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CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2527/1993

New Delhi, this 25th day of July, 1997

Hon'ble Dr. Jose P. Verghese, Vice-Chairman(J)
Hon'ble Shri S.P. Biswas, Member(A)

Shri Jaya Nand
s/o Shri Rudri Dutt
198, A-2 Railway Colony
Basant Road, Paharganj, New Delhi .. Applicant

(By Advocate Shri M.L.Sharma)

versus

Union of India, through

1. General Manager
Northern Railway
Baroda House, New Delhi

2. Dy. General Manager (G)
Northern Railway
Baroda House, New Delhi .. Respondents

(None present)

ORDER

Hon'ble Shri S.P. Biswas

The short question for consideration is (i) whether the services of a substitute railway employee, having obtained temporary status, could be terminated without affording any opportunity of being heard and (ii) whether he could be termed as 'workman' and his termination would mean retrenchment falling within Section 2(00) of ID Act requiring compliance with the provisions under Section 25F of the Act.

2. The applicant was initially engaged as a substitute bungalow khallasi/peon of Chief Radiologist under the Northern Railway on 6.5.91, obtained temporary status with effect from 6.5.93 but his services were terminated by order dated 18.8.93 (Annexure A-1). By letter dated 24.11.93 (Annexure A-2) his appeal for regularisation as

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casual employee was rejected by the respondents. Consequently, the applicant has prayed for quashing of the aforesaid orders and take him back on duty with consequential benefits.

3. As per the counsel for the applicant, orders have been issued without following the procedure applicable to temporary government servant and also without following statutory provisions contained in the Industrial Disputes Act, 1947.

4. In the counter, respondents have opposed the above contentions and have submitted that the applicant's services were found to be unsatisfactory by the officer with whom he was assigned the work and he was discharged from service with effect from 18.8.93 according to the terms and conditions of his engagement.

5. It is well settled in law that even a temporary government servant is entitled to the protection of Article 311(2) of the Constitution where termination involves a stigma or amounts to punishment. We have looked into the order of termination and found that the decision of termination of the services of applicant was taken at the highest level on grounds of "unsuitability" of the applicant in respect of the post held by him and it is not by way of any punishment and no stigma is attached to the respondent by reason of the termination of his service. Under these circumstances, termination cannot be said to be vitiated by non-observance of Article 311(2) of the

Constitution of India. This view of ours gets support from the decision of the Hon'ble Supreme Court in the case of Commodore Commanding, Southern Naval Area, Cochin Vs. V.N. Rajan, AIR 1981 SC 965. We held, therefore, that the above plea does not help the applicant.

6.. Respondents have denied that the applicant could be termed as workman. Whether a person employed in a substitute post is "workman" or not within the meaning of ID act, has been considered elaborately by a decision of this Tribunal in C.R. Hariharan Vs. CPO, Southern Rly. & Ors. (1990(14)ATC-106) wherein it has been held that such an employee is a workman. Even with the attainment of temporary status, the applicant will continue to be a workman within the provisions of ID Act.

7.. Section 25F provides two conditions-precedent retrenchment, viz;

(i) The workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;


(ii) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to 15 days average pay for each completed year of continuous service or any part thereof in excess of six months.


8.. The applicant was not given notice and was not paid any retrenchment compensation because the management acted on the plea that the applicant was not a workman and provisions of Section 25F were

not attracted. Since the above said provisions are mandatory, we hold that non-observance of the conditions-precedents would make the termination order invalid.

9. In the result, we set aside the order of termination. While doing so, we make it clear that this would not take away the right of the respondents to proceed against the applicant in accordance with law, if it finds it fit and proper.

10. The application is allowed as aforesaid, with no order as to costs.


(S.P. Biswas)
Member(A)


(Dr. Jose P. Verghese)
Vice-Chairman(J)

/gtv/