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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: HYDERABAD BENCH: AT HYDERABAD.

D.A.No. 515 of 1989

DATE OF DECISION: - - - - -

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Between:-

NEELA SOURI & 23 others

Petitioner(s)

Shri P. Krishna Reddy

Advocate for the
petitioner(s)

Versus

Divisional Railway Manager,
SCR, Vijayawada, & 3 others.

Respondent.

Shri N.R.Devraj

Advocate for the
Respondent(s)

CORAM:

THE HON'BLE MR. D.SURYA RAO, MEMBER(JUDICIAL).

THE HON'BLE MR. R.BALASUBRAMANIAN, MEMBER(ADMN.).

1. Whether Reporters of local papers may be allowed to see the Judgment ? NO
2. To be referred to the Reporter or not ? NO
3. Whether their Lordships wish to see the fair copy of the Judgment ? NO
4. Whether it needs to be circulated to other Benches of the Tribunals ? NO
5. Remarks of Vice Chairman on columns 1, 2, 4 (To be submitted to Hon'ble Vice Chairman where he is not on the Bench)

(H.D.S.R.)

(H.R.B.S.)

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL : HYDERABAD
BENCH : AT HYDERABAD

O.A.No. 515 of 1989

Date of Decision: 8-8-1990

Between:-

1. Neela Souri
2. Neela Jogaiah
3. Yeddu Eliah
4. Kunchala Yesupadam
5. Thota Siva Prasad
6. Karlapudi Nikshapana Rao
7. Marrivudi Ankamma Rao
8. Kalluri China Koteswara Rao
9. Devarapalli Subba Rao
10. Devarampadu Narasimha Rao
11. Kotta Venkateswarlu
12. Kotta Bala Kotaiah
13. Devarapalli Veera Raghavulu
14. Kanaparti Malyadri
15. Domatoli China Venkaiah
16. Dammu Nageswara Rao
17. Satuluri Manikya Rao
18. Vagolu Israil
19. Garika Mukkala Ramalingam
20. Tippakudishi Anka Rao
21. Mandalapu Subba Rao
22. Valluri Brahmaiah
23. Neela Chinnappa
24. Burga Subba Rao

.. APPLICANTS

AND

1. The Divisional Railway Manager
South Central Railway, Vijayawada.
2. The Senior Divisional Personnel
Officer, South Central Railway,
Vijayawada.
3. The Senior Divisional Engineer
(South), South Central Railway,
Vijayawada.
4. The Senior Divisional Engineer
(North), South Central Railway,
Vijayawada.

.. RESPONDENTS

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APPEARANCE:-

For the Applicants : Shri P.Krishna Reddy, Advocate.
For the Respondents : Shri N.R.Devaraj, Standing Counsel
for Railways.

CORAM:

THE HONOURABLE SHRI D.SURYA RAO, MEMBER(JUDICIAL).
THE HONOURABLE SHRI R.BALASUBRAMANIAN, (MEMBER (ADMN.).

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE MEMBER(J)
SHRI D.SURYA RAO)

1. The Applicants herein were Workmen (Casual Labour) previously engaged under the Permanent Way Inspector, Special Works, South Central Railway, Ongole (PWI, Ongole, for short). They had completed 6 months service as Casual Labour and were therefore given temporary status. On 10-7-1983 they were stopped from service. That was followed by a written termination order dated 26-12-1983. The termination order was set aside by this Tribunal by its Order dt.9-3-1988 in T.A.No.76/87. The Applicants claim that pursuant to the Order in T.A.76/87, they were entitled to back wages as long as their juniors continued in service and also reinstatement in service. However, before the disposal of T.A.76/87, the unit of the PWI, Ongole, was abolished in December 1984. It is for this reason that the Tribunal in T.A.76/87 had ordered payment of arrears of salary only for the period so long as the Applicants' juniors were continued in employment and also directed that arrears should be limited till such period as the seniors have been ousted for want of work. It is stated that pursuant to the order dated 9-3-1988 in T.A.76/87, the Railways (Respondents)

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11 to 14, 16, 17, 22 and 24

the Applicants 13 to 21 from 1-2-1984 and to Applicants 15, 18 and 21 from 10-7-1983 onwards i.e. as long as their juniors are continued in service in the unit of the Senior Divisional Engineer (North), SCR, Vijayawada.

