

(See rule 114)

OA/TA/RA/CP/MA/PT410.....of 2090

Versus

INDEX SHEET

[illegible]

Certified that the file is complete in all respects.

BCC file for post card & disney
Report BT 6/2024

Signature of S.O.

Sign

Signature of Deal. Hand

CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH

O.A. / T.A. No. 410190 of 199

Name of Parties

Gaya Prasad

Applicant

Varsus

Union Of India & Others

Respondents

Sl. No. Particular Of Documents No. of page

PART A

1. CHECK LIST 1 to 2
2. ORDER SHEET 3 to 8
3. FINAL JUDGEMENT DT. 9 to 12-26.11.96
4. PETITION COPY WITH POWER 13 to 29
5. ANNEXURE 2 to
6. COUNTER WITH POWER 30 to 51
7. REJOINDER WITH ANNEXURE 52 to 59
8. SUPPLEMENTARY COUNTER 1 to
9. SUPPLEMENTARY REJOINDER 1 to

PART B

B-1 to B-50

PART C

Notice Power of Atty. Mr. Har
CERTIFICATE

Certified that no further action is required to be taken and the case is fit for consignment to the record room (decided)

(Signature of Deputing Asst. Secy.)

COUNTER SIGNED :-

Dated:-

V.K. MISHRA

(SECTION OFFICER / COURT OFFICER)

CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

Central Administrative Tribunal
Circuit Bench, Lucknow

Date of Filing: 17/12/90
Date of Receipt by Post: 17/12/90

Deputy Registrar (I)

Registration No. 910 of 1989 90 (4)

APPLICANT(S) Smt. Sangeeta Prasad

RESPONDENT(S) Union of India

Particulars to be examined

Endorsement as to result of examination

1. Is the appeal competent?
2. a) Is the application in the prescribed form?
b) Is the application in paper book form?
c) Have six complete sets of the application been filed?
3. a) Is the appeal in time?
b) If not, by how many days it is beyond time?
c) Has sufficient case for not making the application in time, been filed?
4. Has the document of authorisation/Vakalatnama been filed?
5. Is the application accompanied by B.D./Postal Order for Rs.50/-
6. Has the certified copy/copies of the order(s) against which the application is made been filed?
7. a) Have the copies of the documents/relied upon by the applicant and mentioned in the application, been filed?
b) Have the documents referred to in (a) above duly attested by a Gazetted Officer and numbered accordingly?
c) Are the documents referred to in (a) above neatly typed in double space?
8. Has the index of documents been filed and paging done properly?
9. Have the chronological details of representation made and the outcome of such representation been indicated in the application?
10. Is the matter raised in the application pending before any court of Law or any other Bench of Tribunal?

No. 910/1989/4 has been made an application for consideration of order. M.P. M. Trefor is filing F.A.

(2)

Particulars to be Examined

Endorsement as to result of examination

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

4 sets

yes

yes

x

N.A. There are

five respondents in this F.A.

yes

N.A.

Yes

yes

yes

yes

yes

yes

dinesh/

17.12.90

D.R.

Put up before the Hon. Bench,

on 8/1/91 for orders.

21/2

12/12/18

SC /
11/12/18

OA 410/90.6

③!

Attest: Mr. D.K. Agarwal Jm
Jm. Mr. K. Chayya Am

Hard. Issue arises to show cause
as to why the petition may not be
admitted and delay condoned. The
petition shall be put up with T.A 793/87

We direct Sri B.K. Shukla representing
the administration in T.A 793/87 to
take notice and assess us by producing
before us the relevant record or
counter reply to enable us to adjudicate
the issue involved. List on 4.3.91

Renewed for OP 165.
with unit petition copy A.M.
Jagjit Singh
Jm. Sri B.K. Shukla
Re: Am.

Dec
Jm

02
Notice issued
2/11/91

OR
Notices were
issued on 17.1.91.
Neither reply nor
any unusual reply
has been received
from
S.F. OR 6)

4/3/91
Respondent desists
from filing counter
Pet up, on 16/5/91,
7 filing counter

16.5.91

Respondent's counsel is present
the desire time to file
counter,

Put up on 6.8.91 for
filing counter

211

(4)

3-12-92
D.R.

None is present for the parties
and rejoinder has not been
filed till to day. It is a
writ petition of the year, 1981.
List for final hearing before
the Hon. Bench on 29.1.93.

CA/RA have
been filed

OK
for
CA/RA chamber
hld. 29.1.93
Hearings

Cx mt. rehd adj
20.3.93

OK
20/1/93
CA/RA Graham
JFH
20/1/93

2.3.93

No sitting adjw
14.4.93

15.4.93

No sitting of D.B. adjourned
to 21.5.93.

OK
CA/RA exchange
JFH
21.5.93
21/5/93

No sitting of D.B. adj
20.6.93

8-6-93 Hon Mr S.N. Prasad Jm.
Hon Mr B.K. Singh. AM

OK
CA/RA
exchanged
JFH
20/6/93
OK
CA/RA
exchange
JFH
20/6/93

Shri A.K. Chaturvedi is
present on behalf of applicant.
None responds on behalf of
respondents. List this case
on 18.8.93 for hearing
and disposal.

AM

Jm

(S)

CA 410/90
703/87.T

18.8.93

No sitting of D.M. adj to
16.9.93

note

Case over, record adj
17.10.93

note

d
16.9.93
RD for bench
JTH
D
P

17.10.93

Case over, record adj

note

of
CAD, P.A. Sec.
M.P. 10/94
Filed by AK
Chaturvedi
for hearing early
Date
Submitted same
before Honble
V.C.

DR
5.4.94

Vide order of Honble in MP no 10/94,
list this case for hearing on 21.4.94.
Notify in warning list

DR

21.4.94
7/11/94

No sitting of D.M. adj
do 14.7.94

note

of
Pleadings
are completed
MP 10/94 not
considered
Submitted for
order
19/11/94

14.7.94

Lawyer absent for adj, with
col for 22.8.94

note

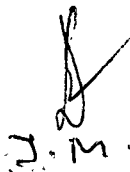
of
Submitted
to Hearing C.10.TA
19/3/89

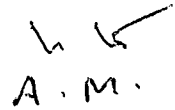
6.12.94

Hon. Mr. V. K. Seth, A.M.

Hon. Mr. D. C. Verma, J.M.

due to illness of Shri A.K. Chaturvedi
ad. counsel for the applicant case
adjournment to 3.2.95.


J.M.

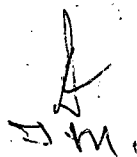

A.M.

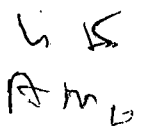
3.2.95

Hon. Mr. V. K. Seth - Am.

Hon. Mr. D. C. Verma - J.M.

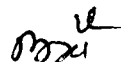
On the adjournment application
of Mr. B.K. Shukla, case is
adjourned to 27.3.95.

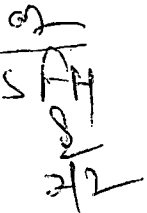

J.M.

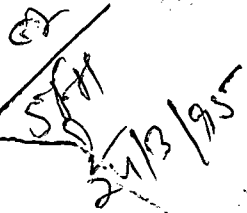

A.M.

27.3.95

No entry of D.M. adjn
5.4.95


maxi


S.H.
8/2


S.H.
24/3/95

09/10/95

(7)

11/8/95

Hon. Mr. V.K. Seth, A.M.
Hon. Mr. D.C. Varma, J.M.

The list has been revised & case has been called twice but none responded on behalf of either of the parties.
List for hearing on 28/8/95.

or
CP/R & now
Case charged
22/8/95

J.M.

V.K.
A.M.

29-8-95

Hon'ble Mr. V.K. Seth - A.M.

Hon'ble Mr. D.C. Varma-J.M.

