

(17)

Open Court

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH
ALLAHABAD

Original Application No. 741 of 1997

Allahabad this the 16th day of May, 2002

Hon'ble Mr. Justice R.R.K. Trivedi, V.C.
Hon'ble Mr.C.S. Chadha, Member (A)

Dr.Vivek Upadhyay Son of Sri S.J. Upadhyay, resident
192, Karalan, Biharipur, District Bareilly.

Applicant

By Advocate Shri G.C. Gehrana

Versus

1. Union of India through the Chief Medical Director,
North Eastern Railway, Gorakhpur.
2. Chief Medical Superintendent, Regional Hospital,
North Eastern Railway, Izatnagar, Gorakhpur.
3. Divisional Railway Manager(P), North Eastern
Railway, Izatnagar, Bareilly.

Respondents

By Advocate Shri D.C. Saxena

O R D E R (Oral)

By Hon'ble Mr. Justice R.R.K. Trivedi, V.C.

By this O.A. under Section 19 of the
Administrative Tribunals Act, 1985 the applicant
has challenged the order dated 30-06-97/03-07-97
by which the applicant's services as House Officer/
N.E.Railway Surgeon posted in ~~Regional~~ Hospital, Izzat Nagar,
Bareilly have been terminated.

.....pg.2/-

18

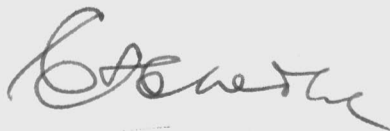
2. The ~~Facts~~ of the case are that the applicant was appointed as temporary House Officer/ ~~Surgeon~~ in N.E. Railway Hospital after having been selected vide order dated 21.11.1995. The appointment order annexure-1 contained a condition that the applicant's services may be terminated at any time on 14 days notice. The services of the applicant have been terminated by the impugned order stating that his work and conduct was not satisfactory. On 15.05.1997 he was asked to ~~go~~ accompany a serious cancer patient Smt. Rajesh Mathur to Varanasi but the applicant did not accompany the patient, who died in the way. The show-cause notice was given to the applicant. He submitted his explanation, which was not accepted and the impugned order was passed that his service shall be terminated automatically on the expiry of 14 days notice. Learned counsel for the applicant has submitted that as the order impugned is not the order of termination simpliciter but it is based on specific charge, it is liable to be quashed, as such, the order could not be passed without holding any inquiry and without giving any opportunity of hearing ~~xx~~ under the relevant rules. Learned counsel for the respondents, however, submitted that the order of termination has been passed strictly in terms of the order of appointment after serving 14 days notice and order does not suffer from any error, calling any interference by this Tribunal

3. We have heard and carefully considered the submission of counsel for the parties.



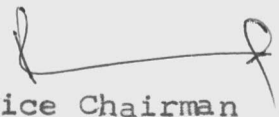
4. Article 311(2) of the Constitution of India provides that ~~no~~ such person who is a member of Civil Service of the Union or in All India Service shall be dismissed, or removed, or reduced in rank except after an inquiry in which he has been informed of the charges against him and given reasonable opportunity of being heard in respect of those charges. Legal position is well settled that protection contemplated under Article 311(2) is applicable to temporary employees also. Thus, if the respondents wanted to terminate the applicant from service, on the charges mentioned in the impugned order, it was incumbent on them to hold an inquiry and give reasonable opportunity of hearing to the applicant, which in the present case has not been done.

5. For the reasons stated above, the impugned order cannot be sustained being violative of Article 311(2) of the Constitution of India, and the applicant is entitled for the relief. The O.A. is, therefore, allowed. The impugned order dated 30.06.97/03.07.97 is quashed. The applicant shall be reinstated. However, he will not be entitled for any other consequential benefits. No order as to costs.



Member (A)

/M.M./



Vice Chairman