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10.7.90 MP 2247/89, MP 2248/89, MP 2249/89, MP 2250/89, MP 2251/89, OA 169/89 OA 170/89 OA 178/89 OA 177/89 OA 173/89

MP 2252/89, MP 2254/89, MP 2255/89, MP 2256/89, MP 2257/89, OA 174/89 OA 175/89 OA 171/89 OA 172/89 OA 167/89

MP 2253/89, MP 2258/89 OA 176/89 OA 168/89

Present: None.

This Misc. Petition is for early hearing of the O.A.filed against termination of the service of the applicant. There are 12 cases of similar nature. It will be in the interest of justice to expedite the hearing of these cases. M.P./ allowed.

List all these cases on 10.10.90 for final hearing.

(Amitav Banerji)
Chairman
10.7.90.

SRD

10/10 Present Sh. D.N. Vohra counsel for Applicant. Ld counsel for Applicant completed his arguments For remaining list on 11/10 as P.H.

11/10 Present:- Sh. D. N. Vohra, counsel for the Applicant - Sh. Inderjit Sharma, Counsel for the Respdt.

Arguments Concluded. Order Reserved.

Bno
for Bench
CO

25/10/90 Judgement Pronounced To-Day.

Bno
for Bench
CO

CENTRAL ADMINISTRATIVE TRIBUNAL
PRINCIPAL BENCH, DELHI.

DATE OF DECISION: 15-10-1990.

(1) Regn. No. OA-169/1989.
Shri Kishan Pal Vs. Union of India & Ors.

(2) Regn. No. OA-170/1989.
Shri Balbir Singh Vs. Union of India & Ors.

(3) Regn. No. OA-178/1989.
Shri Ilam Chand Vs. Union of India & Ors.

(4) Regn. No. OA-177/1989.
Shri Yad Ram Vs. Union of India & Ors.

(5) Regn. No. OA-173/1989.
Shri Prem Raj Singh Vs. Union of India & Ors.

(6) Regn. No. OA-174/1989.
Shri Rajbir Singh Vs. Union of India & Ors.

(7) Regn.No. OA-176/1989.
Shri Mahabir Singh Vs. Union of India & Ors.

(8) Regn. No. OA-175/1989.
Shri Raj Kumar Vs. Union of India & Ors.

(9) Regn. No. OA-171/1989.
Shri Gyananender Singh Vs. Union of India & Ors.

(10) Regn. No. OA-172/1989.
Shri Chaman Singh Vs. Union of India & Ors.

(11) Regn. No. OA-167/1989.
Shri Sushil Kumar Vs. Union of India & Ors.

(12) Regn. No. OA-168/1989.
Shri Asa Ram Vs. Union of India & Ors.

....

Shri D.N. Vohra .... Counsel for the Applicants.

Shri Inderjit Sharma .... Counsel for the Respondents.

CORAM: Hon'ble Mr. P.C. Jain, Member (A).
Hon'ble Mr. J.P. Sharma, Member (J).

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(Judgement of the Bench delivered by
Hon'ble Mr. P.C. Jain, Member (A).

JUDGEMENT

All these 12 Applications filed under Section 19 of the Administrative Tribunals Act, 1985 are based on similar facts, having been filed by Safai Karamcharis of Northern Railway, Delhi Railway Station, and can be conveniently disposed of by a common judgement. All the applicants have prayed for the following reliefs: -

" (i) The impugned order dated 6.12.88 removing the applicant from Railway Service without holding an enquiry under Rules 14(ii) of Railway Servants (Discipline & Appeal) Rules may be quashed and the applicant may kindly be reinstated in service with continuity of service and full back wages.

(ii) Any other relief or reliefs be granted to the applicant as the Hon'ble Tribunal deems fit and proper in the circumstances of the case."

2. The applicants were appointed as Safai Karamchari in CWS, Railway Station, Delhi Main / casual labour against day to day vacancies on the dates shown against each: -

(1) Shri Kishan Pal	...	29.6.80.
(2) Shri Balbir Singh	...	29.1.80.
(3) Shri Ilam Chand	...	18.4.80.
(4) Shri Yad Ram	...	16.4.80.
(5) Shri Prem Raj Singh	...	13.3.81.
(6) Shri Rajbir Singh	...	29.1.80.
(7) Shri Mahabir Singh	...	11.2.80.
(8) Shri Raj Kumar	...	13.5.81.
(9) Shri Gyanender Singh	...	16.2.80.
(10) Shri Chaman Singh	...	11.2.80.
(11) Shri Sushil Kumar	...	15.6.80.
(12) Shri Asa Ram	...	21.2.80.

On 17.8.1988, they were served individually by a Show Cause Notice in which it was alleged that they had secured appointment as Safaiwala on fictitious casual labour cards containing

bogus entries of their working on the Railway prior to their appointment under CWS/DLI during the year 1980-81 and that the investigation had revealed that they had never worked on Railway prior to their engagement under CWS/DLI and thus they had obtained the service by fraudulent means and misrepresentation of facts. The applicants sent their replies on 31.8.1988 addressed to the A.M.E. (C&W), N.R., New Delhi stating that their certificates were genuine and true and they had passed screening test conducted by APO & AME in January 1987. The A.M.E. (C&W), vide his letter dated 6.12.1988 conveyed the following orders: -

> "Your defence is not convincing and undersigned has come to this conclusion that you have obtained service through fraudulant means, misrepresentation, bogus casual labour cards not issued by the competent authority.
> I understand that you are not a fit person to be retained in service. Hence you are hereby removed from service with immediate effect."