Sri A.K. Chaturvedi, learned counsel for the applicant has prayed for adjournment on account of personal reasons.

None for respondents.

List for hearing on 30-11-1995.

J.M.

K.N.

V.K.
A.M.

03-11-95

Hon'ble Mr. V.K. Seth, A.M.

Hon'ble Mr. D.C. Varma, J.M.

None for the parties.

List on 05-12-95 for hearing.

J.M.

V.K.
A.M.

5-12-95

Hon. Mr. V. K. Seth, A.M.

Hon. Mr. D. C. Varma, J.M.

On the illness slip of Shri B. K. Shukla, learned counsel for the respondents, case is adj. to 31-1-96.

J.M.

V.K.
A.M.

on
pleadings are
complete
21/12/95

O. A. 410/90

(8)

7-8-96

Hon. Mr. V. K. Seth, A.M.

Hon. Mr. D. C. Verma, J.M.

Learned counsel for the respondent
Shri B. K. Shukla has sent illness slip.
List on 17-9-96.

J.M.

A.M.

17-9-96

Case no. reached office to
14.10.96

of
Doo

14-10-96

Hon. Mr. V. K. Seth, A.M.

Hon. Mr. D. C. Verma, J.M.

Li. Alok Trivedi, brief
holder for Li. Anil Kumar, learned
counsel for applicant. Li. B. K. Shukla,
for respondents has submitted illness
slip.

List on 04-11-96 for hearing.

J.M.

A.M.

4-11-96

Hon. Mr. M. B. Seth, A.M.

Hon. Mr. D. C. Verma, J.M.

For applicant: Shri B. K. Shukla, Adv.
For respondents: Shri Alok Trivedi,
Proxy counsel.

As this is an old case it may be taken up
for disposal on the next date even in absence
of counsel for either or both the sides.
List on 26-11-96.

A.M.

or
Pleadings are
Complete

or
S.F.H.
30/10/96

or
CP/PA have a
each 28/9/96
19/11/96

CENTRAL ADMINISTRATIVE TRIBUNAL, LUCKNOW BENCH

Lucknow this the 26th day of Nov., 1996.

O.A. No. 410/90(L)

HON. MR. V.K. SETH, MEMBER(A)

HON. MR. D.C. VERMA, MEMBER(J)

Gaya Prasad, aged about 30 years, son of Sri Ram Khelawan, resident of village Bargaura, Post office Bikapur, District Faizabad.

Applicant.

By Advocate Shri Anil Kumar.

versus

1. Union of India through Secretary, Railway Board, Rail Bhawan, New Delhi.
2. Union of India through Secretary, Ministry of Labour, New Delhi.
3. Divisional Personnel officer, Lucknow Division, Northern Railway, Hazratganj, Lucknow.
4. Assistant Engineer, II, Northern Railway, Charbagh, Lucknow.
5. The Permanent Way Inspector, Northern Railway, Barabanki.

Respondents.

By Advocate Shri B.K. Shukla.

O R D E R (ORAL)

HON. MR. V.K. SETH, MEMBER(A)

By means of this O.A. the applicant has prayed for quashing of the order dated 19.9.89 (Annexure 3 to the O.A.) passed by the respondents to the effect that a decision has been taken not to refer the dispute raised for adjudication as there has been delay of 9 years in raising the dispute without adequate reason. The applicant has also prayed for quashing of the

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termination order if any with effect from 15.6.81 and to reinstate him with full back wages and other consequential benefits.

2. The claim of the applicant has been resisted by the respondents and pleadings have been exchanged between the two sides which we have perused. We have also given thought to the submission of the learned counsel made during the course of hearing.

3. A brief resume of facts would be in order. As per the averments in the O.A. the applicant was appointed as Gangman on 26.7.1978 under P.W.I., Northern Railway Barbanki, and he continued to work upto 14.6.1981 with breaks. It is alleged that the services of the applicant were terminated through oral order with effect from 15.6.1981. The applicant claims that he completed 120 days of continuous service and thereby attained temporary status. As a sequel the Uttar Railway karmchari Union served strike notice on D.P.O. and A.E.N-2, Northern Railway and the matter was referred to the Assistant Labour Commissioner, who gave his finding vide his order dated 15.3.1989 (Annexure-2 to the O.A.). This order interalia mentions that since there was not any possibility of settlement, the dispute ended in failure. With reference to this order of Assistant Labour Commissioner, the respondents have passed the impugned order dated 19th September, 1989.

4. During the course of arguments emphasis was laid by the learned counsel for the applicant on the legal issue involved in the matter. It was urged by him that section 10 of the I.D. Act 1947

(11)

does not lay down any time limit for reference to be made by the appropriate government. He however, fairly conceded that in case the government makes a reference of the dispute to the appropriate judicial forum, the question of grant of second part of the relief prayed for by him viz. his reinstatement by this Tribunal does not arise at this stage.

5. We find force and merit in the contention of the learned counsel for the applicant. The clause I of section 10 of the I.D. Act reads:

"Where appropriate government is of the opinion that any Industrial Dispute exists or is apprehended, it may at any time (emphasis supplied by us) by order in writing:

(a).....

(b).....

(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or

(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it related to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication."

The wording of this clause makes it clear that there is no time limit set for making reference. The only point of discussion was whether the expression 'it may' makes it obligatory for the government or it is left to the discretion of the government to make such a reference. The learned counsel for the applicant in support of his

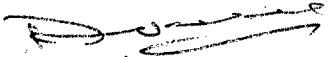
LS

(12)

contention stated that there is no discretion and with the government in the matter/cited for our benefit the judgment in the case of 'Jai Pratap Singh vs. State of U.P. and others' passed by Lucknow Bench of the Allahabad High Court on 25.11.92, reported in S.C.D. 1994(1), 148. The observations of the High Court contained in para 4 are relevant for our purposes. These are:

"The words 'at any time' are very material. They make it abundantly clear that the Legislature has fixed no time limit for making reference. The State Government has only opinion making power.The petitioner workman should move application for condonation of delay. This aspect of the matter should have been left in the Labour Court or Industrial Tribunal to be judged. The impugned order of the State Government is thus apparently illegal."

6. We are inclined to agree with the above view and therefore, hold that the impugned order of the respondents is illegal and unsustainable. The same is hereby quashed and we direct that the respondents shall refer the Industrial Dispute which forms the subject matter of the impugned order, to the appropriate Labour court/Industrial Tribunal in accordance with the provisions of section 10 of the I.D. Act. This decision shall be complied with by the respondents within 3 months from the date of communication of this judgment and order. The O.A. is disposed of in the above terms. No order as to costs.


MEMBER(J)

Lucknow; Dated: 26.11.96.

Shakeel/


MEMBER(A)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

O.A.No. 410 of 1990(L)

Gaya Prasad ... Applicant

Versus

Union of India & others ... Respondents .

I N D E X

1. Memo of application	1_15
2. <u>Annexure No. 3</u> Copy of impugned order dated 19.9.89	16
3. Wakalatnama	17
4. Postal order No. _____ for Rs 50/- only.	Dated _____

Place: Lucknow

Dated: 17-12-90

Raju/-

Asit Kumar Chaturvedi
(Asit K. Chaturvedi)
Advocate,
Counsel for the applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

6.A. No. 410 of 1990(L)

GAYA PRASAD,
Aged about 30 years,
Son of Sri Ram Khelawan,
Resident of Village Bargaura,
Post office Bikapur,
District Faizabad.

... Applicant

Versus

1. Union of India through Secretary,
Railway Board, Rail Bhawan,
New Delhi.
2. Union of India through Secretary,
Ministry of Labour,
New Delhi.
3. Divisional Personnel Officer,
Lucknow Division, Northern Railway,
Hazrat Ganj, Lucknow.
4. Assistant Engineer, II,
Northern Railway, Charbagh,
Lucknow.
5. The Permanent Way Inspector,
Northern Railway,
Barabanki.

