

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL
N E W D E L H I

O.A. No. 421/87
T.A. No.

199

DATE OF DECISION 27.11.1990.

<u>Shri Om Parkash</u>	Petitioner
<u>Shri S.K. Sawhney</u>	Advocate for the Petitioner(s)
Versus	
<u>Union of India</u>	Respondent
<u>Shri O.N. Moolri</u>	Advocate for the Respondent(s)

CORAM

The Hon'ble Mr. Justice Amitav Banerji, Chairman

The Hon'ble Mr. I.K. Rasgotra, Member (A)

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 ?


 (AMITAV BANERJI)
 CHAIRMAN

IN THE CENTRAL ADMINISTRATIVE TRIBUNAL

PRINCIPAL BENCH: NEW DELHI

OA No.421/87

Date of decision 27.11.1990.

Shri Om Parkash

...Applicant

Versus

Union of India

...Respondents

CORAM:

THE HON'BLE MR. JUSTICE AMITAV BANERJI, CHAIRMAN

THE HON'BLE MR. I.K. RASGOTRA, MEMBER (A)

Advocates:

For the applicant

Shri A.K. Sawhney

For the respondents

Shri O.N. Moolri

(Judgement of the Bench delivered by Hon'ble Mr. I.K. Rasgotra, Member (A))

Shri Om Parkash, Shunting Porter, Saharanpur, Northern Railway has filed this application under Section 19 of the Administrative Tribunals Act, 1985, challenging the order of discharge/removal from service issued by the respondents No.220-E/O/Screening/GM/P-3 dated 8.5.1986. The short question raised in this OA is whether the applicant who had put in 5 years service should have been removed from service on the ground that he had obtained employment on the basis of bogus casual labour card without giving him a reasonable opportunity to defend himself under the Railway Servants Discipline & Appeal Rules, 1968.

2. The applicant was employed after screening as a Shunter Porter w.e.f. 3.9.1981 (Rs.196-232). He was earlier working with the respondents on Daily Wages during the period 18.4.1975 to 14.8.1981 on seasonal and intermittent work. He was issued a casual labour card

showing the entries of the dates regarding his employment with the respondents. After screening and on being found medically fit he was taken on regular employment. The applicant has contended that the impugned discharge slip dated 8.5.1986 is illegal and malafide as the same has been issued without giving him a reasonable opportunity to defend himself in accordance with the Rule 9 of the Railway Servants Discipline & Appeal Rules, 1968. He also contends that his juniors have been retained in service who were screened along with him. The applicant belongs to Scheduled Caste Community.

By way of relief he has prayed that impugned order be declared unconstitutional and set-aside and that the respondents be directed to take him back on duty w.e.f. 17th May, 1986 - the date he was discharged from service illegally-with-consequential benefits.

3. The respondents in their written statement have submitted that the petitioner was screened on the basis of Casual Labour Service recorded for the following periods in the casual labour card No.13558:-

- i) 18.4.1975 to 7.5.1975
- ii) 22.6.1975 to 11.7.1975

The entries in the Casual Labour Card, however, were not found to be genuine on a subsequent verification. The respondents have denied that the applicant was a regular employee but have admitted that he was engaged as a substitute Shunting Porter under Chief Yard Master Khanalampura. It has also been admitted that his service was dispensed with as he produced a bogus casual labour card for engagement as a substitute.

The substitutes are defined as persons engaged in regular service of pay and allowance applicable to posts against which they are employed in the Indian Railway Establishment Manual, unlike the casual labour whose employment is seasonal intermittent, sporadic or extends over short periods (Paragraphs 2325 and 2501 I.R.E.M.).

Substitutes are entitled to draw annual increments and subscribe to provident fund etc. They receive payment on monthly basis and have the temporary status. They are considered as Railway servants for all purposes (emphasis supplied). The service rendered as substitute after completion of 4 months and followed by regular absorption also counts for pension. Since substitutes are Railway servants for all purposes their service cannot be discharged summarily. A large number of cases of casual labour in circumstances identical have earlier been disposed of by the another Bench of this Tribunal in the case of Rati Ram & Ors. (OA-309/89) along with 7 other OAs vide judgement delivered on 6.4.1990. The only point of distinction in the case before us is that the applicant is better placed than the applicants in the OAs of the judgement (supra) as he was engaged as a 'substitute'.

4. We have heard Shri S.K. Sawhney and Shri O.N. Moolri, learned counsel for the applicant and respondents respectively and given our careful consideration to the matter. We are of the view that services of the applicant were terminated illegally without following the process of law viz. Railway Servants Discipline & Appeal Rules, 1968.

We, therefore, set aside and quash the impugned order dated 8.5.1986. We further order and direct that the respondents shall reinstate the applicant in service. In the facts and circumstances of the case we however do not direct payment of back wages to him. After reinstating the applicant the respondents will be at liberty to take appropriate action against him under the Railway Servants Discipline & Appeal Rules, 1968 for any alleged misconduct. The respondents shall comply with the above directions within a period of two months from the date of communication of this order.

The parties will bear their own costs.

S. K. Sawhney
(I.K. RASGOTRA)
Member (A)

Amitav Banerji
(AMITAV BANERJI)
Chairman