

FORM NO. 21

(See rule 114)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,BENCH

QA/TA/RA/CP/MA/PT 262/90 of 20.....

Assistant Engineer

Versus

U.D.-9

Applicant(S)

Respondent(S)

INDEX SHEET

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Certified that the file is complete in all respects

B.C. file

needed to destroy

Signature of S.O.

Signature of Deal. Hand

Amrit
20/6/93

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Date of Filing 21/8
Date of Re 21/8
Deputy Registrar (S)

Registration No. 262 of 1989 Q.C. 21/8

APPLICANT(S) Assistant Engineer II N. Rly. Charbagh LKO.
RESPONDENT(S) Central Govt. Industrial Tribunal Kanpur Posis
over by Argundev.

Particulars to be examined	Endorsement as to result of examination
1. Is the appeal competent ?	yes
2. a) Is the application in the prescribed form ?	yes
b) Is the application in paper book form ?	yes
c) Have six complete sets of the application been filed ?	yes
3. a) Is the appeal in time ?	yes
b) If not, by how many days it is beyond time ?	N. A.
c) Has sufficient cause for not making the application in time, been filed ?	yes
4. Has the document of authorisation Vakalatnama been filed ?	yes A. P. Govt. Cou
5. Is the application accompanied by B.D./Postal Order for Rs.50/-	yes
6. Has the certified copy/copies of the order(s) against which the application is made been filed ?	yes
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed ?	yes
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly ?	yes
c) Are the documents referred to in (a) above neatly typed in double space ?	yes
8. Has the index of documents been filed and paging done properly ?	yes
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application ?	yes
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal ?	No

	<u>Particulars to be Examined</u>	<u>Endorsement as to result of examination</u>
11.	Are the application/duplicate copy/spare copies signed ?	yes
12.	Are extra copies of the application with Annexures filed ?	No
	a) Identical with the Original ?	yes
	b) Defective ?	x
	c) Wanting in Annexures	
	Nos. _____ pages Nos. _____ ?	
13.	Have the file size envelopes bearing full addresses of the respondents been filed ?	N.A.
14.	Are the given address the registered address ?	yes
15.	Do the names of the parties stated in the copies tally with those indicated in the application ?	yes
16.	Are the translations certified to be true or supported by an Affidavit affirming that they are true ?	yes
17.	Are the facts of the case mentioned in item no. 6 of the application ?	yes
	a) Concise ?	
	b) Under distinct heads ?	
	c) Numbered consecutively ?	
	d) Typed in double space on one side of the paper ?	yes
18.	Have the particulars for interim order prayed for indicated with reasons ?	yes
19.	Whether all the remedies have been exhausted.	yes

dinesh/

dinesh

22/8

Applicant to
mention his
name in full
with particulars
of the case
23/8

fix 8.10
before
plea
for
9/11/21/99

Bindit?

26/10/90 (D)

12

8.10.90

No sitting Adt to 23.10.90

23.10.90

No sitting Adt to ~~22~~ 23.11.90

(D)

7.11.90

Hon. Mr.

Hon. Mr. M.Y. Prakhar A.M.

P.K. Agarwal J.M.

Due to resolution of Bar
Association case is adj. to
9.11.90

9.11.90 Hon Mr M.Y. Prakhar, A.M. (D)
Now Mr P.K. Agarwal, J.M. B.O.C.

Heard Shri Rajan Bhargava for Appellant.

Issue notice to the cause
as to why the petition be not
admitted

The learned counsel prays for some
time to implead Union of India as
a party. It is a necessary party.
Therefore, put up this case as
soon as the application for
implementation of Union of
India is made.

J

De
J.M.

69
A.M.

12.1990

Hon'ble Mr. Justice K.Nath, V.C.
Hon'ble Mr. K.Obayya, A.M.

AB

Heard the learned counsel.

ADMIT.

Issue notice to respondents to file a ~~for~~ reply within four weeks to which the applicant may file a rejoinder within two weeks thereafter.

In the matter of interim relief list for ~~then the operation of~~ orders on 09.1.91. Till ~~the~~ the order dated 21.8.89, Annexure-I shall remain stayed.

Sd/

Sd/

A.M.

V.C.

Sd/

~~REMARKS~~

Notices

Issued

8/

12-12-90

9-1-91 Hon'ble DK Agreed, Sd/
 Hon'ble K.Obayya, Sd/OK

Shri Arjun Bhadra for
 applicant - Sd/RB.

Sanction for O.P.N. 3.
 no work to be filed
 court. Allowed.

Court may be filed
 within 6 weeks. Report
 within 2 weeks thereafter
 last before DR on
 11-4-91 for completion
 of pleadings.

Interim order shall
 hold good till further
 orders.

SD/
 A.M.

De
 Tom

Notice of O.P.N.
 has been seth
 with postal remittance
 incomplete add.

4c for the
 has ~~not~~ incorporated
 amendment:

S. F.O.

L
 7/1

O.A. 262/90

17.9.91

D.R.

Both the parties
are present today.

Applicant to file

Rejoinder by

31/10/91. ✓
17.9.91

31.10.91

D.R.

Sri B.D. Tewari

Department is present.

No appears for the
applicant. Applicant
to file Rejoinder

by 20/1/92. ✓

20.1.92

D.R.

counsel for the

Respondent is present.

Applicant to file Rejoin-
der by 4/2/92

28-5-92

Hon. Justice U.C.S, VC
to R.B. Gorde, A.M

07/26/90

AS

Time to file rejoinder
within 3 weeks is granted.
Not for hearing on 24.7.92

8
AM.

W
VC

9

24.7.92

No Siling of D.B. adj'd
9-9-92

d

9.9.92

No Siling of D.B.
adj'm'tg 28.10.92

d

Due to autumn
vacation case

is shifted on

8.1.93.

S.F. of
No.R.P.
filed.
S.F.H
SIIAB

8.1.93

Case sent reached off
22.3.2.93

Boe

6N

no R.P.H

S.F.H

copy

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH
LUCKNOW

D.A. NO. 262 of 90 199 (L)

T.A. NO. 199 (TL)

Date of Decession 3.2.93

Assistant Engineer IL-Northern petitioner.
Railway, Lucknow

Advocate for the
Petitioner(s)

V E R S U S

Central Government: Industrial respondent
Examining tribunal & others

Advocate for the
Respondents

C O R A M

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

1. Whether Reporter of local papers may be allowed to see the Judgment ?
2. To be referred to the reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether to be circulated to other benches ?

U
Vice-Chairman / Member

CENTRAL ADMINISTRATIVE TRIBUNAL LUCKNOW BENCH LUCKNOW

Original Application No. 262 of 1990 (L)

Versus

Hon'ble Mr. Justice U.C.Srivastava, V.C.

Hon'ble Mr. K. Obayya, Member (A)

(By Hon'ble Mr. Justice U.C.Srivastava, VC)

The applicant was respondent before the Industrial and Labour Court, ~~has~~ challenged the award passed by the Labour Court directing the re-instatement of Shiv Parson and awarding ~~to~~ back wages. The order has been challenged on the ground that the witness itself ~~was~~ died and the services of Shiv parson was never terminated and as such there was no question of re-instanting his services and directing the back wages. The Union submitted a charter of demand for alleged workmen said to be working, whose services were terminated on 15.10.1972. It appears from the basis of Charter of demand a reference was made by the Central Government to the Labour Court regarding the unjust format, terminating the services of Shiv Parson without mentioning the date as to when his services were terminated. According to the applicant that Siv Parson never worked at Barabanki and no termination order issued from Barabanki and that's why the reply was filed on 18.4.1985 to the Charter of demand in which it was stated that he may be directed to file the complete proof about his place of working. The matter was before the conciliation officer and as the parties could not sit ⁱⁿ to the matter. Consequently, the matter was referred to Central Government and the

Contd., 2/-

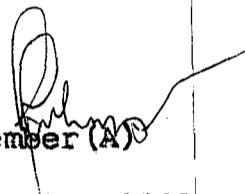
Central Government made a reference to the Labour Court and before the labour court, pleadings were exchanged and objections were raised, but the labour court after taking into consideration whatever evidence before it was passed a particular order.

2. Sri Arjun Bhargava learned counsel for the applicant contended that the services of Shiv Parson were never terminated and as a matter of fact, he was in ^{any} different unit and even if he has worked in any different unit and this unit he never worked. According to the applicant the medical memo was returned by him. Only after medical examination and other proceedings, he could have been regularised. The tribunal it appears did not confined itself to the year 1972-74. According to the tribunal, the said Shiv Parson continued to work upto 23.4.1982 and he was sent for medical examination with a medical memo, was signed by the attesting authority who was asked to go back to Assistant Engineer that is the applicant for obtaining the signature of proper authority. The medical memo was delivered to the workmen, thereafter, he was not given any duty and the allegation was that the person junior to him was retained in service while he was not given any duty. From the evidence, the tribunal came to conclusion as a matter of fact that Shiv Parson did work. Of course, Shiv Parson was never made a regular employee and he was sent for medical examination it is not true, if he worked for more than 240 days and after medical examination he could have attained the status but it appears that such stage never reached and that's why in this perspective observation was made by the court. As a matter of fact the award which should have been read as the said Shiv Parson will now be taken back in service as the juniors continued to remain in service and his case for further benefits after giving him medical examination is to be given and as such the application is allowed

AS

:: 3 ::

allowed to the extent and the award will now be read as the Said Shiv Parson will be taken back in service and will be deemed as if he was continued in service and only sent for medical examination for absorption of regular vacancy in scheduled caste quota and if found medically fit he may be given the same in case, no senior person if still waiting , but as he has not worked and he is also responsible for the same he will not be awarded back wages. No order as to Costs.


Member (A)


Vice-Chairman

Lucknow Dated: 3.2.1993.

(RKA)

For the Central Maritime Tribunal
Circuit Bench Mumbai.

Registration No 262 of 1990 (C)

Assistant Engineer P. R. B. Mishra
Northern Railway Mumbai Appellant

VS.
Central Maritime Industrial Tribunal
+ d/s. Off Part

8/10/90 f.A.

In the Central Administrative Tribunal,

Circuit Bench Lucknow.

O. A. No. 262 of 1990 (L)

Central Administrative Tribunal

Circuit Bench, Lucknow

Date of Filing ... 21/8

Date of Receipt by Post ...

21/8
Deputy Registrar(J)

Assistant Engineer II

Northern Railway Charbagh Lucknow.

21/8
21/8

..... Applicant

Versus

1. Central Govt. Industrial Tribunal

Kanpur Presided over by Shri Arjun

Dev.

2. Shri B. D. Tewari

Zonal Working President,

Uttar Pradesh Karamchari Union,

96/196 Roshan Bazaz Lane Ganeshganj,

Lucknow.

3. Shiv Parson son of Shri Dukarey

resident of Village Dakhina, Sheikhpur

P. S. Mohanlalganj, District Lucknow.

4. Union of India through Secretary
Ministry of Labour - New Delhi

..... Opp. Parties

Details of Application:

1. Particulars of the order Order dated 21.8.1989
against which application passed by Opposite party
is made: No. 1, a copy of which
is filed as Annexure No.1
to the application.

21/8

Assistant Engineer/II
Northern Railway, Lucknow

2. Jurisdiction of the Tribunal:

The applicant declares that the subject matter of the order against which the redressal is sought, is within the jurisdiction of the Tribunal.

3. Limitation:

The applicant declares that the application is within the limitation period prescribed in Section 21 of the Administrative Tribunal Act.

4. Facts of the Case:

4. 1. That by way of instant application, the applicant seeks to challenge the validity of the order ^{Quoted} dated 21.8.1989 passed by the opposite party No.1 therein answering a reference issued by the Central Government vide its notification No. L- 4012/54/85-D.II(B) dated 4th. November 1986 in favour of Respondent No.3 alleged employee under the administration of Northern Railway/Union of India. A true copy of reference dated 4.11.1986 is annexed to the application as ANNEXURE No. A-2.

4. 2. That the circumstances under which the reference was notified by the Central Government

* arises out of the following facts:-

(a) That on 15.1.'85 opposite party no.2 submitted a charter of demand before the A.L.C. (Central) purporting to be one for the alleged workmen Sheo Parson (Opposite Party No.3) ^{be} said to working under the applicant and his services having been terminated on 15.10.'72. A copy of the said charter of demand dated 15.1.1985 is annexed to this application as ANNEXURE NO. A-3.

(b) That through letter dated 13.3.'85, the applicant submitted before the ALC (Central) Dehradun, to whom the charter of demand stood transferred, that in view of the charter of demand being incomplete in as much as it did not reveal the unit at which the opposite party No.3 is alleged to have worked, no reply can be submitted to the charter of demand. A true copy of the letter dated 13.3.1985 is annexed to this application as ANNEXURE No. A-4.