... Respondents

APPLICATION UNDER SECTION 19
OF THE TRIBUNALS ACT, 1985

गया प्रसाद

DETAILS OF APPLICATION

Central Administrative Tribunal
Circuit Bench, Lucknow
Date of Filing 17/12/90
Date of Receipt by Post.....

Deputy Registrar(J)

cyg
17/12

15

(2)

1. Particulars of the order against which the application is made;

The above said application is being preferred before this Hon'ble Tribunal against the order dated 19th September, 1989 passed by Opposite Party No. 2, a copy of which was received by the petitioner on 6th October, 1990 from Sri D.P. Awasthi, Assistant General Secretary, Uttar Railway Karmachari Union, Lucknow by which the claim of the applicant for reinstatement in service with full backwages from the date of termination i.e. 15.6.1981 and other consequential benefits have been denied. The applicant is also challenging the oral termination w.e.f. 15.6.1981 and claiming reinstatement in service with full backwages from the date of termination along with all consequential benefits.

2. Jurisdiction of the Tribunal;

That the applicant was working under Opposite Parties 3 to 6 as such this bench of the Hon'ble Tribunal has jurisdiction to adjudicate the matter.

3. Limitation;

The applicant declares that he received the order dated 19th September, 1989 passed by Opposite Party No. 2 on dated 6th October, 1990 from Sri D.P. Awasthi, Assistant General Secretary, Uttar Railway Karmachari Union, Lucknow hence it is well within limitation prescribed under section 21 of the Hon'ble Tribunals Act, 1985.

Filed today

cyg
17/12/90

जपा प्रसाद

4. Facts of the case;

The facts of the case are as under;

- i) That the applicant was appointed as Gangman on 26.7.1978 to work under Permanent Way Inspector, Northern Railway, Barabanki, Opposite Party No. 5 in accordance with Rules and regulations on the subject. The applicant continued to work up to 14.6.1981 with artificial breaks.
- ii) That the work and conduct of the applicant as Gangman while working under Opp. Party No. 5 was to the full satisfaction of his superior and was never warned, punished or censured. The details of the period along with number of days worked by the applicant as Gangman under Opposite Parties 3 to 5 is being annexed herewith as ANNEXURE No.1 to this application.
- iii) That the services of the applicant were terminated by Opposite Party No. 5 through an oral order with effect from 15.6.1981 without any rhyme and reason and without complying the provisions of the Industrial Dispute Act, 1947 and Indian Railway Establishment Manual.
- iv) That the applicant completed 120 days continuous service with effect from 15.2.1979 to 15.6.1979 thereby he attained the temporary status and is entitled for the terms and conditions applicable to the Railway servants

(4)

and substitutes in temporary service stated in Chapt. XXIII of the Indian Railway Establishment Mannual.

v) That the applicant has worked for 719 days from 26.6.78 to 14.6.81 as Gangman under Opposite Party No. 5 and was controled by Opposite Party No. 3 & 4.

vi) That the applicant has worked for 302 days as Gangman in preceding 12 months from the date of his termination i.e. 15.6.1981.

vii) That the applicant is working as Gangman under Opposite Party No. 5 mentioned above may be verified from paid vouchers for the relevant period for which sanction from Divisional Railway Manager, Lucknow division was obtained and mentioned against each period in the casual labour service record maintained by Opposite Party No. 5.

viii) That the services of the applicant were terminated by Opposite Parties 3 to 5 by retrenchment, without notice, notice pay and retrenchment compensation provided in the Industrial Dispute Act, 1947 and Chapt. XXIII and XXV of Indian Railway Establishment Manual, and as such the termination with effect from 15.6.1981 is null and void and the applicant is entitled for reinstatement with full backwages .

(5)

ix) That no reason of termination from service with effect from 15.6.1981 was disclosed to the applicant by Opposite Party No. 5.

x) That the work assigned to the applicant was on permanent open lines during the period of engagement and the said work is still continuing and it cannot over/complete as it is not a project and the work is in continuous nature.

xi) That the applicant has completed 120 days or more in service and thus have completed 4 months and have acquired a temporary status in view of the provisions of paragraph 2501 of Chapt. XXV of the Indian Railway Establishment Manual. Originally the period was of 6 months in service as casual labour for acquiring the temporary status but subsequently the same was amended in accordance with the recommendation of the Railway Labour Tribunal. The requisit period of attainment of temporary status was reduced to 4 months vide Railway Board letter No. P.C. 72/HLT 69/3(1) dated 12.7.1973.

xii) That the applicant's work was not overed/completed as such the post and vacancy is still continuing and the applicant cannot be ousted from service as under sub-section IV of Section B of Chapt. I of Indian Railway Establishment Manual the applicant has a prior claim of regular absorption and in order to defeat the claim the Opposite Parties 3 to 5 has ousted the applicant from service.

(6)

xiii) That under paragraph 2511 of Chapt. XXV of the Indian Railway Establishment Manual relating casual labourers, the casual labourers without acquiring the temporary status are entitled to all rights previlages admissible to temporary railway servant and substitutes in temporary service as laid down in Chapt. XXIII of the Indian Railway Establishment Manual.

xiv) 7 That under paragraph 2302 of Chapt XXIII of the Indian Railway Establishment Manual a temporary railway servant is liable to 14 days notice for termination of service or salary in lieu of the notice. The applicant was neither given 14 days notice nor was offered the payment of salary for 14 days in lieu of the notice as such the ouster of the applicant from service with effect from 15.6.81 is wholly illegal.

xv) That the ouster of the applicant from service with effect from 15.6.81 is wholly illegal and unwarranted as neither the applicant was given any notice for the termination of his services nor was paid salary in lieu of the notice as the language of paragraph 2302(2) of Chapt XXIII of the Indian Railway Establishment Manual is mandatory.

xvi) That the applicant has completed 240 days during the period of 12 calander months preceding the date of termination but yet the conditions precedents of retrenchment of workman provided

(7)

under section 25F of the Industrial Dispute Act, 1947 has not been followed. The services of the applicant were retrenched/terminated without complying the provisions of the Sec. 25F of the Industrial Dispute Act, 1947 and as such the termination/retrenchment is ab-initio void and illegal.

xvii) That paragraph 2514 of the Chapt. XXV of Indian Railway Establishment Manual relates to retrenchment benefits for casual labourers but the applicant has not been granted the said benefits despite retrenchment with effect from 15.6.1981 and as such the termination is ab-initio void.

xviii) That the applicant is entitled for absorption in regular vacancy as the applicant is a casual labour and is entitled for the benefits provided in paragraph 2512 of Chapt. XXV of the Indian Railway Establishment Manual.

xix) That the applicant contacted personally the Opposite Parties 3 to 5 since the date of retrenchment/termination and was assured that he will be granted all the benefits provided under Industrial Dispute Act, 1947 and Indian Railway Establishment Manual for which the applicant is entitled. Opposite Parties 3 to 5 continued to assure the applicant but without any fruitful result. and at last the applicant served a strike notice under section 22(1) of the Indian Dispute, Act, 1947 through Sri

(8)

D.P. Awasthi, Assistant General Secretary, Uttar Railway Karmachari Union, Lucknow on 9.5.1988 as the said decision was taken in a meeting of Uttar Railway Karmachari Union on 7.5.1988 upon Opp. Parties 3 and 4 and a copy was also endorsed to Assistant Labour Commissioner (Conciliation), Lucknow.

xxi) That the Assistant Labour Commissioner (Conciliation) Lucknow opened a conciliation proceedings under the Industrial Dispute Act, 1947 through letter dated 16th May, 1988 and called the Opposite Parties 3 on 9th June, 1988 for conciliation.