3. On behalf of the Respondents (Railways) a Counter has been filed denying the claim of the Applicants. It is alleged that the Applicants' services were terminated on the ground of fraud committed by them by producing bogus Casual Labour Cards. While admitting ^{that} the termination order was struck down by the Tribunal in T.A.76 of 1987, it is contended that the said order does not give the Applicants a right to reinstatement or for arrears of pay for the periods as claimed in the present Application. Since the unit of Permanent Way Inspector, Ongole, is wound up as also the Senior Divisional Engineer (South), Vijayawada, the Applicants are not entitled to claim wages or re-employment. For these reasons, it is prayed that the application may be dismissed.

4. We have heard Shri P.Sridhar Reddy, Advocate for the Applicants and Shri N.R.Devraj, Standing Counsel for Railways, on behalf of Respondents. Shri Sridhar Reddy, learned Counsel for Applicants, has fairly ^{conceded} ~~contended~~ and rightly ^{so in} ~~said that in our view~~ that the application is not pressed in regard to Applicants 15, 18 and 21. Application is accordingly dismissed in so far as these Applicants are concerned.

5. The first question is whether the remaining Applicants are entitled to the reliefs claimed for. The relief as ^{for is in} ~~is sought~~ prayed on the basis of the direction of this Tribunal in T.A.No.76 of 1987 by its order dated 9-3-1988 setting aside the order terminating the services of the

issued proceedings dated 14-12-1988. By these proceedings Applicants 1 to ¹⁸12, 19 and 20 were paid back wages for the period from 10-7-1983 to 2-3-1986, Applicants 11 to 14, 16, 17, 22 ^{to} and 24 were paid back wages from 10-7-1983 to 31-1-1984 while Applicants 15, 18 and 21 were not paid any back wages. Since the Applicants were not reinstated to duty, they filed Contempt Case No.42 of 1988. This Tribunal while holding that there is no contempt, held that the contention that their juniors are being continued cannot be raised by way of a Contempt Case, but it should be raised by way of a separate O.A. Accordingly, the present Application has been filed.

^{Although the unit of}
2. It is their case that ~~the~~ ^{the} PWI, Ongole, was wound up on 31-1-1984, ^{vis a} The casual labour, ^{those} those who were juniors to the Applicants were given option to be absorbed in the Unit of Senior Divisional Engineer, North, South Central Railway, Vijayawada. It is their case that since they were illegally retrenched from service from 10-7-1983, they were prevented from getting ^{an} opportunity for being absorbed in the unit of Senior Divisional Engineer (North), SCR, Vijayawada, where the juniors to the Applicants are still continuing in service. The ^{hence} ~~substance~~ of the order of the Tribunal in T.A.76 of 1987 should be looked into and it should be interpreted to mean that as long as the juniors are continued, the Applicants are also entitled to continue in service. It is also contended that there is no justification on the part of the Respondents not paying any salary to Applicants 15, 18 and 21. For these reasons, it is contended that a direction may be issued to the Respondents to reinstate all the Applicants as Class-IV employees and also direct the Respondents to pay salaries to Applicants 1 to ^{10 and 19 and 20} ~~12~~ from 2-3-1986, to

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Applicants on the ground that the Applicants were not given reasonable opportunity. It was ordered that they are entitled to be treated as on duty from 9-7-1983 onwards. Since it was brought to the notice of the Tribunal that the Special Works for which the services of the Applicants were taken and engaged under Permanent Way Inspector, Ongole, had been completed by July 1984 and that in normal course the Applicants would have been put off duty from July 1984, the Tribunal did not straightway direct their reinstatement. This Tribunal observed that it was not possible at that point of time to say that the Applicants were junior-most Casual Labour, who would have been automatically retrenched from duty from July 1984. While observing so, this Tribunal held at para 9 of the order as follows:-

" 9. In the result, we direct that the applicants would be entitled to payment of salary only for the period so long as their immediate juniors were continued in employment either in the Unit or under the control of the 2nd respondent. If their immediate seniors had been ousted from duty for want of vacancies/work, the applicants would not be entitled to arrears of salary beyond the date on which such seniors were ousted. It is further directed that the applicants will not be entitled to arrears of salary for any period or periods they were gainfully employed. "

