

CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO. 1298/1994

DATED: Thursday, the 19TH DAY OF OCTOBER, 2000

Shri Hanmanta Thapayya Applicant.

(Applicant Shri G.S.Walia, Advocate)

Versus

Union of India & Ors Respondents

(Respondents by Shri S.C.Dhawan, Adv.)

CORAM

Hon'ble Shri Justice Ashok Agarwal, Chairman,
Hon'ble Shri B.N. Bahadur, Member (A)

(1) To be referred to the Reporter or not? }
(2) Whether it needs to be circulated to other Benches of the Tribunal? } No
(3) Library.

(B.N. Bahadur)
Member (A)

sj*

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
MUMBAI BENCH, MUMBAI

Original Application No.1298/1994

Dated: THURSDAY this the 19th Day of October, 2000.

Coram: Hon'ble Justice Shri Ashok Agarwal, Chairman
And
Hon'ble Shri B.N. Bahadur, Member (A)

Hanmanta Thapayya
Khalasi/I.O.W. (M)
Bombay Central Railway
C/o G.S. Walia
Advocate, High Court
16, Maharashtra Bhavan,
Bora Masjid Street
Fort, Bombay 400 001. Applicant

(Applicant by Shri G.S. Walia, Advocate)
vs.

1. Union of India through
General Manager,
Central Railway,
Bombay V.T.,
Bombay 400 001.
2. Divisional Railway Manager,
Central Railway,
Head Quarters Office,
Bombay V.T.
Bombay 400 001. Respondents.

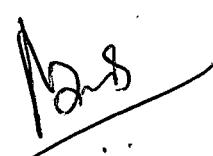
(Respondents by Shri S.C. Dhawan, Advocate)

ORDER (ORAL)

(Per: B.N. Bahadur, M(A):)

This is an Application made by Shri Hanmanta Thapayya seeking the relief that this Tribunal direct the Respondent to take the Applicant back on duty. The case of the Applicant is that he was working as a Casual Labourer, under Inspector of Works, in Mumbai V.T. w.e.f 20.3.1981 and that he had attained temporary status after working for about 4 months. Due to mental disturbances and illness he, however, remained absent for a period of 6 to 7 years. However, he recovered and appeared before his employers, with the Medical Certificate issued on

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20.12.1991, by a Railway Doctor (Exh.A). The Applicant is aggrieved that when he appeared before the authorities with this Certificate and requested for being taken back for duties, the Railway Authorities have not agreed to take him back on duty.

It is with this grievance that the Applicant has come up to the Tribunal, seeking the relief as mentioned above.

2. The Respondents have resisted the claim of the Applicant in their Written Statement, and stated that the Applicant was engaged as daily waged Khalasi, and was a casual labourer, and had worked for the period between 3.8.1977 and 19.8.1977 i.e. for a period of 16 days only. It is contended that after this, he had remained absent from duty, without permission. The Respondents deny that the Applicant was working with them in 1981, or had acquired temporary status, and hence they assert that the question of screening him for absorption did not arise. Thus they claim that the Applicant's services are deemed to be terminated on 28.8.1977, from which date he absented himself.

3. We have heard Learned Counsels on both sides, and perused the papers in the case, including the photo copies of the Labour Card at pages 11 to 14 which has incidentally also become the subject matter of a Misc. Petition in this case.

4. Learned Counsel for the Applicant Shri Walia, drew attention to the application made by the Applicant (copy at Ex.5 P.10) to make the point that applicant's plea for being taken back on duty has not even been looked into, and no reply has been provided to him. Hence this O.A. was filed with the simple prayer that the Applicant be taken back on duty.

5. The main ground taken by the Counsel for Applicant is that no Inquiry was conducted and, therefore, no opportunity of any kind was provided to the Applicant. He asserts that this is against the principles of natural justice and seeks support from the case

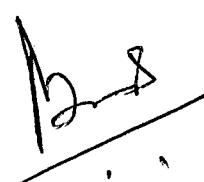


of *Robert D'Souza vs. Executive Engr. Southern Ry. I (1982)* SCC (L&S) 1240 where, according to him in a similar case, the Hon'ble Supreme Court had held that the Applicant therein could not be discharged without a regular Inquiry. He made a point that the abandonment of principle did not apply to the Govt. Servants, in view of this case law cited.

6. Learned Counsel for Respondents, Shri S.C.Dhawan took support from his Written Statement and argued that in spite of the clear application for production of an original record of services/Labour Card, or this has not been produced, and that the photo copies produced are illegible. It is, therefore, not possible to ascertain details from this. In fact, he asserted that these photocopies would not be admissible as evidence in the case. He made more than a hint to the effect that in any such document the entries should not be relied as being necessarily factually correct.

7. It is an admitted fact that the Applicant was a casual labourer. There is however, a dispute as to whether he had attained the temporary status. In the light of the facts produced, we are unable to come to the conclusion that the Applicant had attained temporary status. Now in regard to the argument, that no inquiry was conducted. We have seen the judgement in case of *Robert D'Souza* cited above. In this case, the absence of the Applicant therein was admittedly for a period of about 20 days only. Here, the absence is admittedly of the order of 6 to 7 years and there can be no compatibility on the facts of the case. Hence the case law cited would not be applicable to the present case before us.

8. Our attention has been drawn by Counsel for Respondent to Note below para 301 of the IREC Vol. I 1985 Edn. where it is


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provided that no notice of termination will be necessary in a case where a temporary Railway Servant has remained absent on extra ordinary leave (EOL) beyond 5 years. And that no Show Cause Notice would be necessary in such cases. Here it is not even the case of a temporary Railway Servant. It is not even the case of EOL being sanctioned, but virtually a case of an abandonment of service, for the causes for that might well have been unfortunate.

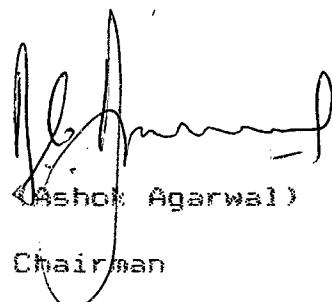
9. In the light of the above discussions, we do not find any cause for interference in this case. However, in case the Respondents themselves wish to grant any relief on the basis of any new facts that may come to their notice, this Order will not come in the way of their providing a relief, available under rules, to the Applicant. However, no directions can be given in the matter.

10. In the consequence, this O.A. is hereby dismissed. No orders as to costs.

B.N.Bahadur

(B.N.Bahadur)

Member (A)



(Ashok Agarwal)

Chairman

sj*