xxi) That the conciliation proceedings were conducted by Assistant Labour Commissioner (Conciliation) thereafter which ultimately ended in failure and a report was submitted by Asstt. Labour Commissioner (Conciliation) Lucknow through letter No. Lko-B/1-40/88-ALC dated 15th March, 1989 to Opposite Party No. 2. A copy of the same is being annexed herewith as ANNEXURE No. 2 to the application.

xxii) That the Opposite Party No. 2 refused the reference too required under section 10 of the Industrial Dispute Act, 1947 on the basis of the report submitted by the Assistant Labour Commissioner (Conciliation), Lucknow dated 15th March, 1989 on the ground that the dispute has been raised after 9 years and as such the reference cannot be made through letter dated

(9)

19th September, 1989. A copy of the same is being annexed herewith as ANNEXURE No. 3 to this application.

xxiii) That the letter dated 19th September 1989 was not served upon the applicant as the copy of the same was not endorsed to the applicant and Sri D.P. Awasthi, Assistant General Secretary, Uttar Railway Karmachari Union could not inform the applicant about the refusal of reference by Opposite Party No. 2 and as such the applicant could not challenge the same. Sri D.P. Awasthi, Assistant General Secretary, Uttar Railway Karmachari Union, Lucknow provided a copy of the letter dated 19th September, 1989 to the applicant on 6th October, 1990 and as such the said letter is being challenged now.

xxiv) That the services of the applicant were terminated/retrenched with effect from 15.6.81 and the applicant continuously raised the dispute and ~~has~~ claimed his rights before the Opposite Parties 3 to 5 continuously from 15.6.1981 and at last raised the dispute through Uttar Railway Karmachari Union, Lucknow in May, 1988. The applicant has explained the delay. However the question of delay was not considered material by the Asstt. Labour Commissioner (Conciliation) Lucknow and as such he did not make a reference of the said facts in his letter dated 15th March 1989, but the Opposite Party No. 2 arbitrarily

(10)

and illegally rejected the reference on the ground of delay of 9 years. In fact, the dispute was raised before the Assistant Labour Commissioner (Conciliation) Lucknow only after a period of about 7 years.

xxv) That the question of limitation is not application in the Industrial Disputes relating to the Industrial Dispute Act, 1947 as there is no reference of limitation in the said Act. The claim of the applicant cannot be rejected by Opposite Party No. 2 on the ground of limitation. The Opposite Party No. 2 has refused reference arbitrarily, illegally and in colourable exercise of power without any rhyme and reason.

xxvi) That the various judgments of the Hon'ble High Courts and Hon'ble Supreme Court of India have settled the question that the reference cannot be refused by Opposite Party No. 2 on the ground of limitation as the provisions of relating limitation are not application in the disputes pertaining to the Industrial Dispute Act, 1947. The Opposite Parties has wrongly mentioned 9 years in the order dated 19th September, 1989 while the applicant has continuously raised the dispute either before the Opposite Party No. 3 or 5 against his illegal ouster with effect from 15.6.1981 or before Assistant Labour Commissioner (Conciliation) Lucknow and as such the claim of the applicant is within time.

xxvii) That several writ petitions were filed before the Hon'ble High Court by the Casual Labourers claiming their rights due to completion of 120 days and 240 days and more of continuous service in one calander year and as the result they were reinstated in service with full back wages by the Hon'ble High Court. Similar writ petitions were filed before the Hon'ble High Court in Jan. 1981 which were later on transferred to the Central Administrative Tribunal, circle bench, Lucknow and was marked as T.A.No. CA793/87(T) Gaya Prasad and others Vs. Union of India and others which is yet pending. and fixed for 8.1.91

5. Grounds for relief with legal provisions;

i) Because the Opposite Parties has arbitrarily, illegally and in colourable exercise of power without any rhyme and reason has refused the reference under section 10 of the Industrial Dispute Act, 1947.

ii) Because the provisions of limitation is not applicable upon the disputes raised through Industrial Dispute Act, 1947.

iii) Because the applicant has continuously claimed his right for reinstatement with effect from 15.6.1981 and as such the reference cannot be refused on the ground of limitation as the delay has been explained.

(12)

iv) Because the Opposite Party N o.2 has refused the reference without taking into consideration the facts stated in the letter dated 15th March, 1989 of the Assistant Labour Commissioner (Conciliation) Lucknow.

v) Because the dispute before the Assistant Labour Commissioner (Conciliation) was raised only after 7 years as such the mention of 9 years is totally wrong.

vi) Because the applicant is a temporary Railway servant within the meaning of provisions of Indian Railway Establishment Manual referred above and cannot be ousted from service in this manner with effect from 15.6.1981.

vii) Because the services of the applicant cannot be terminated without compliance of the requirement for such termination/retrenchment condition in Chapt XXIII and XXV of the Indian Railway Establishment Manual as well as the provisions of the Industrial Dispute Act, 1947.

viii) Because the termination of the services of the applicant is wholly arbitrary, illegal and with mala fide motive and amounts to punishment and as such in utter violation of the provisions of Art. 311 of the Constitution of India and principles of natural justice.

ix) Because the termination of the services of the applicant is violative of Arts. 14 and 16

of the Constitution of India.

x) Because the similarly situated persons have been granted benefits of Chapt XIII and XIV of the Indian Railway Establishment Manual by Opposite Party No. 3 to 5 as well as by the Hon'ble High Court and Hon'ble Supreme Court of India.

6. Details of remedy exhausted;

That the applicant declares that he has availed all the remedies available to him under the relevant service rules etc., and industrial dispute Act, 1947.

7. The matter is not previously filed or pending with any other court;

The applicant further declares that he has not previously filed any application, writ petition or suit regarding the matter in respect of this application has been made before any court or any other authority or any other bench of the Tribunal nor any such application, writ petition, or suit is pending before any of them.

8. Relief sought;

In view of the facts and grounds mentioned in para 4 & 5 of this application, the applicant prays for following reliefs;

((4)

(A) That this Hon'ble Tribunal may be pleased to quash the order dated 19th September, 1989 received on 6th October, 1990 contained as Annexure no. 3 to the application passed by Opposite Party No. 2 and the termination order if any with effect from 15.6.1981 and reinstates him with full back wages and other consequential benefits.

(B) That any other and further relief which this Hon'ble Tribunal may deem fit and proper be also awarded in favour of the applicant in the interest of justice with cost.

9. Interim Relief if any prayed for;

No interim relief is being prayed.

10. The humble applicant wants oral hearing through his counsel.

11. Particulars of postal order;

Postal order No. _____ dated _____
for Rs 50/- only.

VERIFICATION

I, Gaya Prasad, Aged about 30 years,
Son of Sri Ram Khelawan, Resident of Village
Bargaura, Post office Bikapur, District Faizabad
do hereby verify that the contents of paragraphs

गया प्रसाद

1 to 11 are true to my personal knowledge except para-5 which is true on the basis of legal advice received and that I have not suppressed any material facts.

Application is being provided vide notification No. A.A.T.11019/44/87 dated 11th October, 1988.