6. Shri Devraj contends that both the PWI, Ongole, and Sr.DEM(South), under whose jurisdiction the PWI, Ongole was functioning, have been wound up and therefore the Applicants cannot ask for reinstatement. The answer to this is that though the PWI, Ongole, was wound up, before its winding up, option was given to the juniors to the

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Applicants to get absorbed under the DEM, North. But for the illegal ouster w.e.f. 10-7-1983, they would have also been given a similar option and would have been entitled to continue in service of the Railways under DEM, North. This is the purport of the order of this Tribunal in T.A.76 of 1987. The Tribunal could not at that time specifically make an order to this effect since it was not brought to the notice of the Tribunal that such options had been given to the juniors of the Applicants. Hence such an order namely that if the juniors to the Applicants have been given an option to continue in service despite abolition of the P.W.I., Ongole, or the Office of the 2nd Respondent in T.A.76/87 viz., D.E.N.(South), the Applicants also are entitled to such an option, can be read into the order in T.A.76 of 1987.

7. Shri Devraj has raised an objection that the present application is hit by the rule of resjudicata. He contends that the reliefs asked for in T.A.76 of 87 as well as in the present application are identical. He says that the reliefs in T.A.76 of 87 seek payment of arrears of salary right from 10-7-1983 till the date of reinstatement and also reinstatement into service. Again in the present O.A.515 of 1989 the identical reliefs have been asked for. Shri Devraj contends that so far as relief of arrears of salary is concerned, the Tribunal has specifically ordered in T.A.76 of 1987 that "the Applicants would be entitled to payment of salary only for the period so long as their immediate juniors were continued in employment either in the same unit or under the control of the 2nd Respondent".. Such arrears were also directed to be limited to the period till when


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their immediate seniors have been ousted from duty for want of vacancies. Shri Devaraj contends that the prayer made in T.A.76/87 that the Applicants are to be paid arrears of salary from the date of ouster to the date of reinstatement was specifically rejected and relief granted to the limited extent that the applicants would be entitled to arrears only as long as their juniors were continued in the unit of P.W.I., Ongole, or under the control of the D.E.N.(South). Shri Devaraj contends that this conditional order cannot be reopened by way of a separate application. We are satisfied that this order relating to arrears of salary has become final and that the Applicants cannot seek to enlarge the same and claim right to arrears till the date of reinstatement. If the Applicants were aggrieved by the order in T.A.76 of 1987, they ought to have got it modified by way of a Review Application or by way of an Appeal. We accordingly reject the plea of the Applicants that they are entitled to arrears of salary upto the date of reinstatement.

8. In regard to the plea that the Applicants herein are entitled to reinstatement, Shri Devaraj has contended that this relief is also barred by the principle of resjudicata. He states that the Tribunal in T.A.76 of 1987 has denied the right of reinstatement and therefore the Applicants are not entitled to reinstatement. We are unable to accept this contention. There is no specific order of the Tribunal holding that the Applicants are not entitled to reinstatement. In T.A.76 of 1987 the impugned order dated 26-12-1983 removing the Applicants from service has been set aside. Setting aside



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of an order of termination implies a right to reinstatement unless specifically denied. In the instant case ^{was no rejection of his claim of} there ~~is no denial~~ of the right to reinstatement in the order of the Tribunal dated 9-3-1988 in T.A.76 of 1987. Further the Tribunal in T.A.76/87 ~~has~~ observed at paragraph 6 of its order that it cannot say whether the Applicants were the juniormost employees, who would have automatically been retrained with effect from 1-7-1984. Hence the Tribunal had left open the question of their reinstatement to the question whether they were the juniormost employees in the unit of P.W.I., Ongole, liable for ouster on 1.7.1984. If their juniors were continuing in service beyond 1-7-1984, the order of the Tribunal implies that they were entitled to reinstatement. Since their juniors are continuing in service as is contended in the present case, though under DE (North) and this contention has not been rebutted, it follows that the Applicants will be entitled to reinstatement. We would, therefore, hold that the Applicants are entitled for reinstatement either under the control of the D.E. (North) or in whatever vacancies of Casual Labour are available in the Vijayawada Division of South Central Railway.

