

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH

JAIPUR

O.A. No. 724/92

Dt. of order: 17.2.1994

Om Prakash Sharma

: Applicant

Vs.

Union of India & Ors.

: Respondents

Mr. J. K. Kaushik

: Counsel for applicant

Mr. S. S. Hasan

: Counsel for respondents

CORAM:

Hon'ble Mr. Gopal Krishna, Member (Judl.)

Hon'ble Mr. O. P. Sharma, Member (Adm.).

PER HON'BLE MR. O. P. SHARMA, MEMBER (ADM.).

Applicant O. P. Sharma, has filed this application under Sec. 19 of the Administrative Tribunals Act, 1985, praying that order dated 17.3.89 (Annex. A1) ordering that the applicant may not be taken on duty may be quashed. He has further prayed that the respondents may be directed to reinstate the applicant in service with retrospective effect with all consequential benefits and obtain the requisite permission from the General Manager for regularising the applicant's engagement in service.

2. The applicant's case is that he was initially appointed on the post of Electrical Khallasi on 14.5.84 at Jaipur and has been continued on the said post with breaks. He had attained the temporary status after working continuously for a period of 120 days by operation of law in the year 1984 itself. The applicant was on leave during July and August 1987 due to his marriage. He resumed duties on 21.9.87 and continued to perform his duties upto 9.4.88. Thereafter he fell ill and remained under private treatment upto 18.2.89. He has furnished a medical certificate Annex. A-2 in this regard. On coming out of his illness he reported for duty to his superior, Senior Electric Foreman, but was not taken on duty. He again reported for duty on 15.3.89 but was again not taken on duty. He was informed that since he was absent on 13.7.87, the prior

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permission of the General Manager was required for his engagement in service. Vide communication dated 17.3.89, it was conveyed that the applicant could not be taken on duty in view of the General Manager's instructions dated 13.7.87.

3. The applicant's representation dated 18.5.89 to the Divisional Electrical Engineer, Jaipur Division, in this regard has been of no avail. As regards the instructions dated 13.7.87, the applicant's case is that it was for the Department to obtain permission to engage the applicant and it was not for him to do so. Further, the instructions dated 13.7.87, have been misinterpreted by the respondents in as much as 13.7.87 has not been specified as the cut off date.

4. The respondents in their reply have stated that the applicant had continued in service upto 9.4.88 with breaks. They have denied that the applicant had worked for a period of 120 days and had therefore attained the temporary status. He remained absent during July & August 1987, but he never informed the department about his marriage and in any case a marriage does not continue for 2 months. They have questioned the genuineness of the medical certificate Annex.A-2 filed by the applicant along with his application. They have added that keeping in view the circular dated 13.7.87 Annex.A-1 and circular dated 11.4.88 (Annex.B-3) the applicant could not be taken on duty.

5. During the arguments the learned counsel for the applicant stated that the circular dated 13.7.87 (Annex.A4) has no applicability to the facts of the case. This circular places an embargo on engagement of casual labour without prior approval from the General Manager 'hereafter'. However, it does not talk about the casual labour who are already in employment on the date of issue of the circular namely 13.7.87. As far as the applicant was concerned, it

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was not a case of his fresh engagement after disengaging him from employment. As far as the applicant was concerned, he was on leave during July and August 1987 and he was allowed to join duty after the expiry of the aforesaid period of leave. It was only on 9.4.88 that he again fell ill and did not report for duty thereafter till 18.2.89.

6. The learned counsel for the respondents stated during the arguments that it was a case of abandonment of duty by the applicant w.e.f. 9.4.88. Once the applicant had himself failed to report for duty and had remained absent for a long period of about 9 months from 9.4.88 to 18.2.89, he was rightly not taken on duty by the respondents.

7. We have heard the learned counsel for the parties and have gone through the records.

8. As regards the applicability of the circular dated 13.7.87, it is clear that it has no applicability to the facts of the case of the applicant. If it is assumed that on 13.7.87 was the cut off date from which no casual labour was to be engaged the applicant was taken back on duty in September 1987 after the period of his absence during July and August 87. Although the learned counsel for the respondents has pleaded that it was a case of abandonment of his service by the applicant, this plea has not been taken in the reply filed by the respondents. In the reply filed, it has been stated that the applicant was not taken back on duty in view of the circular dated 13.7.87 (Annex.A4) and circular dated 11.4.88 (Annex.R-3). A copy of Annex.R-3 has not been filed and it was not available with the learned counsel for the respondents. We do not want to pronounce on the genuineness or otherwise of the medical certificate Annex.A-2 filed by the applicant. However, the reasons given by the respondents for not taking the applicant back in service when he reported for duty on 18.2.89 are not tenable.

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9. In the circumstances of the present case, we direct that the applicant may be taken back on duty within one month from the date of the receipt of a copy of this order. The applicant shall not be entitled to the benefits of back wages or any other benefits of past service. The O.A. is disposed of accordingly with no order as to costs.

(O.P.Sharma)
Member(A).

Gopal Krishna
(Gopal Krishna)
Member(J).