The appeals filed by the applicants were also rejected by the Divisional Mech. Engineer (Coaching), Northern Railway, New Delhi, vide letter dated 12.1.1989, by which they were communicated as under: -

> On the basis of enquiry made by Vigilance department, it had been proved that they had obtained the said appointment on the basis of casual labour cards indicating that they had worked on Railway earlier, whereas on enquiry it was revealed that they had never worked on railways, prior to their engagement under CWS/DLI and their previous casual labour cards were found to be false and bogus.
>
> "I have gone through this case and have received the conclusion, that any appointment of any length of prior which has been obtained on the basis offalse and bogus card/certificate cannot be sustained even if worked for 8 years or so and screening etc. has taken place in between."

3. We have gone through the record and have heard the learned counsel for the parties.

4. The case of the applicants is that each of them had put in about 8 years of service and they have been denied the protection given under Article 311 of the Constitution of India. They have pleaded that since they had acquired the status of a temporary employee, it was essential that an enquiry in compliance with Rule 14 of the Discipline & Appeal Rules should have been conducted before imposition of a major penalty of removal from service. They have assailed the order of the Assistant Mech. Engineer as arbitrary, wholly unjustified and violative of the principles of natural justice. The socalled investigation made by the respondents as mentioned in the Show Cause Notice was made only at the back of the applicants as they were never made a party to the same.

5. In their written statement, the respondents pleaded that the applicants were engaged as casual labour against day to day vacancies. They themselves gave in writing that they secured bogus casual labour cards by giving an illegal gratification and that they had not served the Railway Administration earlier. Under the extant rules it was not necessary to issue a charge sheet to the applicants nor was it necessary to hold a full fledged enquiry in view of the facts and circumstances of the case of the applicants, and they have been rightly removed from service. The applicants on the other hand have denied their confession by stating that "This has been written by the Inspector of Vigilance who called the applicants in his office on 31st July, 1986 and forcibly obtained the signature on the paper. The applicants are not literate. The contents were not read over to the applicants."

6. The instructions issued by the Ministry of Railways (Railway Board) in their letter dated 8.6.81 on the subject

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of Casual Labour provide that staff paid from contingencies and who continue to do the same work for which they were engaged or other work of the same type for more than 120 days without a break will be treated as temporary after the expiry of 120 days continuous employment. These instructions also provide that casual labour given temporary status are eligible for all the entitlements and privileges admissible to temporary Railway servants as laid down in chapter XXIII of the Indian Railways Establishment Manual. These entitlements and privileges also include the benefits of the Discipline and Appeal Rules. In view of these instructions, the applicants having worked continuously for more than 120 days, would be deemed to have acquired temporary status and, as such, their services could not have been terminated except by holding a proper enquiry under the Railway Servants (Discipline & Appeal) Rules, 1968. In the inquiry said to have been conducted by the Vigilance Department, the applicants were not associated. Similarly, the show cause notice cannot be held to be a Memorandum of Charge in accordance with the Railway Servants (Discipline & Appeal) Rules, 1968. No evidence was adduced against the applicants, nor were they given any opportunity to controvert the same. In view of this, termination of the services of the applicants cannot be upheld.

7. The learned counsel for the applicants emphasised that the applicants should be paid arrears of pay and allowances for the period they have been kept out of job for no fault of theirs and also cited a number of judgements in support of their contention. In the cases before us, according to the respondents, the applicants are said to have admitted that they had furnished bogus cards of previous employment. Whether their admission was voluntary or under duress will need to be gone into if the respondents choose to initiate an inquiry under the Railway Servants (Discipline & Appeal) Rules. After considering all relevant factors,

we are unable to grant the prayer for pay and allowances for the period the applicants did not work on the principle of 'no work, no pay' as also due to the fact that at this stage, it cannot be said that the applicants did not contribute in any manner whatsoever to the process which resulted in the termination of their employment.

8. In view of the foregoing discussion, the impugned orders dated 6.12.1988 whereby the applicants were removed from service, and the orders dated 12.1.1989 whereby the appeals of the applicants were rejected are hereby quashed and set aside. The respondents are directed to take the applicants back in service on the same terms as were applicable to them before their services were terminated, within 30 days of the receipt of a copy of this order by them. But the applicants will not be entitled to arrears of pay and allowances for the period between termination of their services and reinstatement. The respondents would be free, if they so decide, to initiate action under the Railway Servants (Discipline & Appeal) Rules, 1968 for the alleged misconduct in regard to furnishing of bogus service cards by the applicants. In the circumstances of the case, we leave the parties to bear their own costs.

(J.P. SHARMA)
Member(J)

(P.C. JAIN)
Member(A)