अपाप्रसाद

Signature of the Applicant

Place: Lucknow

Dated: 17-12-90

Asit Kumar Chaturvedi

(Asit Kumar Chaturvedi)
Advocate,
Counsel for the Applicant

(29)

॥ 16 ॥

इन दि आनरेबल सेंट्रल एडमिनिस्ट्रेटिव ट्रिब्यूनल
सर्किट बैच एट लखनऊ

ओ०एन० आफ 1990॥ एल॥

गया प्रसाद

---एप्लीकेन्ट

वर्सेज

यूनियन आफ इण्डिया एण्ड अदर्स

---रेस्पॉन्डेन्ट्स

फाइल नं० -3

संख्या एल-41012/45/89-आई.आर॥डी.यू॥
भारत सरकार
श्रम मंत्रालय

नई दिल्ली दिनांक 19 सित० 1989

सेवा में,

- 1- डिवाइजन्सल परसनल अफसर
नादरन रेलवे, हजरतगंज,
लखनऊ।
- 2- असिस्टेंट जनरल सेक्रेटरी
उत्तर रेलवे कर्मचारी यूनियन,
39-11-जे, मल्टीस्टोरीड रेलवे कालोनी,
धारबाग, लखनऊ 226001

विषय:- नादरन रेलवे, लखनऊ और उत्तर रेलवे कर्मचारी यूनियन
के मध्य औद्योगिक विवाद।

महोदय,

उपर्युक्त विषय पर सहायक श्रमायुक्त॥केन्द्रीय॥ लखनऊ की
संराधन विफलता रिपोर्ट सं० एल.के.ओ-8/1-40/88-ए.एल.सी.
दिनांक 15-3-89 का हवाला देते हुए मुझे यह कल्ले का निदेश हुआ
है कि केन्द्रीय सरकार ने इस विवाद में उठाई गई मांगों को
न्यायनिर्णयन के लिए न भेजने का निर्णय किया है क्योंकि विलम्ब
के लिए बिना किसी उचित कारण से इस विवाद को 9 वर्ष बाद से
उठाया गया है।

भवदीय,

ह०/- हरी सिंह
डिस्क अधिकारी

- प्रतिलिपि:-
- 1- केन्द्रीय श्रमायुक्त॥के॥कानपुर
 - 2- सहायक श्रमायुक्त॥के॥लखनऊ
 - 3- गाई फाइल

ह०/- हरी सिंह
डिस्क अधिकारी

गया प्रसाद

T.C.

Asit Kumar Chaturvedi

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

In Re M.P.No. 743/90(L)

O.A.No. 410 of 1990(L)

Gaya Prasad

... Applicant

Versus

Union of India & others

... Respondents

Application for condonation of delay.

The applicant above named most respectfully begs to submit as under;

That through the above mentioned original application, the applicant has challenged the validity of order dated 19th September, 1989 which was served upon him by Sri D.P. Awasthi, Assistant General Secretary, Uttar Railway, Karmachari, Union, on 6th October, 1990. The order dated 19th September, 1989 was neither addressed nor endorsed to the applicant. The applicant could not file the application within time for the reasons given in the original application.

It is, therefore, most respectfully prayed that for the reasons stated above and in the accompanying original application the Hon'ble Tribunal may be pleased to condone the delay in filing the above original application and the original application may be decided on merits in the interest of justice.

Place: Lucknow

Dated: 17-12-90

Asit Kumar Chatterjee
Advocate,
Counsel for the applicant

(31)

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

O.A.No. 410 of 1990(L)

Gaya Prasad ... Applicant

Versus

Union of India & others ... Respondents

I N D E X

-
- | | |
|--|-----|
| 1. <u>Annexure No. 1</u> | 1 |
| Extract of record of service
as casual labour of the
applicant | |
| 2. <u>Annexure No. 2</u> | 2-3 |
| Copy of letter dt. 15.3.89 | |
-

Place: Lucknow

Dated: 17-12-90

Raju/-

Asit Kumar Chaturvedi
(Asit K. Chaturvedi)
Advocate,
Counsel for the applicant

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

O.A.No. of 1990(L)

Gaya Prasad

... Applicant

Versus

Union of India & others

... Opp. Parties

Annexure No. 1Record of Service as Casual Labour

Sl.No.	Period of From	Employment to	Number of days
1.	26.6.78	10.7.78	15
2.	11.7.78	17.7.78	7
3.	18.7.78	15.10.79	90
4.	20.10.78	14.11.78	26
5.	16.11.78	30.11.78	11
6.	15.2.79	14.3.79	28
7.	15.3.79	14.4.79	31
8.	15.4.79	14.5.79	29
9.	15.5.79	14.6.79	31
10.	15.6.79	14.7.79	30
11.	15.7.79	13.8.79	32
12.	16.8.79	14.9.79	28 Total 356 days
13.	15.4.80	14.5.80	30
14.	15.5.80	31.5.80	17
15.	1.6.80	14.6.80	14
16.	15.6.80	14.7.80	30
17.	15.7.80	14.8.80	31
18.	16.8.80	14.9.80	30
19.	15.9.80	14.10.80	30
20.	15.10.80	14.11.80	31
21.	15.11.80	14.12.80	30
22.	15.12.80	14.1.81	31
23.	15.1.81	14.2.81	31 Total 661 days
24.	15.4.81	14.5.81	27
25.	15.5.81	14.6.81	31 Total 719 days

गया प्रसाद

T.C.

N.L.K.

Ch. At...

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL

CIRCUIT BENCH AT LUCKNOW

O.A.No. of 1990 (1)

Gaya Prasad ... Petitioner

Versus

Union of India & others ... Opp. Parties

Annexure No. 2

FAILURE OF CONCILIATION REPORT

Govt. of India
Ministry of Labour
Office of the Asstt. Labour Commissioner(c)

B-12, Sector-9, Aliganj, Lucknow 226020

No. LKO-8/1-40/ALC

Dated the 15th March 89

The Secretary(Sh. Hari Singh, Desk Officer),

Govt. of India,

Ministry of Labour,

New Delhi.

Subject:- I.D. Between the management of Northern
Railway, Lucknow and Uttar Railway
Karmachari Union over alleged illegal
termination of services of Shri Gaya
Prasad.

Sir,

The Asstt. General Secretary, Uttar Railway,
Karmachari Union, Lucknow served a strike notice on
D.P.O. and A.E.N. II Northern Railway, Lucknow over
alleged illegal termination of services of Shri Gaya
Prasad S/I Shri Ram Khelawan w.e.f. 14.6.81. On
receipt of the Strike Notice the same was seized
in conciliation and was discussed on several dates
and finally on 2.1.1989. During the course of
discussions the representative of the Union submitted
that Shri Gaya Prasad was appointed as Gangman/
Khalasi under P.W.I., Barabanki on 26.6.78 and

गया प्रसाद

T-C

11. 11. 1989

(3)

continued to work till 14.6.81 for total 1719 days. The management however terminated his services abruptly in violation of Sec. 25 F of I.D. Act 1947. Hence the Union demanded that he be reinstated with full back wages. On the other hand the representative of the management submitted that period involved in the case is very old and records are not available hence the same cannot be verified.

Since there was not any possibility of settlement, the dispute ended in failure. The union is willing for arbitration, but the management has declined the same.

Yours faithfully,

Sd/-

(R.M. Chellani)
Asstt. Labour Commissioner(c)
Lucknow.

Copy to;

1. The Regional Labour Commissioner(C), Kanpur 26002.
2. The Divisional Personnel Officer, Northern Railway, Hazratganj, Lucknow 226001.
3. The Asstt. General Secretary, Uttar Railway, Karmachari Union, 29-II-J, Multistoreyed Railway Colony, Gharbagh, Lucknow 226001.

Asstt. Labour Commissioner(c),
Lucknow.

आपका प्रसाद

T.C.
Asstt. Kumar Chaturvedi
Adv

IN THE HON'BLE CENTRAL ADMINISTRATIVE TRIBUNAL
CIRCUIT BENCH, LUCKNOW

O. A. NO. 410 of 1991 (L)

Gaya Prasad ... Applicant
Vs.
Union of India & others. ... Respondents.

COUNTER REPLY ON BEHALF OF THE
RESPONDENTS NO. 1, 3, 4 & 5.

