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IN THE CENTRAL ADMINISTRATIVE TRIBUNAL: JAIPUR BENCH: JAIPUR.

O.A.No. 388/95

Date of order: 29.6.1998.

Ashok S/o Shri Mangtoo Ram, P/o Harijan Basti, Bandariya Ki Bagichi, Near Teen Fuliya at Railway Gangapurcity, Distt. Sawai Madhopur. C/o S.S. Hindauncity, last employed as Safai Wala at Railway Station, Hindauncity (Sawai Madhopur).

: Applicant

Versus

1. Union of India through General Manager, Western Railway, Churchgate, Bombay.
2. The Divisional Railway Manager, Western Railway, Kota.

: Respondents.

Mr. E.N.Mathur, counsel for the applicant
Mr.Manish Bhandari, counsel for the respondents

CORAM:

HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

O R D E R

PER HON'BLE SHRI RATAN PRAKASH, MEMBER (JUDICIAL)

The applicant herein Shri Ashok has approached this Tribunal under Section 19 of the Administrative Tribunals Act, 1985, to quash the impugned order dated 16.8.1994 (Annx.A/1) and to direct the respondents to grant him temporary status on the day he completed 120 days of work with the respondent department. The applicant has also prayed that the respondents should consider his name for regularisation. The applicant has further sought a direction against the respondents to regularise his services and to pay him back wages.

2. Facts relevant for disposal of this application and as alleged by the applicant in brief are that he was initially appointed as Casual Labour with the respondents railways on 6.4.1984. The grievance of the applicant is that he worked on

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the post of Casual Safaiwalas continuously except for a brief spell of artificial break, yet the respondents instead of granting temporary status to the applicant have terminated his services by the impugned order dated 16.8.1994 (Annx.A/1). Having failed to seek relief from the respondents, he has approached this Tribunal to claim the aforesaid reliefs.

3. Respondents, while opposing the application by filing a written counter, have averred that though the applicant has been engaged as Safaiwala by local office, yet it was without any authority and prior sanction from the Railway administration. The applicant having never been engaged by the competent authority and that too after due sanction, the applicant cannot be conferred with the temporary status; more so when he has not completed more than 120 days of continuous service with the respondent department. It has, therefore, been urged that the applicant's case being not covered by para 2504 of the IREM this application deserves rejection.

4. I heard the learned counsel for the applicant and have gone through the pleadings of the parties including the documents filed by the applicant in support of his claim.

5. It may be pointed out that it is after repeated opportunities given to the respondents that the respondents ultimately filed their reply to the OA in February, 1997. Still in their reply, the respondents have failed to assert emphatically whether actually the services of the applicant have been terminated. They have placed reliance upon the impugned order dated 16.8.1994 and stated that this letter

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was issued to all the Subordinate Officers including Traffic Inspector, Station Superintendent and the Station Masters of the Railway Stations specified therein. The respondents have not placed on record any order which has been issued in compliance of this order dated 16.8.1994 terminating the services of the applicant whose name appears at serial No.12 of Annexure A/1. However, as the things stand, the respondents have treated this order as an order of termination of the services of the applicant. On the contrary, the applicant has approached and placed in support of his case the Casual Labour Card (Annx.A/2) to say that he was duly engaged by the respondents in April, 1984 and has served the respondent department for a period of 10 years though with artificial breaks. From the details given in the Casual Labour Card (Annx.A/2), the total number of days for which the applicant has served the respondent department comes to 533 days upto the year 1992 as per the records placed on record by the applicant. In this total period of 533 days, the period specified in Annx.A/3 between 5.4.1989 till April, 1990 has been shown as 140 days which purportedly appears to have been counted for conferment of temporary status upon the applicant while forwarding his case for this matter. The inability of the respondents to deny emphatically that the applicant has not served for a period exceeding 120 days reflects that the respondents are not sure about the record which they maintained at their Railway Stations. Moreover Para 2504 of the IFE Manual read with para 2511 of the IFE Manual which deals with conferment of temporary status reads as under:-

"(d) Temporary Status, Casual labour who have worked for a continuous period of 120 days will be granted temporary status. Such status will also be granted to the C.L. working on Projects on completion of 180 days of continuous service. The service may be either in

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the same work or the same type of work. In no case they should be discharged deliberately to cause an artificial break in their service. They shall also be entitled to 20 days authorised break which will not be counted while determining continuous service."

Under Para 2504 it has also been indicated that the following will not be considered as break in their service:-

- (i) Absence due to medical treatment for injuries sustained on duty.
- (ii) Authorised absence with the permission of the supervisor, upto 30 days.
- (iii) Non-performance of work on days of rest;
- (iv) Non performance of work when the establishment remains closed."

Clause (d) of Para 2511 of the IFE Manual which is material and deals with benefits admissible on getting temporary status further reads as under:-

"(d) BENEFITS ADMISSIBLE ON GETTING TEMPORARY STATUS: They will be entitled to all the rights and privilege admissible to temporary Ely. servants under Ch.XXIII EM viz. Revised scale of Pay, Compensatory and local allowance. D.A. Medical facilities, leave, PF facilities, Passes, Notice for termination of service and hospital leave. They will also be entitled to the benefits of D & A Rules. Their service, prior to the date of completion of 120/180 days will not, however, count for any purpose like seniority etc; they can carry their leave due to the new post of absorption in regular service. They will however not be brought to permanent establishment till they are selected through regular selection Boards for class IV staff. They will however have a prior claim over others to permanent appointment. Those who join as CL before 25 years of age, may be allowed relaxation of maximum age limit to the extent of their total service.

Half of their service after attainment of temporary status if followed by regular absorption, may count towards pension.

(E(UG)ii-78/CL/12 dt. 14.10.80, EE 190180)

It is not necessary to create temporary posts to accommodate CL who acquire temy status."

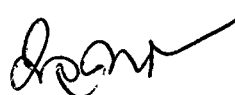
It all goes to show that though the applicant has served the

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respondents for a period of 120 days and there has been a recommendation to confer upon him the temporary status as at Annx.A/3 dated 4.6.1992, yet the respondents, for the reasons best known to them, have not been able to give the relief to the applicant. Merely asserting that the applicant has not worked for more than 120 days without any supporting document on part of the respondents goes to show that the applicant's case is not without foundation and he should have been duly considered by the respondents for conferment of temporary status as has been laid down by the Hon'ble Supreme Court in the case of Union of India Vs. Bansaant Lal and others, Supreme Court Rules (1950-1992), Vol.4, 411.

6. In view of above, the impugned order as at Annx.A/1 dated 16.8.1994 qua the applicant is not tenable in the eye of law and is hereby quashed. The applicant having completed more than 120 days of continuous service with the respondents Railways though with artificial breaks, yet it is incumbent upon the respondents to confer upon him the temporary status as per the provisions laid down in Para 2504 read with Para 2511 of the IREM.

7. For all the aforesaid reasons while quashing the impugned order dated 16.8.1994 (Annx.A/1) qua the applicant the OA is allowed. The respondents are directed to consider the case of the applicant for conferment of temporary status he having served with them for more than 120 days continuously and to grant him consequential benefits. The respondents are given four months time to comply with this order after the receipt of a copy of the same. No order as to costs.



(RATAN PRAKASH)

JUDICIAL MEMBER