(c) That on 14.3.'85, it appears that the opposite party no.2 revealed that Sheo Parson (Opposite party no.3) had allegedly worked under F.W.I Barabanki and as such on the basis

of this information the record at Barabanki was checked and it was found that he (opposite party No. 3) never worked at Barabanki nor any termination order was issued at Barabanki and consequently a reply was filed on 18.4.'85 to the said Charter of Demand of which a copy is annexed to this application as ANNEXURE No. A-5. It was also stated in the said reply dated 18.4.'85 that the opposite party No. 2 be directed to file concrete proof about the place of working of opposite party No. 3 etc.

(d) That the A.L.C. (Central) Dehradun recorded failure of conciliation proceedings and intimated the same to the Secretary Ministry of Labour New Delhi vide its No. D8(23)/85 ALC dated 17.9.'85, a copy of which is annexed to this application as ANNEXURE No. A-6

(e) That vide letter No. L-41012/54/86-DII(b) dated 4.11.'86 the Ministry of Labour Delhi created an Industrial Dispute and referred the same to C.G.I.T. for adjudication. The dispute referred in the said letter was as under:-
"Whether the Assistant Engineer II Northern Railway Charbagh Lucknow is justified in terminating the service of Shri Sheo Parson working under PWI Barabanki. If not to what relief Shri Sheo Parson is entitled and from what date."

A true copy of the said letter dated 4.11.86
is annexed to this application as ANNEXURE NO.

A-2.

4.3: That the opposite party No. 2 submitted claim petition dated 16.1.87 on behalf of Shri Sheo Parson before the opposite party No. 1, a true copy of which is annexed to this application as ANNEXURE NO. A-7.

It is relevant to state that the claim statement dated 16.1.87 was totally different to the Charter of Demand dated 15.1.85 (Annexure No. A-3) which formed the basis of reference sent by Ministry of Labour Govt. of India for adjudication.

4.4: That on 21.8.87 objections to the claim statement dated 16.1.87 (Annexure No. A-7) were preferred before the opposite party No. 1. A true copy of the said objections dated 21.8.87 is annexed to this application as ANNEXURE NO. A-8.

4.5: That a rejoinder to the objections was filed by the opposite party No. 2 on behalf of Sheo Parson (opposite party No. 3) A true copy of the said rejoinder is annexed to this application as Annexure No. A-9.


Assistant Engineer/II
Northern Railway, Lucknow

4.6: That the opposite party No. 2 had the affidavit of opposite party No. 3 filed before the opposite party No. 1. A true copy of the said affidavit dated Ni. Feb. 1988 is annexed to this application as ANNEXURE No. A-10.

4.7: That the alleged workman opposite party no.3 was cross examined by the counsel for the applicant. A true copy of the cross examination of the opp. party No.3 dated 18.7.'88 is annexed to this application As ANNEXURE NO. A-11.

It is relevant to state that shri Sheoparson , opposite party No.3 admitted in his cross- examination that he worked at Lucknow and never worked at Barabanki. It is thus clear that the reference which was made by the Central Govt. became void and could not be proceeded further.

4.8: That on 9.8.88, the opposite party No.1 filed photostat copy of the casual card. A true copy of the said photostat copy of the casual card is annexed to this Application as ANNEXURE No. A-12. It is relevant to state that entries in the alleged casual card shows that Sheo Parson was given appointment on 14.1.'71 and worked upto 15.10.'72 which was in total contradiction to that in the claim statement showing date of appointment as allegedly 16.9.'72 and to have/worked and completed 240 dates upto 14.9.'73. Thus the photostat copy is


Assistant Engineer/II
Northern Railway, Lucknow

- 7 -

not a reliable document and cannot be read in evidence, in absence of the original casual card, which casual card, a casual worker is required to keep with him. Since there is divergence in the two statements, it is submitted that either the statement made in the claim statement dated 16.1.87 (Annexure No. A- 7) is incorrect or the photostat copy of the causal card is a fabricated document or it does not belong to the alleged Sheo Parson (opposite party No.3) which is said to be represented by opposite party No.2.

4. 9: That on 30.9.'88 an application was made before the opposite party No.1 to the effect that the reference has to be answered as it is, unless the reference is amended by the Government. Till then the reference cannot be adjudicated upon in the changed circumstances of the case. It was also stated that the casual card filed by opposite party no.2 alleging it to be that of opposite party No.3 does not bear the signature of the competent authority at the end of each period of engagement, therefore the same is unreliable. It was also stated in the said application that Shri Sheo Parson left the work at his own accord. A true copy of the said application dated 30.9.88 is annexed to this application as ANNEXURE NO. A-12A


Assistant Engineer/II
Northern Railway, Lucknow

4.10: That the opposite party No.1 in an arbitrary and illegal manner and without applying its mind passed the following order rejecting the aforesaid application dated 20.9.'88 with the cryptic order which runs as follows:-

"No force rejected "

4.11: That the opposite party No.2 made shri Sheo Parson file an affidavit dated nil Oct. '88 before the opposite party No.1. A true copy of the said affidavit dated Nil Oct. 1988 is annexed to this application as ANNEXURE NO: A-13.

It is relevant to state that the opposite party No.2 took the stand that the said shri Sheo Parson was after being put in selection against SC Quota was sent to PWI Barabanki , wherein he was not taken in employment, It is also submitted that there is a categorical denial and on the other hand admission of shri Sheo Parson (opposite party No.3) that he never worked at Barabanki but all through out worked at LUCKNOW.

4.13: That on 22.2.'89 an affidavit of shri Pyarey Lal was filed on behalf of the applicant before the opposite party No.1, which stated that Shri Sheo Parson obtained medical memo on 22.4.'82 or near about , but never returned the medical memo for correction. The said Sheo Parson also did not handover its Labour service casual card or his

service card. A true copy of the said affidavit dated 22.2.89 is annexed to this application as ANNEXURE NO. A-14.

4.13: That vide application dated 7.3.'89, a copy of page 218 of Casual Labour maintained by PWI(I) Lucknow was filed by the applicant before the opposite party No.1 showing that Sheo Parson's claim is falsified as the opposite party No.3 appearing at page 218 of the Casual Labour worked only upto 18,12.'71. A true copy of the said application along with copy of page 218 of Casual Labour maintained by PWI(I) Lucknow is annexed to this application as ANNEXURE NO. A-15.

4.14: That the opposite party No. 3 was never retrenched , as alleged by him.

4.15: That the opposite party No.1 passed the impugned award dated 21.8.1989 as contained in Annexure No. A-2 to this application, without considering the material on record and the law placed before it. Being aggrieved the award is challenged on interial the following grounds:-

G R O U N D S

A. Because the learned Opposite party No.1 has grossly erred in law in transgressing its limit in rendering the impugned award.

B. Because the learned opposite party No.1 ought not to have travelled beyond the limits of the reference in question sent to it by the Ministry of Labour New Delhi.

C. Because the impugned award rendered by opposite party No.1 suffers from gross perversity in as much as it has completely overlooked a fact that the opposite party No.3, had never worked under PWI Barabanki.

D. Because the findings, inferences and decision given by the learned opposite party No.1 in his award suffers from a gross perversity, in as much as opposite party no. 3 had never been terminated from his services, even then the learned opposite party No.1 held that his services will be deemed to have been terminated.

E. Because the learned opposite party No 1 has grossly erred in ordering the reinstatement of opposite party no.3, with past wages, whose services, as a matter of fact, had never been terminated by the applicant.

** रमेश*

Assistant Engineer/II
Northern Railway, Lucknow

F. Because the reference in question itself being bad in law, in as much as opposite party No. 2 had no authority under law to make the reference on behalf of opposite party No. 3 and, as a consequence the entire findings, inferences and the award given by learned opposite party No. 1 are without jurisdiction.

G. Because the reference in question being highly belated and barred by gross laches, it could not have been entertained by opposite party no. 1.

H. Because the learned opposite party No. 1 committed a gross error of law apparent from the record, ^{2. in omitting to consider a} ~~it being an important~~ admission of fact in claim statement dated 16.1.1987 (Annexure No. A-3 to the application) which catagorally stated that opposite party No. 3 joined services on 16.9.1972, while stating as a fact that the service of opposite party no. 3 were terminated w.e.f. 15.10.1972 in Demand Charter, the basis of reference.

I. Because the learned opposite party No. 1 acted beyond its jurisdiction, by entertaining a question of declaration of 1976 Panel for scheduled caste and non absorption of opposite party no. 3, which question as a matter of fact, was not included in the reference, the basis for the award.



J. Because the declaration of 1976 Panel for scheduled castes and non absorption of the opposite party no.3 related to a question of non appointment to a post, bot could not be termed as termination or deemed termination.

K. Because at any rate , the declaration of 1976 panel and non absorption of opposite party no.3 could not be attributed to be an action by the applicant and the learned opposite party no.1 , committed an error of law in not directing the opposite party no.2 ^{to} implead proper parties.

L. Because the proceedings held by opposite party no.1 are ipso facto void in absence of Union of India,necessary party to the matter/dispute in issue.

M- Because the impugned award is liable to be set aside.

5. Reliefs sought

In view of the facts and circumstances, the award dated 21.8.1989 rendered by the learned opposite party no.1 be quashed after summoning the record.

Any other relief or further relief to which the applicant be found entitled to , be also granted.

5. Interim order, if prayed for:

Pending final decision on the application, the applicant seeks issue of the following interim order:-

The operation of the order /award dated 21.8. 1989 (Annexure No. A-1) be stayed.

6. Details of remedy exhausted:

No other alternative remedy exists, but to approach this Tribunal.

7. Matter Not pending with any other court, etc.

The applicant declares that the matter regarding which this application has been made is not pending before any court of law or any other authority or any other bench of the Tribunal.

8. Particulars of Bank Draft/Postal Order in respect of the application fees:

1. Number of postal order B02-409273
2. Name of the issuing post office
3. Date of issue of postal order 20/8/90
4. Post office at which payable.

9. Details of Index:

An index in duplicate containing details of documents to be relied upon is enclosed.

Verification.

I, R. B. Misra

working as Assistant Engineer(II), Northern Railway Lucknow do hereby verify that the contents of paras 1 to 9 are true to my own knowledge based on information derived from record and legal advice received and that I have not suppressed any material fact-

x R. B. Misra

Place Lucknow

dated: 2/8/90

Signature of the applicant

Assistant Engineer/II
Northern Railway, Lucknow

through Cane
Arjun B. Hargava
ADR

A23

In the Central Administrative Tribunal

Circuit Bench Lucknow

Registration No. of 1990

Assisstant Engineer II, Lucknow

Applicant

Versus

Central Govt. Industrial Tribunal
and others

Opp. Parties

Details of Index.

1. Application:	1 to 14
2. Copy of award dated 21.8.1989 along with enclosing letter dated 13.9.1989 (Annex. No. A-1)	15 to 20
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6. Copy of letter dated 18.4.85	Ann. A-5 25
7. Copy of letter dt. 17.9.1985	Ann. A-6 26
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11. Copy of affidavit of O.P.No. 3 dated - Feb. 1988	Ann. A-10 32 to 35
12. Copy of cross examination of O.P.No. 3	Ann. A-11
13. Copy of application dt. 30.9.88	Ann. A-12
14. Copy of affidavit dt. Oct.88 of O.P.No. 3	Ann. A-13
15. Copy of affidavit of Shri Pyarey Lal	Ann. A-14
16. Copy of application dt. 7.6.1989 along with copy of page 218	Ann. A-15

TO BE PUBLISHED IN PART II, SECTION 3, SUB-SECTION(ii) OF THE GAZETTE OF INDIA NOT LATER THAN THE 30.9.1989)

Government of India/Bharat Sarkar
Ministry of Labour/Shram Mantralaya

A24

New Delhi, dated

10. 8. 89

NOTIFICATION

S.O. : In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award of the Central Government Industrial Tribunal, ~~Kanpur~~ as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Northern Railway, Lucknow and their workmen, which was received by the Central Government on the 1-9-1989.

1. C-2
(HARI SINGH)
DESK OFFICER

No. L-41012/54/85-D.II(B)

To

The Manager,
Government of India Press,
Mayapuri Industrial Area,
Near Rajouri Garden,
Ring Road, NEW DELHI.

Copy, with a copy of the award, forwarded to:-

- *1. The Asstt. Engineer II, Northern Railway, Charbagh, Lucknow 226 001.
- *2. Sh. B.D. Tewari, Zonal Working President, Uttar Railway Karmchari Union, 96/196, Roshan Bajaj Lane, Ganeshganj, Lucknow 226 001.
- 3. The Chief Labour Commissioner(C), New Delhi.
- 4. The Regional Labour Commissioner(C), Kanpur.

1. C-2
(HARI SINGH)
DESK OFFICER

Copy, without a copy of the award, forwarded to:-

- 1. The Presiding Officer, Central Government Industrial Tribunal, Kanpur.
- 2. The Assistant Labour Commissioner(C), Dehradun.
- 3. Ministry/Department of Railways, Estt. (IL), Railway Board, New Delhi.
- 4. I & E Division (I Wing).
- 5. Awards Folder (In favour of workmen).