I, N. K. Jain

aged about 26 years, son of Shri R. C. Jain

Asst Personnel Officer in the office of Divr

Rly Manager N Rly do hereby solemnly affirm
and state as under:-

1. That I am working as Asst Personnel

officer, Northern Railway,

Lucknow. I have been duly authorised by respondents

no. 1, 3, 4 & 5 to file the instant reply on their

behalf. I have readover the contents of the

Filed today
21/12/91

Assistant Personnel Officer
Northern Railway
LUCKNOW

application and have gone through the record and as such I am well conversant with the facts and circumstances of the case mentioned herein-after:-

2. That the contents of Para-1 & 2 of the application need no comments.

3. That the contents of Para-3 of the application are wrong, hence denied. In reply thereto it is stated that the application is highly barred by time as the applicant has approached to this Hon'ble Court after a lapse of about 10 years. Therefore, in view of Sec. 20 & 21 of the Administrative Tribunal Act, the application is not maintainable. The details of the para under reply are being given in the following paras of this counter reply.

4. That the contents of Para-4 of the application are being replied as under:-

4(i) That the contents of Para-4(i) of the application are not admitted as alleged. In reply thereto it is stated that there is no authentic record available in the offices of the Assistant Engineer (II)/ Lucknow or the Divisional Railway Manager, Lucknow or the Permanent Way Inspector, Barabanki by which the correct working

Signature
4/11/97
PERSONNEL OFFICER
Northern Railway
LUCKNOW

3.

days of the applicant could be verified, due to the reason that the matter is very old and after a specific period the record is weeded out and that is why the applicant has filed the instant application after lapse of long time. Anything contrary to it is denied.

4(ii) That the contents of Para-4(ii) of the application are not admitted as alleged, hence denied. In reply thereto it is stated that the applicant was working as casual labour^{-er}/as per averments in the application no service record of the casual labourers is maintained. Therefore, it cannot be said whether his working was satisfactory or otherwise. It is further submitted that the Annexure No.1 of the application can be verified by the department in view of the averments made above.

4.(iii) That the contents of Para-4.(iii) of the application are not admitted, hence denied. In reply thereto it is stated that the applicant as per his own averments made in the application, the services of the applicant automatically ceases on the

Signature
4/11/91
General Manager's Office
Northern Railway
LUCKNOW

4.

expiry of sanctioned period. There is no question of termination because his engagement was for the specific period i.e. from time to time which was well within the knowledge of the applicant.

4.(iv) That the contents of Para- 4.(iv) of the application are not admitted, hence denied. In reply thereto it is stated that the engagement of the applicant was on contract basis for a certain period for which sanction was accorded by the competent authority as such the question of acquiring temporary status after completing 120 days does not arise. In view of the same it is submitted that the para under reference is misleading and vehemently denied.

4(v) That the contents of Para-4.(V) of the application are not admitted as alleged. In reply thereto it is stated that there ~~is no~~ being no authentic record available in the offices of the respondents, the same cannot be verified as stated above.

4.(vi) That the contents of Para-4(vi) of the application are not admitted, hence denied. In reply thereto it is stated that there

Adyain
HL/1/91
Northern Railway
LUCKNOW

being no authentic record available in the offices of the respondents, the same cannot be verified as stated above.

4(viii)

That in view of the facts and circumstances narrated above in this counter reply, the averments made in para under reply are denied as these are incorrect.

4(vii) That the contents of Para-4(vii) of the application are not admitted, as alleged, hence denied. In reply thereto it is stated that there was NO retrenchment from his side of the respondent no. 3 to 5 as the applicant was engaged for the specific period. It is further clarified that the Ch. XXIII of Indian Railway Establishment Manual is not applicable in his case. Therefore, the question of re-instatement and back wages does not arise.

4(ix) That the contents of Para-4.(ix) of the application are not admitted as alleged. In reply thereto it is stated that there was no termination of the applicant. Since the applicant was engaged for specific period on ELA (Essential Labour Acquisition)

Signature
24/11/91
Assistant Personnel Officer
Northern Railway
LUCKNOW

(2/0)

which was sanctioned by the competent authority. The cession of work was automatic and there was no termination at all.

4.(x) That the contents of Para-4.(x) of the application are wrong, hence denied in view of the facts and circumstances narrated in the preceding paras of this counter-reply.

4.(xi) That the contents of Para-4.(xi) of the application are not admitted, as alleged because the same are not applicable in the case of applicant. However, it is further submitted that all the concerned records were weeded out under the age limit and as such at this belated stage i.e. after ten years actual working days of the applicant cannot be ascertained. It is further submitted that the applicant's case was rightly refused by the respondent no. 2 to refer the dispute before the Central Government Industrial Tribunal, Kanpur for its adjudication on the ground of laches on the prayer of the applicant. The applicant has not made any representation to

Signature
4/11/91
Assistant Personnel Officer
Northern Railway
LUCKNOW

any authority before the alleged date of termination. It is further submitted that in the present application, the applicant has not filed any termination order and as such the claim is false and frivolous and not maintainable under the law. The applicant had never acquired temporary status as alleged in the ~~said~~ para. under reply. The applicant had been engaged against the temporary sanctions received from time to time for specific work and for specific period. Thus, the question of termination of his service does not arise.

4.(xii) That the contents of Para-4.(xii) of the application are wrong, hence denied. However, it is submitted that the baseless ground has been taken by the applicant. The para under reply does not deserve any specific comment in view of the preceding p-aras of this counter reply.

Adyain
4/11/97
Legal Officer
Northern Railway
LUCKNOW

4.(xiii) That the contents of Para-4(xiii) of the application need no comments.

However, it is submitted that the rules

under reference are not applicable in the applicant's case.

4.(xiv) That in reply to Para-4.(xiv) of the application it is stated that the employee who attains the temporary status, is entitled for notice or in lieu of notice pay but since the applicant had not acquired the temporary status and he was not engaged under contract for completing the specific work for specific period hence the allegations made in the para under reply are baseless, as such the same are denied.

4.(xv) That in reply to Para-4(xv) of the application it is stated that its contents are not applicable in the case of the applicant as the same has been mentioned by the applicant on the frivolous ground just to strengthen his case, hence denied.

4.(xvi) That the contents of Para-4(vi) of the application are not admitted, hence denied. In reply thereto it is stated that the entire record i.e. paid vouchers which are the only documents

Alpuri
4/11/91
Assistant Personnel Officer
Northern Railway
LUCKNOW

to ascertain the number of working days of the applicant, have been weeded out as per the Railway Board New Delhi Letter No. 25

dated . Therefore,

the claim of the applicant at this belated stage after the expiry of 10 years cannot be verified from the original records. Moreover, it is well settled law if a person is engaged for a particular work and after the completion of that work, the services of the said person are automatically terminated and he is not at all entitled for any protection of Sec. 25 F of Industrial Dispute Act, 1947.

4(xii) That the contents of Para-4(xvii) of the application are not admitted as alleged, hence denied. In reply thereto it is stated that the applicant was never retrenched by the respondents. Since the applicant was engaged as casual labourer for specific period, the cession of his services was automatic. However, the applicant is not entitled for any retrenchment benefits as claimed.

4.(xviii): That the contents of Para-4(xviii) of the application are not admitted in the applicant's case, hence denied as those are not applicable in the instant case.

4.(xix) That the contents of Para-4(xix) of the

Signature
4/11/91
General Manager
Northern Railway
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application are not admitted as alleged, hence denied. In reply thereto it is stated that the applicant never contact^{ed} personally to the respondents No. 3 to 5. It is further submitted that the applicant was not retrench-
ed or his services were not terminated because he was engaged for specific period for a fixed period on contract basis as a such on the expiry of such period, his services were automatically ceased. It is necessary to mention that the Assistant Labour Commissioner (Central), Lucknow vide its Notice No. LKO-8(1-40)/88- ALC dated 16.5.88 sent a Strike Notice which was alleged to be served on the Railway Administration by one Sri D.P. Awasthi. As a matter of fact, no such notice was previously served by Sri D.P. Awasthi on the railway administration.