9. Shri Devraj has also raised the question of limitation. He contends that on the date when P.W.I., Ongole, unit was wound up, the colleagues of the Applicants, both seniors and juniors were given option to go to the ^{Sr.} office of the Divisional Engineer (North). He, therefore, states that the Applicants had a cause of action to claim that they had a right of appointment in 1984 itself. He contends that they ^{should} ~~could~~ not have waited till 1988 when

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their earlier application T.A.76 of 1987 was allowed. Shri Devraj contends that the Applicants must have exercised option only on 31-1-1984 when their colleagues were being absorbed in D.E. (North) at Rajahmundry.

In our view this contention is wholly untenable. The Applicants were out of service in 1984 when the option was given to their seniors and juniors to go to D.E.

(North) consequent on the winding up of the unit of P.W.I.,
and hence they had no opportunity of giving an option.

Ongole. Shri Devraj contends that the Applicants and those, who continued in service, must be presumed to have come from the same area or locality and that they should, therefore, be attributed to have a knowledge that their counter-parts were given the option. We see no basis or reason for such presumption. This contention that the application is barred by limitation is rejected.

10. To sum up, the claim of the Applicants (except Applicants 15, 18 and 21) that they are entitled to back wages from the date of ouster namely from 10-7-1983 till the date of reinstatement is rejected. The claim of the Applicants that they are entitled to reinstatement is allowed since their juniors in the unit of P.W.I., Ongole, were allowed to continue beyond 1-7-1984 i.e. the date of abolition of the said unit. Accordingly the Applicants in this application (except Applicants 15, 18 and 21) are directed to be reinstated into service forthwith either under the control of D.E. (North), Rajahmundry, or in whatever vacancies of Casual Labour are available in Vijayawada Division of South Central Railway. They shall be reinstated within one month of receipt of this order, *they will however not be entitled to count the period* ~~while not granting the counting~~ *of service* from the date of ~~their ouster~~ till the date of reinstatement, for the purpose of back wages. This order will not, however, affect the payments

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already made pursuant to the order passed in T.A.76 of 1987. The Applicants will, however, be permitted to count the period from the date of their ouster till the date of their reinstatement for seniority and other service benefits. With this direction, the application is partly allowed. No order as to costs.

D. Surya Rao

(D.SURYA RAO)
MEMBER (JUDICIAL)

R. Balasubramanian

(R.BALASUBRAMANIAN)
MEMBER (ADMINISTRATION)

DATE: 8th AUG., 1990

S. Srinivasan
for DEPUTY REGISTRAR (JUDL)

To

1. The Divisional Railway Manager,
South Central Railway, Vijayawada.
2. The ^{nsr}Senior Divisional Personnel Officer,
S.C.Railway, Vijayawada.
3. The Senior Divisional Engineer, (South),
S.C.Railway, Vijayawada.
4. The Senior Divisional Engineer, (North),
S.C.Railway, Vijayawada.
5. One copy to Mr.P.Krishna Reddy, Advocate.
2-5-899, Himayatnagar, Hyderabad.
6. One copy to Mr.N.R.Devraj, SC for Rlys, CAT.Hyd.Bench
7. One copy to Mr. R.Balasubramanian, Member(Admn) CAT.Hyd.Bench.
8. One spare copy.

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COMPARED BY

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
HYDERABAD BENCH AT HYDERABAD

~~THE HON'BLE MR. B.N. JAYASIMHA : V.C.~~

AND

THE HON'BLE MR. D. SURYA RAO : MEMBER (J)

AND

~~THE HON'BLE MR. J. NARASIMHA MURTY : M(J)~~

AND

THE HON'BLE MR. R. BALASUBRAMANIAN : M(A)

DATE: 8/8/90

ORDER/JUDGMENT:

L.A./ R.A/C?A/No.

in

T.A.No.

W.P.No.

O.A.No. 515/89

Admitted and interim directions issued
Partly
Allowed.

Dismissed for Default.

Dismissed as withdrawn.

Dismissed.

Disposed of with direction.

M.A. Ordered/Rejected.

No order as to costs.