1. C-2
(HARI SINGH)
DESK OFFICER

*B.Y. NEDU, D.O.B.
OMP

x 2102
Assistant Engineer/II
Northern Railway, Lucknow

Before Shri Arjan Dev Presiding Officer
Central Govt. Industrial Tribunal, Kanpur.
I.D. No. 141 of 1986

In the matter of dispute between:

Sh. B D Tewari
Zonal Working President
Uttar Railway Karamchari Union
96/196 Roshan Bajaj Lane
Ganesh Ghat, Lucknow.

And

The Assistant Engineer II
Northern Railway Charbagh
Lucknow.

Award

1. The Central Government, Ministry of Labour, vide its notification no. L-41012/54/85-D.II(B) dated 4th November, 1986, has referred the following dispute for adjudication to this Tribunal:

Whether the Assistant Engineer II Northern Railway Charbagh, Lucknow is justified in terminating the services of Shri Sheo Person working under the PWI Barabanki? If not, to what relief Shri Sheo Person is entitled and to and from what date?

2. The industrial dispute on behalf of the workmen has been raised by Shri B D Tewari, in his capacity as Zonal President, Uttar Railway Karamchari Union (hereinafter referred to as Union).

3. The case of the Union, is that the workman was a casual Khalasi under the Asstt. Eng. II N.R. Lucknow. He joined service on 15.9.72 and upto 14.9.73, the workman completed 240 days of working. In the year 1976, he was empanelled as S.C. candidate. He continued working intermittently upto 23.4.82. On 23.4.82, he was sent for medical examination to D.M.O.N.R., LKO. Since the medical memo was ^{signed} not sent by the proper attesting authority he was asked to go back to Asstt. Engg. II for obtaining signatures of the proper attesting authority. The medical memo was delivered by the workman in the office of AEN II but, thereaf he was not given any duty. The Union alleges that persons junior to the workman were retained in service while he was not given any duty. At the time of his retrenchment no notice or notice pay nor retrenchment compensation was paid to him. It there was violation of the provisions of Secs 25 F, 25G and 25I of the I.L. Act. The Union, has therefore, prayed that the workman be reinstated with full back wages and consequential benefits.

X 207
Assistant Engineer II
Northern Railway, Lucknow

4. The management ~~plead~~ while admitting the fact that the workman was sent for medical examination to D.M.O. N.R. Lucknow, against the panel of S.C. quota deny that that the workman ever returned the medical memo to the office of the AEN II Lucknow. Since, so far the workman has not been declared medically fit in its absence he is entitled to no relief. The management further ~~plead~~ that the workman joined service on 16.9.72 or completed 240 days of working upto 16.9.73. The management also denies that the workman had worked upto ~~20~~ 23.4.82. In fact there is no record that the workman ever worked in any Unit. Therefore, the question of terminating his services or payment of retrenchment compensation does not arise. According to Rule 2318 of the Indian Railway Manual, the temporary status is acquired by a workman only on the availability of a vacancy. The Quota of Scheduled Caste with AEN-II Lucknow being full, the workman cannot be given any employment. The management further plead that the reference is without jurisdiction and it is also defective.

5. In its ~~fejoinder~~, the Union has almost reiterated the same facts as stated by it in the claim statement.

6. In support of its case, the Union has filed the affidavit of the workman and a number of documents and in support of their case, the management ~~had~~ filed the affidavit of Shri Pyarey Lal Asstt. Suptd. in the office of AEN II Lucknow and a number of documents.

7. Ext. M-2, is the copy of extract from page 218 of the casual labour register maintained by PWI(I) Lucknow. It has been filed by the management with their application dt. 27.4.89. It shows that the workman joined service on 14.1.71 and worked for 265 days upto 18.12.71. The same things comes out from the copy of casual labour card filed by the Union with its application dt. 9.9.88. The only difference between the casual labour card and Ext. M-2 is that in the casual labour card entries of 1972 also appears. In 1972, he appears to have worked from 24.1.72 to 22.2.1972, 16.5.72 to 14.6.72 and 16.9.72 to 15.10.72.

8. Thus from the identical nature of evidence adduced by both the sides it comes out that the workman joined service for the first time on 14.1.72, and had completed more than 240 days of working during 1971.

9. Ann. 4 to the affidavit of the workman is the copy of medical memo dt. 23.4.82. The management has also filed its copy and it is ext. M-4. The medical memo shows that the name

of the workman appeared at serial no.15 of the approved panel of Schedules Caste candidates and that he was referred to D.M.O. Northern Ry, Lucknow for medical examination. Ann. 4 to the affidavit of the workman is ^{The} copy of letter dt.11.5.82 from the Medical Officer Railway Hospital Lucknow to AEN-II, Lucknow. The letter shows that 5 candidates including the workman who were sent for medical examination were sent back without their medical examination on the ground that the signatures of the attesting authority on their photographs were not legible. In para 7 of his affidavit dt.8.4.82, the workman has averred that the said letter of the medical officer was submitted by him in the office of the AEN-II. It was received by the dealing clerk who thereafter, did not take him on duty. Then in his cross examination at page 2, the workman has deposed that he was given medical memo on 23.4.82 by Shri Gupte AEN (II). The same was returned to him on 11.5.82 on the ground that the signature of the attesting authority on his photographs were not legible. He was asked to obtain clear and legible signature on his photographs. According to him he delivered the medical memo to Shri Pyarey Lal, who assured him that after meeting the objection, the same would be given to him. Despite the fact ^{that} he had visited Shri Pyarelal several times, Shri Pyarey Lal did not give him the medical memo.

10. The management witness Shri Pyarey Lal, was also questioned on this point. In his affidavit he has deposed that he has been working in the office of Assistant Engineer II since Sept. 1978. He has further deposed in his affidavit that the workman obtained medical memo from him on 22.4.82, or near about that date. He denied that the medical memo was ever delivered back to him by the workman. In his cross examination he has deposed that he met neither the workman nor 4 other persons, named, in annexure 5 to the affidavit of the workman came to see him. He has expressed his ignorance on the point whether or not the other 4 persons named in annexure 5 are working in Railway. According to him he did not write to D.M.O. to enquire as to why what happened ^{to} all these 5 persons who were sent for medical examination to D.M.O. He says that if these 5 persons had been found medically fit they would have approached him. He stated that he also did not inform AEN II that these five persons have not come to him. Since, these persons did not turn up to him, the question of keeping their names on the Muster Rolls did not arise.

11. To me the evidence of the management witness does not appeal to mind. There is no documentary evidence from the

side of the management that annexure 5 to the affidavit of the workman is fake document. It is a well known fact that screening is done for the purposes of absorption of casual labour in regular vacancies and if a casual labour comes out successful in the screening, he is sent for medical examination. In the circumstances, in the event of the workman having been ~~sent~~ sent back for obtaining legible signature of the attesting authority on his photograph, he would not have kept silent. He would have surely met the dealing clerk for removal of the defect. He and others would not have taken the matter lightly. Rather from the replies given by the management witness I find that there was definitely some thing wrong on the part of the management witness. But for indifferent attitude adopted by the dealing clerk such an unpleasant situation would not have arisen nor the workman would have been put to such a great inconvenience.

12. I, therefore, hold that the workman, who had worked for 265 days during 1971 was sent for medical examination for absorption in regular vacancy but on account of indifferent attitude adopted by the dealing clerk Shri Pyarey Lal of the office of the AEN-II Lucknow, he could not secure appointment in regular vacancy.

13. The case of the union is that the workman was empanelled in 1976 and it is proved from annexures III, IV and V to the affidavit of the workman. The workman in his affidavit has deposited that he worked upto 23.4.82 intermittently. The management without verification of the record in para 6 of their written statement denied that the workman joined on service on 16.9.72 or completed 240 days of working upto 16.9.73. The management has gone so far to say that there was no record with the management regarding workman's working in any Unit. But as has been seen above all these stand belied by some of the own documents of the management.

14. By means of application dt. 8.4.88, the Union summoned from the management, the casual labour register of the period 1972 to 1982. The joint inspection report filed on 9.9.88 shows that the registers of the said periods were not produced by the management for joint inspection. If record of 1971 could become available, I fail to understand why the record of the subsequent period would not become available. In the circumstance an adverse inference will have to be drawn against the management. Non giving of work after 23.4.82 for such a long period goes to show that the services of the workman were terminated w.e.f. 24.4.82. There is no evidence nor it is the case of the management that the workmen was given any notice or notice pay and paid

X 2102

retrenchment compensation. Therefore, it is a clear case of violation of sections 25 P.I.D. Act. The Union has also taken up the case, that the management also violated the provisions of section 25G I.B. Act. In the claim statement the names of those who were junior to the workman are not given. Even in the rejoinder no such names were disclosed by the Union. It was for the first time that in para 13 of his affidavit dt. 8.4.88, that the workman gave the names of two persons. Although the panel list of Scheduled Caste Candidates was made available at the time of joint inspection, it is not found in the joint inspection note that the persons named by him in his affidavit were junior to the workman.

15. — I, therefore, hold that the Union ~~as h-~~ failed to prove its case on this point.

16. Hence, from the above discussions of evidence I hold that the action of the Assistant Engineer-II, Northern Rly, Charbagh Lucknow, in terminating the services of Shri Sheo Person is not justified. He is entitled to be reinstated in service with full back wages and continuity of service. He shall be sent for medical examination for absorption in regular vacancy ~~falling~~ to Scheduled Caste quota and on his being found medically fit, he shall be given the same seniority which he would have got had he been declared medically fit in the year 1982.

17. The reference is answered accordingly.

Sd/- 21-8-89
(Arjan Dev)
Presiding Officer

Let six copies of this award be sent to the Ministry of Labour for its publication.

Sd/- 21-8-89
(Arjan Dev)



R. K. SPV - STAVA
Personnel Assistant
Central Govt. Industrial Tribunal
Chair - Labour Court - Lucknow

TRUE COPY

X *QTM*
Assistant Engineer-II
Northern Railways Lucknow

3
Bench Copy A.

In the Central Administrative
Tribunal
Delhi Bench.

OA No 27/1990.

~~Plaintiff~~ Asst. Engineer(II)

VS

Central Govt Industrial Finance
& Dev.

Annexure No 2

Government of India/Bharat Sarkar
Ministry of Labour/Shram Mantralaya

21
A30

New Delhi, the 10th November, 1986.

ORDER

No.L-41012/54/85-D.II(B) : WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of AEN/DPO, Northern Railway, Lucknow and their workmen in respect of the matters specified in the Schedule hereto annexed;

AND WHEREAS the Central Government considers it desirable to refer the said dispute for adjudication;

NOW, THEREFORE, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby refers the said dispute for adjudication to the Central Government Industrial Tribunal, Kanpur. The said Tribunal shall give its award within a period of three months.

THE SCHEDULE

"Whether the Assistant Engineer II, Northern Railway Charbagh, Lucknow is justified in terminating the services of Shri Sheo Persn working under the permanent way Inspector Barabanki? If not, to what relief Shri Sheo Persn is entitled to and from what date?"

H. C. S.
(HARI SINGH)
Deputy Officer

Copy forwarded for necessary action :-

- *1. The Presiding Officer,
Central Government Industrial Tribunal,
Kanpur.
- *2. The Assistant Engineer II,
Northern Railway, Charbagh,
Lucknow.
- *3. Shri B.D. Tewari, Zonal President,
Uttal Railway Karamchari Union,
96/196, Roshan Bajaj Lane, Ganesh Ganj,
Lucknow.

*By Registered Post

Contd.. 2.

Q.M.
Assistant Engineer/II
Northern Railway, Lucknow

DEMAND CHARTER

Where as Assistant Engineer II, Northern Railway, Lko and D.P.O., N.Railway, Lucknow terminated services of Sri Sheo Person S/o Sri Dularey workman under Ass'tt.

Engineer II, N.Rly, Lko w.e.f. 15/10/72 after working for more than 240 days from 14/1/71 onward and retained juniors to Sri Sheo Person in service in Scheduled Caste quota of Lucknow Division where-in vacancy even now exists

And

Where as this termination of Sri Sheo Person amounted to violation of S/25 F & 25/H of the I.D. Act 1947.

And

Whereas Rule 72 of the I.D. Central rules 1957 has also been violated by the officers aforementioned.

Now

Therefore this union demands that Sri Sheo person may be re-instated with back wages in scheduled caste quota and may be held senior to his erstwhile juniors.

15/1/85

B. D. Tewari
(B. D. Tewari)
Zonal President
URKU, Lko

B. D. Tewari
B. D. Tewari
Zonal President
Uttar Railway Karamchari Union
LUCKNOW.


Assistant Engineer/II
Northern Railway, Lucknow

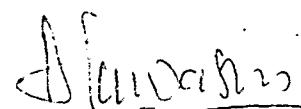
An emergent meeting of the Uttar Railway Karmachari Union was held on 13/1/85 at 17 hrs. in Gandhi Park/Lucknow under the president ship of Sri D.P. Awasthi, the following resolution was unanimously adopted.