The Uttar Railway Karmchari Union is neither the recognised union of the management nor have any legal right to serve any notice under the Industrial Dispute Act, 1947 to the Railway Administration. There are two recognised unions of the Railway Administration viz. Northern Railway Mens Union and

Signature
4/11/91
Northern Railway
LUCKNOW

and Uttar Railway Mazdoor Union. They have only legal right to settle the dispute of the employees with the authorities of the Railway Administration under the permanent Negotiation Machinery and when the dispute was not settled under the permanent Negotiation Machinery, these recognised unions of the opposite parties as per rules are entitled to raise the dispute under the Industrial Dispute Act against the Railway Administration and as such the allegation contained in Para under reply of the application are baseless and against the provisions of Law and as such those are denied.

4.(xx) That the contents of Para-4(xx) of the application are admitted to the extent of issue of notice by the Assistant Labour Commissioner (C), Lucknow, the management had given the reply alongwith the facts to the Assistant Labour Commissioner (C), Lucknow. Since the Railway Administration cannot do any conciliation with the unrecognised unions and as such the question of conciliation does not arise with the unrecognised union in the instant

Signature
14/11/97
Assistant Personnel Officer
Northern Railway
LUCKNOW

12.

case. Anything contrary to it is denied.

4.(xxi): That the contents of Para-4(xxi) of the application are admitted only to the extent that after receiving the facts which were given by the Railway Administration, the confidential report was sent to the Ministry of Labour, New Delhi by the Assistant Labour Commissioner (C), Lucknow as provided under the rules of the Industrial Dispute Act where the authorities of the Ministry of Labour thoroughly considered the report sent by the Assistant Labour Commissioner, Lucknow (C) came to the conclusion that the case is not its fit to refer for/adjudication before the Central Government Industrial Tribunal, Kanpur. Anything contrary to it is denied.

4.(xxii) That the contents of Para-4(xxii) of the application need no comments.

4.(xxiii) That the contents of Para-4(xxiii) of the application are not admitted, as alleged, hence denied. In reply thereto it is stated that the dispute of the applicant was raised/ represented by the unrecognised union against the Railway Administration and as such under

Signature
4/11/91
Assistant Personnel Officer
Northern Railway
LUCKNOW

13.

the provisions of the Industrial Dispute Act, the same was not communicated correctly to the concerned union.

4(xxiv): That the contents of Para-4(xxiv) of the application are misleading, hence denied. In reply thereto it is stated that in view of the facts and circumstances stated above in this counter reply, the claim of the applicant is barred by time and as such the present application is not legally maintainable in the eyes of Law and it is further submitted that the applicant's matter was rightly rejected by the Ministry of Labour, New Delhi on the ground of latches of 9 years on the part of the applicant. It is also relevant to mention that the applicant himself has admitted that he raised the matter after a lapse of 7 years' period.

4(xxv): That the contents of Para- 4(xxv) of the application are not admitted as alleged. In reply thereto it is stated that it is well settled law that latches must be explained so that employee cannot take advantage for his own wrong. Anything contrary to it is denied.

Shyam
4/11/97
Northern Railway
LUCKNOW

in reply to
4.(xxvi): That/the contents of Para-4.(xxvi) of

the application, it is stated that the present application is barred by time. The same is clear from the perusal of Annexure No.3 of the application by which the respondent no.2 has been pleased to refuse to refer the matter before the Central Government Administrative Tribunal, Kanpur on the ground of delay and laches of 9 years. However, it is further submitted that the applicant himself has admitted in his para-4.xxiv that he raised the matter after ~~expiry~~ lapse of 7 years' period. Therefore, in such circumstances, the p-resent application is highly barred by time and is not maintainable due to the reasons that the applicant did not prefer the same within the prescribed period of limitation.

4(xxvii): That the contents of Para-8 4.(xxvii) of

the application are partly admitted and the rest of the contents are denied. The T.A.No. 793/ 87, Gaya Prasad Vs. Union of India & others is admitted. The rest of the contents are denied as the facts of the case of casual labour are not the same with the present case of the applicant. The applicant is

Chyain
4/11/91
Northern Railway
CCKNOR

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required to give the strict proof of the same.

5. That the contents of Para-5 of the application and the grounds taken therein are false, frivolous and fabricated and as such those are not sustainable in the eyes of law. Therefore, the application deserves to be dismissed throughout.
6. That the contents of Para-6 of the application need no comments. However, it is further submitted that the applicant did not avail any departmental remedy.
7. That the contents of Para-7 of the application need no comments.
8. That the contents of Para-8 of the application are wrong, hence denied. In reply thereto it is submitted that the applicant does not deserve any relief as prayed in view of the facts and circumstances narrated in the preceding paras of this counter reply. The application of the applicant deserves to be dismissed throughout.
9. That the contents of Para-9 of the application need no comments.
10. That the contents of Para-10 of the application need no comments.
11. That the contents of Para-11 of the application

W. J. Singh
4/11/91
Assistant Personnel Officer
Northern Railway
CHAKRA

(50)

16.
need no comments.

12.

(*M. Jain*)
4/11/91
VERIFICATION

Assistant Personnel Officer
Northern Railway
LUCKNOW

I, M. K. Jain, Asst Personnel Officer

do hereby verify that the contents of Paras
of the instant reply are true to my personal
knowledge and those of paras 1 to 11
of this counter reply are true on the basis of
record and those of paras _____ of
the same are believed by me to be true on the
basis of legal advice.

Signed and verified this 4/11 day
of Nov, 1991 at Lucknow.

Lucknow

Dated: 4.11.91

(*M. Jain*)
Assistant Personnel Officer
Northern Railway
LUCKNOW

through
B. Shukla
(B. K. Shukla)
Rly. Advocate

(51)

Central Administrative Tribunal
Lucknow

वदालत धीमान् महोदय

(वादी) अपीलाष्ट

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वकालतनामा

प्रतिवादी रेषाडेन्ट



(अपीलान्ट)

बनाम

प्रतिवादी रेषाडेन्ट

Gaya Prasad Vs UOI

नं० मुकदमा

सन्

पेशी को ता०

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ऊपर लिखे मुकदमा में अपनी ओर से

Asit Kumar Chattervedi

वकील

महोदय

Bashir Building, Pandarib, UOI एडवोकेट

को अपना वकील नियुक्ति करके प्रतिज्ञा इकरार करता हूं और लिखे देता हूं इस मुकदमा में वकील महोदय स्वयं अथवा अन्य वकील द्वारा जो कुछ पैरवी व जबाब देही व प्रश्नोत्तर करें या कोई कागज दाखिल कर या लौटावे या हमारी ओर से डिगरी जारी करावे और रूपया वसूल कर या सुलहनामा व इकबाल दावा तथा अपील निगरानी हमारी ओर से हमारी या अपने हस्ताक्षर से दाखिल करें और और तसदीक करें मुकदमा सठावे या कोई रूपया जमा करें या हमारी विपक्षी (फरीकसानो) का दाखिल किया हुआ रूपया अपने या हमारे हस्ताक्षर युक्त (दस्तखती) रसीद लेवे या पंच नियुक्त करें-वकील महोदय द्वारा की गई वह सब कार्यवाही हमको सर्वथा स्वीकार है और होगा मैं यह भी स्वीकार करता हूं कि मैं हर पेशी पर स्वयं या किसी अपने पैरोकार को भेजता रहूंगा अगर मुकदमा अदम पैरवी में एक तरफ मेरे खिलाफ फैसला हो जाता है उसकी जिम्मेदारी मेरे वकील पर नहीं होगी। इसलिए यह वकालत नामा लिख दिया प्रमाण रहे और समय पर काम आवे।

Accepted
Asit Chattervedi

हस्ताक्षर गजाप्रसाद

साक्षी (गवाह)

साक्षी (गवाह)

दिनांक

17/12/70

महीना

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BEFORE THE HON&BLE CENTRAL ADMINISTRATIVE TRIBUNAL
LUCKNOW BENCH, LUCKNOW.

