

OPEN COURT

CENTRAL ADMINISTRATIVE TRIBUNAL
ALLAHABAD BENCH, ALLAHABAD.

Allahabad, this the 9th day of November 2004.

QUORUM : HON. MR. D. R. TIWARI, A.M.

O.A. No. 1470 of 2001

Akhilesh Kumar Pandey, S/o Shri A.P. Pandey, Jagdishpur,
Post Panapur, Allahabad.....

.....Applicant.

Counsel for applicant : Sri Ashish Srivastava.

Versus

1. Union of India through General Manager, Northern Railway,
Baroda House, New Delhi.
2. Divisional Railway Manager, Northern Railway, Lucknow.
3. Controller of Stores, Northern Railway, Jodhpur (Rajasthan)
4. Divisional Mechanical Engineer, Northern Railway, Diesel
Shed, Mughalsarai, Varanasi.

.....

.....Respondents.

Counsel for respondents.: Sri A.K. Gaur.

ORDER

BY HON. MR. D. R. TIWARI, A.M.

By this O.A. filed under section 19 of the A.T.
Act, 1985, the applicant has prayed for the following
reliefs :-

- "i) This Hon'ble Court may be pleased to set aside
the order dated 20.3.2001 (Annexure A-4 to
this O.A. with Compilation No.1).
- ii) The respondent No.3 may be directed to accord
all benefits and privileges of continuity
of service including monetary benefits as
if, no such order dated 20.3.2001 (Annexure
A-4 to this O.A.) has ever been passed."

2. The facts, in brief, of this case are that the
applicant was on verbal orders and was engaged as Casual
Labour in the office of Divisional Mechanical Engineer
(Diesel Loco Shed, Mughalsarai). He started working as
such since Feb.1994 and he was given regular appointment
by giving him Token No.95 for the post of Khalasi. After

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learning that the Diesel Locomotive Shed was to be abolished on the advice of the senior Officers, the applicant applied for his transfer in the office of Respondent No.3 where the vacancies of Khalasis existed and he joined the office of Respondent No.3 after being relieved on 21.2.98. This was done in pursuance of a letter from the office of Respondent No.3 dated 12.1.98 which required the services of the applicant (Annexure A-1). In the office of Respondent No.3, after passing the suitability test, he was promoted to the post of Store Majdeer in the pay scale of Rs.2610-3540 by order dated 10.3.98. It appears that some vigilance inquiry was going on and he was called in the office of Respondent No.3 and four officers started questioning him about his appointment and continuance in service. He told them that he was appointed on the verbal order of the Officers in Mughal Sarai and he had no appointment letter. These Officers threatened him that he would loose the job and will be on the road because he was not in possession of appointment letter. The applicant was helpless and they asked him to give in writing that he was appointed on the compassionate ground. He did not want to give it in writing but he was forced to give this fact in writing that he was appointed on compassionate grounds and these Officers assured him that since he was working for the last four years and there has been no discrepancy in his performance and he will not be affected with the statement that he was appointed on compassionate ground. They also stated that Railway records showed that he was appointed on compassionate ground and his statement to the effect that he was appointed as a Casual Labour on a verbal instruction would be contradictory to the records maintained in the Railway and it was necessary that there should be harmony with the Railway record. The applicant being not very literate and poor man, he was forced to give in writing according to the wishes of these Officers and he had to give the statement that he had been given the

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compassionate appointment on the ground that his father was disabled Railway employee. This statement was given under coercion and duress that too under the threat of termination and also being physically manhandled. After sometime he got the impugned letter dated 20.3.2001 terminating his services. (Annexure A-4).

3. The order terminating his services has been assailed on various grounds mentioned in para 5 and its various sub-paragraphs of the O.A. The main ground is that it is not a termination simpliciter and is violative of Article 311(2) of the Constitution. It is in utter violation of principles of natural justice as no show cause notice or hearing was granted to the applicant.

4. The respondents, on the other hand, have contested the O.A. and filed a detailed C.A. They have submitted that no casual labour can be engaged by any authority as per the extent rules. Only the General Manager is competent authority for sanction to engage casual labour. They have accepted that some vacancies of group 'D' staff (Khalasi) grade Rs.750-940 was vacant in the office of Respondent No.3 and the applicant applied for his transfer from Lucknow to Jodhpur. They have also submitted that vigilance investigation was made by the General Manager (Vigilance), Bareda House, New Delhi and as per the report of the vigilance investigation, the appointment of the applicant was found to be fake and fraudulent and the services of the applicant have been terminated. Hence the O.A. is devoid of merit and be dismissed.

5. I have heard counsel for the parties very carefully and perused the records.

6. The only question which falls for consideration is whether the action of the respondent in terminating the services of the applicant can be sustained in law. The impugned order (Annexure-4) clearly speaks about the inquiry

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made by the Vigilance Department and on the basis of findings, his services were terminated. This inquiry was made behind the back of the applicant. It cannot be said that it is a termination simpliciter and does not require any inquiry. Since the applicant has worked for about four years and he was a contributor to the P.L., bonus etc., which is clear from Annexure A-2 of the O.A. The respondents have admitted that there were vacancies in the office of Respondent No.3 and the applicant also applied for the same. The requirement of vacancy in the office of Respondent No.3 is clear from Annexure No.A-1 of the O.A. He has been terminated without following any procedure under the Railway Servant (Discipline & Appeal), Rules, 1968. It is a case of no notice, no hearing etc. It is a settled principle of law that no employee can be terminated by an inquiry held behind his back. Principle of natural justice demands that he should be given an opportunity to defend, himself. For this view I am taking gets support from the decision of the Apex Court in the case of Dipti Prakash Banerjee Vs. Satvendra Nath Bose, National Centre for Basic Science, Calcutta & others - JT 1999(1) SC 396 wherein it has been held that if findings were arrived at in inquiry to the misconduct behind the back of the officer or without a regular Departmental inquiry, the simple order of the termination is to be treated as "founded" on the allegation and will be bad in law. In view of this, the O.A. is liable to succeed on merit because the principles of natural justice and the statutory provisions of Railway Service (Discipline & Appeal) Rules have been given a go by.

7. In the result in view of the discussions made above, the O.A. succeeds on merit and is accordingly allowed. The respondents are directed to reinstate the applicant forthwith with the liberty to the respondents to initiate the disciplinary proceedings in accordance with law if so advised.

D.S.
A.M.