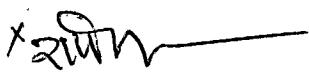
Resolution

Resolved that pro forma 'L' may be issued against Sr. Civil Engineer, N.Rly./CB/Lko, Asstt. Engineer N.Railway, Lucknow and ~~Exx~~ Sr. E&E/N.Rly/Lko for termination. ~~of~~ of the ~~Shri~~ Shri Person and

Pro forma 'L'

S/Sri Babadin ~~Y~~ Shek Pal, S/Sri B.D. Tewari, Raj Kumar Gupta, Y.D. Vashitha, D.P. Awasthi and Pervez Alam may be authorised to issue pro forma 'L& and negotiate settlement if any. Date of proposed strike may be declared as 15th March 1985.


(D.P. Awasthi)
President


Assistant Engineer/II
Northern Railway, Lucknow

Annexure No A-4

24

A33

ब्रॉडलॉ 19-A/जनरल 99 छोटा
G.L. 19-A/Genl. 99 Small

उत्तर रेलवे NORTHERN RAILWAY

No. EA/7/D-8/237/85/ Office of the AEN. II.,
A.L.C. Lucknow. Dated: 13.3.85

The Asstt. Labour Commissioner (Central),
117, Chand-er Nagar,
Dehradoon. at LKO.

Sub: ID/between the management of SEN./
DPO/N.Railway/Lucknow and URKU.Union
over alleged illegal termination of
Sri Shek Person Strike notice.

Ref: Your letter No.D/8(23)/85-ALC/dt.
4.3.1985.

Dear Sir,

Notice of strike under section 22(1) of the ID Act 1947 by the URKU Lucknow with Demand Charter in Annexure I is incomplete itself as it does not reveal the unit where the workman has worked. In the absence of the above fact it is not possible to examine the issue by the undersigned.

It is therefore requested that Union may be intimated accordingly.

Yours faithfully,

(N.C.TRIpathi)

Vkp

Assistant Engineer/II
Northern Railway, Lucknow

Annexure NO A-5

25

१९८५ ४/४/८५ १०

राज्य विवरण विभाग

A 34

राज्य विवरण विभाग

NO. EA/7/D-8(32)-85/ALC

Office of Asistt. Engrg (II)

Northern Railway,
Lucknow.

Dated 18-4-85

The Assistant ~~Engr~~ Labour Commissioner (Central),
117, Chander Nagar,
Dehradun.

Sub:-ID between the management of AEN/DPO N. Rly/Lucknow
and URKU Union over alleged illegal termination of
Sri Sheo Person-Strike Notice.

@@@

Dear Sir,

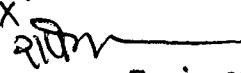
On 14-3-85 at Lucknow, it was revealed by the Union
that Sri Sheo Person has worked under Permanent Way Inspector,
Barabanki. The records whichever are available in the office
of PWI. Barabanki have been checked and it has been found
that the name of such workman does not appear in the record.

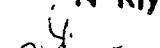
I, therefore, request you to kindly ask the Union to
furnish some authentic proof for his working unit which will
facilitate to trace the working period of the workman/. It
appears that the Union is not confident of his Unit where the
workman has worked as this fact has already been ignored
in the Demand Chart.

Yours faithfully,


(R.G. TRIVEDI)
ASSISTANT ENGINEER, II

N Rly., LUCKNOW.


Assistant Engineer/II
Northern Railway, Lucknow


18/4/85

OFFICE OF THE ASST. LABOUR COMMISSIONER(C)
117 CHANDER NAGAR, DELHI-110041.

No. DS(23)/85-ALC.

dated 17.9.85

The Secretary,
Govt. of India,
Ministry of Labour
New Delhi.

(Shri Hari Singh)
Duck Officer,

Subject:-Industrial Dispute between the management of WGN/
DNO/N.Rly LUCKNOW & Uttar Rly. Karamchuri Union
Lucknow regarding alleged illegal termination of
Shri Sheo Person-Strike Notice-FTC.

Sir,

Personal
The Zonal President of Uttar Rly. Karamchuri
Union Lucknow issued a Strike-Notice dated 15.1.85 to
the Asstt. Engineer II N.Rly and Divisional ~~Officer~~ Officer
N.Rly Lucknow proposing to call strike from 15.3.85 in
case the demand mentioned in the annexure to the strike
notice is not considered. (Copy of strike notice enclosed
as annexure 'A')

ALC. (C), Kanpur to whom a copy of the strike
notice was endorsed, held conciliation proceedings on
12.2.85 and transferred the file to ALC(C), Dehradun.
Conciliation proceedings were held by Shri T.C. Garg,
my predecessor on 14.3.85 and there after by me on
22.4.85 and 27.6.85.

On 27.6.85 the full facts of the case was
explained by the President of the union and it was decided
that a D.O. letter will be issued by me to the Divisional
Suprte. Engineer to N.Rly Lucknow to re-examine the case.

Copy of the Minutes recorded on 27.6.85, my
D.O. letter dated 28.7.85 to Shri K.L. Agarwal, D.S.E.
II N.Rly Lucknow, his interim reply dated 16.7.85 and
final reply of A.E.N. II dated 10.8.85 are enclosed as
annexures 'B', 'C', 'D' and 'E' respectively.

Final conciliation proceedings were held on
11.9.85 and a failure of conciliation was recorded as the
Rly. Administration failed to attend.

Yours faithfully,

Enclosure: As above

(G.NARAYANA SWAMY)
Asstt. Labour Commissioner(C)
Dehradun.

Copy to :-

1- The C.L.C. (C), New Delhi along with enclosures.

2- The R.L.C. (C), Kanpur -----do -----

3- The Asstt. Engineer II. Northern Rly Charbagh
Lucknow,

4- Shri B.D. Tewari, Zonal President, Uttar Railways
Karamchuri Union 96/196, Noorhan Bajaj Lane, Charkhi
Lucknow.

Assistant Engineer II
Northern Railway, Lucknow

G.Narayana Swamy
Asstt. Labour Commissioner

In the Court of Shri R.B. Srivastava
Presiding Officer,
Central Govt's Industrial Tribunal, Kanpur.

A36

Camp at Lucknow.

I.D. No. 141 of 1986.

Sheo Persan, Through URKU

Workman

VS

Northern Rly. Administration:

Employee.

Claim Statement of the workmen side:

Workmen Shri Sheo Persan S/O Dularey R/O Nakhina Shekhpur, P.S. Mehan Lal Ganj, Distt. Lucknow was a casual Khallasi under the Asstt. Engineer-II, N.Rly, Lucknow. He had joined service on 16.9.1972. He completed 240 days upto 14.9.73. He was empanelled in the year 1976 as a scheduled caste candidate. He continued working upto 23.4.82. On broken periods on 23.4.1982 he was sent for medical Examination to D.M.O., N.Rly, Lucknow. The Medical Memo was not signed by proper attesting authority. Hence he was returned back to AEW-II for signatures of the proper attesting authority. The medical memo was thereupon taken back from him and he was not given duty thereafter. Persons junior to him in appointment were retained in service while he was not given duty. No Notice, notice pay and retrenchment compensation was given to him and no reason was assigned for non-provision of duty to him. Workmen submitted several applications but to no avail. Finally Union raised I.D. in 1985 on which this reference before this hon'ble. The gr termination was made in the disregard of sections 25-F, G, and H of the I.D. Act 1947.

DEMAND OF THE UNION

Union requests that since no notice, notice pay, or retrenchment compensation were given to Sri Sheo Persan, juniors to him retained in service, and no information was given to him at the time of fresh recruitments onward, and also Rules 77/78 of the I.D. Central rules were not complied with and no reasons were assigned for non-provision of duty to him on his representations and request of this union, hence termination of Shri Sheo Persan's service may be held unjust and the workman may be reinstated on duty with full back wages and all consequent benefits.

PRAYER

It is, therefore, prayed that this hon'ble Tribunal may be pleased to order his reinstatement on duty with full back wages and consequent benefits.

Dd. 16.1.87

S/- B.D. Tewari
Zonal Working President,
Uttar Rly. Karmachari Union.

** 2/11*

Assistant Engineer/II

Northern Railway, Lucknow

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL KANPUR

I.D. No. 141/86

A37

Sheo Person V/S Northern Railway Administration.

Q3

Objections on behalf of CPs are as follows:

1. That Northern Railway Administration by self is not a legal entity, therefore, it cannot be sued. The frame of the claim is defective and the reference is liable to be rejected on this account only.
2. That the alleged has been made without determine whether the applicant acquired a temporary status by continuous working, in absence of which the reference is without jurisdiction and is to be answered in favour of the management.
3. That according to the allegations of the workman he was working under P. Way Inspector, Barabanki, the record of which the said unit does not show that any such workman was working under the said P.Way Inspector. The management required for some proof of working but the workman has failed to submit this proof. The reference has been made without considering this aspect of the matter which cuts at the root of the workman's claim.
4. That according to rule 2318 of Railway Manual, the temporary status is required only on the availability of the vacancy. The quota of the scheduled caste with Assistant Engineer (II), Lucknow was full with the scheduled caste workmen working under him. In absence of available vacancy, this workman could not be given employment as such his claim is not maintainable.
5. That it is denied that the workman by continuous working has qualified himself to claim a status.

X 2/11
 Assistant Engineer/II
 Northern Railway, Lucknow

Contd....2

6. That it is denied that workman joined his service on 16.9.1972 or completed 240 days upto 16.9.1973. It is not denied that the workman worked upto 30.4.82.

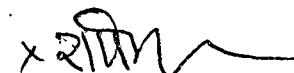
7. That it is not denied that the workman was sent for medical examination to Divl. Medical Officer, Lucknow against the panel of scheduled caste quota but it is denied that he returned the Medical Memo to the office of the Assistant Engineer (II), Lucknow. So far the workman has not been declared medically fit in absence of which he is not entitled to any relief.

That there is no record that the workman worked in any unit, the question of terminating his services or retrenchment compensation has never a reason. The workman is not entitled to any retrenchment compensation or any other claim. Moreover, there was not shortfall of scheduled caste in this Sub-division.

8. That for the reasons stated above, the reference may be answered in favour of the management dismissing the claim of the workman.

Opposite Party N. Rly Adminis-
tration through Assistant Engr.(II)
Northern Railway, Lucknow

~~Assistant Engineer (II)~~
N. Rly, Lucknow
Dated 21.10.1987



Assistant Engineer/II
Northern Railway, Lucknow

in the Court of Shri Arjun Desai
A39

Presiding Officer

Central Goots Industrial Tribunal
Kanpur (on visit to the)

I D no: 141 of 1986

Shroferson Ity h UKU -

workmen

vs.

N. Rly. Administration

Employer

Rejoinder application of the Union

In response to W.S. of the management, para
wise rejoinder of the Workmen side is as follows.

① An Industrial Dispute is raised against the
Northern Railway Administration through its
Local Manager. The Local Railway Management
may therefore be held local entity on
behalf of the Northern Railway Administration.

Ans: In 1982, On open lines, all workmen acquire
Temporary status after completing 120 days

continuous service. Present workmen
was an experienced hand and he
was sent for medical Exam in 1982.
The medical Memo was not signed by
proper authority, hence the same was

returned by DMO Lucknow for
signature of proper Railway Authority
workman was offisiate

Assistant Engineer/II
Northern Railway, Lucknow

Printed

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sent again for Medical Exam. nor was taken on duty. Thus this is a case of clear cut management not in its due process. Reference is thus accurate and justified, hence maintainable

para 3: - Proof shall be submitted before this Honble Tribunal, if management denies existence of the workman on its roll.

para 4: - Juniors have been retained while senior person who was senior, has been turned out.

para 5: - Workman was retrenched without Compliance Sections 25F and 4 of The ID Act

para 6: - Workman joined duty on 16.9.72 though he was called for Screening on 2/2/76 which is a matter on record. It is clarified on PWI - Barakanti letter no. 220 E / APO (Lc) / 50 / 225 dated 2/8/76 that he had completed more than 120 days continuous service upto that time. He completed 210 days on 16.9.72 which on record of PWI - Barakanti.

para 7: - Returned Medical Memo - Photo stat copy shall be submitted as a document in this dispute.

para 8: - The workman was not given duty which means termination of service. This termination was an illegal retrenchment.

220
Assistant Engineer/II
Northern Railway, Lucknow

It is therefore prayed that - The Tribunal which is an illegal retrenchment may be held unjust and workman may be reinstated with retrospective effect.

P. D.
B. D. F. W.
W. T. Q. President

Presiding Officer Annexure A-10

32

Central Government Industrial Tribunal

KANPUR

AU

I.D.No. 141 of 1986.

Sheo Parsan through URKU Workman

Versus

Northern Railway Administration Employer

26/5 LK

Affidavit incorporating statement
of workman.

I, Sheo Parsan S/o Dularay aged 38 years R/o
Village Sheikhpur Dakhina P.S. Mohanlalganj, district
Lucknow, do hereby depose and solemnly affirm on oath
as under : -

1. That the deponent is the workman concerned
in this case and is well aware of the facts thereof.
2. That the deponent has been working as a
Casual Labour under PWD, Lucknow since 16.9.72.
3. That he was empanelled as a gangman on
14.2.76 of which call letter of which a copy is herewith
enclosed as Annexure III to this affidavit.
4. That the deponent had already completed more
than 240 days on 14.9.73 and in the year 1976 he was
Northern Railway, Lucknow
empanelled as a Scheduled Caste candidate worker in a
selection held in 1976 specially held for completing

A/WK

shortfall of Scheduled castes in the cadre of Gangmen.

