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In the Central Administrative Tribunal
Principal Bench, New Delhi

Regn. No. OA-1719/89

Date: 20.4.1990.

Shri Abdul Khan Applicant

Versus

Union of India through Respondents
General Manager,
Northern Rly. & Ors.

For the Applicant Shri Sant Singh, Counsel

For the Respondents Shri B.K. Aggarwal, Counsel

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

1. Whether Reporters of local papers may be allowed to see the Judgement? *yes*
2. To be referred to the Reporter or not? *No*

(Judgement of the Bench delivered by Hon'ble
Shri D.K. Chakravorty, Member)

The applicant, who has worked as a Casual Labourer in the Office of the respondents, filed this application under Section 19 of the Administrative Tribunals Act, 1985, praying that the impugned order dated 27.7.1988 whereby he was discharged from service, be quashed. He has prayed for reinstatement into service with back wages from 4.8.1988 to the date of payment.

2. According to the applicant, he has worked as Casual Labourer for 301 days from 7.3.1984 to 16.2.1985. He was also given a Casual Labour Card No.184911, a copy of which has been produced as Annexure A-2; pages 11-13 of the paper-book..

3. On 27.7.1988, his services were terminated by the respondents by issuing the following order:-

"On verification of your C.L. service from
the Office of IDW (K) Delhi, it has come to notice

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that you obtained an engagement on 7.3.1984 as Casual Labourer under IOW (K) Delhi on the basis of Casual Labour Card No.75317 said to have been issued by PWI (Spl.), Kanpur, which was found bogus on verification from the Office of PWI (Spl.), Kanpur.

You have cheated the Railway Administration by misrepresentation.

You are, therefore, discharged from service with immediate effect."

4. The applicant was discharged from service with effect from 4.8.1988. No notice was given to him before terminating his services. No inquiry was held against him.

5. The version of the respondents in their counter-affidavit is that the appointment of the applicant was purely provisional, pending screening and subject to final verification of his Casual Labour Card concerning previous service. In the appointment letter given to him, it was clearly stipulated that if the Card of the service was found bogus/wrong on verification, his services would be terminated without observing any formalities.

6. We have carefully gone through the records of the case and have heard the learned counsel for both the parties. The respondents have produced a copy of a letter dated 14.7.1988 in which it has been stated that the applicant was engaged on 7.3.1984 on the production of Casual Labour Card No.75318 which, on verification, was found to be bogus. Therefore, he was discharged from service on 17.2.1985. However, he worked as Casual Labourer from 7.3.1983 to 16.2.1985. Another Casual Labour Card No.184911 was issued to him "under the pressure of Union".

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7. While disposing of a batch of similar applications by judgement dated 6.4.1990 (Shri Rati Ram & Others Vs. Union of India & Others), this Tribunal had observed that in cases 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. In case he has acquired temporary status, even though the respondents allege that his initial engagement was by fraud or misrepresentation, his services cannot be terminated without following the procedure prescribed under the Railway Servants (Discipline & Appeal) Rules, 1968. In case he had not acquired temporary status, termination of his services could be effected by affording him an opportunity to explain his conduct and hearing him on the point. If the respondents have formed an opinion on the basis of some documents, the employee should 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. In case, he asks for a personal hearing, that also should be afforded to him.

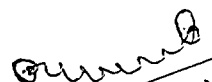
8. Following the decision of this Tribunal in Rati Ram's case, we are of the opinion that the termination of the services of the applicant without giving a show-cause notice to him, is not legally sustainable. The investigations conducted by the respondents were behind the back

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of the applicant, We, therefore, set aside and quash the impugned order dated 27.7.1988 and direct the respondents to reinstate him in service as Casual Labourer within a period of three months from the date of communication of this order. Thereafter, the respondents will be at liberty to take appropriate action against him for any act of misconduct after giving him a show-cause notice and keeping in view the observations contained in this judgement. In the facts and circumstances of the case, we do not direct payment of back wages to him.

9. The parties will bear their own costs.


(D.K. Chakravorty)
Administrative Member
20th April, 1990


20/4/90
(P.K. Kartha)
Vice-Chairman (Judl.)