

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

N E W D E L H I

O.A. No. 2589/89
T.A. No.

199

DATE OF DECISION 05.06.1990.

<u>Shri Naresh Kumar alias Naresh</u>	Petitioner
<u>Shri G.D. Bhandari</u>	Advocate for the Petitioner(s)
Versus	
<u>The General Manager, Northern</u>	Respondent
<u>Railway & Others</u>	
<u>None</u>	Advocate for the Respondent(s)

CORAM

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

The Hon'ble Mr. D.K. CHAKRAVORTY, ADMINISTRATIVE MEMBER

1. Whether Reporters of local papers may be allowed to see the Judgement ?
2. To be referred to the Reporter or not ?
3. Whether their Lordships wish to see the fair copy of the Judgement ?
4. Whether it needs to be circulated to other Benches of the Tribunal ?

(The judgment of the Bench delivered by Hon'ble
Mr. D.K. Chakravorty, Administrative Member)

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

- (i) to set aside and quash the impugned order dated 27.9.1989 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.

2. Despite service of notice on the respondents, none

has appeared on their behalf and nor have they filed their counter-affidavit. The case was listed for hearing on 29.5.1990, when we heard the learned counsel of the applicant and perused the records of the case carefully.

3. The applicant has produced documentary evidence to show that he has worked as substitute Safaiwala from 1.6.1988 to 27.9.1989 (vide the working certificate issued by the Traffic Inspector of Northern Railway's on 28.11.1989 at Annexure A-2, page 13 of the Paper Book). The applicant also belongs to the Scheduled Caste community. He had an earlier stint of service with the Northern Railway for 31 days from 25.7.1983 to 24.8.1983 (vide the certificate given by the Inspector of Works at Annexure A-4, page 15 of the Paper Book). His services were terminated by the impugned order dated 27.9.1989 at Annexure A-1, page 12 of the Paper Book which reads as follows:-

" 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 with effect from 27.9.1989 FN dated, as your services are no longer required".

4. The applicant submitted a representation to the respondents on 8.10.1989 wherein he requested for reinstatement on the ground that he had acquired temporary status. This did not receive any favourable response.

5. Admittedly, the applicant has worked for more

than 120 days continuously as a substitute Safaiwala.

In view of this, he has acquired temporary status in accordance with the provisions of the Indian Railway Establishment Manual and the instructions issued by the respondents in this regard. 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 Railway Servants (Discipline & Appeal) Rules, 1968 is not legally sustainable. The legal position in this regard has been considered in this Tribunal's judgment dated 16.3.1990 in OA 2467/88 (Basant Lal & 104 Others Vs. Union of India & Others). 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 to them 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 is not legally sustainable.

6. 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 and if found suitable, he should be regularised in a Group 'D' post.

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

D.K.C.
(D.K. CHAKRAVORTY)

MEMBER (A)

9/6/1990

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Parmanu
(P.K. KARTHA)
VICE CHAIRMAN (J)

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