5. That the deponent continued working, with occasional short breaks in between, for one or two days only, upto 23.4.82.

6. That he was sent for Medical Examination on 23.4.82 copy of which memo is Annexure IV to this Affidavit. The DMO, N.Rly returned him back to Asstt. Engineer II on 11.5.82 with remarks that the signatures of attesting official were not legible. Photo copy of that letter is Annexure V to this affidavit.

7. That the letter of which copy is Annexure V to this Affidavit, was submitted by the deponent in the office of the Asstt. Engineer II in original. The dealing clerk received the letter but did not, therefore, take him on duty.

8. That the deponent then submitted an application to the DRM N.Rly. Lucknow on 17.11.84 through proper channel of which a Photo copy is Annexure VI to this affidavit containing remarks of Divisional Superintending Engineer I for Asstt. Engineer II " to look into the matter".

9. That a copy of the said application was also sent to the Asstt. Engineer II on 29.11.84 by the union of which a copy is herewith enclosed as Annexure VII to this affidavit.

10. That a fresh selection was also proposed to be held on 20th, 21st and 22nd October 1986 in which name of the deponent was not included. Depon-

21/11
Assistant Engineer/II
Northern Railway, Lucknow

submitted an application to the DRM Lucknow on 20.10.1986 of which a copy is Annexure VIII to this application.

11. That the letter of Asstt. Engineer II No. 18E dated 23.8.76 calling upon him to submit my working days, age certificate and Educational Qualifications etc. is being enclosed herewith as Annexure I and deponent's affidavit in support of his age is Annexure II to this affidavit. All these documents Annexures I to VIII are true copies of original documents which are genuine to the best of the knowledge and belief of the deponent.

12. That the deponent's union raised dispute in November 1986 in which conciliation proceedings were held by Asstt. Labour Commissioner-Central-Swarup Nagar Kanpur, but none from the Rly Administration appeared in the conciliation proceedings.

13. That the present reference is outcome of the same proceeding in which the Rly Administration has taken plea that no vacancy was available for engagement of the deponent. But the deponent was working in 1982 - whereafter two juniors named S/Shri Chhavi Nath and Shri Pal were taken on roll while deponent was not given duty maliciously and deliberately

14. That the deponent has throughout been approaching Rly Administration in person and through applications and through Union also. But Rly. Administration did not provide duty to him.

21/11/1986
Assistant Engineer/II
Northern Railway, Lucknow

15. That no notice, notice pay, and/or Retrenchment compensation were given to him at any time and

- 4 -

deponent's juniors were retained, fresh recruitments were made but the deponent was never informed, even on his personal approaches every month since 1982 upto 1986.

शेहो परसन

(SHEO PARSON)
Deponent

Verification

I, Sheo Parson, deponent do hereby verify that the facts as stated in this affidavit paras 1 to 14 and the documents Annexures 1 to VIII are true to the best of my knowledge and belief. Nothing material has been concealed by me. So help me God.

शेहो परसन

(SHEO PARSON)
Deponent.

Signed and sworn before me on this day of February 1988 in this Court Compound. Deponent identified by Shri

Assistant Engineer/II
Northern Railway, Lucknow

Annexure No. A-11

Ans

Copy of Cross examination of OP No. 3

Shiv Parson S/o Dularey aged about 38 years R/o

ग्राम शेषपुर दरवना पी० सस० मोहन लाल गंज, जिला लखनऊ

आज कल मजदूरी करते हैं, मैं अपने साक्ष्य में अपना शपथ-पत्र मय एक्स-1

से ० जो प्रस्तुत करता हूँ।

मैं लखनऊ में दिनांक 16.9.72 को भर्ता हुआ भर्ता होने के पश्चात मैंने पी० डब्लू -1 केसवानी के आर्थिन कार्य किया। 16.9.72 से 14.9.73

मैंने लातार लखनऊ में ही कार्य किया बाराबंकी में नहा०। 14.9.73 के

पश्चात 22.4.82 तक मैंने लखनऊ Proper में ही मैंने कार्य किया बीच

बीच में कभी कभी एक या दो दिन का ब्रेक करा दिया जाता था। मेरे

कार्यकाल में ही AEN II लखनऊ की चिट्ठी जिसकी नकल मेरे शपथ-पत्र

का एक्स-1 है ऐसी थी चिट्ठी प्राप्त होने के दो तीन दिन बाद जो

कागांत मुझसे मार्ग गये थे ऐसे हैं -। श्री दुष्टे जी के पास गये। मुझे

23.4.82 को ऐसे हैं -। श्री गुप्ता ने Medical Memo दिया था इस Memo

को लेफर मैं Dr. के पास गया है दिनांक 11.5.82 को मुझे लौटा

दिया। यह कड़कर फ़िक मेरे फोटो पर हस्ताक्षर साफ नही० है साफ हस्ताक्षर

कराकर लाऊँ इस Memo को मैंने श्री प्यारे लाल बाबू को दे दिया

उन्होंने मुझे अश्वासन दिलाया फ़िक मेरे फोटो पर साफ हस्ताक्षर करवा के

देक्के। मैं उनके पास Medical Memo लेने के लिये बराबर जाता

रहा है लेकिन उन्होंने आज तक मुझे गोड़कल में नही० लौटाया मेरे इलापा

पांव धार और अन्य आकर्षणी को भी मोड़कल मेमों दिया गया था उनकी

मेडिकल मेमो डाक्टर साटब ने लौटा दिया उन्होंने भी प्यारे लाल बाबू

को हमारे सागरे यह मैगें दिस । प्यारे लाल बाबू ने उनके मेडिकल मेमो ठीक करा दिया तथा देंदिया ॥ मेरी प्यारे लाल बाबू से कोई दुश्मनी नहीं थी उन्होंने मुझसे कोई पैसा नहीं मांगा ।

मेरा अलग से नाम भी एस०सी० के पैनल में आया था क्योंकि मैं भी एस०सी० था। इसके लिये मैंने डी०आर०एम० के यहाँ मैंने प्रार्थना पत्र दिया था जब मुझे लोगों से इस बात का बताया यह प्रार्थना पत्र मैंने डी०आर०एम० को 29. 11. 84 को दिया था फिर कहा 29. 11. 84 को मैंने डी०आर०एम० की इस बात की प्रश्नायत का प्रार्थना पत्र दिया था प्यारे लाल बाबू ने मुझे दुबारा मेडिकल मेमों सही करके नहीं दिया ।

एस०सी० का पैनल 1976 में बना था इस पैनल में अपने नाम के लिये मैंने फार्म भरा था ।

16.9.72 को जब मैं भर्ती हुआ तो मेरा बायां हाथ के अंगूठे का निशान इलियास बाबू ने एक राजस्टर में लिया था और मुझे सी०एल० का दिया था जब 23.4.82 को जब हमें मेडिकल मेमों मिला था तभी प्यारे लाल बाबू ने एस०सी० कार्ड दोगर फार्म जमा करवा लिए थे बाद में फार्म मुझे वापस कर दिए । लेकन Casual Card वापस नहीं किया मैंने इस सम्बन्ध में बाबू ने Casual Card नहीं दे रहा है मैंने किसी आधिकारी से कोई लिखकर, न जवानों प्रश्नायत की ।

रुनकर तस्वीक किया ।

हस्ताक्षर

18.7.88

Alleshia

Jack

(2)

प्रथम नियुक्ति के समय अपार्टमेंट वाला दंतचित्रक व्यौरा

Personnel Details to be filled in on first appointment

1. व्यौरा नाम (वडे व वार्ड में) *Shashi Shekhar*

Name in full (in Block letters)

2. पिता का नाम

Father's Name *Shashi Dulal*

जन्म तिथि

Date of Birth *24/07/1963*

प्रारम्भिक भागिनीति तिथि (वृत्ति के समय शायु)

Age at initial casual employment *24*

Educational Qualification

व्यक्तिगत प्रदर्शन विवर (i) *Postmark Engineering*

Personal marks of

(ii) *Badhukhankhanda*

Identification

प्रथम नियुक्ति के समय किस प्रकार को कार्य दिया गया

Nature of job on initial employment *By Order*

स्थायी पता

Permanent address *M.C. Dokhnia Shukla*

डिक्षित

Post Office

Nigeham

पारा

Mahan Lal Chauhan

सहसील

Mohan Lal Chauhan

Tehsil

Lucknow

जिला और राज्य

Lucknow

District & State

(3)

द्वितीय भागिनीति का पुरा नाम.....

Name in full of heir

Relationship

Permanent address of his

At Column no. 8

Aug

39

(4)

अनियंत्रित मजदूर के रूप में काम करने का रिकार्ड
RECORD OF SERVICE AS CASUAL LABOUR

अनियंत्रित मजदूर के रूप में काम करने का रिकार्ड
RECORD OF SERVICE AS CASUAL LABOUR

प्रारम्भिक नियुक्ति की तारीख 14-1-71
Date of initial employment

प्रारम्भिक नियुक्ति की तारीख 14-1-71
Date of initial employment

नोकरी की अवधि Period of employment	कार्य का स्वरूप Nature of assignment	प्रयोक्तक के तारीख सहित हस्ताक्षर और पदार्थ Sig. & Design. of Supr. with date
कब से From	कब तक To	
14-1-71- 2-71	30/8/1971- 14-1-71 22	प्रयोक्तक के तारीख सहित हस्ताक्षर और पदार्थ Sig. & Design. of Supr. with date
23-2-71- 15-4-71	5/10/1971- 14-1-71 30	
21-4-71- 20-5-71	24/5/1971- 26-3-71	
19-7-71- 19-7-71	28/6/1971- 23-7-71 30	
23-7-71 (24-10-71)	28/10/1971- 13-9-71 30	
5-10-71- 3-11-71	5/10/1971- 22-9-71 30	
4-11-71- 18-11-71	18/11/1971- 27-11-71 45	
14-11-71- 18-12-71	12/12/1971- 25-12-71 30	

(5)

अनियंत्रित मजदूर के रूप में काम करने का रिकार्ड
RECORD OF SERVICE AS CASUAL LABOUR

प्रारम्भिक नियुक्ति की तारीख 14-1-71
Date of initial employment

नोकरी की अवधि Period of employment	कार्य का स्वरूप Nature of assignment	प्रयोक्तक के तारीख सहित हस्ताक्षर और पदार्थ Sig. & Design. of Supr. with date
कब से From	कब तक To	
24-4-72- 22-9-72	22/9/1972- 26-3-71 32/10/1972- 27-3-72	
16-9-72- 15-10-72	15/10/1972- 27/3/72 20-2-72	
		31-3-72

४५७

40.

41
AS

Before the Central Government Industrial Tribunal
Labour Court, Ranchi

ED 141/86

Shoo Person v/s Northern Railway Administration.

Open

In the above case, it is submitted that the reference is as follows:-

"Whether the Assistant Engineer (II), Northern Railway Chakdaha, Lucknow is justified in terminating the services of Shri Shoo Person working under the Permanent Pay Inspector Kharabanki ? If not, so what relief Shri Shoo Person is entitled to and from what date?"

The reference has to be answered as it is unless the reference is amended by the Government, this Tribunal cannot not adjudicate against the same. The card filed by the applicant does not bear the signature of the competent authority at the end of the each period of engagement, therefore, the same is unverifiable. The workman was cross examined, when this document was not there. There is no stage for filing the card which shows that the applicant left work at his own accord.

It is, therefore, prayed that the present application may be rejected and cognizance made zero and in case, the court decides, a *de novo* trial then the workman should be permitted to be cross examined on this account.

D.N. Bhattacharya
D.N. Bhattacharya
Railway Advocate,
For opposite parties
Dated

X R.D.M.
Assistant Engineer/II
Northern Railway, Lucknow

30.9.86

BEFORE THE HON'BLE PRESIDING OFFICER,
CENTRAL GOVERNMENT'S INDUSTRIAL TRIBUNAL, KANPUR.

I.D. NO. 141 OF 1986

Shiv Parsan

... Workman

- Versus -

Northern Railway

Administration

... Employer

AFFIDAVIT IN SUPPORT OF DOCUMENT, CASUAL LABOUR

CARD OF THE APPLICANT IN ADDITION TO DOCUMENTS

ANNEXURES 1 TO 8

I, Shiv Parsan son of Shri Dularey, aged 30 years, resident of Village Dakhina Sheikhpur, P.S. Mohanlalganj, District Lucknow, do hereby depose and solemnly affirm on oath as under :-

1. That the deponent has submitted his Casual Labour Card before this Hon'ble Court in support of the fact that the deponent was an employee working under Assistant Engineer (II) and that he had completed more than 240 days working in the year 1972-73 where-after he worked almost continuously with short breaks of one or two days in a year, upto 23.4.82.

2. That the deponent was working under the Assistant Engineer (II) at Lucknow upto 1982 and after empanelment of his name in the short-

Assistant Engineer/II
Northern Railway, Lucknow all of S.C. quota in the year 1976, his name was included in the list of P.M.I., Faizabadi.

