

In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. Nos.:

Date: 24.4.1990.

1. OA-1388/89
2. OA-1385/89
3. OA-1434/89
4. OA-1494/89
5. OA-1720/89

1. Shri Davinder Kumar .)
2. Shri Daryao Singh .)
3. Shri Raghu Raj .)
4. Shri Shailender Kumar .)
5. Shri Haroon Khan .)
..... Applicants

Versus

Union of India through
General Manager,
Northern Railway.

.... Respondents

For Applicants 1 to 4

.... Shri O.P. Gupta, Counsel

For Applicant No.5

.... Shri Sant Singh, Counsel

For Respondents 1 & 2

.... Shri O.N. Moolri, Counsel

For Respondents 3 & 4

.... None

For Respondent No.5

.... Shri P.S. Mahindru, Counsel

CORAM: Hon'ble Shri P.K. Kartha, Vice-Chairman (Judl.)
Hon'ble Shri D.K. Chakravorty, Administrative Member.

(Judgement of the Bench delivered by Hon'ble
Shri P.K. Kartha, Vice-Chairman)

In all these applications, the services of the applicants who had been engaged as substitutes, have been terminated by the respondents. Common questions of law arise for decision and it is proposed to deal with them in a common judgement.

2. At the outset, we may refer to the legal position applicable to substitutes engaged in the Railways.

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3. Chapter XXIII of the Indian Railway Establishment Manual deals with the terms and conditions applicable to Railway servants and substitutes in temporary service.

Rules 2315 to 2319 deal with substitutes. Substitutes are persons engaged on regular scales of pay and allowances applicable to the posts against which they are employed. This post may fall vacant on account of a railway servant being on leave or due to non-availability of permanent or temporary service and which cannot be kept vacant. They are paid regular scales of pay and allowances admissible to the posts against which they are engaged, irrespective of the nature of duration of the vacancy.

They are entitled to all the rights and privileges as may be admissible to temporary railway servants from time to time on completion of four months' continuous service.

4. In all these cases, the applicants have worked for less than four months' continuous service as substitutes before their services were terminated. The particulars of such service put in by them and the respective dates of termination of their services are as under:-

Case No.	Period of service as substitute	Date of termination
OA-1388/89	19.4.88 to 2.7.1988	28.6.1988
OA-1385/89	23.3.88 to 10.7.88	6.7.1988
OA-1434/89	22.3.88 to 11.7.88	6.7.1988
OA-1494/89	29.5.88 to 15.7.88	13/15.7.88
OA-1720/89	28.4.88 to 28.7.88	28.7.1988.

5. Except in the case of applicant in OA-1388/89, no show-cause notice was served on the applicants nor any inquiry held against them before terminating their

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services. In OA-1388/89, a show-cause notice was issued to the applicant on 8.6.1988 before his services were terminated by the impugned order dated 28.6.1988 (vide Annexure R-1 to the counter-affidavit, page 23 of the paper-book).

6. The contention of the applicants in these cases is that the termination of their services without giving them a show-cause notice or conducting inquiry in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, is legally unsustainable.

The contention of the respondents in the counter-affidavits filed by them is that the applicants have not acquired temporary status and that no show-cause notice is required to be served on them nor any inquiry is to be held against them in accordance with the provisions of the Railway Servants (Discipline & Appeal) Rules, 1968. According to them, the termination of the services of the applicants was on the ground that on verification of the Casual Labour Cards furnished by them at the time of their initial engagement, the same were found to be bogus and false.

7. We have gone through the records of the case and have heard the learned counsel for both the parties, except in OA-1434/89 and 1494/89 in which the respondents did not enter appearance nor did they file their counter-affidavits.

8. In our opinion, the applicants in these applications, except OA-1388/89, are entitled to succeed on the ground that no show-cause notice was given to them before terminating their services. The legal position in this

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regard has been considered at length in our judgement dated 6.4.1990 in a batch of applications (OA-305/85 and connected matters - Rati Ram & Others Vs. Union of India & Others through the General Manager, Northern Railway). In short, where the respondents allege a charge of misconduct against a railway employee and terminate his services on that ground, it amounts to the imposition of penalty by way of disciplinary action. Even in a case where the employee has not acquired temporary status, termination of the services could be effected only by affording him an opportunity to explain his conduct and after hearing him on the point. If the respondents have formed an opinion on the basis of some documents, the employee should also be afforded an opportunity to submit his explanation. He would also be entitled to know the evidence by which it is proposed to prove the allegation of misconduct against him, to inspect the documents sought to be relied upon for the purpose of being used against him and to produce his own evidence in his defence. As no such show-cause notice or opportunity was given to the applicants in these cases except in OA-1388/89, we hold that the termination of their services is not legally sustainable.

9. As regards the OA-1388/89, it is noticed that the respondents had given a show-cause notice to the applicant, as has already been pointed out above.

10. In the light of the foregoing, the applications are disposed of with the following orders and directions:-

- (i) OA-1388/89 is dismissed and we uphold the order of termination dated 26.8.88; and

(ii) the impugned orders of termination dated 6.7.1988 in DA-1385/89 and 1434/89, the impugned order of termination dated 13/15.7.1988 in DA-1494/89, and the impugned order of termination dated 28.7.88 in DA-1720/89 are set aside and quashed. The respondents are directed to reinstate the applicants in these cases in the respective posts in which they had been engaged prior to their termination within a period of three months from the date of communication of this order. In the facts and circumstances of the case, we do not, however, direct payment of back wages to them. After reinstating them in their posts, the respondents will be at liberty to take appropriate action against the applicants after giving them a show-cause notice for any alleged misconduct, if so advised.

(iii) The parties will bear their own costs.

Let a copy of this order be placed in each of the plaint case files.

and location of the concerned office.

(D.K. Chakravorty) (P.K. Kartha)
Administrative Member Vice-Chairman (Judl.)

24/4/1990