

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH MUMBAI

ORIGINAL APPLICATION NO:1053/98

DATE OF DECISION: 10<sup>th</sup> August 2000

Shri Rafique Khan Applicant.

Shri S.V. Marne Advocate for  
Applicant.

Versus

Central Railway and another. Respondents.

Shri R.R.Shetty Advocate for  
Respondents

CORAM

Hon'ble Shri S.L.JAIN, Member (J)

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

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

(3) Library. yes

*S.L.Jain*  
(S.L.JAIN)  
Member(J)

NS

CENTRAL ADMINISTRATIVE TRIBUNAL  
MUMBAI BENCH, MUMBAI.

ORIGINAL APPLICATION NO: 1053/98

the 10<sup>th</sup> day of AUGUST 2000

CORAM: Hon'ble Shri S.L.Jain, Member (J)

Rafique Khan  
Residing at  
Jam Mohalla  
Behind Anjuman School  
Bhusawal

...Applicant

By Advocate Shri S.V. Marne.

V/s

1. Union of India through  
General Manager,  
Central Railway,  
Mumbai CST, Mumbai.
2. Divisional Railway Manager,  
Central Railway,  
Bhusawal Division,  
Bhusawal.

...Respondents.

By Advocate Shri R.R. Shetty.

O R D E R

(Per Shri S.L.Jain, Member (J))

This is an application under Section 19 of the Administrative Tribunals Act, 1985 for a direction to the respondents to consider the applicant for regularisation in office services in any department taking into consideration the period from 19.8.1979 to 11.8.1983 for regularisation of the services alongwith a declaration that non-regularisation of the services of applicant is illegal and void- abinito.

2. There is no dispute between the parties that the applicant has worked as Casual Labour with P.W.1 depot from 19.8.79 to 10.11.1983, in locoshade on 7.9.1985, in CIOW workshop

*[Signature]*

...2...

:2:

from 19.4.1986 to 18.12.1986 in broken period. Casual labour card was issued in 1991. The applicant was also screened for Hot Season Waterman. The applicant served the legal notice dated 28.8.1990. The name of the applicant is borne in live register in locoshade and CIOW.

3. The dispute between the parties is with respect to the fact that the applicant claims to have worked as casual labour with PW1 Khandwa in 1988 for two months, claims to have represented the matter with the respondents vide dated 28.2.1989, 28.2.1990, 27.2.1991, 3.1.1992, 24.9.1992, 28.2.1993, the respondents served the applicant with a show cause notice, terminating the services of applicant dated 18.12.1986, the result of screening for hot season waterman as on 1.9.1990 has not been communicated to the applicant so far.

4. The applicant claims that his juniors have been regularised and he has been discriminated illegally, hence this OA.

5. The applicant's claim is resisted by respondents on the ground that it is barred by limitation and has sought the job on the basis of bogus labour card 206000.

6. Regularisation is a continues cause of action hence the claim of applicant cannot be said to be barred by time, ((1993) 24 ATC 747 Hukum Singh V/s Union of India) though show cause notice, terminating the services of the applicant as claimed by the applicant is said to have been served on 18.12.1986. It is worth mentioning that respondents have <sup>falsely</sup> denied to have issued <sup>h</sup> ~~of~~ such notice.

J. G. M. /

...3...

7. On the basis of the alleged bogus card 206000 the respondent claimed that the applicant has secured the job. Suffice to mention that respondents have not hold any enquiry against the applicant in respect of the said bogus card 206000.

8. The learned counsel for the applicant relied on 1999(2) All India Service Law Journal 410 S.R. Shevale V/s Union of India and others decided by C.A.T. Mumbai Bench on 13.7.98 which lays down the proposition that where service obtained by fraud, it creates no relationship of employer and employee, hence it can be terminated without enquiry. It is worth mentioning that respondents themselves have filed Annexure R-3 which is a show cause notice regarding termination of the services of the applicant. In such circumstances, when the respondents initiated the action for the reason to arrive to a conclusion, the applicant cannot be deprived to afford an opportunity of hearing. Hence the said authority does not apply to the present case.

9. The respondents have not so far passed any order refusing to regularise the services of applicant but have resisted the claim before this Tribunal.

10. No one can be condemed without following the principles of natural justice. This Tribunal has jurisdiction of judicial review and not to hold enquiry and decide the matter initially.

11. In the circumstances stated above the only way is to direct the respondents to hold an enquiry against the applicant in respect of the alleged bogus labour card 206000, after following the principles of natural justice and arrive to a finding. After coming to a conclusion if the finding is that the applicant has obtained the job on the basis of a bogus labour card 206000, it is not necessary to examine the question of

J. Y. S. -

:4:

regularisation of the applicant. If finding is in favour of the applicant then to consider the case of applicant regarding the regularisation of services would arise.

12. It is not material that whether the applicant has represented the matter for regularisation or not because it is the duty of respondent to regularise those who are entitled for the same. Regarding screening for Hot Season Waterman the applicant was not found suitable.

13. In the result OA is disposed of with the following directions:-

(a) The respondents are ordered to initiate the enquiry against the applicant in respect of the alleged bogus labour card No. 206000 within a period of three months (no extension shall be provided in this respect) and conclude the same within a further period of six months.

(b) In case the finding is in favour of the applicant the case of regularisation of applicant be considered within a further period of three months.

(c) If the applicant is aggrieved by the finding of the respondents in respect of (a) or (b) / (a) & (b) he is free to agitate the said matter as per law.

No order as to costs.

*S.L. Jain*  
(S.L. JAIN)  
Member (J)

NS