3. That S/Shri Chhavi Nath, Sri Pal and the deponent together with some other persons were sent for medical examination for employment under P.W.I., Barabanki, out of which Shri Chhavi Nath and Sri Pal, who were juniors to the deponent, were retained in service whereas medical memo of the deponent returned by D.M.O., Lucknow, for proper signatures of the competent authority was never returned back to the deponent by the office of the Assistant Engineer (II), Northern Railway, Lucknow, for being presented back before D.M.O., Northern Railway, Lucknow.

4. That the deponent was thus retrenched by not providing onward duty to him while his juniors afore-named were provided job under P.W.I., Northern Railway, Barabanki.

12/14/83

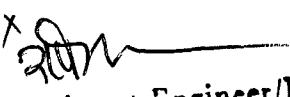
(SHIV PARSAN)

DEPONENT

VERIFICATION

I, the deponent, named above, do hereby verify that the contents of Paras 1 to 4 of this affidavit are true to my own knowledge.

Signed and verified on this day of October, 1983, at .


Assistant Engineer/II
Northern Railway, Lucknow

12/14/83

(SHIV PARSAN)

DEPONENT

44
AS3

Anneature No A 14

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNEMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR IN
CAMP AT ALLAHABAD.

ID 141 of 1986

One person v/s Northern Railway

Affidavit of Shri Pyare Lal, Assistant Supdt.

I Pyare Lal s/o M.R. Dass, Railway gr. No. II-55F, CPH Colony, Alambagh, Lucknow solemnly affirm and state as under:-

1. That the deponent is employed under Assistant Engineer (II), Lucknow since September 1978 and is acquainted with the facts deposed to below.
2. That the applicant approached the deponent and obtained Medical Memo on 22-4-82 or near about. At that time or any other time, the applicant never handed over to the deponent any Casual Labour Service Card or his Service Card. The applicant thereafter never met or contacted the deponent or returned the Medical Memo for correction.

Deponent

VERIFICATION.

I Pyare Lal verify that the above para 1 to 2 is true to my knowledge and belief.

Verified at Kanpur on 12-2-88 Deponent


Assistant Engineer/II
Northern Railway, Lucknow

BEFORE THE PRESIDING OFFICER CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL CUM LABOUR COURT, KANPUR IN
CAMP AT LUCKNOW.

ID 141 of 1986

Sheo Person v/s Northern Railway

The following is the document sought to be filed
by the OP.

1. Certified copy of Page 218 of Casual Labour Register
which is maintained. The said copy falsifies the claim
of the applicant that he worked after 18.12.71 is
false and fabricated.

That the above document or certified copy of public
document is free from suspicion and can be admitted at any
stage of the proceedings.

It is, therefore, prayed that the above document
be taken on record.

(B.N. Bhattacharya)
Railway Advocate

T
Jm

8/1
7/20

X 20/1
Assistant Engineer/II
Northern Railway, Lucknow

PAGE 218 OF CASUAL LABOUR REGISTER MAINTAINED BY PWI(I) LKO

ASS

Photograph. Name-Sri Sheo Parasam.
 Father's Name- Dularay.
 Vill-Dakhina shkh pur,
 PO-Nigohan.
 P.S.-Mohanlal Ganj.
 Distt-LKO.

DOB-6.1.50

Cast-Chamar 46519

FROM	to	No. of Days.	Sanction No.	Date	NDA
14.1.71	11.2.71	30	1897	DS-LKO	14.1.71
23.2.71	15.4.71	55	192	- do -	14.1.71
21.4.71	20.5.71	30	265	- do -	26.6.71
19.7.71	1.9.71	45	53	- do -	22.7.71
6.9.71	4.10.71	30	354	- do -	18.9.71
5.10.71	3.11.71	30	105	- do -	22.9.71
4.11.71	18.11.71	15	135	- do -	27.10.71
19.11.71	18.12.71	30	123	- do -	25.10.71

265

CERTIFIED that it is a true copy of the original entries and that such original entries are contained in the records or other documents or my administration in my possession

ASSISTANT ENGINEER, II
 N.R.R. LUCKNOW

7-3-89

X2W
 Assistant Engineer/II
 Northern Railway, Lucknow

AS6

In the Central Administrative Tribunal Circuit Bench

Lucknow.

M. P. No. 694/90 (C)

O. A. No. 10 of 1990

Assistant Engineer II

Northern Railway Charbagh Lucknow. Applicant

Versus

1. Central Government Industrial Tribunal

Kanpur Presided over by Shri Arjun Dev.

2. Shri B. D. Tewari

Zonal Working President

Uttar Pradesh Karamchari Union

96/196 Roshan Bazaz Lane, Ganseganj Lucknow.

3. Shiv Parson son of Shri Dularay

resident of Village Dakhian, Sheikhpur

P.S. Mohanlalaganj, District Lucknow

..... Opp. Parties

It is submitted by the applicant as under:-

1. That the applicant has filed the present application challenging the award passed by the opposite party No. 1 in favour of O.P. No. 3.

2. That the opposite party No. 1, after making the award sent the same to Ministry of Labour Union of India, wherefrom the dispute was referred to and the Ministry of Labour ordered the award to be published in the Gazette with a copy to the applicant.

Expt
22/11

- 2 -

3. That in the circumstances Union of India through the Ministry of Labour is thus a necessary party.
4. That the Union of India through the Ministry of Labour has been left out from being made a party to the applicant. The same can only be done by way of amendment.

It is therefore most respectfully prayed that the applicant be allowed to array Union of India through the Ministry of Labour a party to the application and to that extent the amendment may be allowed to be incorporated and the application be amended as follows:-

After party No. 3 the following be added as party no. 4.

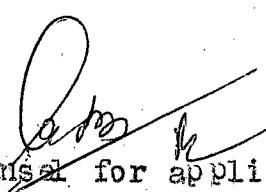
4. Union of India

through the Ministry of Labour

New Delhi.

Lucknow

dated: 11.1990

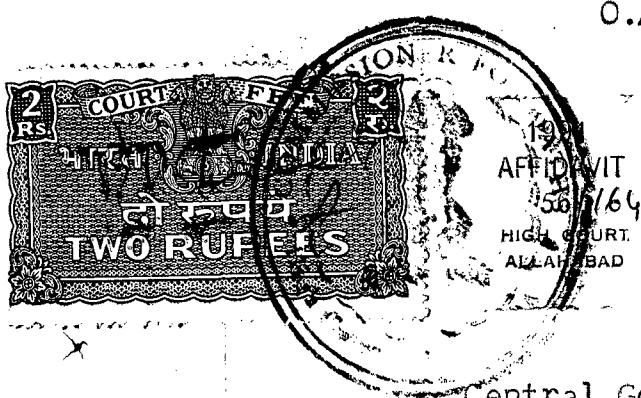

Counsel for applicant.

BEFORE THE CENTRAL ADMINISTRATIVE TRIBUNAL,

CIRCUIT BENCH, LUCKNOW.

O.A.NO.262/90/L OF 1990.

ASB



Central Governments Industrial Tribunal,

Kanpur and others

... Respondents

- Versus -

Assistant Engineer (II),

Northern Railway, Charbagh,

Lucknow.

... Applicant

COUNTER AFFIDAVIT OF RESPONDENT NO.2

I, B.D. Tewari, aged 67 years, son of Shri S.D. Tewari, Zonal Working President, Uttar Railway Karmchari Union, Lucknow, do hereby submit following facts in response to the application (Appeal) of the Assistant Engineer (II), Northern Railway, Charbagh, Lucknow, against award of Central Governments Industrial Tribunal, Kanpur, on I.D.No.141 of 1986 Shiv Parsan through Shri B.D. Tewari, Zonal Working President, Uttar Railway Karmchari Union Versus Assistant Engineer/II, Northern Railway, Charbagh, Lucknow.



Filed today
S.D.T.
11/11/91

1. That the deponent has gone through the application-cum-appeal numbered as O.S.No.262(L) of 1990 and has noted the contents carefully. He begs to submit in response thereof as noted hereunder.

B

PARAWISE REPLY :

Para 1 : Needs no reply except that the application is an appeal in disguise against award of the Central Governments Industrial Tribunal, Kanpur.

Para 2 : The jurisdiction of this Hon'ble Tribunal does not extend to appeals on awards of the Central Governments Industrial Tribuanal. Since no appeal is provided in the Industrial Disputes Act against decision of the Central Governments Industrial Tribunal and consequent Central Government Notification on Gazette, appeal can only be addressed to Hon'ble Supreme Court of India under Article 136 of the Constitution of India. Powers of this Hon'ble Tribunal under Section 19 of the Administrative Tribunal's Act do not provide right of appeal to this Hon'ble Tribunal, i.e., to listen to appeals on cases where no appeal is provided in the Industrial Disputes Act. This application (appeal) is, therefore, completely out of jurisdiction of this Hon'ble Tribunal.

Para 3 : Needs no reply.

Para 4.1 : Only reference portion of this para is correct and is admitted. Rest is denied. The applicant/appellant's this appeal in disguise of application is mis-conceived.

Para 4.2 (a) : Shri Shiv Parsan has proved by record that he was an employee of the Assistant Engineer (II), Northern Railway, Charbagh, Lucknow. The words "alleged workman" are vehemently opposed and denied.



Para 4.2 (b) : Needs no reply except that the Unit was Lucknow Sub Division controlled by the Assistant Engineer (II), Northern Railway, Lucknow; hence objection contained in Annexure A-4 was merely the intentional device for passing time.

Para 4.2 (c) : The deponent had clarified that Shri Shiv Parsan had worked under P.W.I., Northern Railway, Lucknow, and that he was empanelled under the Scheduled Caste quota and was given memo for medical examination which was found incomplete in details by the Divisional Medical Officer, Northern Railway, Lucknow. The Divisional Medical Officer, therefore, returned medical memo for examination of Shri Shiv Parsan to the applicant/appellant through Shri Shiv Parsan himself. It was also revealed by the Union representative that juniors to Shri Shiv Parsan were working under P.W.I., Northern Railway, Barabanki while Shri Shiv Parsan was not given duty and/or fresh medical examination memo after he had submitted it back to the Assistant Engineer (II), Northern Railway, Charbagh, Lucknow, on .

Para 4.2 (c), therefore, contains mis-leading information.

Para 4.2 (d) : Needs no reply.

Para 4.2 (e) : Does not require any further clarification except that the issue referred for adjudication is termination of the services of workman by Assistant Engineer (II), Northern Railway, Charbagh, Lucknow, under whom P.W.I., Northern Railway, Barabanki and P.W.I., Northern Railway, Lucknow, both of them are functioning. The panel of Scheduled Castes formed by the Assistant Engineer (II), Northern Railway,



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Charbagh, Lucknow, was meant for P.W.I., Northern Railway, Barabanki. The reference order was, therefore exactly to the point.

Para 4.3 : Submission of the claim statement by the deponent on behalf of the Union is admitted. Shri Shiv Parsan had neither raised the dispute nor was a party in the dispute. The industrial dispute was raised by the Union on its own resolution and not on request of Shri Shiv Parsan. The claim statement of the Union was based on the information available with the organisation.

Para 4.4 : The objections of the management were meant for mis-leading industrial tribunal. As stated above, since the workman was not permitted to be examined by the Divisional Medical Officer, Northern Railway, Lucknow, to report thereafter to P.W.I., Northern Railway, Barabanki, non-existence of the name of Shri Shiv Parsan on the Muster Rolls of P.W.I., Northern Railway, Barabanki, was not impossible. However, the objections were mis-conceived and cast no shadow on the reference order.

Para 4.5 : Rejoinder was submitted by the Union and not on behalf of Shri Shiv Parsan as stated in this para.

Para 4.6 : Needs no clarifications.

Para 4.7 : Shri Shiv Parasan was examined by the Union as a witness and he stated the facts as then existed. He clarified that a panel of Scheduled Castes was formed in 1976 according to which he was sent for medical examination to the Divisional Medical Officer, Northern Railway, Lucknow. The medical memo



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was not signed by a Gazetted Officer; hence the same was returned to Assistant Engineer (II), Northern Railway, Lucknow, by the D.M.O. through the workman, Shri Shiv Parsan, himself. Shri Shiv Parsan was thereafter not given duty while his juniors were utilised under P.W.I., Barabanki. The reference order did not become null and void.

Para 4.8 : The management could produce original Casual Labour Card deposited by the workman on 23.4.82 with the Head Clerk of Assistant Engineer/II, Northern Railway, Lucknow. In case the same could not be produced, the management could produce Casual Labour Register to prove facts otherwise in absence of which unrebutted statement of Shri Shiv Parsan in respect of the facts in his cross-examination would have to be held as correct.

