

CENTRAL ADMINISTRATIVE TRIBUNAL, JABALPUR BENCH, JABALPUR

Original Application No. 364 of 2001

Jabalpur, this the 6th day of September, 2004

Hon'ble Mr. M.P. Singh, Vice Chairman
Hon'ble Mr. Madan Mohan, Judicial Member

Paul Francis,
S/o Shri A. Francis,
aged about 33 years,
R/o Railway Goods Shade Colony
Raipur (Chhattisgarh).

APPLICANT

(By Advocate - Shri S. Paul)

VERSUS

1. The Union of India
through its Secretary
Ministry of Railways
(Railway Board),
New Delhi.
2. The General Manager,
South Eastern Railway
Garden Reach,
Kolkata.
3. The Divisional Railway Manager
South Eastern Railway,
Bilaspur Division,
Bilaspur (Chhattisgarh).
4. The Senior Divisional Personnel
Officer, South Eastern Railway,
Bilaspur.
5. The Station Superintendent,
South Eastern Railway,
Raipur Station,
Raipur (Chhattisgarh).

RESPONDENTS

(By Advocate - Shri S.S. Gupta)

O R D E R

By Madan Mohan, Judicial Member -


By filing this OA, the applicant has sought the following main reliefs :-

" (ii) Set aside the order dated 10.5.90 Annexure A-4 and also the order dt. 24.11.2000 Annexure A-13.

(iii) Consequently command the respondents to appoint/engaged the applicant pursuant to his selection from 1990 with all consequential benefits".

2. The applicant was employed as a Casual Parcel Hम्माल alongwith 9 others on 1.5.1984 by Station Superintendent,


Raipur. The applicant worked from 1.5.1984 till 12.5.1984. A certificate was issued in favour of the applicant by Station Superintendent (Gaz.) on 21.5.1990. In the year 1990 an advertisement was issued for recruitment/engagement of casual Gangman who were required to be engaged in Bilaspur Division. It was learnt that there were 900 vacancies of Casual Gangman in the said Division. The applicant was eligible to be considered and appointed as a Casual Gangman. The respondents had taken a decision that preference shall be given to the candidates who have earlier worked in the Railways. The document dated 14.2.1990 shows that the applicant was directed for engagement as Casual engagement on daily rate of pay. It was also directed that the employees who have attained the temporary status and got Central Pay Commission scale will be eligible to get the scale prescribed by the CPC. However, the applicant was dis-engaged vide order dated 10.5.1990. The applicant submitted that before terminating the applicant's services, no opportunity of any nature was given to him. No charge sheet/show cause was issued, no departmental enquiry was instituted and directly the applicant's livelihood was snatched without following the principles of natural justice. The applicant preferred a representation to the Divisional Railway Manager, on 9.10.1990. Some enquiry was conducted by the Department later on regarding actual working of the applicant and other similarly persons against whom there was an allegation that they have not actually worked for the period in question. An enquiry report dated 25.6.1990 was prepared, wherein it was found that the applicant had worked from 1.5.1984 to 12.5.84 and his attendance is duly marked in the attendance register kept at that time. In spite of this categorical finding/report the applicant was not reinstated/re-engaged by the respondents. Thereafter the applicant filed several



representations. Vide order dated 14.3.1995 issued by the Sr. Divisional Personnel Officer, Bilaspur, it was mentioned that the applicant was selected for appointment as Casual Gangman on the strength of past certificate produced by him. It is further mentioned that subsequently the said certificate was found to be false and accordingly the applicant's services were terminated and his name is kept in the black list. In view of the above black listing the applicant's request for re-engagement was not considered. The alleged enquiry held against the applicant was conducted behind the back of the applicant and no opportunity of any nature has been given to the applicant. The principles of natural justice and Article 14 are applicable to the Casual Labours. The casual labours have a valuable right to be heard before taking any adverse action against them. Hence, the impugned order is bad in law and is liable to be quashed.

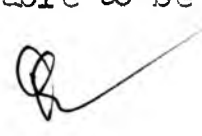
3. Heard the learned counsel for the parties and perused the records carefully.

4. It is argued on behalf of the applicant that the applicant has filed the certificate that he has worked as Casual Labour with effect from 1.5.1984 to 12.5.1984 as Annexure R-J/1 with his rejoinder. It apparently supports the version of the applicant that he had actually worked for the said period. Our attention is drawn towards the order passed in OA No. 27/1999, D.K. Gupta & Ors. Vs. Union of India & Ors., in which it is held by the Tribunal on 10th December, 2003 that the Tribunal has jurisdiction to consider the cases of casual labourers relating to grant of temporary status, termination/retranchment of the service and their regularisation as per the decision of the Full Bench in Ors Nos. 537/1992, 38/1994 and 462/1998. No opportunity of hearing was given to the applicant and even



no show cause notice was issued against him and no enquiry was conducted before termination of his services. Hence, the impugned order passed by the applicant is absolutely in violation of the rules and law and also against the principles of natural justice.