.....

O.A. No. 410 of 1990.

Gaya Prasad

.. .. Applicant.

Versus

Union of India and others.

.. .. Respondents.

REJOINDER AFFIDAVIT
TO THE COUNTER AFFIDAVIT FILED
ON BEHALF OF RESPONDENT NO. 1, 3, 4, & 5.

I, Gaya Prasad aged about 32 years S/o Sri
Ram Khelawan resident of Village Bargaura, Post Office
Bikapur, District Faizabad state as under :-

1. That the deponent is applicant in the above
noted Original Application as such he is well
conversant with the facts and circumstances of
the case.
2. That the deponent has read and understood the
contents of paras of the Counter Reply filed on
behalf of respondents and states as hereinafter :-

..2/-

गया प्रसाद

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3. That the contents of paras 1 and 2 of the Counter Reply need no comments.

4. That the contents of para 3 of the Counter Reply are denied, and the contents of para 3 of the Original Application are reiterated as correct. The Original Application is within time under the provisions of Administrative Tribunal Act, 1985.

5. That the contents of para 4.i and 4.ii of the Counter Reply are denied and the contents of para 4.i and 4.ii of the Original Application are reiterated as correct. The respondents have filed Counter Reply in the Writ Petition No. 62 of 1981 (T.A.No. 793/87(T)) on 4th October, 1991 on the basis of record available with them. The applicants in the aforesaid Writ petition are the casual workers who have been worked upto 14th, December, 1980 but in case of the applicants it is being said that the record has been veeded out. Either the record should have been veeded out in regard to the petitioners in the Writ Petition No.62 of 1981 then the Counter Reply in that writ petition could not have been filed but a contrary statement has been made by the respondent in both these cases.

..3/-

अयाप्रसाद

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6. That the contents of paras 4.iii and 4.iv of the Counter Reply are denied and those of paras 4.iii and 4.iv of the Original Application are reiterated as correct. The applicants acquired temporary status after completing 120 days of continuous service according to the provisions of Indian Railway Establishment Manual.

7. That the contents of paras 4.v, and 4.vi of the Counter Reply are denied and the contents of paras 4.v, and 4.vi of the Original Application are reiterated as correct. The respondents are misrepresenting before this Hon'ble Tribunal as such they may be put to strict prove about the veeding out of the record.

8. That the contents of paras 4.vii and 4.viii of the Counter Reply are denied and those pf paras 4.vii, and 4.viii of the Original Application are reiterated as correct. The applicants' engagement ^{his} did not continue as such ~~his~~ services were terminated w.e.f. 15th June, 1981. Chapter 23 of the Indian Railway Establishment Manual is not applicable in this case. The applicants ^{is} ~~are~~ entitled for reinstatement and back wages.

अमापुसाय

..4/-

9. That the contents of paras 4.ix and 4.x of the Counter Reply are denied and the contents of paras 4.ix and 4.x of the Original Application are reiterated as correct. The applicants' engagement discontinued on 15th June, 1981 as such the services of the applicants were terminated w.e.f. 15th June, 1981. The work under respondents existed even after 15th June, 1981. The respondents are deliberately misrepresenting the fact before this Hon'ble Tribunal.

10. That the contents of paras 4.xi and 4.xii of the Counter Reply are denied, and the contents of paras 4.xi and 4.xii of the Original Application are reiterated as correct. The respondents may be directed to produce the record pertaining to the petitioners in Writ Petition No. 61 of 1981 in which the record was available on 4th October, 1991, and the order ~~re~~ regarding record which can prove that the record of the applicants has been veeded out. The applicants' case has been wrongly rejected by the opposite party No.2.

11. That the contents of paras 4.xiii, and 4.xiv, of the Counter Reply are denied and the contents of paras 4.xiii and 4.xiv of the Original Application are reiterated as correct. The applicant has acquired temporary status as ~~they have~~ ^{he has} worked for more than

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120 days of continuous service. The applicants ~~were~~ never engaged on contract. The applicants ~~were~~ engaged for maintenance work as such it can not be said that it was a contract.

12. That the contents of paras 4.xv, and 4.xvi of the Counter Reply are denied and the contents of paras 4.xv, and xvi of the Original Application are reiterated as correct. The Railway Board's letter referred in para under reply has deliberately not been annexed. However, even if according to the said letter if the records have been weeded out in case of the applicants then the record should have also been weeded out in compliance of the said letter in case of the petitioner of writ petition No. 62 of 1981. The opposite parties are taking a contrary stand in both cases.

13. That the contents of paras 4.xvii and 4.xviii of the Counter Reply are denied and the contents of paras 4.xvii and 4.xviii of the Original Application are reiterated as correct. In the maintenance work there is never cession of work.

14. That the contents of paras 4.xix and 4.xx of the Counter Reply are denied, and the contents of paras 4.xix and 4.xx of the Original Application are reiterated as correct. The applicants contacted personally the opposite party No. 3 to 5 and at last contacted the

गया प्रसिद्ध

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Authorities under the Industrial Disputes Act, 1947.

The applicants approached within time the Authorities under the Industrial Disputes Act, 1947.

15. That the contents of para 4.xxi of the Counter Reply are denied and the contents of paras 4.xxi of Original Application are reiterated as correct.

16. That the contents of para 4.xxii of the Counter Reply need no comments.

16. That the contents of paras 4.xxiii and 4.xxiv of the Counter Reply are denied and the contents of paras 4.xxiii and 4.xxiv of the Original Application are reiterated as correct. The applicants' case was placed before the Authority under the Industrial Disputes Act, 1947, through the Union of which the applicant was a member, The Union through which the applicant approached the Authority of Industrial Disputes Act, was a registered body, there is no delay as such the Opposite party No.2 has wrongly rejected the Claim of the applicants.

17. That the contents of paras 4.xxv and 4.xxvi of the ~~Original~~ Counter Reply are denied, and the contents of paras 4.xxv and 4.xxvi of the Original Application are reiterated as correct. The applicant has explained the delay in approaching the Labour Authority as such

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the dispute was raised within the limitation.

18. That the contents of para 4xxvii of the Counter Reply are denied, and the contents of para 4.xxvii of the Original Application are reiterated as correct. The petitioners in writ petition No. 62 of 1981 were also ~~also~~ working under Permanent Way Inspector, Northern Railway Barabanki and the applicant was also working under the same Authority. The engagement of the petitioners of writ petition No.62 of 1981 were terminated w.e.f. 15th December, 1980 whereas the engagement of the applicant was discontinued w.e.f. 15.6.1981. The applicant is claiming the benefits of same provisions of law of which the petitioners~~is~~ of Writ Petition No.62 of 1981 are claimant.

19. That the contents of para 5 and 6 of the Counter Reply are denied and the contents of paras 5 and 6 of the Original Application are reiterated as correct. The applicant approached the Departmental Authority and when no heed was paid to the applicants requests then the applicant approached the Authority under the Industrial Disputes Act, 1947.

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20. That the contents of para 7 of the Counter Reply need no comments.

21. That the contents of para 8 of the Counter Reply are denied and the contents of para 8 of the Original Application are reiterated as correct. The Applicant's Original Application is full of merit and deserves to be allowed with costs to the applicant. The applicant may be reinstated in service since the date of termination with full back wages, seniority, and increments etc..

22. That the contents of paras 9, 10, and 11 of the Counter Reply need no comments.

Lucknow: DATED: . . 1992.

5/4/92
Deponent.

VERIFICATION.

I, the deponent above named do hereby verify that the contents of paras 1 to 22 of the Rejoinder are true to my own knowledge.

No part of it is false and nothing material has been concealed.

Lucknow: Dated: . . 1992.

5/4/92
Deponent.