S) 218. In the first case it has been explained that lien can be for a person appointed on permanent basis and not on ad hoc basis and lien is to a post etc. Therefore, the respondents cannot resort to back door method in terminating the services of the applicant without following the due process established by law.

62

4. On the otherhand the Ld. Counsel for the Respondents Mr. V S Masurkar, draws our attention to the letter dated 16.2.96 and submits that it is only a show cause notice issued by the respondents and only on the basis of the reply from the applicant further action has to be taken. The applicant has not exhausted the statutory remedy as required under Administrative Tribunals Act. Thus the application filed by the applicant is premature. Further, he submitted that the applicant has been appointed as Substitute Khalashi vide order dated 20.11.95 i.e., only four months prior to the show cause notice and therefore such an employee who is not granted temporary status is not entitled for any protection except the principles of Natural Justice. Therefore, the applicant has no cause of action and the application is required to be dismissed.

5. The Ld. Counsel for the respondents draws our attention to para 2511 of the Indian Railway Establishment Mannual and submits that for granting ~~rights and privileges as temporary~~ the casual labour has to put in six months continuous service. The rights and privileges admissible to such labour include the benefits of Discipline and Appeal Rules. Their service, prior to the date of completion of six months continuous service will not, however, count for any purposes like reckoning of retirement benefits, seniority etc., and such casual labourers will be allowed to carry forward the leave at their credit to the new post on absorption in regular service. During the course of hearing the Ld. Counsel for the Respondents draws our attention to the alleged appointment letter

*ABJ*

issued by the respondents, wherein it clearly states that he will be granted temporary status on completion of 120 days continuous service as per the extant rules. Proposal for temporary status after completion of 120 days service may be sent to this office. The Ld. Counsel submits that since the applicant has not completed 120 days of service, the question of granting any lien or temporary status does not arise.

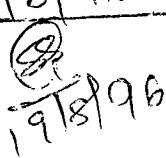
6. Heard the rival contentions of the parties and for the reasons stated above the Interim Order passed on 4.3.1996 is liable to be vacated and accordingly the Interim Order is hereby vacated.

7. In the facts and circumstances of the case the O.A. is admitted.

8. List the case before the Registrar on 11-9-96 for completion of pleadings and thereafter list the case in sine die list.

  
(P.P. Srivastava)  
Member (A)

  
(B.S. Hegde)  
Member (J)

dt. 18/9/96  
Order / Judgment pronounced  
to A. 13/8/96 Plaintiff (s)  
on 13/8/96  
  
19/8/96