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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL, JAIPUR BENCH, JAIPUR.

OA No. 600/88

Date of order : 6.4.94

Baijnath & Hukam
Chandra

:

Applicants

V/s

Union of India & Ors

:

Respondents

Mr. S.K. Jain

:

Counsel for the applicants

Mr. Manish Bhandari

:

Counsel for the respondents

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

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

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

Applicants Baijnath and Hukam Chandra have filed this application u/s 19 of the Administrative Tribunals Act, 1985, praying that the orders Annexure A-2 & A-4 by which the applicants were removed from service may be quashed and they may be continued in service without any break or interruption.

2. The case of the applicants is that they were appointed as casual labourers (Khalasi) on different dates in 1983 and 1984. Having served the Western Railway for more than 3 years, they have acquired the status of quasi-permanent employee. The Assistant Engineer, Western Railway, Kota, issued to them notices on 31.8.87 (Ann. A-1 to A-5) stating that the service cards which they had produced at the time of their initial appointment had been found to be forged on verification by the issuing authority and they had obtained their services on the basis of forged service card. The applicants were required to show cause why they may not be removed from service. Their case is that such a notice for removal from service without enquiry regarding the so called forgery is illegal and contrary to rules. It was not a condition precedent to getting employment that they should have produced the service card. Several other employees had obtained employment without producing such cards. After completion of 6 months service, the applicants had acquired the

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status of temporary employees and status of quasi permanent employee after completion of the services of 3 years and therefore they can be removed from service only after due departmental enquiry according to service rules, is held.

3. The respondents in their reply have stated that their verification had shown that these applicants had obtained employment by fraud by producing service cards which were not genuine, in as much as these applicants had never worked in the offices in respect of which they had produced the service card. The applicants had furnished ~~xx~~ their replies to the show cause notices but their replies were not found satisfactory. They have denied the claim of the applicants that the condition of production of service card is not mandatory. Since the applicants had produced forged casual labour cards, they cannot get away by merely saying that the production of service card is not a mandatory requirement for obtaining employment. They have also denied that the applicants were entitled to quasi permanent status after expiry of 3 years service. They have also stated that the applicants could not be allowed to continue in service particularly when the opportunity to explain their conduct was given to them and they failed to explain their conduct satisfactorily.

4. During the arguments, the learned counsel for the applicants stated that having put in services of more than 3 years at the time when show cause notices was issued to the applicants, they were entitled to be conferred temporary status even if no such orders were passed in fact. The applicants were therefore holding civil posts and were accordingly governed by the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. Therefore the proposal for termination and actual termination of their services thereafter ^{without} holding a regular enquiry as provided in the Railway Servants (Discipline & Appeal) Rules is illegal. He cited before us orders of various Benches of the Tribunal to support his case. In particular he drew our attention to the case of

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Nand Lal Vs. Union of India & Ors (1993) 23 ATC 462 which according to him is directly applicable to the facts of the present case. In this case also there was the termination of services of the applicant, a casual labour, on the ground of production of fake certificate. The Allahabad Bench of the Tribunal had held in this case that after acquisition of temporary status termination is invalid if the provisions of Railway Servants (Discipline & Appeal) Rules are not followed.

5. The learned counsel for the respondents stated that the applicants have not been granted temporary status by passing any specific order. Therefore, they are not holder of any civil posts. Accordingly, the provisions of Railway Servants (Discipline & Appeal) Rules are not applicable to them. Further, however the requirements of natural justice were observed in these cases in as much as show cause notices was issued to the applicants whereby they were confronted with the facts which emerged during investigation and were given an opportunity to explain their conduct regarding the production of fake service cards. The services of the applicants have already been terminated and they are not entitled to any relief from the Tribunal.

6. We have heard the learned counsel for the parties and have gone through the records and the judgements cited before us. The applicants had served the Railways for more than 3 years when show cause notices imposing termination of their services were issued to them. Regardless of whether a specific order had been passed or not conferring temporary status on them, they were entitled to the grant of temporary status on them. ~~xxx~~ We have made this observation only in the context that once they have put in the service for more than 3 years and are ordinarily entitled to temporary status because of their length of service, their case should be governed by the Railway Servant (Discipline & Appeal) Rules. The investigation made by the Railway Authorities showed that the applicants had produced forged service cards showing that they had been employed with cert

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in other Railway Authorities at other places earlier and therefore they were entitled to re-employment now. Indeed production of forged documents for the purpose of procuring employment is a serious matter and deserve to be dealt with seriously. The question however is regarding the manner in which the matter should be dealt with. The respondents issued show cause notice to the applicants confronting them with the facts which emerged during their investigation and proposed termination of their services. It is this procedure which has been assailed in this case. The orders of termination of their services are without doubt punitive in nature and therefore before passing such orders a regular enquiry should have been held during which they should have been given an opportunity to present their case in accordance with the procedure prescribed in Rules 9 of the Railway Servants (Discipline & Appeal) Rules. As we have held above, the applicants are governed by the Railway Servants (Discipline & Appeal) Rules. Therefore, / enquiry as contemplated in Rule 9 of the Railway Servants (Discipline & Appeal) Rules has to be held before it can be held that they had indeed produced forged service cards for procuring employment. The applicants are entitled to protection of Article 311(2) of the Constitution and this can be provided to them only if enquiry as contemplated in Rule of the Railway Servants (Discipline & Appeal) Rules, is held.

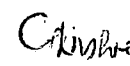
7. Since the services of the applicants have been terminated without following the procedure laid down in the Railway Servants (Discipline & Appeal) Rules, for holding enquiry, the orders Annexure A-2 and A-4 by which their services were terminated are quashed. The respondents shall take steps to reinstate the applicants within one month from the date of the receipt of a copy of this order. The respondents are free to initiate formal disciplinary proceedings against the applicants in terms of the Railway Servants (Discipline & Appeal) Rules and thereafter take such action as may be appropriate in the circumstances of the case.

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8. The learned counsel for the applicant has stated during the arguments that the Tribunal should give a specific direction that wages for the intervening period should be paid to the applicants. We are not aware of the facts regarding whether the applicants were gainfully employed during the intervening period and if so to what extent. This is a matter which should be adjudicated by the appropriate Labour Court. The applicant is free to approach the appropriate Labour Court for this purpose who shall decide the issue in accordance with the rules, procedure and the merits of the cases.

9. In the circumstances, the O.A. is disposed of accordingly with no order as to costs.


(O.P. SHARMA)
Member (A)


(GOPAL KRISHNA)
Member (J)