5. In reply the learned counsel for the respondents argued that the applicant was engaged as casual gangman vide OM dated 14.2.1990 and was posted under PWIAVP, on the basis of the past service certificate issued for the period between 1.5.1984 and 12.5.1984 (13 days). It was found that the past service certificates produced by the applicant were false. Consequently the applicant was discharged from service on 10.5.1990. The applicant never worked from 1.5.1984 to 12.5.1984. There is no attendance of the applicant at the alleged place of posting. The applicant has not received any salary in the year 1984. The applicant was not an ex-casual labour. The respondents further argued that there was a clear condition that if the past service record was found to be false, the employee concerned would be discharged without any notice. The applicant not being a holder of a civil post was liable to be discharged for production of false certificates. The respondents submitted that after detailed scrutiny it was revealed that large number of past service certificates were false and fabricated and accordingly the discharge dated 10.5.1990 of 106 employees was issued, wherein the name of the applicant appears at Sl. No. 95. The applicant was not subjected to any charge sheet in the year 2000. After detailed investigation the respondents were of the view that the decision taken on 10.5.1990 does not deserve to be reopened. Hence, the OA is without any merit and is liable to be dismissed.



6. After hearing the learned counsel for both the parties and on careful perusal of the record, we find that in view of the letter dated 15.12.1995 (Annexure RJ-1) annexed with the rejoinder of the applicant, the argument of the applicant seems to be proper to the extent that he had worked as casual labour since 1.5.1984 to 12.5.1984, while this fact is denied by the respondents specifically. This letter is issued from the office of the respondents. Its bearing No. is E10/12/95, dated 15.12.1995, issued by the then Station Superintendent, SE Railway, Raipur. We have also perused the order of this Tribunal passed in the case of D.K. Dutta (supra) in which it is held that as per the Full Bench decision of this Tribunal in OA No. 537/92, 38/94 and 462/98, decided by the Patna Bench of this Tribunal on 8.10.2001, this Tribunal has jurisdiction to consider the cases of casual labourers relating to grant of temporary status, termination/retranchment of the service and their regularisation. Hence, this Tribunal has jurisdiction to deal with the cases of the casual labourers as per the order of the Full Bench. The applicant has not been given due opportunity of hearing. No show cause notice was served on him and no enquiry was also conducted while it seems to be necessary in the interest of justice. This case does not appear to be a case of simple discharge. In a similar case in OA No. 357/1991, this Tribunal has dealt with the similar issue and the same impugned order dated 10.5.1990 has been quashed and set aside. The Tribunal vide its order dated 12th March, 1997 has passed the following order in OA No. 357/1991 :

"6. We have heard the learned counsel of parties and perused the pleadings on record. We find from the order of discharge dated 10.5.1990 (Annexure A-1) that there were certain conditions which are reproduced as under -

- Note : 1. These candidates should not be re-engaged in any circumstances and should not be re-engaged in future also in any capacity all over the Indian Railways.
2. The date of discharge should be intimated to this office.



3. Their names are recorded in the black list register.
4. Further FIR with Police will be lodged under section 420 of IPC for cheating and forgery against the candidates and Sr. Subordinates who have issued false certificates, later separately.
5. The period for which they have worked be paid only.
6. No AEM/PWI should issue service certificates in favour of these candidates.

this issues with the approval of the competent authority.

Obviously the conditions quoted above are harsh. In view of the same, the applicants cannot get any appointment in the Railways. Thus does not appear to be a case of simple discharge. Enquiry is necessary in the matter before holding the applicants guilty of misconduct. The order discharging the applicants is therefore vitiated. Accordingly, we quash the order of discharge. The applicants be taken back in service. However, they will not be entitled to back wages. The department will be at liberty to hold an enquiry and pass fresh order within three months hereof after giving due opportunity to the applicants."

7. Hence, when similar case has been dealt with ^{by} this Tribunal, the order passed in OA No. 357/1991, quoted above shall mutatis-mutandis apply to the present OA. Accordingly, in terms of the aforesaid decision, the present Original Application is disposed of. No costs.

(Magan Mohan)
Judicial Member

(M.P. Singh)
Vice Chairman

पूठांकन सं ओ/न्या.....जबलपुर, दि.....

प्रतिनिधि कार्य विभाग:-

- (1) सचिव, उच्च न्यायालय का प्रोविशियन, जबलपुर
- (2) आवेक श्री/श्रीमती/श्री.....के काउंसल
- (3) प्रत्यक्षी श्री/श्रीमती/श्री.....के काउंसल
- (4) कार्यपालन, के.ए.ए., जबलपुर जका

सूचना एवं आवश्यक कार्यवाही हेतु

उप रजिस्ट्रार

"SA"

Issued
On 10.9.04
BS