

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH

Original Application No: 1133/93.

Date of Decision: 21.6.99

Prakash Palanimuthu

Applicant.

Shri D.V.Gangal

Advocate for
Applicant.

Versus

Union of India & Ors.

Respondent(s)

Shri V.S.Masurkar

Advocate for
Respondent(s)

CORAM:

Hon'ble Shri. Justice K.M.Agarwal, Chairman,

Hon'ble Shri. R.K.Ahooja, Member(A).

(1) To be referred to the Reporter or not?

(2) Whether it needs to be circulated to
other Benches of the Tribunal?

For
(K.M.AGARWAL)
CHAIRMAN.

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL,
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO.1133/93.

Monday this the 21st day of June, 1999.

Coram: Hon'ble Shri Justice K.M.Agarwal, Chairman,
Hon'ble Shri R.K.Ahooja, Member(A).

Prakash Palanimuthu,
Khalasi,
residing at Permanent Way Inspector,
(Construction) Central
Railway,
Jasai.

...Applicant.

(By Advocate Shri D.V.Gangal)

Vs.

1. The Union of India through
The General Manager,
Central Railway,
Bombay V.T.

2. The Executive Engineer
(Construction) Central
Railway,
Panvel.

3. The Permanent Way Inspector,
(Construction) Central Railway,
Jasai.

...Respondents.

(By Advocate Shri V.S.Masurkar)

: O R D E R :

(Per Shri Justice K.M.Agarwal, Chairman)

By this O.A. the applicant wants a direction to the Respondents to allow him to resume his duties as Casual Labour with Respondent No.3.

2. Briefly stated, the applicant was a Casual Labour. He had acquired temporary status, but not in regular service. He remained absent w.e.f. 24.7.86 to 11.7.92. He appeared before the third respondent on 14.7.92 with a prayer to allow him to join his duties. He also produced Medical Certificate to state that all along he was sick and under treatment of Dr.K.M.Rajendran (which is at Annexure I), but he was not allowed to join his duties and therefore, he has filed the present O.A. The O.A. is resisted by the Respondents.

JKW

...2.

entitled to privileges and rights of temporary government employee as mentioned in Chapter 23 in case his services were terminated by the Railways. Abandonment of service by the applicant in this manner cannot be equated with termination of service by the employer and therefore, he is not entitled to the rights and privileges as mentioned in Chapter 23 of Indian Railway Establishment Manual (IREM).

7. The decision of the Allahabad High Court was with reference to a regularly appointed temporary Railway Servant and therefore, it cannot be applied to the case of the applicant who was only having a temporary status. Further, the employee before the Allahabad High Court was hospitalised in a Railway Hospital and was getting treatment for a long period of three years in that Railway Hospital. Whereas, in the present case, the applicant was getting treatment from one Dr.K.M.Rajendran who is stated to be Authorised Medical Attendant with Registration No.25707 in Government Hospital Vriddhachalam. He was not a Doctor in any Railway Hospital. The other decision of the Supreme Court relied on by the learned counsel for the applicant is also not applicable in the present case because there was no order of removal, dismissal or discharge as in the present case. The applicant's only case is that he had remained absent due to his sickness and therefore when after a period of four years he came to resume his duties, he should have been allowed by the respondents to join his duties.

8. For the foregoing reasons, we find no merit in this O.A., it is hereby dismissed. No costs.

(R.K.AHOOT)
MEMBER(A)

B.

(K.M.AGARWAL)
CHAIRMAN

3. The learned counsel for the applicant submitted that the applicant was not allowed to join the duties as he was on unauthorised absence and he had also committed breach of ~~authorised~~ Railway Medical Rules. According to the learned counsel, this amounted to mis-conduct and therefore, the submission of the applicant could not ^{be} dispensed with without holding a departmental enquiry. He also referred to Chapter 23 of Indian Railway Establishment Manual, Vol.I to submit that a Casual Labour with temporary status was entitled to rights and privileges as a regular employee of the Railways. He also relied on a decision of the Allahabad High Court in **Balwant Raj Vs. Union of India** (AIR 1968 All. 14), and that of the Supreme Court in **State of Punjab Vs. Amar Singh Harika** (AIR 1966 SC 1313) in support of his contentions.

4. The learned counsel for the respondents submitted that a Casual Labour with temporary status cannot claim rights and privileges of a regular Railway servant. It was submitted that the absence of the applicant amounted to abandonment of service and therefore, he could not be allowed to re-join the duties.

5. On hearing the learned counsel for the parties and perusing the records, we are of the view, that even according to the applicant he had only acquired a temporary status and had not acquired the regular status with the Railways. Under the circumstances, after having remained absent from service for such a long period between 24.7.86 to 14.7.92 he cannot claim as of right re-instatement in service. As he was not a regular employee and as his absence was without the permission of the respondents, the absence was unauthorised and for that reason he cannot claim that the period of his absence could not be treated as unauthorised without holding a Disciplinary Enquiry against him. Infringement of Medical Rules by a Casual Labour could also not give a right to claim departmental enquiry in a case of the present nature.

6. The applicant as a Casual Labour with temporary status may be