

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

NEW DELHI

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O.A. No. 2588/89
T.A. No.

199

DATE OF DECISION 31.5.91

Shri Rakesh Kumar alias Rakesh ~~Petitioner~~ Applicant

Shri G.D.Bhandari, Advocate for the ~~Petitioner(s)~~ Applicant

Versus

General Manager, Northern Railway Respondents
& others

Mrs. Shashi Kiran Advocate for the Respondent(s)

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The Hon'ble Mr. P.K.KARTHA, VICE CHAIRMAN (J)

The Hon'ble Mr. D.K.CHAKRAVORTY, MEMBER (A)

1. Whether Reporters of local papers may be allowed to see the Judgement? *Yes*
2. To be referred to the Reporter or not? *Yes*
3. Whether their Lordships wish to see the fair copy of the Judgement? *Yes*
4. Whether it needs to be circulated to other Benches of the Tribunal? *No*

JUDGEMENT

(JUDGEMENT OF THE BENCH DELIVERED BY HON'BLE
MR. D.K.CHAKRAVORTY, MEMBER)

The applicant, who has worked as a Safaiwala in the office of the respondents, has filed this application under Section 19 of the Administrative Tribunals Act, 1985 praying for the following reliefs:-

- (i) to set aside and quash the impugned order dated 27.9.89 whereby his services were terminated;
- (ii) to direct the respondents to treat him as having been granted temporary status on completion of 120 days of substitute labour service in 1988; and
- (iii) to direct them to reinstate him and treat him as on duty since 27.9.1989 with all consequential benefits.

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2. The applicant has produced ^{documentary evidence} to show that he had worked as Substitute Safaiwala from 1.3.88 to 22.9.89 (vide the working certificate issued by the Traffic Inspector, Northern Railway, Jakhal at Annexure A-2, page 13 of the paperbook). The applicant also belongs to the Scheduled Caste community. He had two earlier stints of service with Northern Railway for 30 days each from 12.4.83 to 11.5.83 and 5.3.84 to 3.4.84 (vide the certificate given by the Senior Health Inspector, Northern Railway, Jind Junction at Annexure A-4, page 15 of the paperbook). His services were terminated by the impugned order dated 27.9.88 at Annexure A-1, page 12 of the paper-book which is reproduced below:-

" As discussed with APO/Bills, New Delhi there are only three sanctioned posts of Safaiwala under TI/JHL, the salary has, therefore, been stopped by him.

You are discharged from service w.e.f 27.9.89 FN dated, as your services are no longer required".

3. The applicant, along with Shri Naresh Kumar, who was similarly placed, submitted a representation to the Divisional Railway Manager wherein he requested for reinstatement on the ground that he had acquired the benefit of railway passes and uniform etc. This did not receive any favourable response.

4. In the counter-affidavit, the respondents have mainly relied on the ground that the Traffic Inspector is not the competent authority to appoint Safaiwala in class IV posts under the existing rules and as such, the certificate of employment at Annexure A-1 cannot be

accepted. It is further contended that since the respondents do not have the relevant records available, it is for the applicant to prove that he was rightly appointed by the competent authority. Only such staff, who are engaged or appointed by the competent authority can be regularised after conducting screening.

5. We have heard the learned counsel for both sides and have also carefully gone through the records of the case.

6. The learned counsel for the applicant drew our attention to OA No.2589/89 filed by Shri Naresh Kumar alias Naresh which had been allowed by this Tribunal under the judgement dated 5.6.90. He stated that Shri Naresh Kumar, the applicant in the other OA and Shri Rakesh Kumar, the applicant in the present OA, are ^{similarly} ~~circumstanced~~ and both of them were discharged from service under the same impugned order dated 27.9.89. In compliance with the judgement of this Tribunal in OA 2589/89, Shri Naresh Kumar has already been reinstated and he is now employed in the Railways. The learned counsel for the applicant contended that Shri Rakesh Kumar, the present applicant should also be given similar reliefs and he should be ~~reengaged~~ by the respondents. Further, Shri Rakesh Kumar should be ~~allowed back~~ wages and all consequential benefits ~~atleast from~~ the date Shri Naresh Kumar had been reappointed by the Railways. The learned counsel for the applicant further stated that the Traffic Inspectors are competent to make appointment of casual labourers under sanctions given by the Divisional authorities. The fact that the applicant had been allowed salary as Safaiwala for more than 1½ years indicates that the existence

of sanction for the post must have been verified by the accounts staff and that the respondents have not produced any documentary evidence or orders to show that there was no sanctioned post in existence.

7. Opposing the application, the learned counsel for the respondents contended that since the appointment of the applicant was made through an administrative mistake as there was no sanctioned post of Safaiwala available and that too by an authority not competent to do so, he was discharged and the ordinary rules regarding attainment of temporary status, eligibility for screening for regularisation etc. would not be applicable in this case. As regards, the judgment of the Tribunal in SA 2589/89, the learned counsel for the respondents stated that since no counter was filed in that application and no counsel for the respondents appeared to defend the case, no advantage can be taken of such an ex-parte judgment. She, therefore, prayed that the application should be dismissed.

8. Admittedly, the applicant has worked for more than 120 days continuously as a Substitute Safaiwala. In accordance with the provisions of the Indian Railway Establishment Manual and the instructions issued by the respondents in this regard, the applicant had acquired temporary status. Termination of the service of the applicant, who had acquired temporary status, without giving him any notice or without holding an inquiry against him in accordance with the provisions of the

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Railway Servants(Discipline & Appeal) Rules, 1968 is not legally sustainable. The legal position in this regard has been considered in this Tribunal's judgement dated 16.3.90 in OA 2467/88 (Basant Lal & 104 others Vs. Union of India & others) to which both of us were parties. In short, casual labourers as well as substitutes who had worked continuously for more than 120 days in open line, acquire temporary status and they will be entitled to the rights and privileges admissible to temporary Railway servants as laid down in Chapter XXIII of the Indian Railway Establishment Manual. The rights and privileges admissible include the benefits of the Discipline Appeal Rules. Termination of their service without giving a show cause notice or without following the procedure laid down in the Railway Servants(Discipline & Appeal) Rules, 1968 cannot be legally sustained.

9. Following the decision of this Tribunal in Basant Lal's case, we hold that the termination of the service of the applicant in the instant case, is illegal. The impugned order of termination of service dated 27.9.1989 is, therefore, set aside and quashed. The applicant shall be reinstated in service within a period of three months from the date of communication of this order. The respondents may consider engaging him as a substitute Safaiwala at the place where he had worked earlier failing which he may be accommodated anywhere else in India, depending on the availability of vacancies. In the facts and circumstances of the case, we do not direct payment of back wages to him. The applicant should also be screened for the purpose of regularisation

in accordance with the relevant rules and instructions for which the entire period of actual service rendered by him shall be taken into account and the breaks shall be condoned and, if found suitable, he should be regularised in a Group 'D' post.

10. The application is disposed of with the aforesaid directions. The parties will bear their own costs.

D.K. Chakravorty 31/5/91
(D.K.CHAKRAVORTY)
MEMBER(B)

P.K. Kartha 31/5/91
(P.K.KARTHA)
VICE CHAIRMAN(J)