Para 4.9 : The application dated 30.9.88, allegedly submitted by the management, was mis-conceived. P.O. of the Central Government's Industrial Tribunal correctly proceeded ahead by rejecting the said application because the Tribunal has right to look-into the matters incidental to the actual cause of action also. If management could not rely on the copy of the card submitted by Shri Shiv Parsan, Casual Labour Register could have been very well produced to prove actual working period of the workman. It has been proved on record that the workman was sent for medical examination and on return when he deposited D.M.O's remarks in the office of the Assistant Engineer (II), Northern Railway, Lucknow, he was not given duty further. The management has not produced any evidence or document to rebut records produced by this Union and statement of Shri Shiv Parsan on affidavit.

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Para 4.10 : The management's application was, therefore rightly rejected because it actually had no force meaning thereby that it was not supported either by statutory provisions or case law on this subject.

Para 4.11 : The workman specifically stated in his affidavit as well as in his cross-examination that he was not given fresh medical memo duly signed by the competent authority for his medical examination by D.M.O. and that the D.M.O's remarks on the letter was meant for five workmen out of which four were sent back for medical examination while no fresh memo was issued in favour of Shri Shiv Parsan. The workman also stated that his juniors in the same panel, S/Shri Chhavi Nath and Sri Pal, were posted under P.W.I., Barabanki, while he was virtually retrenched. Para 4.11 of the affidavit is, therefore, denied.

Para 4.12 : Shri Pyarey Lal was a Sub-Head under Assistant Engineer (II), N.Railway, Lucknow, and he has stated incorrect facts under pressure of his subordination. Neither such a person could prove Casual Labour Card as incorrect nor clarify reason of denial of duty and original Casual Labour Card to the workman without producing Casual Labour Register and Medical Memo of Shri Shiv Parsan and other 4 workmen whose names were mentioned in the medical memo.

Para 4.13 : Production of only one page was not sufficient. Full records should have been produced and the workman or Union representing him should have been given opportunity of proving his name and

working period. It was, however, proved by record, i.e., Screening Panel List that S/Shri Chhavi Nath and Sri Pal were junior to Shri Shiv Parsan and they were retained under P.W.I., Barabanki while Shri Shiv Parsan was retrenched.

Para 4.14 : Post termination office order is not the only method of retrenchment. The workman, Shri Shiv Parsan, was sent for medical examination with a medical memo not signed by the competent authority. D.M.O. returned that memo for proper signatures of the Assistant Engineer (II), Northern Rly., Lucknow. The workman deposited medical memo and his original Casual Labour Card in the office of the Assistant Engineer (II), Northern Railway, Lucknow. He was never given any medical memo thereafter and he was also denied duty under P.W.I., NR, Lucknow, which he was performing regularly and continuously upto 23.4.82. This is intentional retrenchment and twisting of facts with intent of making reference order infructuous.

Para 4.15 : Award of the Central Governments Industrial Tribunal is based on facts. The award has been given on merits which is not subject to review either under Article 226 or under Section 19 of A.T. Act, 1984. Only conditions of interference with the award of Industrial Tribunal is that the award should be out of jurisdiction or should be perverse or in disregard of the rules of procedure laid-down under Industrial Disputes Act. This award does not suffer from any of the above discrepancies and is based on merits.

Reply of the G_R_O_U_N_D_S

(a) Tribunal acted on jurisdiction provided by

Ministry of Labour through its reference order against the Assistant Engineer (II), Northern Railway, Lucknow, and decision of the Tribunal is against the Assistant Engineer (II), Northern Railway, Lucknow. Therefore, the Tribunal no-where crossed its jurisdiction.

(b) The reference order is in respect of the justification or non-justification of the termination by the Assistant Engineer (II), Northern Railway, Lucknow. The same reference has been answered by the Tribunal accordingly.

(c) Tribunal strictly adhered to the facts on record and evidence. Appreciation of evidence by the Tribunal is not subject to interference by this Hon'ble Tribunal.

(d) ^h The Dexterity of diction does not change definition of Section 25-F of the Industrial Disputes Act, 1947. Termination by an order or by action of the Management are one and the same in the eyes of law but in this case the workman was not given duty and not posted to work under P.W.I., Barabanki in consequence of his empanelment under Scheduled Caste quota. The learned P.O. was, therefore, correct in holding this matter to be a case of termination and consequent retrenchment.

(e) Reinstatement is normal relief in such cases as per decision in Mohan Lal's case 1981 S.C.C.(L&S) 478 Para 17.

(f) Para (f) is completely mis-conceived. Award is strictly confined to reference order.

(g) Industrial Disputes Act does not provide any



time limit and there are ^{two} more latches in this case.

(h) Tribunal has to look-into the evidence and record, appreciate evidence and then arrive at a decision. This has correctly been done by the Tribunal on facts and record.

(i) Empanelment and non-provision of post in accordance with his position on the panel was an incidental matter within the jurisdiction of the learned P.O. of Industrial Tribunal. Denial of duty at the place of working under Assistant Engineer (II), Northern Railway, Lucknow, after 23.4.82 was a clear case of retrenchment and non-provision of regular post even after empanelment was an incidental matter.

(j) Non-appointment and denial of duty both amount to termination and such terminations are covered by Section 2(00) of the I.D.Act, 1947.

(k) Union raises Industrial Disputes against Northern Railway Administration. Reference order comes against Northern Railway Administration. It was upto the Management to decide who is the concerned party fit to contest the case. Civil law does not apply on industrial adjudication and impleadment of each and every party is not necessary in an industrial dispute.

(l) Union of India is not a party in an industrial dispute. The dispute was raised against Northern Railway Industry and General Manager as true representative of Northern Railway. Non-impleadment of Union of India ~~is~~ has ^{an} adverse effect on this industrial dispute.



R.D.L.

(m) The amount award is, therefore, worth being upheld by this Hon'ble Tribunal.

Para 5(a) : Relief sought by Petitioner Railway Administration need not be provided to the petitioner. The award on the other hand deserves being upheld.

Para 5(b) : In view of Section 17-B of the I.D. Act, 1947, operation of the order need not be stayed. Industrial adjudication between the two un-equal parties, this Hon'ble Tribunal has to keep poverty and resourcelessness of the workman in view. In case operation of the award is stayed without providing relief of regular payment to the workman, it would mean complete massacre of justice and the workman may not survive for reaping benefits of the consequences of this Hon'ble Tribunal's decision.

Para 6 : Remedy ^{exists} ~~exceeds~~ by appeal to Hon'ble Supreme Court under Article 136 of the Indian Constitution. Section 19 of the A.T. Act does not cover that Appellate jurisdiction and jurisdiction under Article 226 has not been invoked by the petitioner. Since this Hon'ble Tribunal cannot look-into the workman's application under Section 17(b) of the I.D. Act, 1947, Para 6 is vehemently opposed and denied.

Para 7 : Needs no reply.

Para 8 : Needs no reply.

Para 9 : Needs no reply.



In view of the above submissions, the dependent may clarify that this claim petition under

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Section 19 of the A.T. 1984 is not maintainable and is worth being dismissed with costs.

Lucknow : Dated
March 11/3, 1991


(B.D. TEWARI)
DEPONENT - OPPOSITE PARTY NO.2

VERIFICATION

I, B.D. Tewari, the deponent, do hereby verify that the contents of Paras 1 to 4.15 of this affidavit and those of Paras (a) to (m) and Paras 5(a) to 9 of "GROUNDS" contained in this affidavit are true to my own knowledge. No part of it is false and nothing material has been concealed. So help me God.

Lucknow : Dated
March, 11/3, 1991

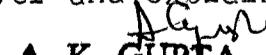

(B.D. TEWARI)
DEPONENT

I identify the deponent who has signed before me.


Shri S. L. Gupta
ADVOCATE

Solemnly affirmed before me on 11/3/91 at 1-45 A.M./P.M. by the deponent, who has been identified by Shri S. L. Gupta Advocate, High Court, Lucknow Bench.

I have satisfied myself by examining the deponent that he understands the contents of this affidavit which have been read over and explained by me.


A. K. GUPTA
Advocate Oath Commissioner
Allahabad High Court
Lucknow Bench Lucknow
No. 56164
Date 11/3/91

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in the Central Administrative Tribunal, Allahabad

Circuit Bench Lucknow.

OA No. 262/90/L of 1990

Assistant Engineer (II)

Applicant

Versus

Central Government Industrial Tribunal
Panpur and others

Respondents.

Statement
Rejoinder ~~affidavit~~ on behalf of the applicant to the
Counter ~~affidavit~~ filed by respondent No. 2.

Para 1: That in reply to the contents of paragraph 1 of
the counter ~~affidavit~~, it is stated that the allegations
about the application being an appeal is
misconceived.

Para 2: That in reply to the contents of paragraph 4 of
the counter ~~affidavit~~, it is stated that the Ho.
Tribunal has full jurisdiction to decide the app
cation, which seeks to challenge the award made
by opposite party no.1. The allegations contrary
to this are denied.

Para 3: That the contents of paragraph 3 of the counter
need no reply.

Para 4.1: That the contents of paragraph 4.1 are denied
which are contrary to what has been stated in
the application, which facts are again re-iterat

Para 4.2: That the contents of paragraph 4.2 of

*(a) application have not been denied and
admitted in the para under rem
allegation that Shri
record that*

Yogesh Mira

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of the application. It is stated that the reference had to be decided by the opposite party no. 1 in its true spirit and not by importing foreign elements besides the reference. It is further stated that the word "alleged workman" has been correctly used and there is no ambiguity on that count.

Para 4.2: That in reply to the contents of paragraph 4.2(b) of the counter, it is not denied that Lucknow Sub Devision comprised of BBK, Unnao and Lucknow as units were under the control of the Assistant Engineer (II) N. Railway Lucknow. It is submitted that the reference contained in Annexure No. 3 to the application clearly indicated Shri Shiv Parson worked under PWI BBK at the time of termination and since it is admitted case of the parties that he never worked at BBK, the reference exhausted itself and should not have been proceeded with by the opposite party no. 1, thus the award is bad on that count. It is further stated that the objections taken were correct. It is also stated that the dispute under reference was termination while working under PWI BBK and not anywhere.

Para 4.2: That the contents of paragraph 4.2(c) of the counter application having not been denied, require no reply so far as those contents are concerned. The allegations made in para 4.2(c) of the counter are irrelevant for the decision of the reference, which was made by the Central Government on the basis of the charter of demand as contained in Annexure No. 3 to the application. It is submit

Yogesh Misra

that the allegations were not the part of the Charter of Demand dated 15.1.85, which merely says "that the services of Sheo Person were terminated w.e.f. 15.10.72 after working for more than 240 days from 14.1.1971."

It is denied that the contents of paragraph 4.2 (c) of the application can be termed as misleading

Para 4.2: (d) That the contents of paragraph 4.2(d) of the counter need no reply.

Para 4.2: (e) That in reply to the contents of para 4.2(e) of counter, it is stated that by no words the reference can be stretched to include PWI Northern Railway Lucknow, when it specifically indicates while working under PWI BBK. Merely that PWI of the three units were working at the relevant time under AEN II will not ipso facto make the reference applicable to AEN II. It is further submitted that the allegations about panel of scheduled caste formed by AEN II N.Rly are incorrect and denied. In fact AEN 'II' was not competent to form the alleged panel. It is also submitted that the reference was not based on the question of the alleged panel, but it was purely on a factual point mentioned in the reference and based on the charter of demand.

Para 4.2: (f) That the contents of paragraph 4.3 of the counter make the reference itself bad and inoperative. It is submitted that the Union is entitled to raise the dispute only at the specific request of the aggrieved person viz.

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Sheo Person and being admitted by the Union that dispute was not raised at the request of Shri Sheo Person, but by the Union on its own resolution is or cannot be termed as a dispute of Sheo Person and the reference made at the request of Union was bad and inoperative. The award based on such reference, even if it had been correctly answered was bad and inoperative under law.

Para 4.4: That in reply to the contents of paragraph 4.4 of the counter, it is stated that the allegations made therein are not in regard to the reference and its decision. The allegations about the workman not permitted to be examined by the DMO cannot be adjudicated under the terms of reference. Mere alleged inclusion of the name in scheduled case panel will not ipso facto make him work under PWI BBK. The reference clearly spoke "while working under PWI BBK" and if he never worked under PWI BBK, the reference exhausted itself and was no longer alive to be adjudicated by the opposite party no. 1.

Para 4.5: Needs no reply.

Para 4.6: Needs no reply.

Para 4.7: That in reply to the contents of paragraph 4.7 of the counter, it is submitted that the allegations contained therein cannot ipso facto be treated as part of the reference or could have been considered for adjudication. It is stated

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that there is no interpretation of the reference needed, which was very clear and being based on the charter of demand, the adjudication was to be done on the basis of reference i.e "Whether his services were terminated by AEN (II) while working under PWI BBK. "" and from the charter of demand the date of termination as 19.10.72 was to be taken. Since on the allegation contained in para 4.7, the panel was of 1976, there could be no demand of his services having been terminated under the panel in 1972.

Para 4.8: That the contents of paragraph 4-8 of the counter are denied. It is stated that the Union having filed the photostat of the casual card should have been in possession of the original casual card and it is wrongly alleged that the said card was deposited with the administration on 23.4.82. It is further submitted that the facts stated in para 4.8 of the application are correct and re-iterated.

Para 4.9: That in reply to the contents of para 4.9 of the counter, it is submitted that the application as contained in Annexure No. 12 A to the application was correctly given in the circumstances of the case. It was correctly stated therein that the reference has to be arrived as it is unless the same is amended by the Govt. In fact the reference exhausted and was no longer to be adjudicated upon, once the Union admitted that Sheo Person did not work at BBK w.e.f. 19.10.72. The allegations made in 4.9. of the counter are no material for answering the reference through adjudication by the opposite party no. 1.

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The union was bound to produce material which would have shown termination at BBK w.e.f. 19.10.72 and in fact the same did not exist on its own admission that he worked till 1982.

Para 4.10: That the contents of paragraph 4.10 of the counter are denied and those of para 4.10 of the application are re-iterated. It is stated that the opposite party no.1 wrongly rejected the requested of the applicant.

Para 4.11: That the contents of para 4.11 of the counter are denied and those of para 4.11 of the application are re-iterated as being correct.

Para 4.12: That the contents of paragraph 4.12. of the counter do not counter the statement given in para 4.12 of the application and are therefore correct. It is submitted that whatever in the affidavit as contained in Annex A-14 was correctly stated by Shri Pyarelal was not under pressure. The copy of affidavit proves that the said Shri Pyarelal has done what has been alleged in the para under

Para 4.13: That in reply to the contents of paragraph 4.13 of the counter, it is submitted that the copy of the said casual labour register was just to bring on record that the claim of the opposite party no. 3 is false and not genuine. Even otherwise, if the full records were required, it would be for the opposite party no. 2 to have summoned the same or made any application for the grievances sought to be made in the para under reply.

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which grievances cannot be raised now before the Hon'ble Tribunal. The allegations of para 4.13 are totally denied. There is no evidence on record as alleged and factum of screening list or who was junior or senior in the screening list were not or could be made subject matter of the reference. The reference was purely on another subject i.e.

whether the Assistant Engineer II Northern Railway Charbagh Lucknow is justified in terminating the services of shri Sheo Person working under PWI BEK. If not to what relief shri Sheo Person is entitled and from what date:

The Screening panel is of 1976, the dispute related to 1972 as per charter of demand, so how the two facts relating to different period of different nature be brought under the reference which specifically deals with termination of service w.e.f. 15.10.72 as per charter of demand. It is further stated that shri Sheo Person was never retrenched under the screening panel, on the own admission of the opposite party no. 2 and 3 that he was not allowed to join under the panel, he not being given the medical memo for his medical examination.

Para 4.14: That in reply to the contents of paragraph 4.14 of the counter, the issue of medical memo to shri Sheo Person is not denied. Rest of the facts are denied. The medical memo was never returned for alleged correction etc. The allegations about intentional retrenchment and twisting facts are vehemently denied. The facts are being twisted

Yogesh misra

to impress upon the Hon'ble Tribunal that the award is in conformity to thereference. It is stated that by admitting the factum of service upto 23.4.1982, the original reference based on charter of demand that services of Sheo Person were terminated w.e.f. 16.10.1972 makes the reference infructuous. Bringing new facts beyond the charter cannot bring the reference back to life or make it such as to be adjudicated upon.

Para 4.15: That in reply to the contents of para 4.15. of the counter, the facts stated in para 4.15 of the application are re-iterated. The award was made without considering the material on record and the law placed before the opposite party no.1. The allegations made in the para under re ly are denied. The award is without jurisdiction, it is as well perverse and in disregard of the rules and procedure laid down under the Industrial Dispute Act. The award can be challenged under section 19 of Adminstrative Tribunal Act , as was being done under Article 226 of the Constitution of India, which powers of Article 226 are vested with the Hon'ble Tribunal. The award suffers from all infirmities and is liable to be set aside.

Grounds taken by the applicant are correctly taken in the application and will be suitable argued keeping into consideration the reply given by opposite party no.2 which reply is baseless. The award is liable to be set aside on the facts and grounds mentioned in the application.

Yogesh Misra

Para 5(a): That the contents of paragraph 5(a) of the counter are denied, while those of paragraph 5(a) of the application are re-iterated. The petitioner is entitled to the relief claimed and the application is worth being allowed.

Para 5(b): That the contents of paragraph 5(b) of the counter, it is submitted that the award itself being void in view of the fact that amongst other grounds, the opposite party has, while passing the impugned award has transgressed the limits of reference and traversed beyond the limits of reference which was not permitted under law. In these circumstances, the operation of stay of the award is fully justified.

Para 6: That the contents of paragraph 6 of the counter are denied. The Hon'ble Tribunal has full powers under section 19 to decide the present application wherein the validity of the award has been challenged.

Para 7 to 9: Needs no reply.

Para 10: Prayer caluse is denied. The application is worthy of being allowed.

Lucknow

dt:

Yogesh Misra
Applicant

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Verification

I, *Yogesh Misra* Assistant Engineer (II) Northern Railway Charbagh Lucknow do hereby verify that the contents of paragraphs 1 to 10 of this rejoinder statement are based on information from record and legal advice received, which is believed to be true.

Signed and verified this day of July 1992 at

Yogesh Misra

In the Central Adminstrative Tribunal, Allahabad
Circuit Bench Lucknow.

O.A. No. 262 of 1990(L)

Assisstant Engineer II
Northern Railway, Lucknow. Applicant

Versus

Central Government Industrial
Tribunal and others Opp. Parties

Rejoinder to the counter filed by Shiv Parsan
Op. Party No. 3

Para 1: Needs no reply. ~~However~~

Para 2: That in reply to the contents of paragraph 2
of the counter, it is stated that the award
in favour of opp. party no. 3 has been passed
against Assisstant Engineer II and not against
Union of India, in view of the fact that while
seeking reference of dispute , filing claim
statement, the Union who sponsored the cause
of the opp. party no. 3 without any authority,
did not like to or intended to make Union of
India a party to the proceedings. In these cir-
cumstances, Asst Engineer II is aggrieved party
and has been rightly made applicant in the
instant case. However in order to avoid any
contraversy on this account, a seperate amend-
ment application is being made to implead Union
of India as party to the instant application,
by making the Union of India as an applicant.

Para 3: That the contents of paragraph 3 of the
counter are denied. The restrictions placed

Recd Cpl
D.G. Smt. for
Adv.
25.9.92

Yogesh Mehta

in the Central Administrative Tribunal Act to exhaust alternative remedies are relegated to the employees and not to the applicant as is in the instant case. The powers under Article 226 and 227 of the Constitution of India do vest in the Central Administrative Tribunal in the same manner as with the High Courts. The instant application has been filed to challenge the award passed by C.G.I.T. (O.P. No.1) as was being done earlier before the Hon'ble Court and as such the present application is fully maintainable in the Tribunal.

Para 4: That the contents of paragraph 4 of the counter are totally incorrect, hence denied. It is stated that the Hon'ble Tribunal has full and unfettered jurisdiction to entertain the present application and decide the same.

Para 5: That the contents of paragraph 5 of the counter are totally incorrect, hence denied. It is stated that the Hon'ble Tribunal has full and unfettered rights to entertain the present application and decide the same. In fact, after the enforcement of the Central Administrative Tribunal Act, the High Courts have seized to have jurisdiction over the service matters relating to the Central Government labour disputes. The making of reference to the C.G.I.T. under section 10 I.D. Act is an alternative remedy which is provided under the Act and after it is exhausted, the challenge can only be made before the Hon'ble Tribunal by means of an original application, wherein the award is the subject matter.

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Para 6: That in reply to the contents of paragraph 6 of the counter, it is stated that the question referred to a larger bench of five judges has been answered wherein it has been held that the Hon'ble Tribunal has jurisdiction to decide the matter exercising the powers under Article 226 and 227 of the Constitution of India.

Para 7: Need no reply.

Para 8: That the contents of paragraph 8 of the counter are denied, so far as reply to 2nd. paragraph of the application para 4.3 is concerned. The facts stated in para 4.3 of the application are re-iterated as true and correct. It is again stated that the claim statement dated 16.1.'87 totally differed from the charter of demand dated 15.1.'85 , which was the basis of the reference.

Para 9: Needs no reply.

Para 10: Needs no reply.

Para 11: Needs no reply.

Para 12: It is admitted that the word 'PWI' has been left out by a typographical mistake. The verments made in para 4.7 of the application are re-iterated and those of para 12 of the Counter which have been allegedly not admitted are denied. It is submitted that the area of

Yogesh Mehta

working coming under PWI BBK extends from Dilkusha (Km1032- Dilkusha Lucknow) to KM 1091/9 (excluding Daryabad station) and the ~~opposite~~ opposite party No.3 did not work under PWI BBK within his area at any point of time.

Para 13: That in reply to para 13 of the counter, the contents of para 4.8 of the application are re-iterated and those contrary to the said contents are denied. The observations made in para 7 of the award pertaining to the conclusions by the learned P.O. (Opp. Party No.1 are erroneous in view of charter of demand, claim statement and objections to the same by the applicant, which are the pleadings of the parties and no evidence beyond the same can either be allowed to be lead, or if lead can be read and relied upon for decision of the case.

Para 14: That in reply to the contents of para 14 of the counter, the averments made in para 4.9 of the application are re-iterated- The cryptic denial by the opposite party no.3 in his counter para 14 is no denial, hence the contents of para 4.9 are deemed to be admitted by the opposite party no.3, but for the sake of no ambiguity, the averments made in para 4.9 of the application are re-iterated-

Yogesh Mehta

Para 15: That in reply to the contents of para 15 of the counter, the averments made in para 4.10 of the application are re-iterated. The cryptic denial by the opposite party No. 3 in his counter para 15 is no denial, hence the contents of para 4.10 are deemed to be admitted by the opposite party no. 3, but for the sake of no ambiguity, the averments made in para 4.10 of the application are reiterated.

Para 16: In view of no denial of the contents of para 4.11 of the application, it needs no reply. However with reference to the contents, it is stated that the applicant having categorically admitted that he never worked at Barabanki is a clear answer to the applicant's objection that the reference made exhausted itself. The alternative plea taken in the counter that the applicant would have been a permanent workman under PWI Barabanki, had his medical memo not been detained by AEN II can utmost be denial of an appointment, but in no case can be termed as removal from service and giving a cause for raising a dispute under section 10 of I.D. Act on the plea that he has been removed from service.

Para 17: Needs no reply.

Para 18: That in reply to the ~~xxx~~ contents of paragraph 18 of the counter, it is stated that the copy of page 218 of casual labour register maintained by PWI() Lucknow was filed to falsify the assertions of the o.p.no.3. The contents therein

Yogesh misra

clearly show that the opposite party no.3 worked upto 18.12.'71. It is stated that there was no cause for the learned O.P.No.1 to draw any inference against the applicant, in view of the admission of the o.p.no.3 that he worked till 23.4.'82, which made the reference exhaust, it being based on charter of demand (Annexure No. A-3) which disclosed the dispute to have arisen on 15.10.'72 which when the services of o.p.no.3 is alleged to have been terminated. In fact the learned O.P.No.1 should have drawn inference against the o.p. no. 2 and 3 in not proving his case according to the facts put in the charter of demand and in case he wanted any other case to be put forward, he should have been permitted to do so only after he had got the reference admitted ammended.

in reply to
Para 19: That/the contents of paragraph 19 of the counter, it is stated that the opposite party no.3 was never retrenched by the applicant. As is evidenced by the charter of demand(Annex. No.A-3) the o.p.no.3 himself admits to have been removed from service w.eff. 15.10.'72 and on that basis raised a dispute u/s 10 I.D. Act and on the basis of the said Charter of demand, the reference was made by the Central Government. The o.p.no.3 having himself admitted that he continued being engaged till 23.4.'82, the reference exhausted itself, unless it was ammended by the Central Government so

as to include the different version placed in the claim statement. Thus the reference which preceded on the basis of alleged retrenchment w.e.f. 15.10.'72, no longer remained a dispute and hence nothing was there left to be adjudicated by the learned O.P.No.1. From the facts of the case, it is clear that it may be a case for not giving an appointment for which panel was formed concerned shortfall in schedule caste quota, but it can never be a case for retrenchment at any stage and on that basis the order of reinstatement could not have been ordered or back wages awarded to a casual worker, who was to be engaged only against leave /sickness vacancy and not as a permanent measure.

Para 20: That the contents of paragraph 20 of the counter are denied and those of para 4.15 of the application are re-iterated as true and correct. It is still maintained that the award has not been passed without considering the material on record and the law placed before it

Para 21: That the contents of paragraph 21 of the counter are denied. It is stated that the application made by the applicant is liable to be allowed and the award passed by O.p.No.1 is liable to be quashed.

Yogesh Misra

Para 22: That the contents of paragraph 22 of the counter needs no reply.

Lucknow

dated:

Yogesh Misra
Applicant

Verification.

I, *Yogesh Misra* Assistant Engineer (II)
Northern Railway Charbagh Lucknow do hereby verify
that the contents of paragraph 1 to 22 of this
rejoinder statement are based on information derived
from record and legal advice received which is believed
by me to be true.

Signed and verified this day of July 1992 at

Yogesh Misra